

ORIGINAL DOCUMENTS IN SAFE

Case No. 487

Date of filing: 30 Apr 1986

487-118
EAV-11A

** AWARD - Type of Award Final
- Date of Award 30 Apr 1986
24 pages in English _____ 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

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاری ایران - ایالات متحدہ



487-118
EAV-118

CASE NO. 487
CHAMBER THREE
AWARD NO. 228-487-3

LOGOS DEVELOPMENT CORPORATION
Claimant,

and

INFORMATION SYSTEMS IRAN OF THE
ISLAMIC REPUBLIC OF IRAN, THE
MINISTRY OF DEFENSE OF THE ISLAMIC
REPUBLIC OF IRAN and THE GOVERNMENT OF
THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاری ایران - ایالات متحدہ
ثبت شد - FILED	
1265 / 2 / 10	
30 APR 1986	
487	

AWARD

Appearances:

For the Claimant: Mr. Philip R. McKnight
Attorney
Mr. Bernard E. Scott
Mr. Arnold E. Mende
Representatives of Logos
Development Corporation

For the Respondent: Mr. Mohammad K. Eshragh
Agent of the Government of the
Islamic Republic of Iran
Mr. Nozar Dabiran
Legal Advisor to the Agent of
the Islamic Republic of Iran

Mr. Nematolah Khoshini
Mr. Bozorgmehr Sotoodeh
Mr. Mohammad Aghadaei
Representatives of Information
Systems Iran

Also Present:

Mr. Daniel M. Price
Deputy Agent of the United
States of America
Ms. Lucy F. Reed
Assistant to the Agent of the
United States of America

I

INTRODUCTORY ISSUES

1. The Claimant in this Case, LOGOS DEVELOPMENT CORPORATION ("Logos"), submitted its Statement of Claim on 18 January 1982. Logos raised claims against three Respondents, INFORMATION SYSTEMS IRAN OF THE ISLAMIC REPUBLIC OF IRAN ("ISIRAN"), the MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN ("MOD") and the Islamic Republic of Iran ("Iran"), based on an agreement between Logos and ISIRAN relating to a computer translation "pilot project". Respondent ISIRAN has raised certain counterclaims.

2. The Parties have submitted pleadings on all issues. A Hearing was held on 19 November 1985 at which the Parties appeared and presented oral argument.

3. Four days prior to the Hearing, i.e. on 15 November 1985, the Claimant submitted an affidavit of Bernard E. Scott. The Respondents objected to this filing. At the Hearing, the Tribunal decided to accept this filing as it

contained exclusively a final itemization of the claim for costs incurred as well as a computation of the claim for interest. During the Hearing the Claimant sought to submit certain additional evidence. The Respondents objected thereto. As to this evidence the Tribunal decided, in view of the requirements of equality between, and fairness to, the Parties, that the same could not be accepted at such a stage of the proceedings.

II

JURISDICTION

4. The Claimant has submitted documentary and testimonial evidence in support of its claim to United States nationality within the terms of the Claims Settlement Declaration. This evidence establishes that the Claimant was incorporated in the State of New York on 3 February 1969 under the name of Mount Hope Laboratory Incorporated and with various subsequent name changes has continued in existence ever since, being merged on 4 May 1983 into Logos Corporation, a corporation established under the law of the State of Delaware, in which form it survives.

5. The same evidence shows that as of both 1 January 1980 and 1 January 1984 more than 50% of the outstanding shares of Claimant were held by natural persons of American nationality or legal entities with addresses in the United States.

6. In light of the evidence submitted, and in the absence of any evidence rebutting it, the Tribunal is satisfied that the Claimant is a United States national and that it has owned the Claim continuously within the meaning of the Claims Settlement Declaration.

7. The Tribunal notes that no objection has been raised as to jurisdiction in respect of the Respondents named in this Case with the exception of ISIRAN. The Respondent ISIRAN

contends that the Tribunal has no jurisdiction over claims raised against it, as ISIRAN is not an agency or instrumentality of the Government of the Islamic Republic of Iran within the meaning of the Claims Settlement Declaration. In accordance with its earlier finding¹ the Tribunal disagrees with the Respondent ISIRAN and holds that ISIRAN is a proper Respondent in this Case within the terms of the Claims Settlement Declaration.

