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\*\* CONCURRING OPINION of \_\_\_\_\_  
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DUPLICATE  
ORIGINAL  
«نسخه برابر اصل»

CASE NO. B55  
CHAMBER ONE  
AWARD NO. 457-B55-1

TELECOMMUNICATIONS COMPANY OF IRAN,  
Claimant,  
and  
THE UNITED STATES OF AMERICA,  
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	19 DEC 1989
	تاریخ ۱۳۶۸ / ۹ / ۲۸

AWARD

Appearances:

For the Claimant : Mr. Mohammad K. Eshragh,  
Agent of the Government of the  
Islamic Republic of Iran,  
Mr. Ali Heyrani-Nobari,  
Deputy Agent,  
Dr. Ali Akbar Riyazi,  
Legal Advisor to the Agent,  
Mr. Karamali Kamayestani,  
Legal Assistant to the Agent,  
Mr. Mohsen Asgari and  
Mr. Hossein Shaheyari,  
Representatives of the  
Claimant.

For the Respondent : Mr. Timothy E. Ramish,  
Agent of the United States,  
Mr. William M. Hughes,  
Former Deputy Chief of  
Decco-Europe,

Also present : Mr. Michael F. Raboin,  
Deputy Agent of the United  
States.

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1. The Claim in this Case arises, out of two contracts under which the Claimant TELECOMMUNICATIONS COMPANY OF IRAN ("TCI") was to provide the UNITED STATES DEFENSE COMMERCIAL COMMUNICATIONS OFFICE - EUROPE ("DECCO-EUR") with the lease of certain telecommunications lines for defense purposes and out of the alleged use of a telephone line by the U.S. Consulate in Tabriz. In its Claim on the first contract with DECCO-EUR, TCI seeks 2,700,000 Rials for use of a leased telegraph circuit between Tehran and Ankara from 1 December 1971 to 30 November 1973. The Claim on the second contract with DECCO-EUR is for 2,803,125 Rials for use of a leased telephone circuit from Tehran to Ankara from 3 December 1973 to 2 October 1974. Finally, TCI requests 115,353 Rials for use of the telephone line in Tabriz from June 1978 through 3 November 1979. Therefore, the Claimant seeks a total of 5,618,478 Rials, plus interest and costs. The Respondent THE UNITED STATES OF AMERICA acknowledges liability in the amount of 1,053,339.50 Rials for use of the telegraph circuit and denies any other liability. After exchange of briefs, a Hearing was held on 15 March 1989.

I. FACTS AND CONTENTIONS

A. The Claim for Services Provided to DECCO-EUR

2. In the early 1970s, DECCO-EUR commenced negotiations with Iranian authorities to arrange for telecommunications services that would connect U.S. personnel in Iran with the communications system operated by the United States Defense Communications Agency ("DCA"). DECCO-EUR needed to establish a telegraph and a telephone circuit between Tehran and the DCA access point in Ankara, consisting of: (1) long-distance transmissions between a central receiving and transmitting station ("main repeater station") operated by Turkey and a main repeater station in Tehran operated by Iran; (2) transmissions over local cables ("tail circuits")

connecting the United States facilities in Iran or Turkey to the main repeater stations.

1. The Claim for Use of the Tehran - Ankara Telegraph Circuit

3. In a meeting on 9 November 1971 in Tehran, officials of the Iranian Ministry of Post, Telegraph and Telephone ("PTT") and representatives of DECCO-EUR reached agreement upon a leasing arrangement for the telegraph circuit which required the use of PTT facilities for the long-distance portion between the main repeater stations and the use of Iran Telephone Company facilities for the local tail circuit between the main repeater station in Tehran and the United States Embassy. The Iranian responsibility for this circuit was subsequently assumed by the Claimant TCI.

4. The United States contends that the terms of the agreement were as recorded in a letter dated 9 November 1971 from Mr. Hughes, the then Deputy Chief of DECCO-EUR, to PTT. The letter stated that its purpose was

to conclude formal arrangements through our appropriate government channels for leasing the long-distance portion of the circuit from the PTT Microwave Department using the CENTO Microwave system and the local tail circuit from the Telephone Company, Iran using their local facilities .

. . .

5. The letter requested PTT to furnish a 50 band private telegraph circuit between Tehran - Ankara not later than 1 December 1971 and noted that the United States

will pay for the Iran long distance portion of the circuit monthly, based on the special rate formula and gold franc quotation developed as follows: 3 Min Tel Call TK-IR= Gfrcs 8.10

1 Gfrc= 25 Rial

One three (3) minute telephone conversation unit charge considering 8.10 Gfr = 25 Rials would cost 202.50 Rials between Tehran - Ankara. Therefore, the telegraph circuit rate is 50% of 1500 x 202.50 = Total telegraph circuit length cost, and 1/2 of

total length cost - Iran PTT share for providing the circuit. The U.S. Government will also pay the Telephone Company, Iran an additional 1,500 Rials each month for each pair required for the local tail circuit. Our payments will be made in local currency (Rials) each month to the PTT Ministry and Telephone Company, Iran separately, upon receipt of invoices.

