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Case No. 65

Date of filing: 18 APR 85

\*\* AWARD - Type of Award ITL  
- Date of Award 18 APR 85  
11 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: \_\_\_\_\_  
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- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi



CASE NO. 65  
CHAMBER ONE  
AWARD NO. ITL 49-65-1

COMPUTER SCIENCES CORPORATION,  
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN,  
MINISTRY OF FINANCE,  
MINISTRY OF NATIONAL DEFENCE,  
IRAN AIRCRAFT INDUSTRIES,  
INFORMATION SYSTEMS IRAN,  
BANK MELLAT,  
BANK TEJARAT,

THE SUCCESSORS OF FOLLOWING ENTITIES:

IMPERIAL IRANIAN AIR FORCE,  
IMPERIAL IRANIAN GROUND FORCE,  
IMPERIAN IRANIAN NAVY,  
IMPERIAL IRANIAN GENDARMERIE,  
IMPERIAL IRANIAN NATIONAL POLICE,  
THE SUPREME COMMANDER'S STAFF,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده
ثبت شد - FILED	
Date	18 APR 1985 تاریخ
	۱۳۶۴ / ۱ / ۲۹
No.	65 شماره

INTERLOCUTORY AWARD

I. The Proceedings

On 17 November 1981 COMPUTER SCIENCES CORPORATION ("CSC") filed a claim with the Tribunal against a number of Iranian Respondents. CSC's claim is mainly for payment for services rendered under a 1972 agreement with IRAN AIRCRAFT INDUSTRIES ("IACI") and under 1974 and 1975 agreements with INFORMATION SYSTEMS IRAN ("ISIRAN"), all of which agreements provided for CSC to supply Iranian military agencies with services in connection with automated data processing for military management information systems. In addition to payment for services rendered, CSC also seeks reimbursement for excess taxes allegedly paid under these agreements, for property allegedly expropriated, for funds deposited in bank accounts in Iran, and for costs allegedly incurred in closing down its operations in Iran, plus interest and attorney's fees and costs.

IACI has brought a counterclaim against CSC for damages allegedly incurred under the agreements. The Ministry of Finance has counterclaimed for taxes plus delay penalties and costs. ISIRAN has raised a counterclaim for social security premiums. The Respondents seek reimbursement of attorney's fees and costs.

On 2 July 1978 COMPUTER SCIENCES CORPORATION SYSTEMS INTERNATIONAL, INC. ("CSCSI"), a subsidiary of CSC, and ISIRAN concluded an "Agreement" to "reconcile and settle their accounts regarding final payment" for the services rendered by CSCSI. ISIRAN asserted in its Statement of Defence, and repeated in its Rejoinder, that this Settlement Agreement was still binding on the Parties and that the only basis for a possible claim of CSC could be this Agreement. CSC argued that this Settlement Agreement had been abrogated by ISIRAN and was no longer valid. During the Pre-hearing Conference, which was held in this case on 20 October 1983,

the Parties maintained their arguments with regard to the Settlement Agreement.

On 25 January 1984 the Tribunal issued an Order in which it stated, inter alia: "The Parties are hereby informed that the Tribunal intends to decide, on the basis of the written pleadings and documents submitted, the question whether the Settlement Agreement of 2 July 1978 between CSCSI and ISIRAN is still binding". The Claimant and ISIRAN were both ordered to brief that question. On 16 March 1984, the Claimant filed its Memorial regarding the 1978 Settlement Agreement. On 4 October 1984 ISIRAN filed Arguments concerning the validity of the 1978 Agreement.

Following the scheduling of a Hearing in this case for 27 and 28 June 1985 the Tribunal, after recalling that the Claimant and ISIRAN had addressed the issue of the Settlement Agreement in writing, invited the Claimant and ISIRAN in an Order of 26 February 1985 to file any further evidence related to the issue of the Settlement Agreement by 11 March 1985 should they wish to present such evidence.