8. As to subject matter jurisdiction, it is clear that the Claim asserted in this Case arises out of a debt or contract within the terms of Article II, paragraph 1, of the Claims Settlement Declaration.

9. Particular issues of jurisdiction of the Tribunal in respect of the claim and the counterclaims will be dealt with in conjunction therewith.

III

THE CLAIM

10. The dispute between the Parties centers around an agreement between Logos and ISIRAN relating to a project for computerized translation of written English into written Farsi. The Claimant contends, in general, that it has completed performance to the satisfaction of ISIRAN as contemplated in the agreement between the Parties. Logos has only been paid a quarter of the agreed price, however. The outstanding amount, for which payment is claimed, is

¹ Ultrasystems Inc. and Islamic Republic of Iran and Information Systems Iran, Award No. 27-84-3 (4 March 1983), reprinted in 2 Iran-U.S. C.T.R. 100, 105.

US\$448,650.06, plus interest and costs. The Respondents dispute the contractual basis of the claim and contend that in any event the Claimant has not performed satisfactorily.

11. The first issue in this Case is what constitutes the contractual relationship between the Parties. This issue will be dealt with immediately below. The second issue concerns the performance of the Claimant under the agreement. This issue will be dealt with subsequently.

THE CONTRACTUAL RELATIONSHIP

The Contract

12. The Claimant contends that the contractual relationship between the Parties was established by the exchange of certain letters describing the content of the mutual obligations between the Parties.

13. The Respondents do not dispute the authenticity of the letters on which the Claimant relies, but argue that certain requirements as to form under Iranian law have not been met. Consequently, they argue, no valid agreement has been entered into as alleged by the Claimant.

14. The Claimant has submitted as evidence, inter alia, three letters constituting the alleged agreement between the Parties.

15. The first letter is dated 14 February 1978, from Mr. John H. Melcher, Jr., Executive Vice President of the Claimant, to Lt. Gen. Hassan Toufanian, Vice Minister of War of the Imperial Government of Iran ("14 February Letter"). In this letter the Claimant proposes to undertake "Phase I" of an "English to Farsi computer translation project". This letter further contains a detailed

description of three stages in which Logos' work on Phase I was to be carried out.

16. The second letter is dated 21 February 1978, from Mr. B. Motazed, Managing Director of ISIRAN, to Mr. Melcher ("21 February Letter"). In it ISIRAN states that the proposal contained in the 14 February Letter had "been reviewed and found acceptable to ISIRAN" subject to certain stipulations contained therein. The 21 February Letter further provides that "[i]f these stipulations are acceptable to LOGOS, please signify acceptance by official letter to ISIRAN."

17. The third letter, dated 21 February 1978, and signed by Mr. Melcher ("Letter of Acceptance"), states that "all of the terms and conditions" set forth in the 21 February Letter were accepted by Logos. At the Hearing ISIRAN acknowledged having received this letter on 22 February 1978.

18. Having considered the content of the aforementioned three letters, exchanged between the Parties, the Tribunal finds that together they constitute a valid and enforceable contract between Logos and ISIRAN ("Contract").

The Agreement

19. At issue also is an agreement signed by the Parties dated 5 October 1981 ("Agreement"). It is undisputed that at the time of the signature of the Agreement settlement negotiations had been in progress between the Parties and that the Agreement was signed with a view to settling the dispute between them. The authenticity of the document as such is not disputed between the Parties, but they disagree as to its validity.

20. The Claimant contends, with the support of extensive contemporaneous documentation, that the cause of the dispute between the Parties was the nonpayment of invoices due and outstanding since September 1978. Logos then made efforts to reach a settlement, and to this end the Parties met in Vienna, Austria, in September and October of 1981. The result of these meetings was the signature of the Agreement, which provided that it would be "enforceable and valid after being ratified by the official authorities of the Government of the Islamic Republic of Iran whose viewpoints will be announced to LOGOS within sixty days after the signature of [the Agreement]". Such ratification was never forthcoming, however. Furthermore, in the course of discussions between the Parties subsequent to the signature of the Agreement it became clear to Logos that a serious dispute still existed between the Parties, inter alia, as to the scope of services expected of Logos under the Contract, rendering further implementation of the settlement impossible.

