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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ



CASE NO. 147

CHAMBER ONE

AWARD NO. 511-147-1

RAM INTERNATIONAL INDUSTRIES, INC.
 ("RAM"),
 UNIVERSAL ELECTRONICS, INC.,
 GENERAL AVIATION SUPPLY, INC.,
 GALAXY ELECTRONICS CORPORATION, INC.,
 Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
 THE ISLAMIC REPUBLIC OF IRAN
 AIR FORCE,

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	9 MAY 1991
	۱۳۷۰ / ۲ / ۱۹ تاریخ

AWARD

Appearances:

For the Claimants : Mr. Barry D. Epstein,
Attorney at Law,
Mr. Marvin Charter,
RAM International, et al.

For the Respondents : Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran,
Mr. Mohammad H. Bordbar,
Legal Adviser to the Agent,
Mr. Gholamreza Davarian,
Legal Adviser to the Air Force,
Mr. Mohammad Ebrahim Noori,
Representative of the
Air Force.

Also present : Ms. Lucy Reed,
Agent of the Government of the
United States of America,
Mr. Michael F. Raboin,
Deputy Agent of the Government
of the United States
of America.

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I. INTRODUCTION

1. The Claims in the present Case arise out of various contracts entered into in 1975 under which the Claimants RAM INTERNATIONAL INDUSTRIES, INC. ("Ram"), UNIVERSAL ELECTRONICS, INC., GENERAL AVIATION SUPPLY, INC., and GALAXY ELECTRONICS CORPORATION, INC. ("Galaxy"),¹ were to provide the Air Force of Iran with items for a radar system in Iran. The Claimants, each directly and on its own behalf, seek to recover damages in the total amount of U.S.\$13,127,958,² plus interest, for the alleged breaches of contract by the Iranian Air Force. The damages claimed consist of anticipated lost profits on the goods allegedly contracted for and/or produced, but not shipped to the Iranian Air Force or its agent after the beginning of 1979; consequential damages; and legal costs. The Respondents THE ISLAMIC REPUBLIC OF IRAN and THE ISLAMIC REPUBLIC OF IRAN AIR FORCE (the "Iranian Air Force") deny any liability. The Respondents have filed a Counterclaim in the amount of U.S.\$42,374,428.32 for damages allegedly sustained due to the Claimants' failure to deliver the goods. A Pre-Hearing Conference took place on 12 April 1984, and a Hearing was held on 20 and 21 September 1989.

II. PARTIES TO THE CLAIMS

2. The Parties involved in this Case are the same as in Case No. 148, which concerned items that actually were

¹The Claim of FALCON AVIATION, also named originally as a Claimant, was withdrawn at the Pre-Hearing Conference and stricken from the Case pursuant to the Order of the Chamber filed on 4 May 1984.

²The total amount of the relief sought originally was approximately U.S.\$12,750,000, which later was increased to U.S.\$13,513,958. At the Hearing, the Claimants reduced this amount by U.S.\$386,000 because of certain alleged mathematical errors.

delivered until the end of January 1979 to the warehouse of the Iranian Air Force's agent in the United States. The Tribunal issued an Award in Case No. 148 on 19 August 1983. See RAM International Industries, Incorporated et al. and the Air Force of the Islamic Republic of Iran, Award No. 67-148-1, reprinted in 3 Iran-U.S. C.T.R. 203.³

3. The Claimants allege that all the companies that are parties to the proceedings in this Case are one hundred percent owned by Mr. Marvin Charter and Mr. Richard Graham (each holding 50% of the shares of each company), and therefore are affiliated companies. Concerning Galaxy, the Claimants state that it went into bankruptcy in 1978. Subsequently, Galaxy was liquidated on 29 December 1978 by the transfer to Messrs. Charter and Graham of all its assets, including cash, accounts receivable, unpaid claims, and monies from affiliated companies. Galaxy thereafter ceased to exist when it was formally dissolved on 16 April 1980. At the Pre-Hearing Conference in 1984, the Claimants asked the Tribunal for permission to amend the pleadings to include Galaxy's owners, Messrs. Charter and Graham, as Claimants.

