IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ...

285-166

۲۸۵-۱۶۶

... SAFE

Case No. 285 Date of filing: 4-10-85

** AWARD - Type of Award Final

- Date of Award 4Oct85

28 pages in English 23 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 _____ pages in Farsi

** OTHER; Nature of document: _____

_____

- Date _____

_____ pages in English _____ pages in Farsi

R/12

Case No. 285
Chamber Two
Award No. 192-285-2

GENERAL DYNAMICS TELEPHONE SYSTEMS CENTER, INC. (formerly known as Stromberg-Carlson Corporation) and GENERAL DYNAMICS INTERNATIONAL CORPORATION,
Claimants,

-and-

THE ISLAMIC REPUBLIC OF IRAN, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, IRAN, THE TELECOMMUNICATIONS COMPANY OF IRAN and BANK MELLI IRAN,
Respondents.

AWARD

Appearances:

For the Claimants:
Mr. David E. McGiffert
Mr. G.V. Morton Minton
Mr. Douglas E. Phillips,
Attorneys for Claimants
Mr. Arnold Kreek
Mr. Tony Olson
Mr. Richard Wilson,
Representatives of Claimants

For the Respondents:
Mr. Mohammad K. Eshragh,
Agent of the Islamic Republic of Iran
Mr. Saifollah Mohammadi,
Legal Advisor to the Agent
Mr. Hassan Ali Bakhshi
Mr. Kharollah Rafie
Mr. Rasoul Ghafoori,
Assistants to the Legal Advisor
Mr. Haydar Ali Payandeh,
Attorney for the Ministry of Defense
Mr. Hassan Klantar Kashi,
Representative of the Ministry of Defense

Also Present:
Ms. Jamison M. Selby
Deputy Agent of the United States of America
Mr. Daniel Price
Legal Advisor to the Deputy Agent

I. THE CLAIM

The Claimants, GENERAL DYNAMICS TELEPHONE SYSTEMS CENTER, INC. (formerly known as Stromberg-Carlson Corporation)("General Dynamics") and GENERAL DYNAMICS INTERNATIONAL CORPORATION ("General Dynamics International") both Delaware corporations, claim for damages allegedly arising from the breach and termination of Contract No. 105 between Stromberg-Carlson Corporation ("Stromberg-Carlson") and the Ministry of War of the Government of Iran. The contract, concluded on 6 October 1976, was for the design, manufacture, installation and one-year maintenance of telecommunications equipment at two Iranian Air Force facilities located in Chahbahar and Omedieh, and for training of Iranian personnel in its use. The Claimants, alleging both that the contract was breached by the Government of Iran and that the contract was terminated by force majeure, seek a total of U.S. $1,868,626, representing amounts due pursuant to unpaid invoices for completed work, reimbursement of costs incurred as a result of delays caused by the Government of Iran prior to the breach, lost profits on uncompleted work and termination costs. The Claimants also seek compensation in the amount of U.S. $96,000 for the alleged wrongful taking of property and demand the release of an advance payment guarantee in the amount of U.S. $1,390,230 and a good performance guarantee in the amount of U.S. $571,065 and related standby letters of credit, which guarantees and letters of credit were obtained pursuant to Contract No. 105 for the benefit of the Government of Iran.

In the alternative, the Claimants request additional damages of U.S. $1,961,295, representing the amount of the unreleased guarantees and letters of credit. The Claimants also seek interest and costs.

The Ministry of National Defence (formerly the Ministry of War) (the "Ministry") denies that it breached the contract and alleges that the only breach was Stromberg-Carlson's failure to install and maintain the equipment and the Claimant's unauthorized and unjustified departure from Iran in February 1979. The Respondent denies the existence of force majeure conditions at the locations where the Claimant was required to fulfill its contractual obligations and alleges that any delays in installation of the two telecommunications systems were either caused by or agreed to by the Claimant. Maintaining that the Omedieh system is only 10 to 12.5 per cent completed and that the Chahbahar system, due to a lack of maintenance, does not function, the Ministry counterclaims for U.S. $3,437,094 and rials 60,315,246, representing the amounts it has paid to Stromberg-Carlson. The Ministry also counterclaims for rials 1,973,442, allegedly representing unpaid taxes for the period March 1978 to March 1979. In an additional counterclaim first raised when it filed its evidence on 16 January 1984, the Ministry also seeks rials 23,767,908, allegedly representing unpaid social security contributions. The Ministry also seeks interest and costs.