No such further evidence was filed. A letter was filed, however, on 11 March 1985 by the Agent of the Government of the Islamic Republic of Iran requesting, inter alia, an extension of two months "[t]o ensure whether Respondent has any evidence and further pleadings or not and, if so, in order that such evidence and pleadings can be prepared and transmitted." The letter went on to state that "[i]t goes without saying that any decision taken with regard to invalidity of the said Agreement prior to notification of Respondent's response shall be construed as an act that impairs Respondent's rights". The Claimant has objected to this extension request.

In view of its decision in this Interlocutory Award, the Tribunal did not deem it necessary to deal separately with the request contained in the Iranian Agent's above letter.

II. The contentions of the Parties

The Claimant and ISIRAN agree that on 2 July 1978 CSCSI and ISIRAN entered into a Settlement Agreement. This Settlement Agreement was the result of discussions and negotiations over disputed amounts due and owing to CSCSI out of the three contracts with IACI and ISIRAN respectively. The Settlement Agreement reads in pertinent parts:

"Whereas, Isiran and CSCSI have agreed to reconcile and settle their accounts regarding final payment for the aforementioned services of CSCSI,  
and;

Whereas, in order to reconcile their mutual accounts .... it is mutually agreed that all settlements, payments, and specifications herein will pertain to all contracts and agreements between Isiran and CSCSI .....

I. Isiran will pay to CSCSI the sum of \$6,460,000 (six million four hundred sixty thousand) dollars. U.S. and; this amount is intended by Isiran and CSCSI as full and complete settlement for all services rendered by CSCSI and CSC to Isiran and Isiran's customers under any and all contracts and agreements written or otherwise between Isiran and CSCSI and between Isiran and CSC, through 21 March 1978 and; is in addition to actual and advance payments made by Isiran to CSCSI and CSC up to the date of this agreement.

1.1 Isiran will provide this amount to CSCSI in the form of an initial payment of \$1,460,000 (one million four hundred sixty thousand) dollars U.S. in July of 1978 and; \$1,000,000 (one million) dollars U.S. per month during each of 5 (five) consecutive months beginning with August, 1978.

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III. Upon execution of this agreement, CSCSI and CSC do hereby release and forever discharge Isiran, .... from any and all claims and causes of actions ....

arising in connection with the performance and payment of any and all contracts and agreements, written or otherwise, between Isiran and CSCSI and between Isiran and CSC, which claim or cause of action arose at any time prior to 21 March 1978."

The Settlement Agreement contains a similar release by ISIRAN in favour of CSCSI and CSC. Attached to the Settlement Agreement is a letter from CSCSI to ISIRAN of 28 June 1978 including a schedule of ISIRAN - CSCSI accounts. This schedule shows two amounts owing to CSCSI through 21 March 1978: CSCSI's claim of \$13,438,000 and ISIRAN's assertion that it owed \$3,160,000. CSCSI states in the letter that the "variance between CSCSI and ISIRAN position [with regard to amounts owing] is of such magnitude, that [it] believe[s] the disputed issues cannot be settled through our standard contract procedure". On the bottom of the attached schedule of accounts are the handwritten "results" of a meeting held between ISIRAN and CSCSI on 29 June 1978, including the figure of \$6,460,000 next to a notation that this is the "total balance due to CSCSI as of March 21/1978".

The Claimant asserts that it is not bound by the Settlement Agreement for the following reasons. The Settlement Agreement was void ab initio because ISIRAN negotiated and contracted in bad faith, and because the Settlement Agreement lacks consideration. Even if it had been valid, the Settlement Agreement only gave ISIRAN the opportunity to tender a substitute performance; this opportunity expired in August 1978 when ISIRAN failed to make the first of five \$1,000,000 monthly payments. ISIRAN having materially breached the Settlement Agreement, equity dictates that the Claimant may treat the Settlement Agreement as abrogated and seek restitution of the right it agreed to release if ISIRAN had performed, that is, the right to the full unpaid invoice amounts.

The Claimant argues that ISIRAN, when concluding the Settlement Agreement, had no intention to perform its

obligations thereunder. According to the Claimant this can be inferred from the fact that ISIRAN did not attempt to make the first of the five \$1,000,000 monthly payments required under the Settlement Agreement, whereas prompt payment, as agreed between the Parties, was the essence of the Settlement Agreement.