4. The Respondents raise certain objections to the nationality and standing of the Claimants before this Tribunal and in particular object to the requested amendment to replace Galaxy with Messrs. Charter and Graham as Claimants. The Respondents consider the change to amount to the filing of new Claims, by the named individuals, after 19 January 1982, the jurisdictional deadline established by the Claims Settlement Declaration. The Respondents further find the present position of the Claimants inconsistent with

³In Case No. 148 the Islamic Republic of Iran was not named as an additional Respondent, and the Claim of Galaxy was considered as withdrawn. See 3 Iran-U.S. C.T.R., at 206.

that adopted in Case No. 148, wherein the Claimants asserted that "Galaxy Electronics' assets and liabilities had been taken over by Ram International"⁴ and argue that the Claimants are estopped from taking a contradictory position in this Case.

5. After the exchange of briefs by the parties pursuant to an Order filed on 4 May 1984, the Tribunal, by its Order of 12 August 1986, postponed its decision on the admissibility of the amendment and joined that issue to the merits of the Claim.

III. CLAIMS AND COUNTERCLAIMS

A. Claims

6. The Claimants state that the Claim here is not for goods delivered, which were subject of Case No. 148 (see para. 2, supra), but it is for lost profits and other damages and is based on the theory of breach, or anticipatory breach, of contract. In support of their Claim, the Claimants relied, at the earlier stages of the proceedings, on the law of the State of New York or New Jersey. The former was the law of the state where the Logistics Support Center of the Iranian Air Force ("Purchasing Mission") was located, and the latter was the law of situs or location of the Claimants, where the parties entered into the Purchase Orders, and where the goods would have been delivered. Both states have adopted the Uniform Commercial Code of the United States. At the later stages of the proceedings, the Claimants stated that the Tribunal might choose to apply general principles of international and commercial law.

⁴Ibid, at 205.

7. The Respondents deny the applicability of the laws of either state but, without taking any issue with the applicability of general principles of law, state that the Tribunal should, pursuant to provisions of Article V of the Claims Settlement Declaration, base its decision on respect for the law, rules, and principles as contemplated by the aforementioned Article. The Respondents, however, contend that the provisions of the contract should prevail when the Tribunal decides the existence of an obligation and breach.

8. The Claimants requested in their pleadings relief in the total amount of U.S.\$13,513,958, specifically listing the components of damages as follows:

1. Lost profits on brokered items	\$9,295,865.00
2. Lost profits on manufactured items	\$3,913,160.00
3. Purchased materials not used	\$ 183,671.00
4. Legal expenses	\$ 46,262.00
5. Payment of settlement	\$ 75,000.00

The total amount of the relief sought was at the Hearing reduced by \$386,000 in view of certain alleged mathematical errors on the list of brokered items.

(a) Lost Profits on Brokered Items

This portion of the Claim relates to items that allegedly would have been obtained by the Claimants as brokers for the Iranian Air Force. The Claimants assert that they did not directly manufacture these items but only procured them from other companies, verified that they met specifications, tested compliance, packed the items, etc. The Claimants argue that lost profits for such brokered goods is calculated by subtracting the costs involved in procuring the items from other vendors or suppliers verifying, their compliance with specifications, etc., from the price for which the Claimants could have sold the items to

the Iranian Air Force. Further, they argue that they calculate the above-mentioned figure by applying accepted accounting and economic principles, which are set forth in a two-page expert report prepared jointly by Dr. R.L. Ruth, an economist, and Mr. B. Graber, a Certified Public Accountant. The expert report is submitted as part of the Claimants' evidence.

(b) Lost Profits on Manufactured Items

This item represents the net lost profit for the goods allegedly manufactured but not shipped. By applying the same principles as mentioned above, the Claimants calculate damages in the amount of U.S.\$3,913,160.

(c) Purchased Materials Not Used

The Claimants allege that they have spent U.S.\$183,671 to obtain various materials that were to be used in the manufacturing process. In support of this portion of the Claim, the Claimants rely on the above-mentioned expert report.

(d) Legal Expenses

The Claimants argue that they are entitled to be reimbursed for the costs incurred in legal proceedings before the United States District Court for the Eastern District of New York instituted against them in December 1978 by Cutler-Hammer, Inc., AIL Division. The Claimants allege that Ram International contracted to procure equipment parts from Cutler-Hammer for resale to the Iranian Air Force but was unable to fulfill its contractual obligations towards Cutler-Hammer, because it was prevented from making shipments to the Iranian Air Force at the time of the change of the Iranian Government in 1979. Accordingly, they claim as damages the legal costs of defending Ram International in this lawsuit.

