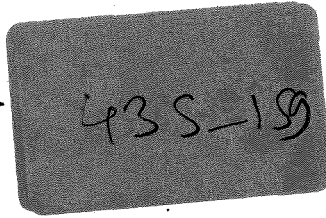


ORIGINAL DOCUMENTS IN SAFE

Case No. 435



Date of filing: 12 Oct '90

** AWARD - Type of Award Final
 - Date of Award 12 Oct '90
23 pages in English 26 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

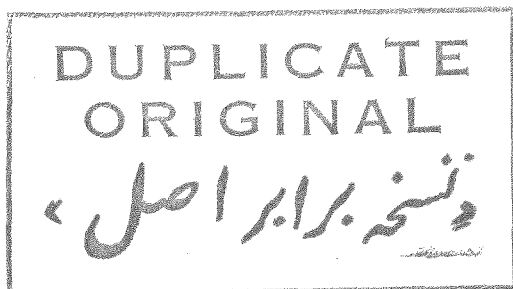
** DISSENTING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

 - Date _____
 _____ pages in English _____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ



CASE NO. 435

CHAMBER THREE

AWARD NO. 491-435-3

HIGHLANDS INSURANCE COMPANY,
 Claimant,
 and

THE ISLAMIC REPUBLIC OF IRAN,
 BIMEH MELLI INSURANCE COMPANY
 Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	12 OCT 1990
	تاریخ ۱۳۶۹ / ۷ / ۲۰

AWARD

Appearances:

For the Claimant : Mr. Arthur W. Rovine,
Mr. Robert Kashtan,
Attorneys;
Mr. James D. Morgan,
Representative of Highlands
Underwriting Agents Limited;
Mr. Michael J. Wildig,
Representative of Arthur
Andersen & Co.

For the Respondents : Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran;
Mr. Nozar Dabiran,
Legal Advisor to the Agent of the
Government of the Islamic
Republic of Iran;
Mr. Karam Ali Kamayestani,
Legal Assistant to the Agent of
the Government of the Islamic
Republic of Iran;
Mr. Manouchehr Arbabi,
Attorney for Bimeh Melli
Insurance Company;
Mr. Mohammad Asoudeh,
Mr. Mostafa Neshat Mobini Tehrani,
Representatives of Bimeh Melli
Insurance Company.

Also present : Ms. Lucy F. 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.

I. INTRODUCTION

1. The Claimant is HIGHLANDS INSURANCE COMPANY ("Highlands"), a corporation organized under the laws of the State of Texas and engaged in the insurance business. The Respondents are BIMEH MELLI INSURANCE COMPANY ("Bimeh Melli" or "the Respondent") and THE ISLAMIC REPUBLIC OF IRAN.

2. In 1976 Highlands and Bimeh Melli concluded a Reinsurance Treaty ("the Treaty") pursuant to which Bimeh Melli agreed to reinsure 28.57 percent¹ of all risks insured by the Claimant, in return for a proportionate percentage of the premiums received by the latter minus commissions and certain other costs. Under the Treaty, Bimeh Melli was to bear a proportionate share of the losses and was to provide, in cash or through a letter of credit, for its share of the loss reserves Highlands was required to maintain. Highlands contends that Bimeh Melli breached the Treaty in December 1978 by failing to post a required letter of credit in Highlands' favor in the amount of U.S.\$858,296. The Respondent claims that the Treaty was then annulled through a settlement agreement entered into between the Parties providing, inter alia, for the repayment by Bimeh Melli of all the premiums it had received from Highlands under the Treaty. The Claimant, denying that any settlement was reached, asserts that the Treaty continued through 1979 and 1980, and that under the Treaty, after deduction of premiums, Bimeh Melli owed Highlands £836,242, U.S.\$2,064,240 and Can. \$6,202 in respect of losses and commissions as of 31 December 1985. The Claimant further seeks compensation of the legal costs and expenses incurred in this arbitration, as well as interest.