The Telecommunications Company of Iran ("TCI"), on the ground that it was not a party to Contract No. 105, maintains that the claim cannot be directed against it.

The Government of Iran denies that the claim is attributable to it and asserts that since General Dynamics International was not a party to the contract it cannot bring a claim.

Bank Melli denies that the claim is attributable to it, arguing that any claim regarding the guarantees should be directed against the beneficiary party.

A hearing was held on 1 May 1984.

II. JURISDICTION

For the following reasons the Tribunal has jurisdiction over this claim. General Dynamics, known prior to 26 July 1982 as Stromberg-Carlson,[1] and General Dynamics International are both Delaware corporations wholly owned by General Dynamics Corporation, another Delaware corporation. The Claimants have provided evidence, including copies of

---

[1] In July 1982, Stromberg-Carlson sold certain of its assets, including its name, to third parties. Following this sale, the corporation changed its name twice with the result that as of 26 July 1982, Stromberg-Carlson was called General Dynamics Telephone Systems Center, Inc.

proxy statements during the relevant period, to establish that General Dynamics Corporation is a national of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration. There is no dispute that the Respondents all are included within the definition of Iran in Article VII, paragraph 3, of the Claims Settlement Declaration.

The Respondents have asserted, however, that the contract in dispute contains a forum selection clause ousting the jurisdiction of the Tribunal. The clause in question, Article 9, reads as follows:

> All disputes and differences between the two parties arising out of interpretation of the Contract items or the execution of the Works which cannot be settled in a friendly way, shall be settled in accordance with the rules provided by the Iranian Laws, via referring to the competent Iranian Courts.

Article II, Paragraph 1, of the Claims Settlement Declaration requires that, in order to exclude the Tribunal's jurisdiction, the contractual choice of Iranian Courts must include all claims arising under the contract. In the present case, the jurisdiction of the Iranian courts has been expressly limited to disputes arising from the interpretation of the contract items and the execution of the works. Disputes concerning other aspects of the contract, including payment, have been left outside the

jurisdiction of the selected courts. Such limitation of the jurisdiction places Article 9 of the contract outside the requirement that the Iranian courts must be solely competent for any disputes arising under the contract. Article 9 of the contract, therefore, does not preclude the Tribunal from asserting jurisdiction over claims arising under this contract. See Ford Aerospace and The Air Force of Iran, Interlocutory Award No. ITL 6-159-FT, reprinted in 1 Iran-U.S. C.T.R. 268 (5 November 1982).

In this connection, the Tribunal repeats what it said in its Interlocutory Award in ITEL International Corp. and Social Security Organization of Iran, et al., ITL 43-476-2 (filed 29 June 1984) that it derives its jurisdiction only from the terms of the Claims Settlement Declaration."

> Accordingly, the Tribunal has not entered into the question of the intention, actual, implied or presumed, of the parties to a dispute settlement clause in a contract, nor into the question of the connecting factors between the performances under the contract and the jurisdiction of a particular state and the circumstances under which the contract was concluded. The Tribunal concerns itself only with the wording of the relevant clauses of the contract in order to decide whether it meets the requirements of the Declaration.

Jurisdictional questions relating to the counterclaims are dealt with in Section III. F. below.

III. THE MERITS

A. Breach of Contract or Force Majeure

In their Statement of Claim and subsequent filings, the Claimants have alleged that various actions on the part of

the Respondents constituted breaches of Contract No. 105. Such actions, according to the Claimants, included long initial delays in preparing sites for the telecommunications systems, failing to safeguard the Claimants' personnel, causing Stromberg-Carlson to suspend installation at Omedieh in October 1978 and all other performance in February 1979, failing to cooperate with the Claimants regarding resumption of work, failing to reimburse Stromberg-Carlson for costs resulting from delay and for work completed and causing the loss of the Claimants' property.