(e) Payment of Settlement

This item represents the settlement of U.S.\$75,000 allegedly paid to Cutler-Hammer in the above-mentioned proceedings. The Claimants allege that Cutler-Hammer initially sought a court judgement of more than U.S.\$600,000.

9. The Claimants also request to be awarded interest computed as of June 1980 based on the average interest rate on six-month U.S. Treasury Bills.

10. For the first time at the Hearing, Mr. Charter said that after an abortive attempt in 1979 to deliver certain items with a total value of U.S.\$255,000, the Claimants kept the items in inventory. The items were sold in 1982 to Powermade Company - a manufacturing company also owned by Messrs. Charter and Graham - for salvage value in the amount of U.S.\$10,000, because they were unique goods produced for the Iranian Air Force that had no other use. The Claimants neither asked for an amendment of their Claim in this respect, nor explained whether this transaction is reflected in their computation of damages, summarized in sub-paragraphs 8(a) to 8(e) above, although it may be included in the computation of the claim constituting the "Lost Profits on Manufactured Items", see sub-para 8(b), supra.

B. Counterclaims

11. Denying the extension of delivery dates allegedly granted by Colonel Sadeghi's letter and challenging the letter's authenticity (see paras. 18, 19, infra), the Iranian Air Force asserted a counterclaim for U.S.\$42,374,428.32 for damages from the Claimants' alleged failure to deliver the goods by January 1979. The Iranian Air Force requests that the Tribunal compensate it for this alleged breach of contract arising from the failure by the

Claimants to deliver the required items within the period contractually agreed upon.

IV. FACTS AND CONTENTIONS

12. The Claimants allege that Ram International and its affiliates entered into various contracts with the Iranian Air Force. The Claimants were small companies set up solely for doing business with the Iranian Air Force. The Claimants assert that the transactions were conducted as follows: the Claimants would send quotation documents to the Iranian Air Force's Purchasing Mission in New York City. If the Iranian Air Force wanted the goods, it would send a Purchase Order to one of the Claimants' companies. The latter would then produce or procure the goods and ship them to the Iranian Air Force's Agent, Behring International ("Behring") in Orange, New Jersey. The prices of the goods were computed "F.O.B. Vendor's premises or warehouse" pursuant to the General Conditions, which formed part of the contracts printed on the reverse of the Purchase Orders. As evidence of the contracts between the companies and the Iranian Air Force, the Claimants presented copies of the original Purchase Orders.

13. According to the Claimants, goods were shipped to and accepted by the Iranian Air Force until early January 1979; at that time when the Iranian Revolution had gained momentum, the Claimants received no further instructions for the delivery of goods purchased on the basis of sixty-three Purchase Orders. The Claimants assert that the 90 to 120 day delivery dates set by the Purchase Orders were extended for 24 to 36 months with respect to some items, so that the delivery dates were extended until January 1979. In addition, the Claimants allege that the delivery dates were further extended until 30 June 1980 and offer as proof a letter dated 15 February 1978 and allegedly signed by a Colonel "A. Sadighi", as representative of the Purchasing

Mission of the Iranian Air Force in New York. The letter states as follows:

This letter will confirm our conversation whereby purchase order LP 74-300043 HG, all line items, which were issued to Rams International Industries [sic] and its associated companies (Universal Electronics, Galaxy Electronics, General Aviation Supply and etc.) hereby extends the delivery dates to 30 June, 1980. This action is taken as the result of our lateness in making payment due to the reorganization of the Logistics Support Center.