6. Invoices were to be forwarded to the United States Army Mission Headquarters -- Military Assistance Advisory Group ("Armish Maag"), which would act as the disbursing office in Tehran. The letter further noted that the United States would make arrangements with the Turkey PTT to provide its portion of the circuit for which Turkey would be paid separately. It concluded:

As agreed during the meeting, your acknowledgement of this letter will constitute the formal basis for the services provided to the U.S. Government.

7. Iran made the telegraph circuit available to the United States in December 1971. As explained in more detail below, the exact date when this occurred is in dispute.

8. The United States contends that the circuit had operational problems from the beginning. On 22 February 1972, DECCO-EUR sent a telex to both the Iranian PTT and the Turkish PTT which, with reference to an earlier telex dated 11 February 1972 on the same subject, advised that DECCO-EUR continued to receive reports from users that the circuit was not operational. It requested investigation of the matter.

9. In a further letter dated 4 August 1972, DECCO-EUR informed PTT that there was

a record of repeated outage problems apparently due to faulty cable in the local section of the circuit between the American Embassy - PTT Tehran.

10. The letter also mentioned that DECCO-EUR had contacted the Turkey PTT authorities so that the problem could be identified and corrected if necessary in both countries.

11. On 28 August 1972, DECCO-EUR sent a telex to Ankara and Tehran which referred to the 4 August 1972 letter and requested to be advised on actions being taken to correct "the sub-standard condition on this circuit".

12. On 27 September 1972, DECCO-EUR sent another letter to PTT noting that the circuit had not performed well enough to pass traffic since the beginning of July 1972. PTT was further informed that DECCO-EUR had not yet received an invoice for the Iranian portion of the circuit. Invoking Recommendation D-1 (White Book, 1969) of the International Telegraph and Telephone Consultative Committee ("C.C.I.T.T.") dealing with circuit interruptions, DECCO-EUR requested that the circuit should not be billed to the U.S. Government until the service had been restored.

13. On 1 September 1973, TCI informed the Iranian Bureau of International Affairs and Telecommunications Regulations, inter alia, that one telegraph circuit had been assigned to the U.S. Defense Communications Agency on 1 December 1971 at 11.30. It was also pointed out that the matter had been reported to the Deputy Director of Planning and Control Department by letter of 26 September 1971 and to the Department of General Telecommunications for "preparation of the contract and necessary actions".

14. On 1 December 1973, TCI sent an invoice to DECCO-EUR in the amount of 2,587,500 Rials for the use of the Tehran - Ankara telegraph circuit from 1 December 1971 to 31 October 1973, based on a monthly fee of 112,500 Rials. On 25 February 1974, TCI sent another letter to DECCO-EUR reminding it of its 1 December 1973 invoice and a further letter dated 31 January 1974. It requested DCA to expedite action

regarding payment of 3,000,000 Rials as rental charges for the Tehran - Ankara telegraph channel from 1 December 1971 through 19 February 1974.

15. On 6 May 1974, DECCO-EUR responded to the 1 December 1973 invoice by a letter from Mr. Hughes to TCI's Director. It commenced by recording that at the meeting on 9 November 1971 in the office of Mr. K.H. Parsa, Telecommunications Deputy Minister of PTT, agreement was reached to provide a telegraph circuit to the United States Government between Tehran and Ankara to be routed via the CENTO Microwave System. Noting that he had been advised that Mr. Parsa was no longer with the Ministry of PTT, Mr. Hughes listed the names of the three other Iranian officials who had been present at that meeting.

16. The letter went on to state that the agreement reached on 9 November 1971 provided that the United States Government would be granted a 25 percent reduction on the charges for the telegraph circuit in accordance with an agreement between Turkey and Iran, the purpose of which was to foster more telegraph services between the two countries. It further noted that, again allegedly as agreed on 9 November 1971, DECCO-EUR negotiated directly with PTT Turkey and obtained PTT Turkey's portion of the circuit at the 25 percent reduced rate on 11 November 1971. A copy of the letter of 9 November 1971 from Mr. Hughes to Mr. Parsa was enclosed.