This position, however, is inconsistent with Stromberg-Carlson's actions at the time the contract was allegedly breached. Prior to filing this claim with the Tribunal, the Claimants had consistently acted as if Stromberg-Carlson had terminated the contract on grounds of force majeure. On 18 October 1978, Stromberg-Carlson sent TCI, which was administering the project on behalf of the Ministry, a first notice of suspension of work at the site in Omedieh because of "a strike by Iranian personnel (which had) resulted in a suspension loss of labor and accommodation assistance causeing (sic) us to stop installation activity and declare a state of force majeure." In this notice, Stromberg-Carlson estimated that the duration of the force majeure condition would be a minimum of two weeks. On 25 October the strike was over and installation work resumed. Stromberg-Carlson gave notice to this effect on 28 October

1978. On 7 November 1978, following riots and intervention by the Iranian army in nearby Ahwaz, the Claimants sent a second notice of suspension to TCI, informing them that installation at Omedieh had again been stopped on 31 October due to riots and civil unrest and notifying TCI of the departure of the installation crews because of fears for their personal safety. Stromberg-Carlson also notified TCI that all equipment had been locked in the equipment building for protection.

Work was halted at the Chahbahar site on 7 February 1979. Notice of this suspension, sent on 12 February 1979 to TCI and the Ministry of War, read as follows:

> In accordance with Article 7.6 Contract No. 105 ..., you are hereby notified that all remaining work which includes the maintenance of the EPABX-E equipment at Chabahar will be stopped on February 28, 1979 as a result of force majeure. The continuing civil unrest in Iran requires us (by recommendation of the U.S. State Department) to withdraw all American personnel presently working on the...Contract.
>
> Force majeure has been invoked on the Omedieh installation portion of the contract since Oct. 31, 1978 by official notice on Nov. 7, 1978....
>
> We see no change to the present situation in the forseeable future. Pursuant to the contract Article 7.6 paragraph 2, we are willing to work with you to find ways to complete the contract.

From March to October 1979, Stromberg-Carlson corresponded and met with officials of both the Ministry and TCI

regarding resumption of the Claimant's installation performance. By 6 October 1979, conditions were such that Stromberg-Carlson was prepared to resume installation at the Omedieh site, once administrative details, including payment of its outstanding invoices, were resolved.

Following the seizure of the United States Embassy in Tehran in November 1979, Stromberg-Carlson advised TCI by letter that United States nationals could no longer safely enter Iran and proposed that the installation at the Omedieh site be completed by the Claimant's Jordanian distributor. To finalize arrangements, Stromberg-Carlson requested a meeting in Athens. The Ministry, however, insisted that the meeting be held in Tehran. Finally, after further communications had failed to produce agreement, Stromberg-Carlson sent a written notice to the Ministry on 24 March 1980 that the contract was cancelled due to force majeure. After reiterating the previous suspension letters and the parties' unsuccessful attempts to find a mutually acceptable solution, the letter stated as follows:

> The Force Majeure conditions continue to exist to render impossible performance of the Contract.
>
> Based on the above and pursuant to the Contract, we hereby notify you, effective this date, of our election to cancel the Contract, the cancellation to be effective three (3) months from this date.
>
> In addition, you have consistently failed to pay outstanding invoices for work already performed and materials already furnished by us.

> This failure continues on your part even though we have repeatedly called them to your attention and requested payment.
>
> Accordingly, in this interim period we will submit a settlement of accounts for payment by you covering unpaid equipment and services previously furnished by us.

The Ministry responded two months later that the termination of the contract by Stromberg-Carlson was a breach. On 26 June 1980, Stromberg-Carlson presented to the Government of Iran a proposal for financial settlement of the parties' account.[2] The Government of Iran failed to respond to the proposed settlement.

Thus, from late 1978 until mid 1980 Stromberg-Carlson maintained that it was faced with situations of force majeure and acted consistently with the contractual

---

[2]The settlement proposal requested release of the two outstanding bank guarantees and related letters of credit and requested a total settlement in the amount of U.S. $1,720,429. Of that total amount, U.S. $218,351 represented amounts due for unpaid invoices for services rendered, U.S. $667,923 represented costs arising from delays prior to the force majeure termination and U.S. $834,155 represented losses sustained due to force majeure and contract cancellation.

provision regarding force majeure.[3]. It served the required notice of force majeure events; both parties consulted in an attempt to resolve the problem and finally, when a mutually agreeable solution could not be found within three months from the request for negotiations, Stromberg-Carlson did what it was entitled to do under the contract -- cancel it on the basis of force majeure with three months' notice.