14. The Claimants further assert that after the early part of January 1979, the Iranian Air Force issued no delivery instructions. This period was also the last time the Claimants allegedly attempted to deliver goods to Behring. At the Hearing, Mr. Charter submitted that he had seen a truck with items for the Iranian Air Force leave for Behring's warehouse and return later without having been able to deliver the goods. The driver told Mr. Charter that Behring would not accept the goods. Mr. Charter then allegedly called Mr. George Murphy, the Vice-President of Behring, who explained that Behring had received no delivery instructions from the Iranian Air Force. Mr. Murphy states in an affidavit that he was unable to obtain any information from the Iranian Air Force that could be used to solve the delivery problems and that he was "repeatedly told to wait because of the turmoil in Iran at that time". He therefore informed Mr. Charter that the deliveries would have to be delayed indefinitely. Mr. Charter claimed orally, both at the Pre-Hearing Conference and at the Hearing, that he had made various attempts to obtain delivery instructions after January 1979. He stated that he had visited the Purchasing Office of the Iranian Air Force in New York. He also stated that he had been to London to what he believed was the new office of the Purchasing Mission, although the Claimants could not provide the Tribunal with an address for that office.

15. The Claimants assert that the Iranian Air Force never complained about the Claimants' performance under the Purchase Orders. The Claimants further assert that as a result of the lack of instructions to deliver and/or as a result of the Iranian Air Force's failure to pay for goods ordered under similar Purchase Orders and successfully delivered to Behring, the contracts were breached by the Iranian Air Force in January 1979, or, that, alternatively, there was an anticipatory breach by the Iranian Air Force. At the time of the alleged breach, the Claimants assert that the majority of the ordered goods were either in the middle of production, in the pre-production stage, or in the process of being procured from other vendors. In view of the Iranian Air Force's alleged breach or anticipatory breach, the Claimants stopped these processes.

16. In response to the counterclaim presented by the Iranian Air Force, the Claimants argue that the Iranian Air Force did not provide sufficient evidence to support its calculations of damages resulting from a breach of contract. Further, the Claimants dispute that they breached the contract by late deliveries of the items ordered by the Iranian Air Force. They state that the Iranian Air Force never complained to them about late deliveries, but instead it continued to accept deliveries through January 1979.

17. The Respondent, the Iranian Air Force, argues that the delivery dates of all the relevant Purchase Orders had expired by 1979. The Respondents dispute the authenticity of the letter of 15 February 1978 allegedly sent by Colonel Sadighi on behalf of the Purchasing Mission in New York, purporting to extend the delivery dates to June 1980. The Respondents also deny any contractual responsibility to provide delivery instructions.

18. As to the 15 February 1978 letter, the Identification and International Police Department in Iran at the Respondents' request examined the letter allegedly sent by

Colonel Sadighi. The Police Department compared the signature of Colonel Sadighi on the letter of 15 February 1978 with his signatures on other letters and documents that he acknowledged as authentic, specifically with signatures on invoices and a specimen of his signature lodged with Bank Markazi (the Iranian Central Bank) for such purposes. The Department reached the conclusion that "the likelihood that the alleged signature is not written by Colonel Sadighi is quite strong."

19. In further support of their argument that the letter was forged, the Respondents refer to Colonel Sadighi's Affidavit. In paragraph 2 of the Affidavit, Colonel Sadighi, who is not currently employed by the Iranian Air Force and who has resided in Spain since October 1980, states:

I have not even written or signed the above-dated letter or any other similar one. Nor have I ever conversed with Mr. Marvin Charter concerning the extension of the delivery dates as purported in the letter. This letter is undoubtedly forged and absolutely fake.

20. Apart from the question of the authenticity of the letter of 15 February 1978, the Iranian Air Force denies any alleged breach of its contractual obligations by not providing delivery instructions to the Claimants in January 1979 or after that time. In this respect, the Iranian Air Force refers to the Conditions of Payment, stated on the reverse side of the relevant Purchase Orders. Paragraph 1 of these Conditions reads as follows:

Payment will be effected against invoices and shipping documents unless otherwise agreed to by both parties.

The Iranian Air Force therefore argues that it was obliged by the Purchase Orders only to pay the price of the items after delivery. Accordingly, because no items were

delivered by the Claimants, there was no breach of contract on the Iranian Air Force's part.

21. On the same issue, the Iranian Air Force further relies for its defense on paragraph 2 of the General Conditions, also stated on the reverse side of the Purchase Orders. The provision reads as follows:

Prices are to be quoted F.O.B. Vendor's premises or warehouse.

On the basis of this provision, the Iranian Air Force argues that the Claimants were not required to ship the goods to Iran; they were required only either to advise the Iranian Air Force that the equipment was ready for delivery, or to deliver the items to Behring, the Iranian Air Force's shipping agent. However, the Claimants never advised the Iranian Air Force, either orally or in writing, that the equipment was ready for delivery.