17. Moreover, the letter of 6 May 1974 objected to the charges claimed in the 1 December 1973 invoice as being much higher than those agreed upon. It set out the calculation, allegedly in conformity with the agreement, as follows:

- a. One 3-minute telephone call between Turkey-Iran costs Gold Francs 8.10.
- b. One Gold Franc = 25 Rials.

c. A 3-minute telephone call therefore costs 202.50 Rials.

d. Iranian PTT offered a 25 percent reduction in the number of 3-minute call units used for calculating the cost. Normally, 2,000 3-minute call units are used, however[,] with the 25 percent reduction, the number of 3-minute call units would be 1,500 units, therefore  $1,500 \times 202.50 = 303,750.00$  Rials per month for the long distance portion of the telephone circuit between Tehran-Ankara.

e. In accordance with C.C.I.T.T. Recommendations, a teletype circuit is one-half the price for a telephone circuit, therefore  $303,750.000 \div 2 = 151,875.00$  Rials.

f. Iran's share for their portion of the circuit is exactly one-half of the above amount since Turkey receives the other half, therefore  $151,875.00 \text{ Rials} \div 2 = 75,937.50$  Rials.

g. Additional 1,500 Rials per month for each local tail, therefore  $2 \times 1,500 = 3,000$  Rials.

18. With regard to the Iranian portion of the circuit, Mr. Hughes added the total figure of 75,937.50 Rials per month for the long-distance part and the sum of 3,000 Rials per month for the two local tails and concluded that the total charges agreed to be paid in local currency to Iran would therefore amount to 78,937.50 Rials. Furthermore, the letter suggested that the effective date for charging the Iranian portion of the circuit should be adjusted to 6 December 1971 on the basis of information received from PTT Turkey.

19. Finally, the letter claimed that the circuit had a substantial record of outages due to line trouble within Iran for a total of 8,200 hours during the period July 1972 until December 1973. It enclosed a monthly listing of outages for that period noting that an outage report for the last month was still due. DECCO-EUR requested reexamination and adjustment of the invoices as well as an investigation

of the outages during both the period July 1972 through 31 December 1973 and the period 6 December 1971 through 30 June 1972. It requested a refund in accordance with C.C.I.T.T. Recommendations stipulating that rebates should be given on international circuits for outages of 3 hours continuous duration.

20. TCI acknowledged Mr. Hughes' letter of 6 May 1974 with its own letter of 4 June 1974, informing DECCO-EUR that all communications from 1 April 1972 had been given to TCI and that it was "studying about the reduction of the rates in general."

21. On 18 July 1974, the Claimant sent a further invoice claiming 3,562,500 Rials for rental charges for use of the telegraph circuit from 1 December 1971 through 22 July 1974.

22. On 2 September 1975, the Claimant sent another invoice to DECCO-EUR for the amount of 5,137,500 Rials for rental charges for the same circuit from 1 December 1971 to 22 September 1975.

23. On 5 September 1975, DECCO-EUR sent copies of its 6 May 1974 letter and TCI's 4 June 1974 reply letter to TCI and inquired into the status of the matter.

24. In response to the 2 September 1975 invoice, on 27 September 1975, DECCO-EUR sent a letter to TCI stating that the Tehran - Ankara telegraph channel had been deactivated on 30 November 1973. It requested that the rental charges for this channel therefore be recomputed.

25. On 25 May 1976, DECCO-EUR sent a letter to TCI which referred to the previous correspondence and stated that DECCO-EUR had not received an invoice or a definite response to its communications. It further served "official notice"

that if it received no reply prior to 30 September 1976 it would not pay TCI

due to non-receipt of a correct invoice within a reasonable period of time reflecting rates agreed upon between the IRAN PTT and the U.S. Government at the meeting conducted on 9 November 1971.

26. On 26 December 1976, TCI submitted an invoice recomputing the charges for the service period from 1 December 1971 through 30 November 1973. On the basis of a monthly charge of 112,500 Rials, it requested a total amount of 2,700,000 Rials.

27. After sending reminders of that invoice in February 1977, on 11 May 1977 and 3 September 1978 and in October 1978, TCI's International Accounting Department requested the Legal Department to take action to collect the outstanding amount.

28. On 5 December 1978, the Chairman of the Board and Managing Director of TCI sent a letter to DECCO-EUR referring to TCI's previous communications and requesting payment of the telegraph circuit rental charges. The Claimant contends that this letter was another attempt to solve the payment issue before resorting to legal action.

29. In response to that letter, in May 1979, DECCO-EUR drafted a settlement proposal on the outstanding amounts due for the circuit. It noted that it had not received several of the earlier letters referred to in the TCI letter of 5 December 1978, including those dated 26 December 1976, 2 February 1977 and 11 May 1977. Furthermore, it contended that the one invoice DECCO-EUR had received, dated 1 December 1973, did not reflect the proper monthly charge agreed upon. It referred to DECCO-EUR's 6 May 1974 letter which assumed that the monthly recurring charge under the initial contract was 78,937.50 Rials.

30. The draft also repeated the allegation that the effective date of service was 6 December 1971 rather than 1 December 1971 and stated that PTT Turkey could verify that 6 December 1971 and 27 December 1973 were the service dates on which Turkey started and stopped billing for the circuit.

