

160-305

CLAIMS TRIBUNAL

دیوان داورى دعاوى ایران - ایالات متحدہ

17-۲۰۵

ORIGINAL DOCUMENTS IN SAFE

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Case No. 160Date of filing: 23. Sep 87**** AWARD**- Type of Award on Agreed Terms- Date of Award 23. Sep 874 pages in English4 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 _____

_____ pages in English

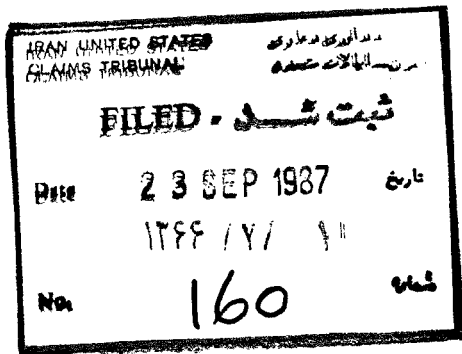
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- Date _____

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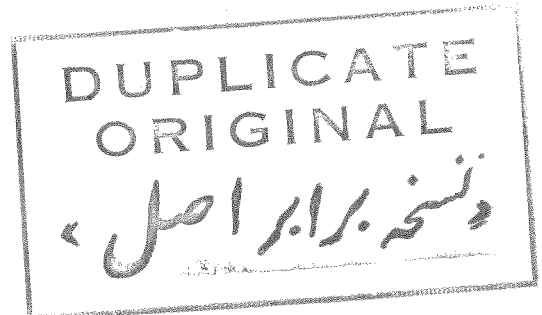


Case No. 160

Chamber One

Award No. 318-160-1

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RCA GLOBAL COMMUNICATIONS INC.,
RCA GLOBAL COMMUNICATIONS DISC, INC.,
RCA GLOBCOM SYSTEMS, INC.,

Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
TELECOMMUNICATIONS COMPANY OF IRAN,
ISLAMIC REPUBLIC OF IRAN's ARMY,
JOINT STAFF, BANK MELLI IRAN,
BANK MARKAZI, FOREIGN TRADE BANK
OF IRAN,

Respondents.

AWARD ON AGREED TERMS

On 29 June 1987, a Joint Request for an Arbitral Award on Agreed Terms was filed with the Tribunal, signed on the one hand by a representative of RCA GLOBAL COMMUNICATIONS, INC., RCA GLOBCOM SYSTEMS, INC., and RCA GLOBAL COMMUNICATIONS DISC, INC (hereinafter called "RCA"), and on the other hand by the AGENT OF THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, a representative of the ARMY JOINT STAFF OF THE ISLAMIC REPUBLIC OF IRAN (hereinafter called "Army Joint Staff") and a representative of BANK MELLI, requesting the Tribunal to record a Settlement Agreement dated 24 April 1987 entered into between RCA on the one hand, and on the other hand, the Army Joint Staff and Bank Melli. Copies of the Joint Request and Settlement Agreement are annexed hereto.

The Settlement Agreement provides for certain reciprocal obligations by the Parties. It provides, inter alia, for "a full, complete and final settlement of all disputes, differences, claims, counterclaims and matters arising directly or indirectly out of the Contract, relationships, transactions, and occurrences related to and subject matters of the Statement of Claim, Statements of Defence, Counter-claims, Cases 107/62 and 282/61 [before the Public Court of Tehran] and this Settlement Agreement." Article XII imposes certain conditions to be fulfilled before the issuance of the Award on Agreed Terms.

On 13 July 1987, in accordance with Article XII paragraph (a) of the Settlement Agreement, RCA deposited with the Tribunal's Registry a check in the amount of Fifty Thousand United States Dollars (U.S. \$50,000) payable to the Central Bank of the Islamic Republic of Iran.

On 27 July 1987, pursuant Article XII paragraph (b) of the Settlement Agreement, the Army Joint Staff delivered to the Tribunal's Registry the originals or certified copies of the following Letters of Guarantee:

ID 37150; ID 37151; ID 37152; ID 37153; ID 37154;
ID 37155; ID 37156; ID 37157; ID 37158; ID 37159;
ID 37160; ID 37161; ID 37162; ID 37183; ID 37184;
ID 37186,

together with the appropriate instructions of Bank Melli to Morgan Guaranty Trust Company to cancel the same. Although paragraph (b) of Article XII of the Settlement Agreement referred only to "the originals" of the documents, RCA filed a letter on 24 August 1987, confirming that the documents filed by the Respondents were satisfactory.