¹As of 1 January 1978, this percentage was reduced to 15 percent.

3. The Respondents have not filed a counterclaim, but they also seek compensation of the costs and expenses incurred in this arbitration.

II. PROCEDURE

4. The Claimant submitted its Statement of Claim on 18 January 1982. The Respondent submitted its Statement of Defense on 23 February 1983, to which the Claimant replied on 30 June 1983.

5. On 7 May 1984 the Tribunal issued an Order requesting the Claimant to submit "a breakdown of the amount claimed and described in the Statement of Claim as 'premiums, commissions and losses' and the basis for each." On 5 November 1984 Highlands filed its "Memorandum Pursuant to the Tribunal's Order of May 7, 1984," to which the Respondent replied on 15 August 1985.

6. On 23 and 24 October 1986, respectively, the Claimant and the Respondent filed a Memorial and Summary of Evidence. On 26 January and 23 July 1987, respectively, the Claimant and the Respondent filed Rebuttal Memorials. Alleging that the Respondent's Rebuttal Memorial raised defenses not previously asserted, the Claimant submitted a further "Reply Memorial" on 30 September 1987, to which Bimeh Melli responded on 1 September 1988.

7. Pursuant to Presidential Order No. 61 dated 19 April 1988, the Case was reassigned from Chamber One to Chamber Three and Mr. Assadollah Noori was designated to act as a Member of Chamber Three with respect to the Case.

8. On 13 October 1989 Highlands filed an "Updated Calculation of Damages and Submission of Background Material in Support of Claim No. 435." On 17 October 1989 the Agent of

the Government of the Islamic Republic of Iran objected to this submission on the ground that the admission of a document filed shortly before the Hearing would prejudice the Respondents' defense. In view of its decision on the merits of this Case, the Tribunal need not determine the admissibility of this submission, which deals exclusively with the quantification of damages.

9. On 19 September 1989 the Claimant gave notice of the appearance of a number of witnesses. On 17 October 1989 the Agent of the Government of the Islamic Republic of Iran filed an objection, contending that the testimony of Mr. James D. Morgan was inadmissible because he was an officer of a company affiliated to the Claimant. Under the circumstances of this Case, the Tribunal finds that the status of Mr. Morgan is not relevant to the Tribunal's consideration of the record.

10. A Hearing was held on 19 October 1989.

11. At the Hearing, the Respondent offered to the Tribunal a document purportedly containing the arguments to be presented by the Respondent. When the Tribunal questioned this document's admissibility, the Respondent did not formally submit it. On 25 October 1989, however, the Respondent filed it with the Tribunal. The Claimant filed an objection thereto on 3 November 1989, to which the Respondent filed a response on 12 January 1990. The Claimant renewed its objection on 18 January 1990. The Tribunal notes the Respondent's statement that it made its submission to "ease the arbitrators' reference to their notes, and, further to provide an alternative to the stenographic manuscript to be furnished by the Claimant." To the extent that the Respondent's submission matches the Tribunal's own record, it is admissible. However, by its very nature such a unilateral presentation, prepared in advance, cannot serve the purpose of providing an alternative to a stenographic

record as referred to in Article 25, Note 4, of the Tribunal Rules. Therefore, the Tribunal does not accept it as such.

12. On 13 November 1989 the Claimant submitted a transcript of a stenographic record of the Hearing, prepared by a certified shorthand reporter and notary public. By letter dated 14 December 1989 the Respondents contested the accuracy of the transcript and suggested certain amendments to that document. In the Claimant's view, as stated in a letter dated 24 January 1990, the Respondents' suggestions constitute inappropriate alterations of the actual record. Article 25, Note 4 of the Tribunal Rules provides, in relevant part, that "[a]ny arbitrating party in the case may make a stenographic record of the hearings, or parts of the hearings, and, in that event, shall make a transcript thereof available to the arbitral tribunal" The Claimant has submitted its transcript in accordance with this Rule. The Tribunal will take corrections to the transcript into account to the extent that they are consistent with the contemporaneous record of the Hearing prepared by the Tribunal.

