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119-2.

CASE NO. 119

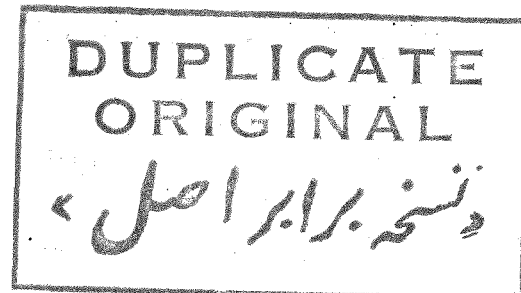
CHAMBER ONE

AWARD NO: 13-119-1

NCR CORPORATION,
Claimant,
and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN, NCR CORPORATION
OF IRAN, BANK MELLAT,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعاوى ايران - ايالات متحده
فيلد شد - FILED	
No. 119	شماره 119
Date 17 NOV 1982	تاريخ 17 نوامبر 1982
1361/8/26	



AWARD ON AGREED TERMS

Representatives:

For NCR Corporation:

Mr. R. E. White,
Vice President
NCR Corporation

For the Government of
the Islamic Republic of
Iran and Bank Mellat:

Mr. A. Zandi Bidgoli,
Acting Head of High State
Council of Informatics

On 19 November 1981 NCR Corporation ("NCR") filed a claim (case No. 119) against the Government of the Islamic Republic of Iran, NCR Corporation of Iran ("NCR Iran") and Bank Mellat.

Bank Melli filed on 18 January 1982 a claim (case No. 501) against Citibank New York and the United States of America seeking an award under a letter of guarantee covering the alleged indebtedness of NCR Iran and extended by NCR through one of Citibank's overseas facilities. This guarantee was in turn secured by an NCR guarantee to Citibank so that, in the event that Citibank was called upon to pay Bank Melli under its guarantee, Citibank would be entitled to call upon NCR to pay under its guarantee.

The High Council of Informatics of the Islamic Republic of Iran, an organization duly established under the laws of the Islamic Republic of Iran, and NCR entered on 9 July 1982 into a Memorandum of Understanding for the settlement of all claims and potential counterclaims that the parties to cases Nos. 119 and 501 had raised or were entitled to raise. Among other terms the parties agreed on a payment to NCR of US \$250,000 from the money deposited in the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981. A copy of the Memorandum of Understanding is annexed hereto.

The Islamic Republic of Iran, Bank Mellat and Bank Melli, acting through the High Council of Informatics, and NCR filed with the Tribunal on 12 July 1982 a "Request for an Arbitral Award on Agreed Terms", executed by representatives of these parties, jointly requesting the Tribunal to record the settlement reached by the parties as an Award on Agreed Terms pursuant to Article 34 of the Provisionally Adopted Tribunal Rules.

Accordingly, the same parties requested the Tribunal to enter an Award on Agreed Terms in the amount of U.S. \$250,000 to be paid from the said Security Account for the account and benefit of NCR.

As a further term of the settlement, the High Council of Informatics and NCR, as the owners of NCR Iran, jointly requested and moved that NCR Iran, which had previously been designated as a Respondent in case No. 119, be dismissed as a Respondent from any further involvement in the proceedings in the said case.

The Tribunal agrees to terminate all proceedings in case No. 119 as against NCR Iran.

After considering the matter for a number of months, the High Council of Informatics and NCR have withdrawn a request that the Tribunal preserve the confidentiality of the parties' settlement.

The Tribunal has satisfied itself that it has jurisdiction over the claims in case No. 119 within the terms of the Claims Settlement Declaration of 19 January 1981 and accepts the settlement in accordance with Article 34 of the Provisionally Adopted Tribunal Rules.

The Tribunal is simultaneously issuing an order for the termination of the arbitral proceedings in case No. 501.

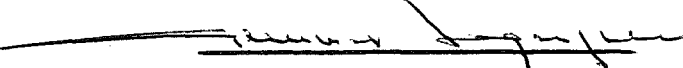
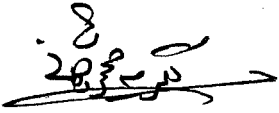
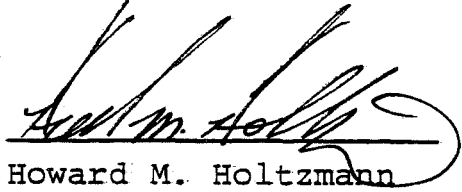
For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

The settlement is hereby recorded as an Award on Agreed Terms, binding on all parties. Consequently, the remaining Respondents, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and BANK MELLAT, are obligated to pay to the Claimant, NCR CORPORATION, the total sum of Two Hundred Fifty Thousand United States Dollars (\$250,000.00) which obligation shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria dated 19 January 1981.