22. Furthermore, the Respondents contest the statements regarding Colonel Sadighi's letter that are contained in Mr. Murphy's Affidavit. In particular, they argue that the Tribunal can attach no probative value to his vague statement that "I am aware of a letter dated February 15, 1978, by Mr. A. Sadighi". The Respondents further dispute Mr. Murphy's statements with respect to Claimants' inquiries in January 1979 as to how they could make deliveries. The Respondents argue that Behring, as the Iranian Air Force's freight forwarder, was obliged only to accept the goods delivered by the Claimants. As a rule, such goods would remain for a certain period in Behring's warehouse before they eventually were shipped to Iran. The Respondents state that a large quantity of other items, including a number of goods delivered by the Claimants that were subject of the Claim No. 148, were received and kept in a warehouse by Behring even after President Carter ordered the freeze of Iranian assets. As additional support, the Respondents cite Mr. Murphy's statement in his Affidavit that he was

Vice-President of Behring until January 19, 1981, and that "[t]hrough that date, Behring International had received, in Edison, New Jersey, various merchandise from Ram ..., Universal ..., [and] Galaxy."

23. In connection with the issue of the need for delivery instructions, the Respondents raise two other arguments. First, they argue that the allegation that the delivery dates under the Purchase Orders were extended until 30 June 1980 is inconsistent with the Claimant's position that the Iranian Air Force was obliged to instruct the Claimants to deliver the goods in January 1979 or later in the same year. Second, the Respondents state that Messrs. Charter and Murphy rely on facts in support of their claim of breach of contract that also support a finding of force majeure conditions at the time of the alleged attempts by Mr. Murphy to contact Iran. In support of this contention, the Respondents refer to Mr. Murphy's statement in his Affidavit that he was unable to get information from the Iranian Air Force to solve any delivery problem because he "was repeatedly told to wait because of the turmoil which was existing in ... Iran at that time." The Respondents argue that such conditions would act to excuse the Iranian Air Force from such a breach of contract.

24. With respect to the Claimants' allegation that the Iranian Air Force breached, or anticipatorily breached, the contract by failing to pay for other items that had been delivered to Behring, the Respondents first argue that the allegations of breach and anticipatory breach are mutually exclusive. The Iranian Air Force also contends that the Purchase Orders for those items and the Purchase Orders for the goods at issue here represent separate and unrelated contracts. In addition, the Iranian Air Force denies that any payments were late because the Claimants did not prepare and deliver the papers required by the Purchase Orders before the Iranian Air Force was obliged to make such payments; therefore, the Iranian Air Force was unaware of

any delivery to Behring until the time of filing of the statement of Claim in Case No. 148. The Respondents further assert that the items ordered from the Claimants were not unique but could be used for many purposes, relying on the affidavit of Captain Khadem Haghighat, who had many years of experience in the Iranian Air Force's procurement branches.

25. With respect to the Claimants' claim for lost profits regarding both brokered and manufactured items and for the purchased materials not used, the Respondents argue that these claims are not substantiated and without merit. In support of its defences in connection with all items of damages, the Respondents have submitted a 22-page Audit Report prepared by a Certified Accountant, Mr. H.A. Beglari. Taking issue with the Claimants' expert report and other documents, Mr. Beglari concluded that the opinions expressed there are "not acceptable from accounting and commercial point of view". In summary, he concluded that the claims are unsubstantiated and that the Claims for lost profits "can not be confirmed" due "to contradictions, weakness and insufficiency of supporting documents".

26. As to the Claim for damages representing the value of the materials allegedly purchased but not used in the manufacturing process, the Respondents allege that there is no probative evidence proving that the items purchased would have been used to manufacture the goods identified in the Purchase Orders issued by the Iranian Air Force. They further point to the document produced by the Claimants in support of this item of damages and contend that the orders, allegedly placed for the purchase of this group of goods, are dated in 1975 and 1976. These dates, according to the Respondents, could indicate that the goods were used in manufacturing items already delivered to and paid for by other customers or the Iranian Air Force.