III. JURISDICTION

13. Highlands contends that it is a corporation organized under the laws of the State of Texas and that it is a wholly owned subsidiary of Halliburton Company, a corporation organized under the laws of the State of Delaware, more than fifty percent of whose capital stock is owned by individuals who are United States citizens. In support of its United States nationality, Highlands submits the following documents: certificates of good standing establishing that both Highlands and Halliburton Company existed on 19 January 1981; a certificate by the Corporate Secretary of Halliburton Company stating that 98.247% of its voting stock was held by persons with United States addresses, as

demonstrated by the list used for the annual meeting closest to 19 January 1981; relevant pages from the proxy statements of Halliburton Company for 1978 through 1981 with an accompanying statement from the Corporate Secretary; and a certificate from Arthur Andersen & Co. stating that from 1 January 1977 through 31 December 1981 Halliburton Company owned all of the outstanding voting stock of Highlands.

14. The Claimant further points out that the Tribunal's Award in Halliburton Company, et al. and The Islamic Republic of Iran, et al. constitutes an acknowledgement that it meets the nationality requirements. Award on Agreed Terms No. 200-12/13-1 (20 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 310. The Respondent asserts generally that the Claimant has failed to prove its nationality.

15. Based on the evidence before it, the Tribunal is satisfied that Highlands meets the jurisdictional requirements of the Claims Settlement Declaration.

16. According to Highlands, Bimeh Melli is a controlled entity as evidenced by the Iranian Government's nationalization of the insurance industry. The Claimant contends that this is confirmed by the Tribunal's acceptance of jurisdiction over Bimeh Melli in American International Group, Inc., et al. and Islamic Republic of Iran, et al., Award No. 93-2-3 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96. The Tribunal is satisfied that Bimeh Melli, which does not dispute its controlled status, is a proper Respondent as defined in Article VII, Paragraph 3, of the Claims Settlement Declaration.

IV. FACTS AND CONTENTIONS

(a) The Treaty

17. On 14 September 1976 Cayzer, Steel (Reinsurance Bro-

kers) Ltd. ("Cayzer") sent a proposal to Bimeh Melli concerning participation in a reinsurance treaty with Highlands. Highlands and Bimeh Melli entered into the Treaty in December 1976. Under the Treaty, effective 1 January 1977, Highlands agreed to cede and Bimeh Melli agreed to accept, by way of reinsurance, a quota-share of 28.57 percent of all risks written by Highlands Underwriting Agents Limited ("HUA") on behalf of Highlands, provided the amount so ceded did not exceed U.S.\$100,000 on any risk. The reinsurance was subject to the same terms and conditions as the original insurance. The rates of premium payable to Bimeh Melli as reinsurer were the same as those received by Highlands after deduction of all original commissions, local taxes, and other acquisition costs. From the net premium ceded, the reinsurer allowed Highlands 9 percent to cover its expenses and commissions of the agent and a fixed annual agency fee.

18. The Treaty required Highlands to furnish quarterly accounts of net premiums and losses, the balance of which was payable by the debtor within thirty days of receipt of the accounts. Highlands was required also to provide preliminary underwriting reports every quarter. Bimeh Melli agreed to provide Highlands with cash or a clean irrevocable letter of credit in an amount equal to the unearned premium reserves (if any) and loss reserves on insurance assumed under the Treaty. According to the Claimant this refers to the situation where commissions and losses exceed premiums. Any such letter of credit was to be updated to reflect the balances of each quarterly report within thirty days of receipt of the report. Concerning its duration, the Treaty provided that

[t]his agreement commences on the 1st day of January, 1977, and shall continue for a fixed period of two years. It may be cancelled on the 31st of December, and thereafter by either party giving to the other six months notice in writing by registered letter to expire on the 31st day of December in any year. In the event of such cancellation, the Reinsurer shall remain liable

for its proportion of all risks ceded to it
. . . .