The Tribunal hereby submits this Award to the President for notification to the Escrow Agent.

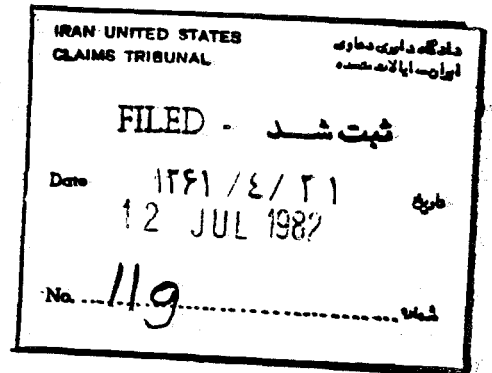
Dated, The Hague,
11 November 1982


Gunnar Lagergren
Chairman
Chamber One
Mahmoud M. Kashani
Concurring in part
and dissenting in
part; see separate
opinion
Howard M. Holtzmann

IN THE NAME OF GOD

BEFORE THE IRAN-UNITED STATES CLAIMS TRIBUNAL

THE HAGUE, THE NETHERLANDS



NCR CORPORATION,

Claimant,

v.

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN, NCR CORPORATION
OF IRAN AND BANK MELLAT,

Respondents,

CLAIM NO. 119

CHAMBER ONE

BANK MELLI IRAN,

Claimant,

v.

CITIBANK, N.A. and THE UNITED
STATES OF AMERICA

Respondents.

CLAIM NO. 501

CHAMBER ONE

REQUEST FOR AN ARBITRAL AWARD ON AGREED TERMS

The Islamic Republic of Iran, Bank Mellat and Bank Melli, acting through its High Council of Informatics ("HCI"), and NCR Corporation ("NCR"), pursuant to Article 34 of the UNCITRAL Rules, as adopted by the Tribunal, jointly request that the Tribunal record a settlement reached by the parties as an Award on Agreed Terms.

On July , 9, 1982 , Mr. R.E. White of NCR and Mr. A. Zandi Bidgoli of HCI entered into a Memorandum of Understanding settling all claims and potential counter-claims that parties to Claims Nos. 119 and 501 raised or were entitled to raise. Among other terms, the parties agreed to payment to NCR from the Security Account established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981 (the "Security Account") of U.S.\$ 250,000 in full settlement of said Claims Nos. 119 and 501. A true copy of the Memorandum of Understanding is herewith submitted to the Tribunal for its review.

Accordingly, the parties request the Tribunal to enter an Award on Agreed Terms in the amount of U.S.\$ 250,000 to be paid from the Security Account to the Federal Reserve Bank of New York for the account and benefit of NCR, and to dismiss Claims Nos. 119 and 501, by issuance of that award in favour of NCR.

The parties have agreed that the payment of the afore-said sum constitutes a full and reasonable and complete settlement of claims Nos. 119 and 501.

As a further term of such settlement, HCI and NCR, as parties in these proceedings, jointly request and move that NCR Corporation of Iran, having heretofore been designated as a respondent party in Claim No. 119, be dismissed as a respondent party from any further involvement in proceedings regarding said Claim.

Pursuant to paragraph 5 of Article 32 of the UNCITRAL Rules, as amended, HCI and NCR, as parties in these proceedings, request that the Tribunal preserve the confidentiality of the parties' settlement although the parties shall have no obligation of confidentiality as a consequence of the foregoing.

For ISLAMIC REPUBLIC OF IRAN,
BANK MELLAT
BANK MELLI IRAN

By A. Zandi Bidgoli
Abolfazl Zandi Bidgoli
Acting Head of High State
Council of Informatics

For NCR CORPORATION

By R. E. White
R.E. White
Vice President, Middle
East/Africa Region IDPG,
and Attorney-in-Fact

By Robert E. Bartkus
Robert E. Bartkus
Counsel

IN THE NAME OF GOD

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding incorporates points of the agreement reached in February 1982, in Vienna, Austria, between:

High Council of Informatics of Islamic Republic of Iran ("H C I") represented by Mr. Abolfazl Zandi Bidgoli, based on Power of Attorney dated 31/3/1361 (June 21, 1982) (Appendix 1).