Having maintained so consistently and clearly that it was terminating the contract on the basis of force majeure, and having in fact terminated it on that ground, Stromberg-Carlson is not now convincing in its alternative claim of breach of contract.

---

[3]Article 7.6 of Contract No. 105 provided as follows:

> In the event of force majeure when the execution of this Contract becomes impossible, the afflicted party must inform, in writing, the other party of the occurrence of the said event or events, and also estimate in his letter the duration of time during which those circumstances will continue.
>
> Then, both parties of the contract must consult and exchange views with each other in order to find ways to deal with such events.
>
> However, if within three (3) months from the date of requesting such negotiations by either party, a mutually agreeable solution is not found, each party can, on its opinion, cancel the contract by giving to the other party a three (3) months prior written notice.
>
> In this case, both parties must take actions to clear their account within three (3) months after the cancellation date and the price of equipments which have already been supplied or are under manufacture according to original and the latest monthly progress report accepted by the Buyer and also the price of services rendered up to this date must be paid.
>
> The cancellation of Contract due to force Majeure must not be considered as breach of Contract or negligence of contract parties.

Considering the evidence as a whole, the Tribunal is convinced that the invocation of force majeure was proper and that the departure of the Stromberg-Carlson personnel from Iran was warranted on the basis of threats and perceived threats to their safety. Although the conditions at these more isolated locations, particularly Chahbahar, were not the same as those in the major cities of Iran, the evidence as a whole clearly establishes that Stromberg-Carlson's apprehension for the personal safety of its employees was real and understandable.

The Tribunal, therefore, holds that Contract No. 105 was terminated by reason of force majeure and that, pursuant to Article 7.6 of the contract, Stromberg-Carlson is entitled to reimbursement of the price of equipment supplied to or approved by the Ministry and the price of services rendered up to the cancellation date, which was 24 June 1980. Calculation of the amount of reimbursement to which the Claimants are entitled under Article 7.6 is dealt with in Section III, C. below.

As Article 7.6 clearly identifies the items to which Stromberg-Carlson is entitled to reimbursement following cancellation due to force majeure, the Tribunal holds that under the contract, the Claimants are not entitled to receive lost profits on the uncompleted work, the costs of maintaining the General Dynamics International office in

Tehran, the costs of closing out operations in Iran, including the costs of termination administration, and the costs of legal support in connection therewith.

B. Costs for Delays Arising Prior to Force Majeure Conditions

Appendix 4 of Contract No. 105 contained a time schedule for the work to be performed under the contract and required that installation at the Chahbahar site was to begin on 25 March 1977 and at Omedieh on 17 June 1977. All installation work was to be completed within eight months of the starting date, followed by maintenance for one year at each site. The sites, however, which the Ministry was obligated under the contract to have prepared prior to installation, were not ready. As a result, the Ministry ordered that shipment of the equipment required for installation be made by sea rather than air, as initially contemplated by the contract.

Despite the fact that the sites had not been completed by the Ministry, Stromberg-Carlson installers began installation at Chahbahar in October 1977. By mid-November, even though there was still no air conditioning to protect the equipment and no permanent power supply, installation was substantially complete. Testing of the equipment, however, was delayed until January 1978, apparently because of the Ministry's failure to supply electrical power. Despite

continuing power supply problems, system testing was completed in May 1978. By June the system was in operation and on 27 September 1978, the Iranian Air Force provisionally accepted the Chahbahar system with minor exceptions, which did not affect the system's functioning. Maintenance of the system began immediately and continued through February 1979, a period of five months.

Recurrent delays resulting from either the non-readiness of the installation site or difficulties with the power supply system occurred also at the Omedieh site. Although at the request of the Ministry the equipment for the telecommunications system was delivered by Stromberg-Carlson in February 1978, installation, at the written request of TCI, was postponed until September 1978 because the site was not yet ready. When the Stromberg-Carlson installation team arrived in September, work was further delayed because of the inadequacy of the electrical power supply. Installation finally began on 23 September 1978.