31. Moreover, it made reference to the outage report attached to the 6 May 1974 letter for the period July 1972 to September 1973, adding that there were earlier and later faults on the circuit for which no rebate was claimed. The draft also stated that the last correspondence DECCO-EUR had received prior to the TCI letter dated 5 December 1978 was the TCI letter of 4 June 1974. Finally, it suggested a settlement for payment for use of the circuit on the basis of the following calculation:

Calculation of Charges and Credit for Circuit Outages -

<u>Period of Charge</u>	<u>Rials</u>
6-31 December 1971 (25 days only since the first day of use is not chargeable in accordance with C.C.I.T.T. regulations)	65,781.25
1 January 1972 - 30 November 1973	1,815,562.50
1 - 27 December 1973	<u>71,043.75</u>
Sub-Total	1,952,387.50

Outage Credits July 1972 - September 1973

Based on a 30-day average month, there are 720 hours to be divided into the monthly charge of Rials 78,937.50 which gives an hourly rate of Rials 109.64 times 8,200 hours of outage amounts to

	<u>( 899,048.00)</u>
Total Rials	<u>1,053,339.50</u>

32. The United States alleges that this payment offer, in the total amount of 1,053,339.50 Rials, was forwarded to the U.S. Embassy in Tehran for hand delivery to TCI which, however, did not occur due to the events in 1979 leading to

the seizure of the United States Embassy in November of that year.

33. The Claimant seeks an award of 2,700,000 Rials for use of the telegraph circuit from 1 December 1971 to 30 November 1973.

34. The United States maintains that the calculation of the charges set out in the May 1979 settlement proposal, on the basis of the 9 November 1971 letter from Mr. Hughes, is correct and accepts liability only in the amount of 1,053,339.50 Rials. It requests the Tribunal to dismiss the rest of the Claim.

35. The Claimant rejects the contention that the terms of the letter from Mr. Hughes dated 9 November 1971 reflect the agreement between the Parties. It denies that it received the letter and emphasizes that it never gave an acknowledgment. It contends that the monthly rental charges mutually agreed upon were based upon the normal rates applicable in Iran and that they amounted to 112,500 Rials. It further argues that the United States never objected to the rental charges billed. The United States denies that it received any invoice except for the ones dated 1 December 1973 and 2 September 1975 to which it had objected.

36. While the Parties agree that the service period ended on 27 December 1973, the United States contends that Iran did not actually commence providing the service before 6 December 1971 and should therefore not bill the United States from 1 December 1971. Iran takes the view that it is irrelevant whether the service started on 1 or 6 December 1971 because even if it had started only on the later date, there was no need to adjust the invoice because Iran was billing the United States only for the period until 30 November 1973 although the service actually continued until 27 December 1973.

37. The United States also maintains that the telegraph circuit had operational problems from the beginning resulting from faults in the local tail circuit to the American Embassy in Tehran. Contending that the total hours of outage amounted to 8,200 in the period from July 1972 through November 1973 and that under C.C.I.T.T. Recommendations it is entitled to rebates of outages of 3 hours continuous duration, it calculates the rebate due to it to amount to 899,048 Rials, as set out in its May 1979 draft settlement proposal.

38. The Claimant denies that the United States has shown that there were operational problems from the beginning. It further alleges that from August 1972 DECCO-EUR stopped writing letters to the Claimant and Turkey concerning any alleged problem and that, at any rate, the Respondent failed to submit any report on outages until May 1974, long after it had received invoices from the Claimant. The Claimant further denies that the circuit was deactivated for 8,200 hours because in such case Turkey would have protested to Iran which it did not. It contends that local tail problems were resolved as soon as they were reported to the Claimant. It therefore rejects the outages claim as well as the Respondent's calculation of the rebate allegedly due to it.

39. The United States insists that it notified the Claimant numerous times of problems with the circuit including repeated outages. It further contends that C.C.I.T.T. Recommendations would not require the reporting of outages at any particular time as a condition to claim refunds. It points out that the Claimant submitted its first invoice only on 1 December 1973, the last month of the circuit's existence. It also refers to its 4 May 1974 report about the outages from July 1972 to December 1973 prepared in response to that invoice and submits that it is entirely unclear why the Claimant considers August 1972 to be a critical date.

2. The Claim for Use of the Tehran - Ankara Telephone Circuit

40. In 1973 PTT had acquired the technical facilities to provide DECCO-EUR also with the desired telephone circuit between Tehran and Ankara. On 12 September 1973, Mr. Morton L. Blaustein, DCA Contracting Officer, sent a letter to TCI recording a discussion with representatives of TCI on 12 September 1973 according to which TCI was to provide its portion of a telephone circuit between Tehran and Ankara for the United States Government. The letter also mentioned the following specific details:

- a. Type of circuit: Telephone circuit, 4 wire, ODB, CCITT Recommendation M-102 conditioned. Circuit is to be used with U.S. furnished 12-channel voice frequency telegraph equipment.
- b. Requested service date: 15 October 1973[.]
- c. Terminal A: Ankara, Turkey, Tuslog Building.
- d. Terminal B: Tehran, Iran, American Embassy.  
  