27. The Respondents deny that the Claimants are entitled to any alleged damages relating to the legal fees involved in a

civil lawsuit instituted by Cutler-Hammer or to the payment of U.S.\$75,000 as a settlement in that lawsuit. They contend that the alleged breach of the Purchase Orders, which the Claimants argue occurred by January 1979, could not be the cause of costs involved in a litigation commenced in December 1978. They also note that the release or quitclaim document produced by the Claimants as proof of the settlement was not signed by Cutler-Hammer.

V. REASONS FOR AWARD

A. Jurisdiction

28. In Case No. 148, the Tribunal accepted its jurisdiction over the Claimants, except for Galaxy, and over the Iranian Air Force of the Islamic Republic of Iran as Respondent. In that Case, the Tribunal did not decide whether it had jurisdiction over Galaxy because its Claim there was considered as withdrawn. In the present case the Claimants have asked that Messrs. Charter and Graham be substituted for Galaxy as Claimants because Galaxy was declared bankrupt and as a result was liquidated on 29 December 1978. After the transfer of all of Galaxy's assets and liabilities to Messrs. Charter and Graham, Galaxy was formally dissolved in April 1980. Messrs. Graham and Charter, as the sole shareholders of the company with equal interests, now appear before the Tribunal as the successors to the rights, assets, and liabilities of the company, and therefore they ask that the Claim of Galaxy be considered as their Claim. With respect to Galaxy, the Tribunal by an Order filed on 4 May 1984 invited the Claimants to submit documents and information concerning its dissolution and the question whether or not Messrs. Charter and Graham are its successors. The Tribunal notes that the transfer of the assets of Galaxy to Messrs. Graham and Charter at the time of the company's liquidation has been confirmed by Mr. Marshall Fineman, an accountant associated with the firm

David Berdon & Company, Certified Public Accountants, in a Statement that forms part of the record in this Case. Furthermore, Colonel Sadighi states in his Affidavit that Galaxy, Ram, General Aviation Supply, Inc. and the other related companies were all managed through the same office and represented by Mr. Charter. Therefore, and in light of the findings in American International Group Inc. and The Islamic Republic of Iran, Award No. 93-2-3 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96 and St. Regis Paper Company and The Islamic Republic of Iran, Award No. 291-10706-1 (29 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 86, the Tribunal allows the requested amendment to add Messrs. Graham and Charter as Claimants under Article 20 of the Tribunal Rules, because the amendment only clarifies the identity of one of the Parties. Therefore, the Tribunal finds that it has jurisdiction over the claims of all the Claimants.

B. Merits

29. The Tribunal notes at the outset that this claim must fail for lack of proof. The Claimants first allege that the Iranian Air Force had a contractual obligation to issue delivery instructions in early 1979 and that the Iranian Air Force breached such an obligation. However, according to the record, the delivery dates expired by January 1979, and nothing in the record shows that the Claimants informed the Iranian Air Force that items were ready for delivery or that they sought instructions in connection with any deliveries, including those effected in January 1979.

30. In support of their Claim, the Claimants rely on a letter that allegedly extended to 30 June 1980 the delivery dates regarding the items at issue. The letter was written on the stationery of the "Imperial Iranian A.F., Logistics Support Center", and it was signed by an "A. Sadighi" on behalf of the Purchasing Mission. When the letter was presented by the Claimants in connection with Case No. 148,

its authenticity was questioned by the Iranian Air Force. In the opinion of the Tribunal in that case, however, the Iranian Air Force was not able to present any evidence substantiating its allegation. Therefore, the Tribunal in Case No. 148 accepted the extension of delivery dates until 30 June 1980 and based its conclusions on this fact.

31. Since the Award was issued in Case No. 148, the Respondents have produced additional evidence in support of their assertion that the letter signed on 15 February 1978 is not authentic. Colonel Sadighi has presented an Affidavit in which he denies having sent the letter in question. He also disputes that he would have extended the delivery dates for the reason noted in the letter, i.e., "as a result of our lateness in making payment due to the reorganization of the Logistics Support Centre". Colonel Sadighi submits that he cannot think of any instance where the Iranian Air Force made late payments to the Claimants. Further, he contests the statement in the letter concerning a reorganization of the Purchasing Mission asserting that no such reorganization occurred during his term of office. Moreover, a report by the Iranian Identification and International Police Department expresses serious doubts about the authenticity of Colonel Sadighi's signature on the letter of 15 February 1978. The Tribunal finds that Colonel Sadighi's statements are convincing, and the Tribunal cannot rely on the letter as a basis for granting the claim.