(b) Performance of the Treaty

19. In accordance with its terms, the Treaty commenced on 1 January 1977. The Claimant asserts that from January 1977 through December 1978 Bimeh Melli received its share of premiums with respect to risks assumed under the Treaty and that Highlands provided Bimeh Melli with quarterly reports concerning the status of its account under the Treaty. The Claimant contends that in December 1978 a deficit existed in Bimeh Melli's account of about U.S.\$858,296. Highlands wrote to Cayzer concerning this alleged deficit on 5 December 1978, stating in relevant part:

Enclosed are the accounts to the 30th September for the Bimeh Melli's participation in the above treaty for 1977/8. . . . We must also ask you to arrange a clean irrevocable letter of credit in favour of Highlands Insurance Co. Houston, Texas, U.S.A., which must be drawn on a U.S.A. National Bank and be dated prior to 31st December, 1978. The amount of your letter of credit, which is to cover outstanding losses and unearned premiums amounts to US\$858,296.

20. By letter of 8 December 1978, Cayzer acknowledged receipt of the accounts and requested HUA to forward a statement showing how the amount of U.S.\$858,296 was calculated. That letter stated further that "[u]pon receipt of this information, we shall immediately request the letter of credit from the Bimeh Melli." On 18 December 1978 Cayzer telexed to Bimeh Melli, stating, inter alia:

Have airmailed to you on 11th December treaty accounts to 30th September 1978 calling for usual settlements to/from reinsurers in accordance with treaty article seven.

However Highlands now require letter of credit from reinsurers for outstanding losses/unearned premiums in accordance with article ten.

Please arrange a clean irrevocable letter of credit in favour of Highlands Insurance Company Houston, Texas, U.S.A. which must be drawn on a U.S.A. national bank and be dated prior to 31st December 1978. The amount of letter of credit required [sic] being US Dollars 858,296 which is calculated on figures as at 30.9.78 Supporting documents re above figures mailed today.

21. Bimeh Melli replied by telex to Cayzer on 20 December 1978, stating in relevant part that "[t]reaty accounts airmailed by you on 11/12 not yet received stop As we have not received premium due to us we do not understand why we should pay amount of dlrs 858296 . . . suggest better if necessary you offset the demanded amount against premiums due to us" On 28 December 1978, Cayzer replied that "please note imperative we receive your reply by tomorrow as to whether you are able to complete letter of credit by 31st December, 1978." On 29 December 1978 Cayzer then telexed to HUA informing it that "[r]egret we have not received letter of credit from Bimeh Melli. Please advise Highlands Ins. Co. accordingly."

22. Based on the foregoing, the Claimant concludes that Bimeh Melli breached Article 10 of the Treaty, entitling Highlands to compensation of damages. Bimeh Melli, on the other hand, asserts that the Claimant breached the Treaty, first, by withholding payments due to Bimeh Melli for the second quarter of 1978, second, by demanding a letter of credit within one-third of the period allowed under the Treaty, and, third, by not providing the documentation required to verify the amounts due under the Treaty, including some of the quarterly accounts. The Respondent therefore argues that Bimeh Melli's refusal to provide the letter of credit within the period stipulated by the Claimant did not constitute a breach of the Treaty.

(c) Settlement Proposal

23. On 17 January 1979, HUA, at the request of Highlands, made a settlement proposal by telex to Cayzer reading as follows:

Attn A Mason U R G E N T
Re Bimeh Melli

In view of failure by reinsurer to comply with L O C request and late payment of balances due to us at 3rd quarter 1978. Highlands have offered following options

- 1) to cancel 1977 and 1978 contracts retroactively from inception provided all cash refunded immediately.
- 2) provided that 12 months L O C in amount of USD 858,296 is lodged with Highlands by 15 Feb 1979 and 3rd quarter 1978 account is paid we are prepared to accept them for 1979 contract with amendment to payment clauses that no monies will be paid on any year until political situation in Iran is considered stable by reinsured.