Contact: SFC Etherington, Tel. No. 881295 - 882358.
- e. Monthly recurring charge for Iran portion will be 281,250 Rls.

41. Moreover, the letter stated that refunds for unscheduled interruptions which were not the fault of the user

shall be made after a minimum interruption to service of three hours in accordance with CCITT Recommendation D.1, Paragraph 5, White Book 1969.

42. Invoices were to be sent to USASTRATCOM-EUR Signal Facility in Tehran. The letter concluded with the statement

that TCI's acknowledgement of the letter would constitute the "formal basis for the services provided to the U.S. Government".

43. On 28 November 1973, the U.S. Military assistance advisory group "CJUSMMAT" in Ankara informed DECCO-EUR that the Turkey end of the telephone circuit had been activated and that Turkey was waiting for Tehran to activate its end.

44. On 18 December 1973, TCI sent a memorandum to the Bureau of International Affairs and Telecommunications Regulations advising that the telephone circuit was activated as of 3 December 1973. In a further communication dated 30 December 1973 to the same Bureau, TCI confirmed the "date of assignment of Tehran - Ankara telephone circuit to the U.S. Defense Communication Agency ("STRATCOM")" as 3 December 1973, after a "final test".

45. The United States contends that, while the circuit (designated as 6ES4) was working within the necessary quality specifications between the Ankara main repeating station and the Tehran repeating station, tests conducted in January 1974 indicated that the local tail circuit in Tehran was not adequate for high quality transmission. This was due to the presence of a random signal which rendered the circuit unusable and was found to exist at the local tail between the main repeating station and the U.S. Embassy in Tehran. It further contends that throughout February 1974 the Parties sought to identify and correct the problem, that the problem continued to exist through March and April 1974 and that Iran failed to establish a central fault reporting point for determining where in the tail circuit the fault existed.

46. On 4 April 1974, DECCO-EUR wrote a letter to TCI stating that:

Although the circuit was provided in December 1973, the user has been unable to pass traffic over it because of its poor quality. After considerable testing of the circuit in Turkey and Iran, the faults were located in the tail segment to the American Embassy in Tehran. Net loss variations of more than 20 decibels are common in this segment within a period of a few hours.

Attempts by the U.S. Army technical controllers to have the local telephone company correct the faults have been unsuccessful. They have been hampered in their efforts by the fact that there is not one designated "fault reporting point" with which they can coordinate. Instead, they are required to try to work with four different PTT stations when attempting to isolate and correct the faults.

In view of both the importance and high value of the circuit, we would appreciate your personal intervention to have the faults corrected and the circuit provided in accordance with CCITT Recommendation M-58 and M-102. Also, for purpose of coordination, it is requested that a single fault reporting point be designated in accordance with CCITT Recommendation M-12.

47. The United States contends that TCI continued to fail to provide the required quality level of the circuit and failed to determine where the fault existed. On 7 October 1974, DCA wrote a letter to TCI, which, referring to its letter of 4 April 1974, stated that the circuit was still unsatisfactory and unusable. It therefore cancelled its request of 12 September 1973 for provision of the circuit. DECCO-EUR also cancelled the request for the circuit made for Turkey.

48. On 25 February 1974 and 18 July 1974, TCI sent invoices to DECCO-EUR, already mentioned above in connection with the telegraph circuit, which also included charges for the use of the telephone circuit. A similar invoice was sent on 2 September 1975.

49. In the abovementioned letter dated 27 September 1975, objecting to the invoice of 2 September 1975 for the

telegraph circuit, DECCO-EUR also gave notice that the telephone channel had been deactivated on 2 October 1974. The letter requested that the respective rental charges in the invoice be recomputed and fully explained.

50. The Claimant later sent invoices, dated 26 December 1976, 2 February 1977, 11 May 1977, 3 September 1978 and 5 December 1978 which reflected the period of circuit use indicated in the Respondent's letter of 27 September 1975.

51. The Claimant seeks an award of 2,803,125 Rials for use of the telephone circuit from 3 December 1973 to 2 October 1974.

52. The United States requests the Tribunal to dismiss the Claim. It denies any liability on the grounds that it was never able to use the circuit because of its alleged poor quality. It alleges that due to problems related to the local tail circuit to the United States Embassy in Tehran the circuit was not usable in spite of efforts to remedy the interferences. It argues that Iran breached the contract by failing to provide for the required quality standard which was an essential element of the agreement. The United States emphasizes that, under the agreement, Iran was obliged to provide a four-wire telephone circuit that could be used for both voice transmission and in conjunction with United States teletype equipment. Such a "speech-plus" circuit required a quality level as set out by C.C.I.T.T. Recommendation M-102.