The Tribunal therefore finds that the conditions established by Article XII of the Settlement Agreement have been fulfilled.

The Tribunal accepts the Settlement Agreement in accordance with Article 34, paragraph 1, of the Tribunal Rules.

Based on the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

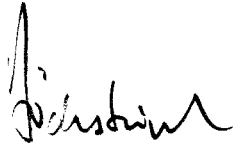
The Settlement Agreement is hereby recorded as a binding Award on Agreed Terms. Consequently, the Tribunal gives effect to the terms and provisions of the Settlement Agreement and terminates the proceedings in this Case pursuant to Article 34, paragraph 1, of the Tribunal Rules.

In accordance with Article XII paragraph (d)(2) of the Settlement Agreement, the Registry is instructed to deliver the check in the amount of Fifty Thousand United States

Dollars (\$50,000), referred to above, to the Agent of the Government of the Islamic Republic of Iran and to deliver to RCA the Letters of Guarantee and the cancellation instructions of Bank Melli to Morgan Guaranty Trust Company.

Pursuant to the requirements of the Joint Request the Tribunal declares the Letters of Guarantee referred to in Articles IV paragraph (iii) and XII of the Settlement Agreement cancelled as of the date of delivery by the Tribunal's Registry of the monies and the Letters of Guarantee referred to in Article XII paragraph (d)(2) of the Settlement Agreement.

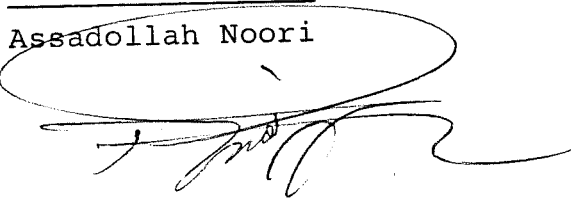
Dated, The Hague,
23 September 1987



Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God

Assadollah Noori



Howard M. Holtzmann

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IRAN/01

IN THE NAME OF GODJOINT REQUEST FOR ARBITRAL AWARD ON AGREED TERMS

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داری و مالی ایران - ایالات متحده
FILED - ثبت شد		
Date	29 JUN 1987	تاریخ
	۱۳۶۶ / ۴ / ۱	
No.	160	شماره

Pursuant to Article 34 of the Tribunal's Rules of Procedure, RCA Global Communications, Inc., its wholly owned subsidiaries RCA Globcom Systems, Inc., and RCA Global Communications DISC, Inc., ("RCA") and the Army Joint Staff of the Islamic Republic of Iran and Bank Melli ("Respondents"), jointly request that the Tribunal issue an Arbitral Award on Agreed Terms that will record and give effect to the Settlement Agreement reached by the Parties to the Settlement Agreement.

On April 24, 1987 RCA and Respondents entered into a Settlement Agreement, a copy of which is attached hereto providing inter alia that (i) the proceedings before the Tribunal and other forums shall be terminated, withdrawn and dismissed forever and with prejudice, upon the issuance of the Award on Agreed Terms; (ii) that the Tribunal issue an Award on Agreed Terms upon the fulfillment of the requirements set forth in Paragraphs (a) and (b) of Article XII of the Settlement Agreement and (iii) that the Tribunal issue the order described in Article XII (d) of the Settlement Agreement, and consider the letters of guarantee referred to in Articles IV (iii) and XII cancelled as of the date of delivery by the Tribunal registry of the monies and the letters of guarantee referred to in Article XII (d) (2). The undersigned request the Tribunal to record this Settlement Agreement as an Award on Agreed Terms, giving effect to its terms and conditions, and terminating forever and with prejudice Case No. 160 in its entirety, in the manner contemplated in the Settlement Agreement.

Respectfully submitted,

The Agent of the Islamic
Republic of Iran

By: 1399/4/8
Date: [Signature]

Army Joint Staff,
Islamic Republic of Iran

By: AL FINGER
Date: APRIL 24, 1987

Bank Melli, [Signature] RCA Global Communications, Inc.
[Signature] RCA Globcom Systems, Inc., and
[Signature] RCA Global Communications DISC, Inc.