A N D .

NCR Corporation ("N C R"), a corporation organized and existing under the laws of the state of Maryland, U.S.A., having its principal offices at Dayton, Ohio, U.S.A., represented by Mr. R.E. White, based on Power of Attorney dated May 10, 1982 (Appendix 2).

As part of the settlement of all disputes among the parties, it is their intention to terminate all litigation and other proceedings currently among them or their representatives, including claims No. 119 and 501 in the Iran-U.S. Claims Tribunal at The Hague and Civil Action No. 80-7162 in the United States District Court for the Southern District of New York, and including all claims that have been or may be filed and all counterclaims that the parties may be entitled to file in those proceedings. In furtherance of this intention, the parties will present this Memorandum of Understanding to the Claims Tribunal and hereby request,

- 1.1 That claims No. 119 and 501 be reduced to an Arbitral Award in NCR's favour in the amount of USDL 250,000.
- 1.2 That neither Bank Melli nor any other Iranian entity be awarded anything by reason of claim No. 501 or counterclaims that might be filed in claim No. 119.
- 1.3 That the aforesaid USDL 250,000 Arbitral Award be issued in favour of NCR as soon as possible from the money deposited in the Security Account established pursuant to the Claims Settlement Agreement signed at Algiers on January 19, 1981; and
- 1.4 That automatically upon the issuance of the Arbitral Award as an integral and irrevocable condition to this Memorandum of Understanding, all claims and counterclaims of both parties including the US District Court of Action would be considered dismissed, null and void. All parties will cooperate in implementing this Article 1 and any appropriate proceedings before the Tribunal.

Automatically after the issuance of the Arbitral Award as mentioned in Article 1, NCR's entire capital stock interest in NCR CORPORATION OF IRAN ("NCR-IRAN") is transferred to HCI. NCR shall cooperate with HCI in executing and delivering

(or causing to be executed and delivered) the instruments of legal transfer as may be required or reasonably necessary to accomplish the foregoing.

General meetings of NCR-IRAN shall be held to amend the Articles of Association of NCR-IRAN to, among other things, change the corporate name "NCR CORPORATION OF IRAN" to another name (which shall not contain "NCR") and other changes deemed desirable by the general meetings.. Immediately upon the issuance of Arbitral Award, NCR shall deliver to HCI a proxy or proxies sufficient for the conduct of such general meetings. HCI agrees to accomplish the above-described corporate name change as quickly as possible. After giving effect to the reorganization of NCR-IRAN described in this Memorandum of Understanding, NCR-IRAN will be referred to by its new name.

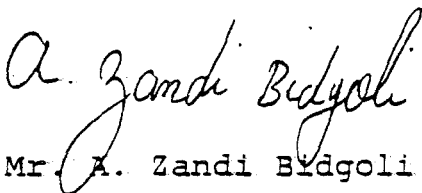
3. Immediately upon the issuance of the Arbitral Award in favour of NCR, HCI shall cause the dismissal of claim No. 501 before the Claims Tribunal (brought by Bank Melli against the United States and Citibank Bahrain in connection with overdraft facilities relating to NCR-IRAN) and cancellation of all Bank guarantees, overdrafts facilities and/or letters of credit that might give rise to any liability or contingent liability by NCR to any Iranian entity, including Bank Mellat and Bank Melli (through Citibank Bahrain). The list of all such guarantees, overdraft facilities and/or letters of credit is annexed hereto as Appendix 3. HCI will secure the execution of appropriate releases to Citibank Bahrain.
4. Immediately upon the issuance of the Arbitral Award, NCR shall cause the cancellation of all of its claims against NCR-IRAN and/or any Iranian party arising out of transactions or occurrences prior to the date hereof of any character or nature, including but not limited to intercompany accounts, capital investments, promissory notes and drafts, loans, advances, overdrafts, rentals, deferred accounts or interest of any kind including the claims described in NCR's statement

of claim in claim No. 119 before the Claims Tribunal. NCR shall further cause the cancellation of any such claims of any subsidiaries, branches or other affiliates of NCR. HCI shall cause the cancellation of any claims against NCR by any Iranian party and arising out of NCR's previous ownership of the majority interest in NCR-IRAN.