We feel that these options are simplest means to overcome problem without resorting to legal proceedings.

Morgan

Cayzer cited this settlement proposal in full in a letter to Bimeh Melli of 19 January 1979. The letter went on to state, inter alia, that "Highlands have stressed that a condition of option (1) is that the return of all monies paid to you should be returned to the Highlands Insurance Company immediately."

24. On Friday 19 January 1979 Cayzer telexed the following reply to HUA:

Have discussed contract with Mr. A.J. South appointed by Melli and he has copy your tel 17/1/79 stp He plans to return Tehran next week

subject to local situation being stable stop We have not been able to reach Melli by tlx but will keep trying stop The P.O. informs us that cables are not being accepted for Iran stop The monies held by us on this contract are U S Dlr 212,555 Can Dlr 5,625 we very much regret the inconvenience caused by the delay in settlement of LOC and will contact you immediately a decision is rcvd from Melli

25. On 19 January 1979 Highlands telexed HUA stating "with dlrs at 2 to pd broker is holding enough to pay part due account and should have already done so. I'd demand payment and withdraw your no. 1 and substitute my suggestions or something similar." The Claimant alleges that Mr. Morgan of HUA then called Mr. Mason of Cayzer and told him that Option 1 was withdrawn. However, on Monday 22 January 1979 Cayzer sent the following telex to Mr. Morgan of HUA:

Yourtel 17.1.79 Dr Amirebrahimi of Bimeh Melli has agreed to option one of your telex and will cancel q share contract 1977/1978 and 1979 years from inception and refund all monies received stop Monies held by us at 2nd qtr 1978 will be returned immediately stop Please inform Highlands of companys decision

26. On 25 January 1979 HUA replied to Cayzer as follows:

Acknowledge your telex 22 Jan. As Bimeh Melli were unable to meet L O C requirements article 10 of contract due to political climate, see no hope of them meeting option 1 requirement quote provided all cash refunded immediately unquote. Accordingly Highlands withdrawing option 1 and considering contract still in operation on original conditions regardless of Melli default article 10. Please arrange return of all monies held by you as at 2nd quarter 1978 "immediately" as per your telex as these will be used to offset account as at 30.9.78 in accordance with article 7. Further Highlands will give Melli a reasonable time to arrange L O C on the understanding that in the meantime we will pass no further monies on to them until situation returns to normal. I am writing more fully to you.

On 29 January 1979 Cayzer responded by telex to HUA as follows:

Re yt 25/1 acting as intermediary have spoken to Mr. Hamirani of Melli on telephone who consider contracts 1977/1978/1979 years cancelled from inception stp Hamirani confirmed monies held by Melli will be returned immediately banks reopen stp Pls conf any further action you require us to make on your behalf

On the same date HUA replied by telex to Cayzer:

Acknowledge receipt yours 29th as Mr Hamirani so ably puts it the return of Melli money depends on reopening of banks therefore word 'immediate' does not apply. Appreciate your position as intermediary but they must realize that immediate meant english dictionary terminology 'without delay, directly' this they are unable to do. Accordingly Highlands find position unacceptable regards option 1 and Melli considered still to be on risk. Reiterating my telex of 25th please arrange for cheques to be drawn equal to Melli's money held by you under our contract and return forthwith in accordance with article 7 of contract.

The Claimant has confirmed that on the same date it received from Cayzer U.S.\$202,115 and Can.\$5,123, which it placed in an escrow account.