21. The Respondents appear not to dispute the Claimant's depiction of the facts as such. The Respondent ISIRAN contends, however, that even assuming the three letters exchanged between the Parties in 1978 did constitute a contract between the Parties, it was superseded by the Agreement. The Respondent ISIRAN further asserts, albeit without any supporting documentation, that the relevant Iranian authorities did in fact ratify the Agreement. On this ground the Respondent ISIRAN argues that the claim is outside the Tribunal's jurisdiction, as it was not outstanding on 19 January 1981. As to the merits, ISIRAN contends that the Claimant's obligations vis-à-vis ISIRAN are defined by the Agreement.

22. The Respondent MOD, however, takes the opposing view, contending that the Agreement was never ratified and that it therefore is not valid and binding.

23. The Tribunal finds it undisputed between the Parties that a possible settlement of their dispute was negotiated at great length between them. It is further well documented that sometime subsequent to the signature of the Agreement it became apparent to both Parties that disagreement still existed between them as to their respective obligations. This is also evidenced, inter alia, by the failure of the Parties to submit a request to the Tribunal for an Award on Agreed terms as provided in the Agreement.

24. The Tribunal notes that no evidence has been presented in support of the Respondent ISIRAN's allegation that the Agreement has been ratified by the "relevant Iranian authorities", and that the Respondents disagree among themselves on this issue. The Tribunal therefore does not consider the possible effect such a ratification might have had on the validity of the Agreement. The Tribunal notes that at some point in the settlement negotiations the Parties may have considered the Agreement to represent a settlement of the dispute between them, at least for a certain period of time. The Tribunal finds, however, that in the present Case the record clearly evidence that disagreement still existed between the Parties even after the signature of the Agreement. In view of the foregoing, the Tribunal finds that the Agreement did not acquire binding effect on either Party, and consequently the Tribunal's jurisdiction over the present claim is not impaired.

THE PERFORMANCE UNDER THE CONTRACT

25. As the Parties have presented their case, the dispute between them concerns both the scope of the services to be rendered under the Contract and the actual performance of those services.

26. In order to resolve these issues, the Tribunal must examine the terms of the Contract, the most relevant of which are summarized immediately below.

The Terms of the Contract

27. Under the 14 February Letter Logos proposed to undertake "Phase 1 of the English to Farsi computer translation project". This phase I was described as a "pilot project" which had as its purpose the "demonstration of the ability of the Logos III Computer Language Translation System to translate written materials from English to Farsi".

28. The Contract was to be completed within eight months from its effective date, defined as "the date on which ISIRAN receives a letter of acceptance from LOGOS, specifying acceptance of all stipulations herein." The Parties agree that the Letter of Acceptance was received by ISIRAN on 22 February 1978.

29. As defined in the 14 February Letter, Phase 1 of the work to be carried out by Logos consisted of three stages, to be finished at unstated dates within the eight month period, as follows:

Stage 1

Initial language translation rules are established for the specific language pair.

A small test dictionary of about one thousand (1,000) words is built.

Preliminary translation tests are conducted.

Stage 2

Translation rules are expanded. Rules for selection between alternative translations of a given source language term are established.

Dictionary is expanded to approximately three thousand five hundred (3,500) entries.

Texts are processed by Logos III and machine errors are analyzed and corrected.

Stage 3

Translation rules are further expanded to include about fifteen hundred (1,500) rules.

Rules for selecting between alternative meanings are expanded.

Dictionary is expanded to about six thousand (6,000) entries. System testing is intensified. Output translation errors are analyzed and new rules are written or existing rules modified.

30. Performance of the work under the Contract was to be completed with a final demonstration. In the 14 February Letter Logos described this final demonstration as "consist[ing] of the translation by the Logos III System of simple sentences from English into Farsi utilizing the vocabulary and the linguistic rules which up to that time have been placed into the System [This will] [d]emonstrate [the System's] ability to render translations from English into Farsi in a syntactically correct and semantically sensitive manner."