5. Immediately after the issuance of the Arbitral Award, NCR shall instruct Mohawk Data Sciences Corporation ("MDS") and A-M International ("AM") to make payment to HCI or REORGANIZED NCR-IRAN of whatever sums may be rightfully owed to NCR-IRAN by MDS and AM or any affiliate of either MDS or AM.
6. The parties agree to take all steps necessary to implement all terms of this Memorandum of Understanding within ninety days following the date of signing indicated in Article 7 below, but the parties agree to extend such ninety-day period if such an extension should then appear to be required or reasonable and warranted under the circumstances.
7. This Memorandum of Understanding consisting of 7 Articles and 3 Appendices has been read, understood and agreed upon by the official representatives of both parties and signed on July 9, 1982.

High Council of Informatics,
Islamic Republic of Iran

NCR Corporation
Dayton, Ohio
U.S.A.



By: Mr. A. Zandi Bidgoli



By: Mr. R.E. White.

IN THE NAME OF GOD

Ref. No.: 58 - 281

Date : June 21, 1982

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

THAT THE STATE HIGH COUNCIL OF INFORMATICS ("HCI"), an organization duly established under the laws of the Islamic Republic of Iran, the special law enacted on 1980, DOES HEREBY MAKE, CONSTITUTE and APPOINT, effective immediately, Mr. Abolfazl Zandi Bidgoli, acting HCI President, as HCI true and lawful attorney, for it, and in HCI's place and stead with full power and authority to do and perform all and every act and thing whatsoever requisite, necessary and proper to be done to adjust, settle any claims, demands, or matters existing between the HCI and NCR CORPORATION, including to execute (by signing) and to deliver, an M.O.U. for the purpose of resolving disputes in full and final settlement of claims to all intents and purposes.

In witness whereof, the undersigned has here-unto signed this 21 St. day of June, 1982.

Mohammad Taghi Banki

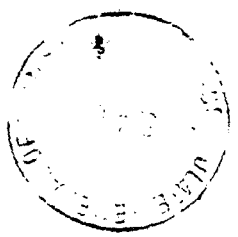


Head Of High State Council Of Informatics

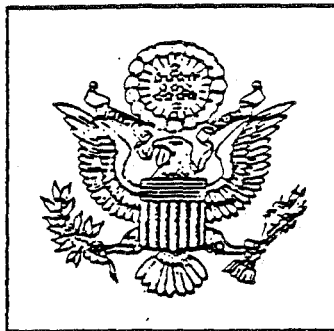
جمع شهر و سال
 و این برگه حلافت (X)
 شده بدین وجه به منتهی حلافت آن
 ۲/۵ در لایه حلافت
 شماره ۱۲۸۴ تاریخ ۸

X نامه این در دست حقیقی میرزا ماسد است
 X و تعین آفتاب این اوراق معبره
 X است در دست در صورت اسلای ایران
 X بینش

علی آفرین



United States of America



DEPARTMENT OF STATE

To all to whom these presents shall come, Greeting:

I Certify That the document hereunto annexed is under the Seal of the Secretary of State of
State of Ohio; and that such Seal is entitled to
faith and credit.*

In testimony whereof, I, Walter J. Stoessel, Jr.,
Acting
Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this eighteenth
day of May, 1982.

* FOR THE CONTENTS OF
THE ANNEXED DOCUMENT
THE DEPARTMENT ASSUMES
NO RESPONSIBILITY

Walter J. Stoessel, Jr.
Acting Secretary of State.

By Annie E. Maddy
Authentication Officer, Department of State.

Issued pursuant to
5 USC 159; Sec.
62 Stat. 249, 251
May 25, 1949;
Secs. 104 and 2
66 Stat. 174 and
5 USC 140.