53. TCI denies that it was under a contractual obligation to provide the quality conditions mentioned by the United States because there was no written agreement. It further argues that such conditions could not be guaranteed anyway. TCI further denies that the telephone channel was not operating properly and that there was a problem with the local tail connecting the main repeating station with the

U.S. Embassy in Tehran. It contends that the United States used the channel for four months before writing the letter of 4 April 1974 which was the only one raising complaints. It argues that TCI corrected problems whenever it was asked to do so. Furthermore, it points out that DECCO-EUR's 6 May 1974 letter did not mention any difficulties with the telephone line. Finally, the Claimant emphasizes that DECCO-EUR's letter of 27 September 1975 failed to object to TCI's entitlement to claim the rent and rather only requested that the invoice be recomputed in view of the fact that the line had been deactivated on 2 October 1974.

54. The United States replies that a written agreement signed by both Parties is not necessary to create a contract and that the quality conditions mentioned in the 12 September 1973 letter constitute a specific term of the agreement reflecting international standards. It contends that it acted in good faith in trying to obtain a quality conditioned circuit by giving the Claimant the opportunity to correct the fault. Finally, it points out that it asked for the deactivation of the telephone circuit only once it had become clear that, within a reasonable amount of time, TCI was not able or willing to provide the circuit as agreed upon.

B. The Claim for the Use of the Telephone Line in Tabriz

55. The Claimant contends that the United States is liable for unpaid telephone charges for telephone no. 51446 used by the "American Mission" in Tabriz. It alleges that the "Mission" paid for all invoices on a monthly basis up to June 1978 and failed to pay any further amounts invoiced from June 1978 through 3 November 1979. TCI seeks an award of 115,353 Rials for use of the telephone line during that period.

56. The United States denies any liability for the charges made for the Tabriz telephone line and requests the Tribunal to dismiss the Claim. The United States argues that, had the Claimant provided the records of the Consulate as the United States had requested the Tribunal to order, it would have been able to prove that all telephone charges due on its telephone lines had been paid and to prove further that the telephone number at issue was not one used by the U.S. Consulate. However, it contends that, even without those records, it is able to show that the invoices do not reflect services provided to the U.S. Consulate.

57. It contends that the U.S. Consulate in Tabriz never had a telephone no. 51446. It also rejects the contention that the "American Mission" belonged to the U.S. Government. It suggests that the term "American Mission" probably referred to a hospital on Shahnaz Avenue next to the U.S. Consulate which was usually called the "American Mission" because it was originally established by American religious missionaries. It denies that the hospital was ever affiliated with the U.S. Government.

58. Iran denies that the "Mission" was affiliated with the hospital and asserts that it belonged to the U.S. Government. It alleges that the initial applicant for the telephone line at issue in Tabriz was the U.S. Consulate.

C. Interest and Costs

59. The Claimant also contends that it is entitled to interest on the amounts due to it. With regard to the Claim for use of the telegraph circuit by DECCO-EUR, it requests that interest should be awarded from 1 December 1973 on the sum of 2,587,500 Rials covering the period until 31 October 1973 as demanded by the 1 December 1973 invoice. Interest

for the remaining sum of 112,500 Rials for the service until the end of November 1973 should start running from the date of the 26 December 1976 invoice which recomputed the charges. As to the Claim for use of the telephone channel by DECCO-EUR, TCI requests that interest be awarded from the dates when payment was demanded. The telephone service through 19 February 1974 was invoiced on February 24th, and the subsequent period up to 22 July 1974 was invoiced on July 18th. As with the telegraph channel, the last period of service on the telephone line had to be recomputed; the corrected charges were submitted to DECCO-EUR in the invoice of 26 December 1976. It appears that with respect to the Claim for use of the Tabriz telephone line, the Claimant seeks interest from the dates of its respective invoices. Referring to Tribunal practice in official claims within the meaning of Article II, paragraph 2, of the Claims Settlement Declaration ("CSD") the Claimant contends that the rate of interest should not be below 10%. The United States denies the Claim for interest.

60. Finally, both Parties seek compensation for the costs they incurred in the arbitration.

## II. REASONS FOR AWARD

### A. Jurisdiction

61. There is no dispute, and the Tribunal is satisfied, that the Claimant is an "agency, instrumentality, or controlled entity" of the Government of the Islamic Republic of Iran and therefore comes within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration ("CSD"). The Respondent is the United States as defined by Article VII, paragraph 4, of the CSD.