31. In addition, in the 21 February Letter the terms of the final "Logos Product Capability Demonstration" were specified also to include the following:

2.2 LOGOS will provide the English-Farsi test dictionary to ISIRAN for review after each stage of development during this demonstration.

2.3 ISIRAN will evaluate the results and performance of each stage of the demonstration and formally advise LOGOS of the results.

2.4 Upon receiving notice from LOGOS, that the complete demonstration has been prepared, ISIRAN will evaluate the usefulness of the system and notify LOGOS of ISIRAN's approval or reasons for non-approval accordingly.

32. The total Contract price was US\$629,684, payable in US dollars, to be transferred by ISIRAN to Logos' bank in the

United States, in four equal installments, the first three to be made upon completion and corresponding "certification by ISIRAN" of each of the three stages and the fourth and final one to be made upon "approval by ISIRAN of the demonstration of phase I." The payments to Logos were subject to a 5% deduction for Iranian taxes.

33. The Contract further expressly foresaw that ISIRAN personnel would be made available to assist Logos in English-Farsi translation, and that Logos would reimburse ISIRAN for this service at direct cost plus ISIRAN overhead.

34. Finally, the Parties agreed that Logos would provide ISIRAN, within three months of the signing of the Contract, with a "follow on proposal for full development, in Iran, of a computerized capability for translation of written English to written Farsi, at a maximum price of \$2,864,000 U.S. ...", and that, subject to a future agreement between the Parties, ISIRAN would become the exclusive distributor in Iran, Afghanistan and Pakistan for all products and services related to the envisaged computerized language translation system.

The Scope of the Contract

35. From the documentation and the pleadings submitted the Tribunal concludes that an essential element in the dispute between the Parties is their different understanding of the scope of the undertaking by Logos. In particular, as the Tribunal understands it, the dispute hinges on the understanding of the concept of a "Computer Language Translation System" in the context of the Contract as well as the difference between "delivery" and "demonstration" of the computer language translation system. In essence, the Claimant argues that under the Contract it had undertaken to demonstrate the feasibility of the system, whereas the

Respondents appear to understand that the Claimant had agreed to deliver the system as a whole. In addition, the Respondents seem to give the concept of "system" a wider meaning than does the Claimant.

36. More specifically, the Claimant submits that at the time the parties were negotiating the Contract ISIRAN was well aware that Logos' technical knowhow regarding the development of a computerized language translation system was valuable and unique. The acquisition of this technical knowhow constituted a major effort in which Logos had invested considerable time and money. In these circumstances Logos was prepared to use its technical knowhow in developing an English to Farsi computerized language translation system. The application of this knowhow to any particular language was in itself a major enterprise, however, as each language would present specific difficulties. Consequently, Claimant avers, the parties agreed that before taking a decision to create a fully working translation system, Logos would demonstrate to ISIRAN that it was feasible to adapt this computerized language translation system to translate written English into written Farsi. This was the scope and purpose of the Contract, Claimant states, which was clear to the parties at the time. The terms of the Contract in fact are explicit in this respect: The Contract is stated to be "Phase 1" of the computerized language translation project; Phase 1 was stated to be a "pilot project"; and Logos was required to submit a "follow on proposal" for the full development of the project. The Claimant further states that contrary to the intentions of the parties as expressed in the terms of the Contract, ISIRAN subsequently conditioned the payment of the amounts due under the Contract on the delivery by Logos of the computerized language translation system. In addition, a telex dated 29 May 1982 (during the time when settlement negotiations still were taking place), signed by Mr. Zoughi, Managing Director of ISIRAN, shows, the Claimant

contends, that ISIRAN required delivery not only of the system, but also of Logos' technical knowhow. In this telex ISIRAN lists the minimum information and documents required in order to consider "the acceptance of the system". This list includes information as to the "design structure and logic of the dictionaries", the "logic and structure of resolution rules", and the "logic and structure of the [spelling] rules". The Claimant states that to provide ISIRAN with this information, i.e., the core of the system, would have amounted to delivery not only of a fully operational computerized language translation system, which would have been the object of Phase II of the project, but also of the technical knowhow which Logos neither agreed to provide under the Contract, nor would have agreed to deliver under any future Phase II contract.