The Claimants, relying on Article 7.8 of the contract, now seek to recover the costs Stromberg-Carlson incurred as a result of these delays. Article 7.8 provides:

> In case performance of the contract is delayed for causes attributable to the Buyer or other Iranian authorities the Buyer with the agreement of the Seller will extend the specified term in order to allow the works to be completed and in the case of the Seller request, the Buyer will pay the Seller for any extra expenses resulting from such delays according to those invoices which are approved by the Buyer.

The evidence submitted establishes that the primary reasons for the delays in installation at both Chahbahar and Omedieh were the non-readiness of the sites and the inadequacy of the power supply system -- both of which under Appendix 1 of the contract were the responsibility of the Ministry. Although the Respondent has alleged that the delays were the result of defective parts supplied by Stromberg-Carlson and the Claimants' failure to provide adequate spares, the evidence does not support this allegation. Furthermore, although Article 7.1 of the contract required the Ministry to notify Stromberg-Carlson of the latter's defaults and entitled the Ministry to draw upon the good performance guarantee if the defaults were not corrected by the Claimant, there is no evidence that the Ministry did so.

Stromberg-Carlson notified the Ministry by letter on 15 November 1979 of the additional expenses incurred by it as a result of these delays and submitted specific invoices in United States dollars and Iranian rials, as required by the contract, for U.S. $397,667.55 and rials 22,516,576. Additional requests for payment of these invoices were subsequently made by Stromberg-Carlson. Although the Ministry was obligated under Appendix 3 of the contract to pay invoices within four weeks after presentation "if there is no reasonable objection" and under Article 7.8 to pay "the Seller for any extra expenses" resulting from these

delays, the Ministry failed to pay the invoices. While the contract provided that the mechanism for determining payment was the submission by the seller of invoices and their approval by the buyer, the Tribunal does not interpret that mechanism as derogating from the obligation in principle to pay for extra expenses. If the buyer failed to approve invoices, the issue could be taken to dispute settlement, and the buyer could not, in that event, defend its non-approval on the ground that it had no obligation to pay anything other than what it wanted to pay.

There is no evidence that prior to 15 November 1979 Stromberg-Carlson informed the Ministry that it would be liable for extra costs arising from delays. Even when the parties entered into a revised work schedule in October 1977 establishing new dates for preparation of the two sites, there is no indication that Stromberg-Carlson notified the Ministry of the additional costs.

The Ministry has alleged that Stromberg-Carlson waived any claim for costs arising from delays by, first, failing to inform the Ministry of these costs until November 1979 and second, agreeing to a new work schedule revising the dates of preparation of the sites.

With regard to Stromberg-Carlson's delay in notifying the Ministry of the costs arising from the delays, the Tribunal notes that Article 7.8 of the contract states no

time limit for a request by Stromberg-Carlson that it be compensated for the additional costs. Furthermore, as the Claimants allege, the overall costs resulting from these delays could only be accurately calculated after the completion of the work by Stromberg-Carlson. Under these circumstances, Stromberg-Carlson's delay in notifying the Ministry of these costs cannot be considered to be a waiver of its contractual entitlement to such costs.

With regard to the revised work schedule, the only evidence submitted is a letter from Stromberg-Carlson dated 30 October 1977 in which the Claimant agreed to revised dates for preparation of the two sites. This letter is entirely consistent with Article 7.8 of the contract which required the Ministry with the agreement of Stromberg-Carlson to extend the dates in order to allow the work to be completed. Nothing in the letter indicates that Stromberg-Carlson waived its entitlement to the costs arising from the delays.

The Tribunal, therefore, holds that Stromberg-Carlson is entitled to receive reimbursement for costs arising from delays caused by the Respondents. Calculation of the amount of reimbursement is dealt with in Section III. C. below.

C. Damages

The Tribunal has determined that the Claimants are entitled to compensation under Article 7.6 of Contract No.

105 for the unpaid cost of equipment supplied and services rendered up to the date of cancellation of the contract and to compensation under Article 7.8 for the costs of delays attributable to the Ministry.