62. The Claim is therefore an "official claim" between "Iran" and the "United States" pursuant to Article II, paragraph 2, of the CSD. This is also common ground between the Parties, as was clarified at the Hearing. The Tribunal's jurisdiction over such claims is limited to those arising out of "contractual arrangements between [Iran and the United States] for the purchase and sale of goods and services." While the Parties dispute the precise contractual basis for the individual parts of the Claim, the Tribunal is satisfied that the lease of telegraph and telephone circuits by the United States from Iran, as well as the alleged use of the Tabriz telephone line, constitute "contractual arrangements" for the purchase and sale of services within the meaning of Article II, paragraph 2. Accordingly, the Tribunal holds that it has jurisdiction over this Case.

B. Merits

63. The Tribunal holds on the merits that the United States is obliged to pay the Claimant for providing DECCO-EUR with telecommunication services the amount of 2,700,000 Rials for use of the telegraph circuit and the amount of 1,668,750 Rials for use of the telephone circuit, plus interest as determined below. It dismisses the Claim against the United States for use of the telephone line in Tabriz. The Tribunal first addresses the Claim for services provided to DECCO-EUR and then deals with the Claim for use of the Tabriz telephone line.

1. The Claim for Services Provided to DECCO-EUR

a. The Claim for Use of the Tehran - Ankara Telegraph Circuit

64. With regard to the Claim for use of the Tehran - Ankara Telegraph Circuit, the Tribunal notes that there are three main issues in dispute between the Parties, namely, the terms of the contract, the date upon which the service commenced, and whether the United States is entitled to a rebate for outages.

65. As to the agreement between the Parties, particularly on the applicable rate, the Tribunal starts from the premise that it is normally the supplier, in this Case PTT, who determines the rates under which charges are made to customers for using telegraph or telephone lines. By asking for the service, the customer accepts the usual rates of the supplier, unless there is a special agreement that other rates should apply.

66. The burden to show that there was such a special agreement in this Case is upon the United States. The Tribunal holds that the United States has failed to demonstrate to the Tribunal's satisfaction that PTT actually agreed to the terms set out in the 9 November 1971 letter from Mr. Hughes. First, Iran denies that it received that letter. Although it appears that TCI may have received a copy of it later as an enclosure to the 6 May 1974 letter from Mr. Hughes, this can have no bearing on the issue because the contract was then no longer effective. Second, at any rate, there was definitely never a formal acknowledgement by PTT of the terms laid down in the 9 November 1971 letter. Mr. Hughes explained at the Hearing that he had been assured orally by Mr. Parsa that these terms were accepted. He admitted, however, that DECCO-EUR was unable to obtain from Iran the formal consent it explicitly had requested. The Tribunal

holds that, in such circumstances, the informal assurance given by Mr. Parsa, which raises the question of whether he was authorized to commit PTT in that manner, did not suffice to bind Iran under the terms of the 9 November 1971 letter. Therefore, the Claimant is entitled to apply its normal rates without reduction and to receive a monthly fee of 112,500 Rials.

67. As to the dispute on when the service was provided, the Tribunal deems that it need not reach a decision on this issue. For it is not controverted that TCI continued to provide the service until 27 December 1973, although it claims only for the period up to the end of November 1973. Therefore, even if one assumes that the circuit was activated only on 6 December 1971, the Claimant still would have enough credit to claim the same amount.

68. Finally, with respect to the rebate claimed by the United States for the alleged outages, the Tribunal relies on the wording of the relevant C.C.I.T.T. Recommendations to which both Parties have made reference in their pleadings at different occasions. Recommendation D-1.5 reads as follows:

#### 5. Refunds

5.1 In the event of non-operation of a leased circuit for which an Administration\* is responsible, a refund may be made if there has been non-operation for a period of at least 3 consecutive hours and it has been reported by the renter.

For each period of non-operation of 3 consecutive hours, the amount of the refund should be equivalent to 1/5th of the charge for a day's lease, which is:

- for a lease of more than one month, 1/30th of the monthly rental;
- for a lease of less than one month, the total rental divided by the number of days reckoned in the lease,

with a maximum of one day's rental for any period of 24 consecutive hours.

5.2 In the intercontinental service, the minimum period of interruption qualifying for a refund may be fixed at less than 3 hours. If so, the amount of the refund is decided on by the Administrations\* concerned.

5.3 However, the Administrations\* need not consider requests for refunds resulting from unfavourable propagation conditions for radio circuits.

5.4 Requests for refund of charges for the use of the public telecommunication service during the period when the leased circuit is not available shall not be entertained.

5.5 No refund shall be granted when an interruption (regardless of how long it lasts), or the non-operation of the leased circuit, is due to the negligence of the renter or to a fault in the apparatus or equipment belonging to him, and maintained and operated by him.