37. In the Respondents' pleadings the arguments on this issue are not explicit. The Respondent ISIRAN repeatedly asserts that Logos was in breach of the Contract because it did not provide ISIRAN with a fully operational system or "a system whose purpose was to render English to Farsi translation service". At the Hearing, however, the position of the Respondents was further developed to assert, as the Tribunal understands it, that the objections raised with respect to the Claimant's performance were based on the understanding that full performance by Logos of the Contract at issue should have given ISIRAN access either to the "system" Claimant contemplated for Phase II or to the technical knowhow which was Logos' proprietary asset.

38. Initially the Tribunal notes that Logos' intention could not have been to market its technical knowhow. As to the purpose of the Contract at issue, the Tribunal does not deem it necessary to go beyond its express terms. The Contract refers to the work LOGOS will do in Phase I of the "computer translation project" and not of the "computer translation system" as the Respondent now contends. In

light thereof, and of the stated purpose of the "pilot project" forming the object of the Contract, the Tribunal finds that the intention of the parties as to the purpose of the Contract must correspond to the Claimant's interpretation, i.e., that Logos was to demonstrate the feasibility of a computerized language translation system. Consequently, the Claimant's performance, ISIRAN's position and the Claimant's entitlements under the Contract must be evaluated in the light of this purpose.

The Claimant's Performance

a) Stage 1

39. The Claimant contends it fully performed its obligations under the Contract in respect of Stage 1. ISIRAN was informed by Claimant's letter dated 23 June 1978 that Stage 1 had been completed and the Stage 1 progress report (including test results and an English-Farsi dictionary), dated 25 June 1978, was transmitted to ISIRAN. On 29 June 1978 the Claimant submitted its invoice for Stage 1 in the amount of US\$149,549.95, representing 25 % of the Contract price less the 5% deduction for Iranian taxes. This invoice was paid by ISIRAN on or about 23 August 1978. Claimant contends that the fact of payment and other contemporaneous documentation show that ISIRAN was satisfied with and had accepted Stage 1 of the work performed.

40. The Respondent ISIRAN contends, however, that the Claimant was authorized under the Contract to require of ISIRAN a downpayment of 25% of the Contract price. ISIRAN claims that the payment made to the Claimant constituted such a downpayment and therefore cannot be regarded as constituting acceptance of the Stage 1 work performed. ISIRAN points out that the Contract conditioned payment to Logos for each of the three stages on ISIRAN's

"certification" of the work performed and that no such certification was given. ISIRAN argues that the Claimant has not submitted all of the material and documentation which it claims Logos was required to submit, especially the "grammar rules". In the view of ISIRAN the Claimant therefore has not fully performed under the Contract in respect of Stage 1.

41. The Tribunal notes initially that ISIRAN does not dispute that the progress report referred to by the Claimant was in fact submitted to and received by ISIRAN. The Tribunal further notes that the alleged deficiencies in the work product provided by the Claimant appear to be based on the Respondents' general contention that the Claimant had undertaken to provide a full "computer translation system". As the Tribunal already has ruled, the Claimant had no such obligation under the Contract.

42. As to the payment made to Logos, the Tribunal takes note of the fact that ISIRAN does not dispute that payment of US\$149,549.95 was made to the Claimant sometime after 29 June 1978, the date the Claimant's Stage 1 invoice was submitted. In addition, the Tribunal notes that the Contract stipulates that it was Logos' option to demand a downpayment, and not ISIRAN's to volunteer it. Further, under the Contract the Claimant would have been required to secure such a downpayment with a bank guarantee or a letter of credit. There is no evidence of Logos having secured any such downpayment. It would appear unlikely, too, that a "downpayment" would be made four to six months after the effective date of this eight month Contract. In addition, the amount paid does not represent 25% of the Contract price, but rather 23.75%, i.e., 25% minus a 5 % Iranian tax deduction which was to be made only in respect of payments for work performed. In view of the foregoing, the Tribunal finds that this payment was made to honor the invoice submitted by the Claimant for Stage 1 of the Contract, and did not constitute a downpayment as ISIRAN contends.