This Certificate is not valid if it is removed or altered in any way whatsoever

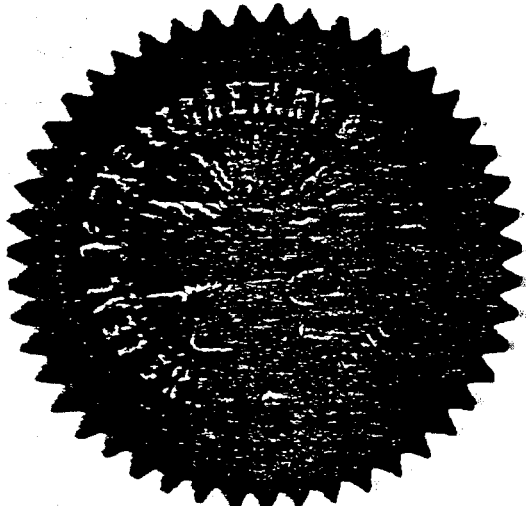

UNITED STATES OF AMERICA
STATE OF OHIO
OFFICE OF THE SECRETARY OF STATE

I, ANTHONY J. CELEBREZZE, JR., Secretary of State,

do hereby certify that I am the duly elected, qualified and acting Secretary of State of the State of Ohio, and I further certify that L. JUNIOR NORRIS

whose signature and official seal are affixed to the attestation hereto attached, was at the date hereof, the duly elected, commissioned and qualified CLERK OF THE COURT OF COMMON PLEAS of MONTGOMERY COUNTY, OHIO, and that he is the proper officer to make said attestation, which is in due form; and that his official acts are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have here-
unto subscribed my name and affixed
the official Seal of the Secretary of State
of Ohio, at Columbus, Ohio, this 12th
day of May 19 82.



ANTHONY J. CELEBREZZE, JR.
Secretary of State

whatsoever requisite, necessary and proper to be done in and about the premises, as fully, to all intents and purposes, as it might or could do, with full power of substitution and revocation, HEREBY RATIFYING and CONFIRMING all that its said attorney in fact or his substitute shall, however, lawfully do, or cause to be done by virtue hereof, reserving unto NCR CORPORATION, in addition to all other legal methods of revocation, the right, at any time by written notice to said attorney in fact, signed by either its President, any Vice President, Secretary or Treasurer, to revoke, countermand, annul and make void all or any of the powers herein conferred.

IN WITNESS WHEREOF, NCR CORPORATION has caused its corporate name to be subscribed hereto by James E. Rambo, one of its Vice Presidents, and attested by Howard Malovany, its Assistant Secretary, and its corporate seal to be affixed by order of its Board of Directors, at Dayton, Ohio, United States of America, this 10th day of May, 1982.

Signed, sealed and acknowledged in the presence of: NCR CORPORATION

[Signature]

By [Signature]
James E. Rambo
Vice President

ATTEST

[Signature]
Howard Malovany
Assistant Secretary

UNITED STATES OF AMERICA,
STATE OF OHIO,
COUNTY OF MONTGOMERY, SS:

Before me, a Notary Public in and for said State, personally appeared JAMES E. RAMBO, Vice President, and HOWARD MALOVANY, Assistant Secretary, of NCR CORPORATION, the corporation which executed the foregoing POWER OF ATTORNEY, who acknowledged that the seal affixed to said instrument is the corporate seal of said corporation; that they did sign and seal said instrument as such Vice President and Assistant Secretary in behalf of said corporation and by authority of its Board of Directors; and that said instrument is their free act and deed individually and as such Vice President and Assistant Secretary and the free and corporate act and deed of NCR CORPORATION.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Dayton, Ohio, United States of America, this 10th day of May, 1982.

Notary Public

JULIE M. KOSSLER, Notary Public
In and for the State of Ohio
Expires Aug. 30, 1986

STATE OF OHIO }
County of Montgomery } ss.

I, L. JUNIOR NORRIS, Clerk of the Common Pleas Court in and for said County, which is a court of Record, having a seal, do hereby certify that

whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and therein written, was at the time of so taking such proof of acknowledgment a NOTARY PUBLIC in and for said County, duly commissioned and qualified and duly authorized to take the same, and to take and certify the proof and acknowledgment of deeds by the laws of this State; and further, that I am acquainted with his handwriting, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of Ohio. The impression of the Notary's seal not required to be filed in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in the City of Dayton, this _____ day of _____

Nº 95274

19
L Junior Norris, Clerk.

IN THE NAME OF GOD

APPENDIX 3

TO

MEMORANDUM OF UNDERSTANDING

BETWEEN

HIGH STATE COUNCIL OF INFORMATICS OF THE
ISLAMIC REPUBLIC OF IRAN

AND

NCR CORPORATION

List of Bank guarantees, overdraft facilities and/or letters of credit mentioned in Article 3 of Memorandum of Understanding.