By: [Signature]

Date: 24.4.1987

By: Lawrence Octavio
Date: April 24, 1987

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری و معاری ایران - ایالات متحده
FILED - ثبت شد	
Date 29 JUN 1987	تاریخ ۱۳۶۶ / ۴ / ۱
No. 160	شماره

April 24, 1987

In The Name of God

SETTLEMENT AGREEMENT OF CASE NUMBER 160 CHAMBER ONE

THIS AGREEMENT is made this 24th day of April, 1987, 4-2; 1366, between RCA Global Communications, Inc., RCA Globcom Systems, Inc. and RCA Global Communications DISC, Inc. (collectively referred to as "RCA") on the one hand, and the Army Joint Staff of the Islamic Republic of Iran, (hereinafter the "Army Joint Staff") and Bank Melli of Iran (hereinafter the "Respondents") on the other hand. RCA and the Respondents shall be collectively referred to as "The Parties.". This Agreement supercedes the Memorandum of Understanding of September 7, 1985.

WHEREAS, differences have arisen out of the contract dated April 16, 1974 (the "Contract") between RCA Global Communications DISC, Inc. ("RCA Globcom DISC") and the Military Switching Project Office (hereinafter "MSPO"), to which the Army Joint Staff is the successor.

WHEREAS, RCA has filed claims at the Iran-United States Claims Tribunal (the "Tribunal") against The Respondents, the Islamic Republic of Iran, (hereinafter referred to as "Iran"), Bank Markazi and Foreign Trade Bank of Iran ("FTB") arising from the Contract and from certain letters of guarantee issued pursuant thereto, which claim has been docketed as case number 160;

WHEREAS, the Army Joint Staff, while objecting to the jurisdiction of the Tribunal, has presented its statement of defense and counterclaim against RCA before the Tribunal;

WHEREAS, the Parties have filed various claims against each other in other forums, including the claim that the Army Joint Staff has filed against RCA Globcom DISC in the Public Court of Tehran, docketed with the File Number 107/62;

WHEREAS, on June 8, 1983, the Public Court of Tehran issued a judgment in the case docketed with the File Number 282/61 obligating RCA to pay the Iran Insurance Company \$120,405 (U.S.) in respect of premiums for insurance obtained in connection with performance of the Contract, and Appendix 10, Par. 2.4 of the Contract entitled RCA to reimbursement for such insurance costs from MSPO;

WHEREAS, the Parties have agreed to settle all their claims, disputes, differences outstanding or capable of arising between them and/or against Iran, FTB, or Bank Markazi, and in general all claims contained in the Statement of Claim and subsequent submissions and the Statements of Defense and Counterclaims filed with the Tribunal.

NOW, THEREFORE, in consideration of and under the conditions set forth herein, the Parties agree as follows:

ARTICLE 1

The subject matter of this Settlement Agreement is:

To settle, dismiss and terminate forever and with prejudice disputes, differences, claims, counterclaims, and matters between the Parties and against Iran, Bank Markazi and FTB which are directly or indirectly raised or capable of arising out of the Contract and the relationships, transactions, and occurrences which are the subject matters of the Statement of Claim, subsequent submissions and the Statements of Defense and Counterclaims filed with the Tribunal, and Cases No. 107/62 and No. 282/61 filed against RCA Globcom DISC in the Public Court of Tehran.

ARTICLE II

The Parties agree to submit and file this Settlement Agreement with the Tribunal on or before June 30, 1987 together with a joint motion requesting the Tribunal to record and give effect to the provisions of this Settlement Agreement as an Award on Agreed Terms. If this Settlement Agreement is not submitted and filed by such date, or within such additional time as the Parties may agree in writing or by telex, then it shall automatically become null and void, and the Parties, without prejudicing their respective rights will be placed in the same position as they were prior to the date of this Settlement Agreement.

ARTICLE III

In consideration of the covenants, premises, transfers, waivers, withdrawals, and other agreements contained herein, the Parties agree to a full, complete and final settlement of all disputes, differences, claims, counterclaims and matters arising directly or indirectly out of the Contract, relationships, transactions, and occurrences related to and subject matters of the Statement of Claim, Statements of Defense, Counterclaims, Cases 107/62 and 282/61 and this Settlement Agreement.

ARTICLE IV

(i) Upon the issuance of the Award on Agreed Terms, RCA shall cause without delay and with prejudice, all proceedings against Respondents and their Related Persons ("Related Persons" being defined as subsidiaries, affiliates, assignees, transferees, predecessors, successors, and agents) as well as against Iran, Bank Markazi and FTB and their Related Persons, in all courts, forums or before any authorities or administrative bodies to

be dismissed, withdrawn and terminated, and shall be barred from instituting, and/or continuing with, any proceedings before the Iran-U.S. Claims Tribunal or any other forums, authorities or administrative bodies, whatsoever, including but not limited to any court in the United States of America or the Islamic Republic of Iran in relation to disputes, differences or claims, related to the Statement of Claim or any past dealings which are within the scope and subject matters of this Settlement Agreement.