The Claimant further asserts that, since the amount which ISIRAN owed to CSCSI was not subject to honest dispute, the Settlement Agreement was without consideration and therefore not effective.

Even if the Settlement Agreement had been valid, the Claimant contends, it was only an "executory accord" which temporarily suspended ISIRAN's obligation to pay the full invoice amounts. It gave ISIRAN the opportunity to tender a substitute performance, i.e. timely payment of the amounts specified in the Settlement Agreement. The suspension only lasted until August 1978 when ISIRAN failed to make the first of five \$1,000,000 monthly payments required under the Settlement Agreement. From that breach on by ISIRAN of its obligations under the Settlement Agreement, the Claimant could again demand the full invoice amounts under the original contracts.

Finally, equity dictates, according to the Claimant, that ISIRAN as the party who has materially breached the Settlement Agreement for six years should not be unjustly enriched by being permitted to enforce the Settlement Agreement against CSC, the party which can no longer be given the benefit it bargained for in the Settlement Agreement. Rather, the Claimant should be permitted to consider the Settlement Agreement abrogated and obtain restitution of the right it agreed to release if ISIRAN had performed, i.e. the right to the full unpaid invoice amounts.

ISIRAN asserts that the Settlement Agreement is a contract concluded under and governed by Iranian law which contract was and still is binding on the parties thereto.

With regard to the Claimant's allegation that ISIRAN never intended to perform its obligations under the Settlement Agreement and that the Settlement Agreement was therefore void ab initio, ISIRAN points to the undisputed fact that it did pay the initial \$1,460,000 in July 1978 as required by the Agreement, a fact which indicates that at that time ISIRAN intended to carry out its obligations.

ISIRAN contends that the concept of "consideration" is a common law concept that does not apply to the Settlement Agreement which is governed by Iranian law, and that according to Article 757 of the Iranian Civil Code "a settlement without consideration is also lawful". But even if consideration were to be a relevant factor, ISIRAN states that the consideration for the Settlement Agreement was the agreement between the parties as to the amounts owing to CSCSI under the original contracts.

ISIRAN further contends that nowhere in the Settlement Agreement can there be found a reference to an "executory accord" or a suspension of ISIRAN's obligations under the original contracts as alleged by the Claimant. According to ISIRAN, the Claimant waived its rights under the original contracts in exchange for ISIRAN's confirmation that it owed to CSCSI \$6,460,000. This waiver became effective upon the signing of the Settlement Agreement, and the term "execution" in Article III refers to the signing of that document, not to its performance.

### III. Merits

The Tribunal determines that the Settlement Agreement of 2

July 1978 at its conclusion was binding on the parties thereto, and is still binding on the Claimant and ISIRAN.

It is clear from the evidence before the Tribunal that the parties in July 1978 entered into the Settlement Agreement in order to settle certain differences between them. This can be taken from the wording of the Settlement Agreement itself. The introductory section speaks of ISIRAN and CSCSI as having "agreed to reconcile and settle their accounts regarding final payment" for the services rendered by CSCSI under the three contracts of 1972, 1974 and 1975. The amount payable by ISIRAN under the Settlement Agreement was "intended by Isiran and CSCSI as full and complete settlement for all services rendered" under the three contracts. The parties speak of an outstanding tax claim, "which is in the process of a separate settlement." (Emphasis added).

In addition to these formulations in the Settlement Agreement itself, a letter from CSCSI to ISIRAN of 28 June 1978, which the parties have attached to the Settlement Agreement and which deals with the payments due to CSCSI, contains the following statement: "The variance between CSCSI and ISIRAN position is of such magnitude, that [CSCSI] believe[s] the disputed issues cannot be settled through our standard contract procedure." In an Affidavit submitted with the Claimant's Memorial regarding the 1978 Settlement Agreement, the Claimant's Executive responsible for its operations in Iran at the time, Mr. Robinson, declared that the Settlement Agreement was concluded only after months of controversial negotiations.