32. Moreover, to support their allegation of damages caused by any breach of contract, the Claimants submit a list of goods that they allegedly would have been able to deliver to the Respondents. However, virtually no evidence was produced to substantiate the Claimants' assertions that they would have been able to obtain or manufacture and then to deliver these items to the Iranian Air Force. The lists produced by the Claimants and the accompanying documents do not indicate when the Claimants expected to produce or

process the goods and have them ready for delivery. There is only one alleged attempt in January 1979 to deliver goods to the Behring Company. Regarding this event, however, the Claimants cannot provide satisfactory evidence as to the contents of the goods supposedly sent by a truck to the Behring Company. The Tribunal is therefore not able to confirm that these goods formed part of the items the Claimants have included in their lists of intended deliveries in this Case.

33. With respect to Mr. Charter's statement that after January 1979 he had sought delivery instructions from the Iranian Air Force, the Tribunal finds that these statements, apart from the fact that they are unspecific, lack any corroborating evidence. There is no documentary evidence on file showing that the Claimants had advised the Iranian Air Force that the goods were ready for shipment. Evidence further shows that the Iranian Air Force Purchasing Mission was operating in New York City at least until Fall 1979 and that a number of payments to other suppliers were effected through August 1979 by the Iranian Air Force through Manufacturers Hanover Trust Company. Assuming that the Claimants unsuccessfully tried to deliver a truckload of goods in January 1979, the Tribunal finds that the Claimants should have sent a notice to the buyer at that time and inquired whether and how the buyer would be able to accept future deliveries. In this case, the Claimants chose to remain silent; and therefore any obligation on the part of the Iranian Air Force to provide delivery instructions was not triggered.

34. The Claimants also failed to produce sufficient evidence to prove that they attempted to mitigate their losses through efforts to resell the items at issue here. The Claimants allege that all the items ordered by the Iranian Air Force "were of a highly technical nature" and "were to be produced for a specific need"; therefore, the

goods could not be resold. The Tribunal cannot rely on these statements, however, because the Claimants produce absolutely no evidence to describe those goods or demonstrate that they were unique, nor can such a conclusion be drawn from the mere names of the items on the lists submitted by the Claimants. The only evidence regarding mitigation again concerns the alleged abortive attempt to deliver some unspecified items to Behring in January 1979. The Claimants allege that the value of the returned goods was U.S.\$255,000, and that the goods were later sold for U.S.\$10,000 to Powermade Company also owned by Messrs. Charter and Graham. The Claimants have not produced any evidence proving what items were sold and the price received on such sales. Further, there is no indication that the Claimants had tried unsuccessfully to sell these goods, or any other goods at issue here, to other customers in an effort to mitigate their losses. Such an effort would have been the normal trade practice; instead, the sale to a related company for the item's salvage value and without any attempt to secure higher prices from other buyers is regarded by the Tribunal as most unusual in the particular business activity of the Claimants. For the above reasons the Tribunal denies this item of the Claim.

35. Furthermore, in a case involving claims for lost profits, necessary preconditions, such as, among other things, the provisions of the contract and the applicable law, for a successful claim include that the claimant be able to prove that it was in a position to fulfil its duty to deliver the goods within the specified dates and the other party refused to accept the delivery or otherwise breached a valid contract. In this Case the Tribunal notes that the Purchase Orders are silent as to the issue of lost profits and that the Purchase Orders were neither extended to June 1980 nor breached. The Claimants have based their claims solely upon a list of dates and deliveries presented at the Hearing, without substantiating this list in any way. To the contrary, when one takes into account the fact that

the Claimants have not been able to present evidence as to deliveries during the four years before January 1979 of items ordered through the Purchase Orders relevant in this Case, the Tribunal sees no likelihood that the Claimants would have been able to deliver goods in accordance with their list of dates for deliveries during the period of January 1979 to June 1980. It has been suggested by the Claimants that in the past the Iranian Air Force did accept late deliveries, but no contractual duty bound the Iranian Air Force to do so in the future under the provisions of the Purchase Orders involved in this Case.