43. As to the contractually required "certification" by ISIRAN, the Tribunal deems it relevant to consider that at the time ISIRAN in informal ways expressed its satisfaction with the Claimant's performance. In addition, by paying the Claimant for its work ISIRAN must be deemed to have accepted the work, thereby waiving any right it might have had as to the form for expressing its acceptance of the Claimant's work.

44. In view of the foregoing, the Tribunal finds that the Claimant fully performed Stage 1 of the work under the Contract.

b) Stage 2

45. The Claimant likewise contends that it has fully completed its work under the Contract for Stage 2. By letter dated 15 September 1978 from Logos to Mr. Motazed, Managing Director of ISIRAN, the completion of Stage 2 was announced to ISIRAN as well as the delivery to ISIRAN under separate cover of a progress report (including test results and an English-Farsi dictionary) dated 17 September 1978. At the same time Logos' invoice, dated 15 September 1978, in the amount of US\$149,549.95 (US\$157,421.00 less 5% Iranian taxes) was submitted to ISIRAN. A formal written acceptance by ISIRAN of Stage 2 was never communicated to Logos. Logos was advised, however, by its own representative in Iran that payment was forthcoming from ISIRAN and that a check had been drawn up. Logos was further advised that the delay in payment was due to Iranian legal requirements that ten percent of the installment due had to be withheld as a guarantee of good performance, unless a bank guarantee in the same amount was furnished. Rather than incurring expenses for the issuance of a bank guarantee, Logos informed ISIRAN by telex of 12 October 1978 that it concurred in the withholding of 10% for the stated purpose and requested

remittance of the balance. Furthermore, in a telex of 12 November 1978 from ISIRAN, signed by Sousan Meshkat, to ISIRAN's linguist Homa Hatemi (at the time seconded to Logos in the United States as provided in the Contract) ISIRAN stated:

Please tell Logos that we are sorry for the delay in their payment due to the present situation. They should wait for another week or two.

46. The Respondent ISIRAN disputes that Logos has performed adequately as to Stage 2 on the same grounds as were raised in respect of Stage 1 (see paragraph 40 above). In particular, it is contended that the telex of 12 November 1978 was not sent by an authorized ISIRAN representative, but rather by the individual sender in her personal capacity. That telex therefore cannot be invoked against ISIRAN, it argues.

47. The Tribunal initially finds that the Respondent's objections as to the content of this progress report also are based on the general contention that the Claimant had undertaken to provide a full "computer translation system". Further, the weight of the evidence supports the conclusion that ISIRAN intended to honor Logos' invoice for Stage 2, which, in view of the earlier practice between the Parties, is deemed to constitute adequate approval. In view of the foregoing, the Claimant is entitled to full payment of the invoice, i.e., US\$149,549.95.

c) Stage 3

48. The Claimant contends that in spite of the nonpayment of the invoice for Stage 2 it continued its work on Stage 3, as it believed that payment was in progress. Stage 3 was completed, according to Claimant, in November 1978. By telex of 14 November 1978 Logos informed ISIRAN that delivery of the progress report (including test results and an English-Farsi dictionary) for Stage 3 had been delayed due to an

airline strike but should arrive "shortly". In any event it was eventually dispatched under cover of a letter dated 3 December 1978. The invoice for Stage 3, dated 30 November 1978, was transmitted to ISIRAN, and ISIRAN raised no contemporaneous objections to Logos' performance.

49. The Respondent ISIRAN reiterates its general objections as to the Claimant's performance and specifically denies any tacit or implicit acceptance of the work performed, although not explicitly denying receipt of the progress report.