(ii) Upon the issuance of the Award on Agreed Terms, except as provided for in Article XII, The Army Joint Staff shall cause without delay and with prejudice, all proceedings against RCA and their Related Persons, including but not limited to Case No.107/62 and Case No.282/61 and all proceedings related to the matters set forth in Paragraphs (iii) through (v) of this Article, in all courts, forums or before any authorities or administrative bodies, to be dismissed, withdrawn and terminated and shall be barred from instituting and/or continuing with any proceedings before the Iran-U.S. Claims Tribunal or any other forums, authorities or administrative bodies, whatsoever, including but not limited to any court in the United States of America or the Islamic Republic of Iran, in relation to disputes, differences, claims and counterclaims related to the Statement of Claim, Statements of Defense, Counterclaims, Case No.107/62 or Case No.282/61, or any past dealings which are within the scope and subject matters of this Settlement Agreement.

(iii) The Army Joint Staff acknowledges that as of the date of delivery by the Tribunal Registry of the monies, the Letters of Guarantee and instructions to cancel referred to in Article XII (d) (2) the following Letters of Guarantee:

ID 37150; ID 37151; ID 37152; ID 37153; ID 37154;
ID 37155; ID 37156; ID 37157; ID 37158; ID 37159;
ID 37160; ID 37161; ID 37162; ID 37183; ID 37184;
ID 37186.

referred to in the Statement of Claim in Case 160 and issued by Morgan Guaranty Trust Company in favor of Bank Melli (the "Guarantees") and the corresponding Letters of Guarantee issued by Bank Melli in favor of MSPO will serve no further purpose and that as of such date the Guarantees and any requests for payment thereunder will be cancelled .

The Army Joint Staff shall indemnify and hold RCA harmless against any claim or counterclaim arising from or related to the Guarantees as of the date of the delivery of the monies and the Letters of Guarantee referred to in Article XII (d) (2) .

(iv) In this Settlement Agreement, RCA's obligations for Iranian taxes and Social Security premiums arising under the Contract, or otherwise as asserted in the Counterclaim, are taken into consideration. The Army Joint Staff acknowledges that RCA's obligations for Iranian taxes and/or Social Security Premiums in relation to the Contract and/or the Counterclaim will be paid or otherwise satisfied by the Army Joint Staff. RCA shall be deemed to be released from the above-mentioned Iranian tax and Social Security liabilities upon the recording by the Tribunal of this Settlement Agreement as an Award on Agreed Terms.

(v) This Settlement Agreement also takes into account the entry by the Public Court of Tehran of a judgment in Case No.282/61 on June 8, 1983, obligating RCA to pay the Iran Insurance Company \$120,405 (U.S.) in respect of premiums for insurance obtained in connection with the performance of the Contract, and Appendix 10, Par. 2.4. of the Contract, which

~~obligates MSPO to reimburse RCA for such insurance premiums.~~
The Army Joint Staff acknowledges that the judgment in Case No. 282/61 and all claims, counterclaims, court costs, penalties, attorneys' fees, fines and other damages and liabilities of whatever description which have or may arise against RCA relating to said insurance premiums or the proceedings in Case 282/61, shall be paid or otherwise satisfied by the Army Joint Staff. The Army Joint Staff shall cause Case No. 282/61, and any related proceedings, to be dismissed with prejudice. RCA shall be deemed to be released from the above-mentioned judgment in Case 282/61 and any related claims, court costs, penalties, attorneys fees, fines and other damages and liabilities of whatever nature upon the recording by the Tribunal of this Settlement Agreement as an Award on Agreed Terms.

ARTICLE V

(i) RCA shall indemnify and hold Respondents, Iran, Bank Markazi, FTB and their respective Related Persons harmless against any claim or counterclaim which RCA, its subsidiaries, affiliates, assignees, transferees, successors, agents or parent companies, or third persons may raise or take against the Respondents, Iran, Bank Markazi, FTB or their respective Related Persons, in connection with or under the same cause or causes of action contained in the Statement of Claim, and/or matters which are within the scope and subject matter of this Settlement Agreement.

(ii) The Army Joint Staff shall indemnify and hold RCA and its Related Persons harmless against any claim or counterclaim which Respondents, Iran, Bank Markazi, FTB, their subsidiaries, affilitates, assignees, transferees, successors, agents, parent companies or third persons may raise or take against RCA or its Related Persons in connection with or under the same cause or causes of action contained in the statements of Defense, Counterclaims, Cases 107/62 and 282/61, and/or matters which are within the scope and subject matter of this Settlement Agreement.