36. With regard to the claim for material allegedly purchased by the Claimants to manufacture items for the Iranian Air Force but not yet used in that process, the Claimants have produced no evidence showing that this material would have been used in manufacturing the items at issue in this Case. Evidence linking the purchased material to the specific goods ordered through the sixty-three Purchase Orders is essential to the success of this aspect of the Claim. Accordingly, the Tribunal cannot award the Claimants compensation for this element of damages and it, too, must be dismissed.

37. Finally, the Claimants request an award representing alleged legal expenses and the payment of a settlement in litigation brought by Cutler-Hammer against Ram. The Claimants have produced no evidence to show a connection between an alleged breach of contract by the Iranian Air Force in January 1979 and Cutler-Hammer's lawsuit commenced on 18 December 1978. Nor is there any proof that the items ordered from Cutler-Hammer were items that would have been sold to the Iranian Air Force by the Claimants in their capacity as brokers. Accordingly, the Tribunal holds that this claim for damages also must fail.

38. For the reasons set out above, the Tribunal dismisses the entire claim for lack of proof and for the other reasons discussed in Section B of this part of the Award.

C. The Counterclaim

39. The Counterclaim of U.S.\$42,374,428.32 is also dismissed for lack of evidence. The Tribunal finds that the evidence produced by the Iranian Air Force to prove the amount of damages caused by the alleged breach of contract is insufficient. No evidence was produced to prove either that the Claimants' failure to deliver items caused loss or harm to the Iranian Air Force or the extent of any such alleged loss. The Tribunal accordingly dismisses the Counterclaim in its entirety.

D. Costs

40. The Claimants filed a Post-Hearing submission on 12 October 1989, in which they submitted a survey of their costs allegedly incurred in presenting this Claim. They request the Tribunal to be compensated for various expenses incurred in the amount of U.S.\$50,000 and for legal fees in the amount of U.S.\$147,000. The Respondent, the Iranian Air Force, has requested in its written pleadings an award of costs incurred in responding to the Claim. In view of the outcome of the proceedings in this Case, the Tribunal finds it reasonable to award the Respondents jointly costs of arbitration in the amount of U.S.\$7,500.

VI. AWARD

41. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a) All claims of RAM INTERNATIONAL INDUSTRIES, INC.,

UNIVERSAL ELECTRONICS, INC., GENERAL AVIATION SUPPLY, INC., and Messrs. Marvin Charter and Richard Graham as successors to GALAXY ELECTRONIC CORPORATION, INC., against THE ISLAMIC REPUBLIC OF IRAN and THE ISLAMIC REPUBLIC OF IRAN AIR FORCE are dismissed.

b) The Counterclaim asserted by THE ISLAMIC REPUBLIC OF IRAN AIR FORCE against RAM INTERNATIONAL INDUSTRIES, INC. is dismissed.

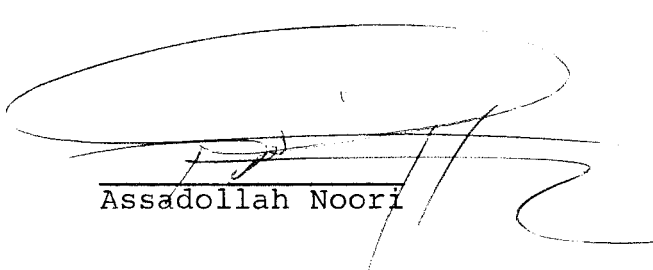
c) The Claimants RAM INTERNATIONAL INDUSTRIES, INC., UNIVERSAL ELECTRONICS, INC., GENERAL AVIATION SUPPLY, INC., and Messrs. Marvin Charter and Richard Graham as successors to GALAXY ELECTRONIC CORPORATION, INC., are obligated to pay the Respondents THE ISLAMIC REPUBLIC OF IRAN and THE ISLAMIC REPUBLIC OF IRAN AIR FORCE costs of arbitration in the amount of U.S.\$7,500.

Dated, The Hague,
9 May 1991

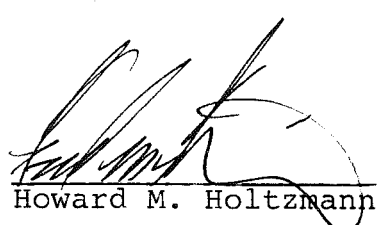


Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori



Howard M. Holtzmann