50. The Tribunal notes that there is no evidence adduced of any contemporaneous objections raised by ISIRAN as to the performance of Logos. Nor has any objection been raised with respect to the delay in Claimant's performance, i.e., from 22 October 1978 (the contractually prescribed completion date, eight months after the "effective date" of 22 February 1978) to late November or early December. The Tribunal finds that the objections now raised by Respondent ISIRAN pertain to the same general contention that the Claimant had undertaken to provide a full "computer translation system". The Tribunal concludes that the Claimant has performed its obligations under Stage 3 of the Contract and is entitled to payment of the invoice amounting to US\$149,549.95 as claimed.

d) The Final Demonstration

51. The Claimant notes there were difficulties in finding a suitable time for the then Deputy Director of ISIRAN, Mr. Babae, to be present for the final demonstration. Eventually it was agreed that the final demonstration, concluding the Claimant's performance under the Contract, was to be held in the United States by the end of November 1978, when Mr. Babae was planning a visit to the United States. The Claimant's President, Mr. Scott, testified that the

demonstration actually took place on or about 30 November 1978 in the presence of Mr. Babae and Miss Homa Hatemi, and that Mr. Babae "expressed his satisfaction with the results." On 3 December 1978, following this approval of the final demonstration, Logos dispatched to ISIRAN its final invoice in the amount of US\$149,549.95 (US\$157,421.00 less 5% for Iranian taxes). On 4 December 1978 Logos dispatched an invoice combining the final payment request with a reiteration of the amount in respect of Stage 3, seeking a total for these two installments of \$299,100.90².

52. The Respondents dispute that this demonstration actually took place and consequently that any approval of the project ever had been given by ISIRAN. The Respondent ISIRAN specifically contests that Mr. Babae travelled to the United States at the time alleged.

53. The Tribunal initially notes that the Claimant's evidence consists of contemporaneous telexes, all but one of them emanating from the Claimant itself, and internal communications between the Claimant and its representative in Iran. The Tribunal further notes, however, that the Respondents have not submitted any evidence in rebuttal of the Claimant's contentions. The Tribunal deems it specifically relevant to consider that neither written nor oral testimony by Mr. Babae has been introduced. The Tribunal further notes the absence of any contemporaneous evidence of disapproval by ISIRAN of the final demonstration. Under these circumstances the Tribunal finds that the Claimant has performed its undertakings to the satisfaction of ISIRAN as required under the Contract. It is therefore entitled to payment for the invoice of 3 December 1978 as well.

² This appears to be an arithmetical error, and the total amount should be US\$299,099.90.

54. The total amount awarded the Claimant shall, however, in accordance with the Claimant's own admission and pursuant to the Contract between the Parties, be reduced by US\$16,000 owed by Logos to ISIRAN. This amount represents the cost of the services rendered Logos by the ISIRAN linguist, Miss Homa Hatemi, seconded to assist LOGOS in performing its work under the Contract. In conclusion, therefore, the Tribunal finds that the Claimant is entitled to payment of a total of US\$432,649.85.

55. Finally, the Tribunal notes that no specific claim has been raised as against the Respondents MOD and Iran, independently of the claim raised as against the Respondent ISIRAN.

IV

THE COUNTERCLAIMS

56. The Respondent ISIRAN seeks to recover the US\$149,549.95 it did pay the Claimant on the ground that the Claimant never performed any part of the Contract. As the Tribunal has found that the Claimant performed the Contract in full, this counterclaim is rejected.

57. The Respondent ISIRAN has further demanded that it be paid US\$10,000 on account of expenses incurred in relation to the settlement negotiations and the conclusion of the 5 October 1981 Agreement. In view of the Tribunal's finding that this Agreement never became binding, the present counterclaim does not arise out of the Contract at issue in this Case within the requirements of Article II, paragraph 1, of the Claims Settlement Declaration. Consequently the Tribunal lacks jurisdiction over this counterclaim, which is hereby rejected.

58. The Respondent ISIRAN finally raises a counterclaim for allegedly unpaid and due social security premia in the amount of 212,888 rials (including delayed payment penalties) apparently assessed on the payment actually made to the Claimant. As to this counterclaim the Respondent ISIRAN relies solely on a computation by the General Department of Revenues dated 19 January 1982. No further evidence has been submitted. In view of the foregoing, and without prejudice to the issue of the Tribunal's jurisdiction, the Tribunal dismisses this counterclaim.

V

INTEREST

59. The Claimant seeks interest on the amounts due and owing at the rate of 20% simple interest per annum from the due date of each of its outstanding invoices until the date of the payment of this Award. The ground invoked, supported with evidence, is that such rate reflects the actual cost of borrowings which were made following, and which were necessitated by, the failure of the Respondent ISIRAN to meet its obligations on time.