Based on this evidence, the Tribunal is convinced that there existed a dispute in 1978 between CSCSI and ISIRAN as to the amounts still owed to CSCSI under the three original contracts, and that the Settlement Agreement of 2 July 1978 was concluded precisely to settle this dispute and state the amount owed. When the parties agreed on the amount of

\$6,460,000 as being owed to CSCSI, there was a settlement benefiting both sides; the amount payable by ISIRAN was less, and CSCSI obtained an admission by ISIRAN that the agreed amount would no longer be disputed.

The Claimant has submitted no evidence to support its allegation that ISIRAN from the beginning had never intended to fulfill its obligations under the Settlement Agreement. To the contrary, it is not disputed between the Parties that ISIRAN in fact paid the first \$1,460,000 in July 1978 as required by the Settlement Agreement, which clearly shows that ISIRAN started to perform its obligations. The Tribunal cannot therefore find that the Settlement Agreement was void ab initio.

It is likewise undisputed between the Parties, however, that from August 1978 on ISIRAN did not pay any further instalments as it was required to do by the Settlement Agreement. This seems to be a breach of the Settlement Agreement. The Claimant argues that such a material breach amounted to an abrogation of the Settlement Agreement with the consequence that the Claimant can now raise its original contract claims. Where one contract party has violated its original contract obligations, the Claimant asserts, a settlement agreement can only be presumed to suspend these obligations until such a party has fully performed the settlement. Further it argues that where the Settlement Agreement is also breached, the claim under the original contract survives. The Claimant asserts that this consequence is laid down in Article III of the Settlement Agreement pursuant to which ISIRAN is discharged from its original obligations under the contracts "upon execution" of the Settlement Agreement. According to the Claimant, "upon execution" in this context means "upon performance".

The Tribunal cannot share this interpretation of the Settlement Agreement. While it is true that in some contexts

the word "execution" is to be understood as referring to "performance", it is not unusual in other situations for the word to be intended to mean "signing". Parties to a settlement who only want to suspend the original contract rights until full performance of the settlement, and not release them upon its signature, frequently include specific language to that effect in their settlement agreement. In the absence of any such indication by the Parties in the Settlement Agreement or otherwise and in the light of the circumstances of this case, the Tribunal must conclude that upon signing and thus taking up the obligations of the Settlement Agreement, ISIRAN was released from its obligations under the original contracts. This conclusion is supported by the fact that in the Farsi version of the Settlement Agreement the Farsi expression for "upon signing" is used for the English expression "upon execution".

Likewise, the apparent breach of the Settlement Agreement by ISIRAN does not require that, under principles of equity, the Settlement Agreement should be considered as abrogated. Rather, it entitles the Claimant to all damages which the law applicable to the Agreement and its breach provides for such a breach.<sup>1</sup> While a breach might result in abrogation in exceptional circumstances, no such circumstances have been shown in this case.

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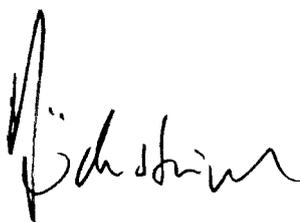
<sup>1</sup> In this context the Tribunal notes that ISIRAN in its Statement of Defence recognizes that "the total amount due to the Claimant is equivalent to U.S. \$4,644,700". ISIRAN arrives at this amount by deducting \$1,460,000 which it has paid on the aggregate amount of the Settlement Agreement of \$6,460,000, and then deducting a 5.5 per cent tax from the remaining \$5,000,000. ISIRAN asserts that it is required by Iranian law to deduct 5.5 per cent from all payments it makes.

For the foregoing reasons,

THE TRIBUNAL DETERMINES

that this case shall proceed on the basis of the Settlement Agreement which is binding, and not on the original contracts which have been superseded.

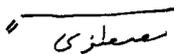
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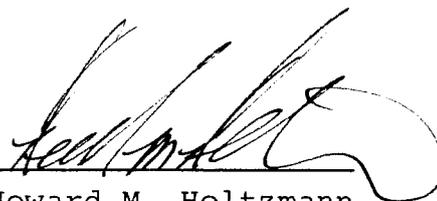
Karl-Heinz Bockstiegel  
Chairman  
Chamber One

In the name of God



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Mohsen Mostafavi



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Howard M. Holtzmann