The evidence submitted establishes that the unpaid price of equipment and services totalled U.S. $145,568 and rials 10,298,909, or a total of U.S. $291,136 after conversion of rials into dollars,[4] and that the cost of delays to which Stromberg-Carlson is entitled to reimbursement is U.S. $262,000, which amount represents all costs incurred through 1978. In this latter connection, the Tribunal notes that the Claimant's requests for delay expenses include estimates based on inflation rates, the "budget" for the project office in Tehran (as opposed to proof of actually incurred costs of the office) and for a period of time following suspension for force majeure, and pro-rata apportionment of contract prices for periods of delay (thus including general overhead and profit along with actual expenses). The Tribunal has granted only such of these costs as it considers a reasonable estimate of costs actually incurred as a result of the delays.

---

[4] Unlike most of the cases in which the Tribunal has faced a choice of conversion rates, in this case the Parties used in the contract the rate of 70.75 rials to the dollar in calculating the rial payment required by Appendix 3 of the contract for the services priced in dollars in Appendix 5. In view of that use of a conversion rate in the contract, the Tribunal believes it justifiable to use the same rate for purposes of the award.

Certain adjustments, however, must be made to these amounts to determine the payment to which the Claimants are entitled. At the inception of the contract, Stromberg-Carlson received an advance down payment equal to 25% of the contract price. As of the cancellation date, all but U.S. $229,189 and rials 16,215,127 of the downpayment had been amortized in the course of the payments made to Stromberg-Carlson.[5] Therefore, a total of U.S. $458,378, representing the unliquidated downpayment must be deducted from the total amount owing to the Claimants.

Secondly, it was the contractual practice of the parties for the Ministry to deduct and withhold a 5.5% tax on the rial amounts billed by the Claimant. The Tribunal, therefore, determines that rials 566,440 or U.S. $8,006, representing 5.5% of the rial amounts billed by and owing to Stromberg-Carlson, must also be deducted from the amount owing to the Claimants.

The Tribunal has reviewed the evidence regarding the training of Ministry personnel provided by Stromberg-Carlson in Iran and the United States and has determined that there are no grounds for a reduction in the contractual amount of U.S. $69,000 already paid to the Claimant for these services

---

[5] This amount is not reduced because of the unpaid amounts found due by the Tribunal in the preceding praragraph, as those amounts included the 25 percent that would have been amortized from the advance.

In this regard the Tribunal notes that Stromberg-Carlson has billed and received payment only for 18 weeks of training and not for an additional six weeks contemplated by a contract amendment which never entered into force.

The Tribunal, therefore, holds that the Claimants are entitled to receive U.S. $86,752, representing the amounts payable under Articles 7.6 and 7.8 of the contract, less the amounts specified above representing the unliquidated portion of the advance payment and the 5.5% tax on rial payments.

D. The Guarantees and Letters of Credit

Pursuant to the contract, Stromberg-Carlson received from the Ministry an advance down payment of U.S. $1,390,230, representing 25% of the contract price. To secure this down payment, Stromberg-Carlson caused Bank Melli to issue a bank guarantee in favor of the Government of Iran (Bank Melli Guarantee No. 28228/D) in the amount of the down payment and obtained a standby letter of credit (No. 8636712, expiration date 3 November 1980) in the same amount for the benefit of Bank Melli from Continental Bank of Chicago. Under Article 8.5 of the contract, the down payment guarantee was to be "released 4 weeks after clearance of down payments".

As also required by the contract, Stromberg-Carlson obtained a good performance guarantee from Bank Melli (No. 28229/D) in the amount of U.S. $ 571,065, representing 10% of the contract price and opened a standby letter of credit with Continental Bank (No. 8636701, expiration date 7 November 1980) for the benefit of Bank Melli in the amount of the guarantee. Pursuant to Article 8.4 of the contract, the good performance guarantee was to be "immediately released" in the event the contract was cancelled due to force majeure.

Neither guarantee nor the related standby letters of credit have been released by the Government of Iran and Bank Melli. In February 1981 Bank Melli demanded further extension of both letters of credit or payment of their full amounts. The Claimant, alleging that the advance down payment guarantee has been amortized and that the force majeure termination of the contract requires the release of the good performance guarantee, requests the Tribunal to order the Respondents to release both guarantees and the related letters of credit.