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\* or recognized private operating Agency(ies)

69. The Tribunal deems it unnecessary to examine whether and to what extent the operation of the circuit was troubled by outages, or to enter into a discussion of the legal nature of the C.C.I.T.T. Recommendations and of the issue whether they are binding upon the Parties as trade usage or otherwise. For even if it is assumed that there were outages and that Recommendation 5 cited above, under certain conditions, grants the user a right to a refund, the United States would still not be able to claim a rebate because DECCO-EUR failed to report the outages, as required by Recommendation 5.1. As explained by Mr. Hughes at the Hearing, DECCO-EUR reported the outages only by telephone to PTT without ever making a request that the fee be lowered or obtaining a promise that a rebate would be granted. The Tribunal, therefore, holds that the United States is not entitled to a refund.

70. The Tribunal concludes that the Claimant is entitled to claim a monthly fee of 112,500 Rials for a period of 24 months of service which amounts to a total sum of 2,700,000 Rials.

b. The Claim for Use of the Tehran - Ankara Telephone Circuit

71. As far as the Claim against DECCO-EUR for use of the telephone line between Tehran and Ankara is concerned, the Tribunal notes that there is no dispute between the Parties on the terms of the agreement or on the dates on which the service was provided and terminated. Under the agreement TCI was to provide a service with a specified standard according to C.C.I.T.T. Recommendation M-102. It is clear from the evidence that TCI failed to meet that standard in spite of combined efforts of the Parties to solve the technical problems. In view of the inferior quality of the circuit, the Tribunal concludes that TCI was not entitled to any fee until the 4 April 1974 letter from DCA. However, the Tribunal holds that the Claimant is entitled to its contractual fee for the period after 4 April 1974 because DECCO-EUR failed to terminate the contract before 2 October 1974. The Tribunal therefore awards an amount of 1,668,750 Rials, calculated as 6 monthly fees of 281,250 Rials minus 18,750 Rials for the two days lacking to complete the full 6 months period in October 1974.

2. The Claim for Use of the Telephone Line in Tabriz

72. With regard to the Claim for use of the telephone line with the number 51446 in Tabriz, the Tribunal holds that the evidence before it does not suffice to award the amount claimed. The fact that the subscriber's name on the invoices submitted by the Claimant is "American Missionary" is

in itself insufficient to establish liability of the United States. There is no other evidence in the record that would support such a holding. The Claimant has failed to meet its burden of proof and to show to the Tribunal's satisfaction that the telephone line at issue belonged to the U.S. Consulate in Tabriz or on which other grounds charges should be attributable to the United States Government. The Tribunal therefore dismisses this Claim.

C. Interest and Costs

73. In accordance with its practice in official claims, the Tribunal awards the Claimant interest at the rate of 10% per annum (365-day basis) on the amount of 2,587,500 Rials from 30 days following 1 December 1973, on the amount of 112,500 Rials from 30 days following 26 December 1976, on the amount of 998,125 Rials from 30 days following 18 July 1974 and on 670,625 Rials from 30 days following 26 December 1976.

74. It has not been the Tribunal's practice in official claims to award costs to the successful Party. Each Party shall therefore bear its own costs of the arbitration.

III. AWARD

In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

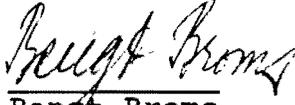
- (a) The Respondent THE UNITED STATES OF AMERICA is obligated to pay the Claimant TELECOMMUNICATIONS COMPANY OF IRAN the sum of Four Million Three Hundred Sixty Eight Thousand Seven Hundred Fifty Rials (4,368,750 Rials)

plus simple interest at the rate of 10% per annum (365-day basis) on the amount of Two Million Five Hundred Eighty Seven Thousand Five Hundred Rials (2,587,500 Rials) from 31 December 1973, on the amount of Seven Hundred Eighty-Three Thousand One Hundred Twenty-Five Rials (783,125 Rials) from 25 January 1977 and on the amount of Nine Hundred Ninety-Eight Thousand One Hundred Twenty-Five Rials (998,125 Rials) from 17 August 1974 up to and including the date of payment of the Award.

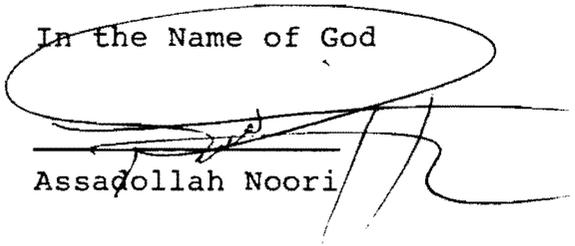
(b) The remaining Claims are dismissed.

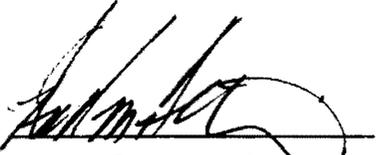
(c) Each Party shall bear its own costs of the arbitration.

Dated, The Hague  
19 December 1989

  
Bengt Broms  
Chairman  
Chamber One

In the Name of God

  
Assadollah Noori

  
Howard M. Holtzmann

Dissenting in part;  
concurring in part.  
See Separate Opinion