ARTICLE VI

In consideration of the covenants, premises and other agreements contained in this Settlement Agreement, upon the recording of the Award on Agreed Terms by the Tribunal, RCA, Respondents, Iran, Bank Markazi and FTB shall be released and forever discharged from any rights, obligations, and interests, past, present or future or any other matters which have been raised, could have been raised or may in the future be raised in relation to the subject matters of this case, Cases 107/62 and 282/61 and/or this Settlement Agreement as contemplated in Article I above.

ARTICLE VII

Upon the recording of the Award on Agreed Terms, RCA and Respondents shall waive any and all claims for costs (including attorney's fees) arising out of or related to the arbitration, prosecution or defense of the claims asserted before the Iran-U.S. Claims Tribunal, Iranian Courts, United States Courts or elsewhere with respect to matters involved in the Statements of Claim, Statements of Defense, Counter-claims, Cases 107/62 and 282/61 and or matters which are within the scope and subject matters of this Settlement Agreement.

ARTICLE VIII

This Settlement Agreement is for the sole purpose of settling the disputes identified herein. Nothing in this Settlement Agreement shall be relied upon or construed as relevant to or to affect in any way any argument Respondents or the Islamic Republic of Iran, its agencies, instrumentalities or entities have raised, or may raise, concerning the jurisdiction or the merits of other cases whether before the Tribunal or any other forum.

ARTICLE IX

The Parties agree that this Settlement Agreement shall be subject to ratification by the appropriate authorities of the Islamic Republic of Iran. Should for any reason whatsoever they choose not to ratify this Settlement Agreement, then it shall become null and void and in that event no party to this Settlement Agreement may rely upon, cite or publish its terms or any statements made in the course of settlement discussions. The submission to the Tribunal shall conclusively demonstrate ratification hereof by the appropriate authority of the Islamic Republic of Iran.

The Parties also agree that this Settlement Agreement shall be subject to ratification by RCA by May 15, 1987 by telex notification to the Army Joint Staff. Should for any reason whatsoever RCA choose not to ratify this Settlement Agreement, then it shall become null and void and in that event no party to this Settlement Agreement may rely upon, cite or publish its terms or any statements made in the course of settlement discussions.

ARTICLE X

For the purpose of construction and interpretation of the Settlement Agreement the entire agreement shall be read and construed as a whole without giving any specific effect to any article separately.

ARTICLE XI

The representatives of the Parties hereto hereby expressly declare that they are duly empowered to sign this Agreement.

ARTICLE XII

Within thirty days of the submission of this Settlement Agreement to the Tribunal:

(a) The sum of fifty thousand United States dollars (\$ 50,000) in cleared funds (Banker's Draft) payable to the Central Bank of the Islamic Republic of Iran shall be deposited with the Tribunal Registry by RCA.

(b) The Army Joint Staff shall deliver to the Tribunal Registry the originals of the following Letters of Guarantee:

ID 37150; ID 37151; ID 37152; ID 37153; ID 37154;
ID 37155; ID 37156; ID 37157; ID 37158; ID 37159;
ID 37160; ID 37161; ID 37162; ID 37183; ID 37184;
ID 37186.

together with the appropriate instructions of Bank Melli to Morgan Guaranty Trust Company to cancel the same.

(c) Unless the requirements of (a) and (b) above are met, the Tribunal shall not issue the Award on Agreed Terms relating to this Settlement Agreement.

(d) The Award on Agreed Terms shall in the following order:

(1) Give effect to the terms and provisions of the Settlement Agreement; and terminate the proceedings as requested in the Settlement Agreement;

(2) order the Tribunal Registry to deliver the monies referred to in (a) above to the Agent of the Islamic Republic of Iran, and also order the Tribunal Registry to deliver the Letters of Guarantee and instructions of Bank Melli to Morgan Guaranty Trust Company to cancel the same referred to in (b) above to RCA.

ARTICLE XIII

This Agreement (in four originals) has been written and signed in both languages in Farsi and English and each text shall have the same equal validity.

Army Joint Staff of the
Islamic Republic of Iran

RCA Global Communications, Inc.

By: Ali Asgari
Date: April 24, 1987

By: Laurence Colacini
Date: April 24, 1987

~~Bank Melli Iran~~
~~By: M. K. Karam~~
~~Date: 24.4.1987~~

RCA Global Communications
DISC, Inc.

By: Laurence Colacini
Date: April 24, 1987

RCA Globcom Systems, Inc.

By: Laurence Colacini
Date: April 24, 1987
Per Power of Attorney attached