As the present Award takes into account for the Respondent's benefit the amount of the unliquidated portion of the advance down payment, it follows that no claim for payment or extension can lawfully be made by the Government of Iran or the Ministry or Bank Melli under the advance down payment bank guarantee (Bank Guarantee No. 28228/D) and the related

irrevocable letter of credit (Letter of Credit No. 8636712). Likewise, as Contract No. 105 clearly provided that the good performance guarantee was to be immediately released upon cancellation of the contract on the grounds of force majeure, no claim for payment or extension can lawfully be made by the Government of Iran, the Ministry or Bank Melli under the good performance bank guarantee (Bank Guarantee No. 28229/D) and the related letter of credit (Letter of Credit No. 8636701).

E. Loss of Claimants' Property

The Claimants have alleged that following the termination of the contract, the Government of Iran either took or caused to be lost certain of the Claimants' property located in Chahbahar, Omedieh and Tehran and valued originally at approximately U.S. $240,000, which amount was subsequently reduced to approximately U.S. $96,000. Of this total, test equipment and installation spares which cost U.S. $72,506, were left in locked rooms at the Ministry's Air Force bases at Omedieh and Chahbahar or at the Iranian Customs Office, and as such, the loss of this property can be deemed to be the responsibility of the Respondents. In 1980 the Claimant requested compensation for these items from the Respondent. Regarding the other property, however, the Claimants have failed to establish that the loss of the property was attributable to any of the Respondents. In the absence of evidence to the contrary, the cost of these items may be

considered their value. The Tribunal, therefore, holds that the Claimants are entitled to receive U.S. $72,506, representing the value of the property left in Iranian Government custody.

F. The Counterclaims

The Ministry, contending that all delays were the result of Stromberg-Carlson's failure to deliver equipment in a timely fashion, that Stromberg-Carlson personnel departed Iran without authorization, that the Omedieh installation is only 10 to 12 percent complete, and that the equipment at Chahbahar is defective due to lack of maintenance following the departure of the Stromberg-Carlson personnel in February 1979, alleges that Stromberg-Carlson breached the contract. Maintaining that the installed equipment is valueless to it, the Ministry counterclaims for the total amount paid to the Claimant, U.S. $ 3,473,094 and rials 60,315,246 and seeks additional damages allegedly arising from the delays.

The Tribunal has already determined that the installation delays at both sites were not caused by Stromberg-Carlson and that the departure of Stromberg-Carlson's personnel was justified by force majeure conditions in Iran.

With regard to the Omedieh site, both parties agree that installation at that site was only approximately 10 to

12.5 percent completed. The failure, however, to finish installation of the system was the result initially of the Ministry's failure to provide a fully prepared site and adequate electrical power. From October onward installation was prevented by the force majeure conditions existing in Iran. Article 7.6 of the contract provided that the cancellation of the contract due to force majeure must not be considered as breach of contract or negligence of the contract parties. Stromberg-Carlson cannot be held liable for the failure to finalize installation at the Omedieh site.

As to the defective condition of the equipment at the Chahbahar site, the evidence establishes that the system was provisionally accepted by the Iranian Air Force on 27 September 1978. From that date until the departure of the Stromberg-Carlson maintenance team on 7 February 1979 the system was maintained by the Claimant's personnel. The equipment was left in functional condition with operational and maintenance manuals at the installation site. Following the departure of the Claimant's personnel the equipment was maintained by Claimant's Iranian sub-contractor until 28 February 1979. After 28 February 1979, the evidence indicates that the equipment was neglected and that, due to a lack of electrical power and air conditioning, the equipment was kept in a highly humid environment at temperatures in excess of a hundred degrees Farenheit. While the equipment may well have been damaged as a result of exposure to such

conditions, this damage cannot be attributed to the Claimant.

The Tribunal, therefore, holds that the counterclaim for breach of contract must be dismissed.