60. Initially, the Tribunal finds that the ground invoked by the Claimant for the interest rate sought does not constitute a ground for entitlement to such an interest rate. Rather, in determining the applicable rate of interest in this Case, the Tribunal applies the principles set forth in McCullough & Company, Inc. and Ministry of Post, Telegraph and Telephone, Award No. 225-89-3 at 37 (22 April 1986). The Tribunal takes into account, inter alia, that at issue in this Case is an ordinary contract of a commercial nature, without any provisions for applicable rates of interest in case of delayed payments, and that the

breaches of contract at issue relate to nonpayment of invoices. The Tribunal also deems it relevant to consider that in this Case the Respondent ISIRAN became aware of the financial consequences its delay in performing its obligations had for the Claimant. On the basis of the foregoing, and in the circumstances of this Case, the Tribunal determines that a fair rate of interest to be awarded on the amount held to be due and owing to the Claimant is 11.5% per annum. The Tribunal further finds that interest shall be calculated from 1 January 1979, a date when all the obligations under the Contract in any event had fallen due.

VI

COSTS

61. The Claimant seeks a total of US\$115,367 as its claimed costs of arbitration.

62. The Tribunal initially notes that the claimed amount includes an amount of US\$30,004 on account of costs directly related to the attempts made by the Parties to settle the dispute between them. The Tribunal finds that in any event this amount cannot properly be claimed as costs of arbitration under the Tribunal Rules.

63. In the circumstances of this Case, the Tribunal determines it appropriate that the Respondent ISIRAN shall compensate the Claimant for its costs of arbitration in the amount of US\$20,000.

VII

AWARD

64. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. INFORMATION SYSTEMS IRAN OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to LOGOS DEVELOPMENT CORPORATION:

(i) the sum of US\$432,649.85 (four hundred thirty-two thousand six hundred forty-nine United States dollars and eighty-five cents) plus simple interest due at the rate of eleven and a half percent (11.5%) per annum (365 day basis) from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; and

(ii) the sum of US\$20,000 (twenty-thousand United States dollars) as costs of arbitration.

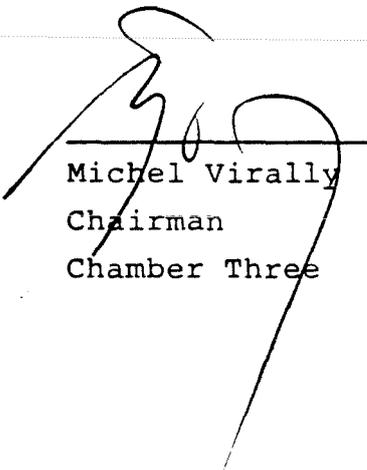
b. The above obligations shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

c. The Counterclaims of the INFORMATION SYSTEMS IRAN OF THE ISLAMIC REPUBLIC OF IRAN are dismissed.

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

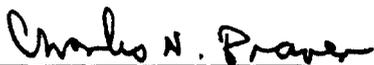
Dated, The Hague

30 April 1986



Michel Virally
Chairman
Chamber Three

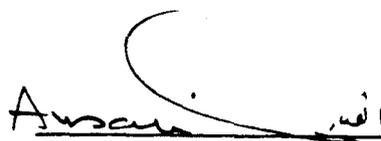
In the Name of God



Charles N. Brower

Joining fully in the Award, although for the reasons stated in my Concurring and Dissenting Opinion in McCollough & Company, Inc. and Ministry of Post, Telegraph and Telephone, Award No. 225-89-3 at paras. 14, 22-31 (22 April 1986), I would have preferred that the Tribunal

- (1) dismiss the counterclaim for social security premia on the ground that the Tribunal lacks jurisdiction over it;
- (2) grant the 20% interest requested, particularly inasmuch as Claimant has proven it was compelled to borrow privately at that rate because of ISIRAN's failure to pay and the Tribunal has found that ISIRAN "became aware" of the probability of such consequences; and
- (3) award Claimant its full costs of arbitration, i.e., \$85,363, considering that Claimant is awarded every cent of its claim and the counterclaims have failed entirely.



Parviz Ansari Moin
Dissenting Opinion