1. Bank Mellat - Letter Guarantee (dated September 20, 1972) from the National Cash Register Company (now NCR Corporation) ("NCR") to Bank Omran to secure overdraft facilities and other borrowings of NCR Corporation of Iran ("NCR IRAN") in the amount of Rials 46,500,000 (NCR's 62 percent share of a facility in the total amount of Rials 75,000,000). This guarantee is described as "Continuing".
2. Bank Mellat - Letter Guarantee (dated March 4, 1974, confirming a telex of the same date) from the National Cash Register Company (now NCR Corporation) ("NCR") to Bank Omran to secure overdraft facilities and other borrowings of NCR Corporation of Iran ("NCR IRAN") in the amount of Rials 23,560,000 (NCR's 62 percent share of a facility in the total amount of Rials 38,000,000), originally scheduled to mature and expire December 31, 1974 (which guarantee superseded a September 20, 1972, Letter Guarantee of Rials 23,637,500 (being NCR's 62

percent share of a facility in the total amount of Rials 38,125,000) with a stated maturity of December 31, 1973). The maturity/expiration date was extended from time to time (most recently, by letter dated April 17, 1978) to December 31, 1978. NCR asserts that this guarantee matured/expired on the last-mentioned date.

3. Bank Melli Iran ("Bank Melli") - Guarantee (Documentary Credit No. 0409-0021/LU) issued May 29, 1979, by Citibank N.A., Manama, state of Bahrain ("Citibank Bahrain") to Bank Melli, at the request of NCR Coproration ("NCR"), to secure proposed overdraft facilities for NCR Coproaration of Iran ("NCR IRAN") in an amount not exceeding Rials 100,000,000 for the period ended May 31, 1980. The line of credit to NCR IRAN supported by said guarantee (Account No. 15595), originally established at Rials 100,000,000, was subsequently reduced to Rials 88,000,000. The said Citibank Bahrain guarantee was supported by NCR's covering guarantee to Citibank N.A. dated May 10, 1979, in an amount not exceeding Rials 100,000,000. In Claim No. 501 before the IRAN-U.S. Claims Tribunal Bank Melli has asserted that Citibank N.A. is liable to it, pursuant to the said Citibank Bahrain guarantee, in the amount of Rials 20,062,290 (or U.S. \$ 250,841.13), plus interest, and plus legal and other expenses of collection in the amount of U.S. \$ 37,626.17.

Case No. 119

Concurring and dissenting opinion of Mahmoud M. Kashani

The Parties' representatives in case No. 119 and Claimant's representatives in case No. 501 reached settlement on all their claims and possible counterclaims and made mutual undertakings detailed in seven paragraphs and three enclosures. They jointly submitted the settlement and requested the arbitral tribunal to accept and record their settlement as an award on agreed terms, whereby terminating the proceedings in both cases.

The arbitral tribunal having become satisfied of its jurisdiction in case No. 119 accepted the settlement, recorded it as an award on agreed terms and simultaneously terminated the proceedings in case No. 501. But in so doing the majority apparently condemned one of the arbitrating parties, declared it obligated to pay Claimant in case No. 119 a sum of money and requested the President of the Tribunal to order the Escrow Agent to make that payment to Claimant.

I concur with the majority in acceptance and recording of the settlement in case No. 119 and termination of the proceedings in case No. 501. But I dissent from the majority as to the format of the Award on Agreed Terms in this case and to the provision for its enforcement.

1. As to its format the settlement decree has been transformed into a contentious resolution of the disputes by the majority. It has condemned one of the arbitrating parties in favour of the other. In principle, where parties choose conciliation and settlement in the course of the arbitral proceedings, they intend

to avoid continuation of contested proceedings and issuance of contested awards. They have several motives for this and the mutual undertakings that they make in the settlement. Our contested proceedings "is simply an alternative to the direct settlement of such disputes between the parties."*

The Provisionally Adopted Tribunal Rules Article 34(1) also points to duality of the procedures in contested and settlement cases. The Article provides for no action by the arbitral tribunal but recording of the settlement if accepted and issuance of a settlement decree.**

* Free Zones, (1929) P.C.I.J. Series A, No. 22 at 13; see also Adede, Settlement of Disputes Arising under the Law of the Sea Convention, 69 Am. J. Int'l L. 798 (1975)

** Iranian Code of Civil Procedure Articles 629 and 630 under Chapter 7, Settlements, provide for the same procedure, which as a proper measure is notable:

Article 629:

Where a compromise is reached outside the court and the deed of compromise is unofficial, the parties are required to appear in the court and verify its authenticity. Verification of the parties shall be recorded in a proces-verbal and signed by the judge of the court as well as by the parties.