The Ministry has also counterclaimed for taxes and social security contributions allegedly due from Stromberg-Carlson. The 5.5% withholding tax which it was the contractual practice of the parties to deduct from payments made to the Claimant in rials has already been taken into account in calculating the amount to which the Claimants are entitled. With regard to the other tax payments allegedly due, the contract merely identified which contractual party was responsible for the payment of taxes. The obligation to pay such taxes, however, did not arise from the contract, but from the tax laws of Iran. The Tribunal, therefore, holds that any liability on the part of Stromberg-Carlson for such tax payments must be deemed to arise not out of the contract but out of the application of Iranian law and those claims are therefore outside the jurisdiction of the Tribunal. See T.C.S.B., Inc. and Iran, Award No. 114-140-2 (16 March 1984). The tax counterclaims other than the counterclaim for the 5.5% contract tax applicable to payments made in rials must be dismissed for lack of jurisdiction.

The counterclaim for social security contributions was not filed until 16 January 1984, almost a year and a half

after the Ministry filed its Statement of Defense, with no justifiable explanation having been provided as to its lateness. As the Tribunal is unable to find that this delay was justified, the counterclaim is dismissed in accordance with Article 19, paragraph 3, of the Tribunal Rules.

IV. INTEREST

In order to compensate the Claimants for the damages they have suffered due to delayed payments, the Tribunal considers it fair to award the Claimants simple interest at the rate of 12 percent per annum on the amounts due. Interest shall run on all amounts owing from 31 July 1980[6] until the date the Escrow Agent instructs the Depository Bank to pay the Award.

V. COSTS

Each party shall be left to bear its own costs of arbitration.

---

[6] On 26 June 1980, Stromberg-Carlson notified the Ministry of all amounts claimed to be due pursuant to Articles 7.6 and 7.8 of the contract and simultaneously submitted invoices for these amounts. Under Appendix 3 of the contract, the Ministry was obligated to pay all invoices within four weeks of presentation. The Tribunal, therefore, determines that 31 July 1980 is the proper date from which interest should run.

AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The Respondent, the Islamic Republic of Iran, is obligated to pay the Claimant, General Dynamics Telephone Systems Center, Inc., U.S. $159,258, plus simple interest at the rate of 12% per annum calculated from and including 31 July 1980 until the date the Escrow Agent instructs the Depository Bank to pay the Award, which obligation shall be satisfied by payment out of the Security Account established by Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

The bank guarantees of Bank Melli (No. 28228/D and No. 28229/D) and the standby letters of credit of Continental Bank of Chicago (No. 8636712 and No. 8636701) have no further purpose, and the parties shall not make any further effort to call or collect on either of them.

The remainder of the claims and the counterclaim for breach of contract are dismissed on the merits.

The counterclaim for taxes, other than the counterclaim for the 5.5% contract tax payable in rials which has been taken into account in the award of the claim, is dismissed for lack of jurisdiction.

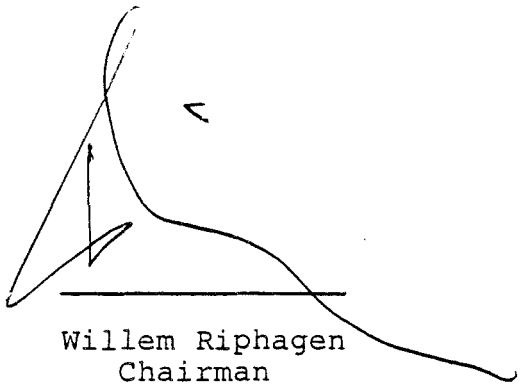
The counterclaim for social security contributions is dismissed in accordance with Article 19, paragraph 3, of the Tribunal Rules of Procedure.

Each of the parties shall bear its own costs of arbitrating this claim.

This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

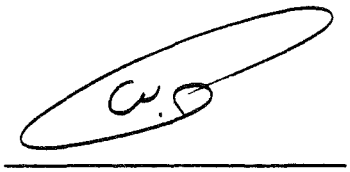
Dated, The Hague

4.Oct. 1985

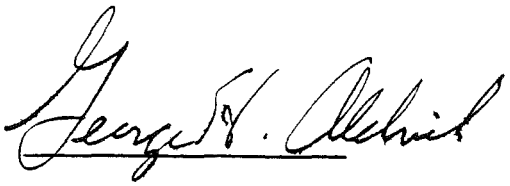


Willem Riphagen
Chairman
Chamber Two

In the Name of God,



Hamid Bahrami-Ahmadi
Dissenting Opinion



George H. Aldrich