In case of non-appearance of the parties in the court without mentioning a plausible excuse, the court shall, without any regard to the purport of the said deed of compromise, continue the court proceedings.

Article 630:

Contents of the deed of compromise made according to the foregoing two Articles shall be valid and applicable to the parties and their heirs and successors, and shall be executed like the judgments of a court of justice whether the subject of compromise was related particularly to the case under consideration or it included other suits or matters.

In his commentary on UNCITRAL Arbitration Rules with regard to Article 34 which has been maintained unchanged in our Provisionally Adopted Tribunal Rules, Sanders states that "(a)s a rule, however, the arbitrators will be prepared to incorporate the settlement into an award signed by them. To this award on agreed terms paras. 4 to 7 of Article 32 apply, as well as the provisions of para. 2: the award is final and binding on the parties and will be carried out by them without delay. If not carried out voluntarily, the settlement incorporated in the award on agreed terms can be enforced like any other arbitral award." *

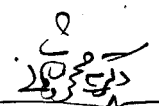
Article 34(1) further provides that "(t)he arbitral tribunal is not obliged to give reasons for such an award."

Nevertheless, in formulation of the settlement decree, the arbitral tribunal has applied the form of a contested award, presented its holding by stating: "For the foregoing reasons, THE TRIBUNAL AWARDS AS FOLLOWS:...." and thereby practically refused the provision of Article 34(1) referred to above and in the operative part condemned "the remaining Respondents, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and BANK MELLAT (as) ... obligated to pay to the Claimant, NCR Corporation, the total sum of Two Hundred Fifty Thousand United States Dollars (U.S. \$250,000.00)...." Such a resolution is wholly outside the mutual intention of the parties wishing to avoid issuance of a contested award by recourse to settlement procedure.

2. As to its enforcement procedure the settlement decree is also of serious defect, for it has mixed the acceptance and recording of the settlement with that of its enforcement, which are two different matters. Decisions of judicial authorities in the form of contested judgments create rights for one party against the other, but in settlement decrees, the duty of the tribunals is merely acceptance of settlement of the parties and declaration of its binding nature. At no time may a judicial authority on its own motion provide for enforcement of its decisions. Enforcement stage of a decision entirely differs from its stage

* Sanders, Commentary on UNCITRAL Arbitration Rules, 1977 Yearbook, Commercial Arbitration 172,212.

of making and issuance. Enforcement has its own separate rules and formulations envisaged in codes of civil procedures of all countries. With regard to arbitral awards also there exist particular procedures. Provisionally Adopted Tribunal Rules Article 32(7) in that respect provides for compliance by the arbitral tribunal with requirements of arbitration law of the country where the award is made. Article 34(3) of the same Rules has restated such requirement for awards on agreed terms. The procedure under the Dutch arbitration law is depositing of the award with the court local to the place of arbitration. And in order that the award be enforced, in case one of the arbitrating parties refuses voluntary enforcement, is obtaining of an exequatur from that local court according to the Dutch Code of Civil Procedure Article 642. Considering the existence of such provisions for enforcement of arbitral awards, the arbitral tribunal is principally relieved from enforcement procedures for its awards, and such matters must be left to the arbitrating parties or the authorities competent for enforcement of the awards. Based on the foregoing, the dispositive part of the award where it states that "THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and BANK MELLAT, are obligated to pay to the Claimant, NCR Corporation the total sum of Two Hundred Fifty Thousand United States Dollars (U.S. \$250,000.00) which obligation shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981. The Tribunal hereby submits this Award to the President for notification to the Escrow Agent", is outside the competence and duties of the arbitral tribunal. Therefore in spite of my agreement with acceptance and recording of this settlement in the form of an award on agreed terms I dissent from the majority decision as to these defects.


M. M. Kashani
Mahmoud M. Kashani