27. On 31 January 1979 Cayzer sent the following telex message to HUA:

Tks yt 29/1 which we have passed to Dr Amirebrahimi by telephone today stp He is adamant that the option given by Highlands to cancel 1977, 1978 and 1979 contracts has been accepted by Bimeh Melli and he confirmed that arrangements have been made to refund monies held by Bimeh Melli by special courier who it is anticipated will arrive in London on Friday 2nd Feb subject to Tehran Airport being reopened stp Pls adv Highlands Ins Co of this development stp

The Respondent contends that, amidst difficult revolutionary conditions, it did dispatch one of its employees on the first available flight out of Tehran on 28 or 29 January 1979 with a check payable to Cayzer for U.S.\$100,000. The

check was delivered to Cayzer on 12 or 13 February. On 16 February 1979, HUA telexed Cayzer requesting that the funds be placed in a "special suspense deposit account." That telex states:

Still awaiting instructions from Highlands re cash. In meantime please place cash on special suspense deposit account with your bank and ensure account is designated "reserved for Highlands Insurance Company".

On 21 February 1979, Cayzer wrote to Bimeh Melli informing it of the situation:

We acknowledge receipt of your letter no. 20202 dated the 28th January 1979, together with a cheque for US\$ 100,000, to be drawn on the Bank of Scotland, personally handed to us by your representative Mr. Akhtari on Tuesday, 13th February 1979. This cheque has been lodged with the bank and we are awaiting clearance, which should be in a few days. When clearance has been obtained the money due to the Highlands Insurance Company shall be put in a Special Suspense Deposit Account, designated "Reserved for Highlands Insurance Company"

Cayzer's next communication to Bimeh Melli, a letter dated 22 February 1979, states in relevant part:

We would refer to our letter dated the 21st February, and we would confirm that we have established a Special Suspense Deposit Account designated "Reserved for Highlands Insurance Company" the following amounts:-

£ 46,445
US\$ 61,646
CAN\$ 6,650

These amounts represent the balances due to Highlands Insurance Company from your company.

With the reconciliation of your accounts stated in your letters nos. 13678 and 13679 dated the 1st October, the total amounts that you have paid to us for onward transmission to Highlands Insurance Company is US\$ 148,540.92.

28. The 22 February 1979 letter further indicated a "Balance due" from Bimeh Melli to Cayzer of U.S.\$13,700.95 for the payments made by Cayzer into the Highlands suspense account. The Claimant contends based on a letter dated 7 September 1979 from Cayzer to Highlands that this U.S.\$13,700.95 was not actually paid into the suspense account until September.

V. THE TRIBUNAL'S DETERMINATION

29. Highlands' claim is based on the alleged breach of the Treaty by Bimeh Melli. The Respondent's primary defense is that, pursuant to an accord reached with the Claimant, it paid an amount to Highlands in settlement of its obligations under the Treaty, which was terminated as a result. The initial task for the Tribunal, therefore, is to examine whether a valid settlement agreement was entered into between the Parties. The Claimant argues that such a settlement was not entered into for several reasons: first, the 17 January offer to settle was withdrawn on 19 January before it was accepted; second, the offer could only be accepted by immediate payment, not a mere promise to pay, which the Respondent failed to do; and, third, even if the offer was properly accepted, the Respondent failed to fulfill the essential condition of immediate repayment. The Respondent, on the other hand, argues that a valid settlement agreement was reached and that it fully complied with the terms of that agreement so that Bimeh Melli was released from any further obligations under the Treaty.

30. Turning first to the question whether the settlement offer was withdrawn before it was accepted, the Tribunal must analyze the facts and evidence surrounding the alleged 19 January 1979 telephone conversation between Mr. Morgan of

HUA and Mr. Mason of Cayzer withdrawing the offer.² The evidence establishes that HUA sent Highlands' settlement proposal to Cayzer by telex of 17 January 1979. Cayzer then informed Bimeh Melli by letter dated 19 January 1979 and telexed to HUA that it would convey Bimeh Melli's decision as soon as possible. By that date, however, Highlands had second thoughts about the offer, as evidenced by its telex to HUA of 19 January 1979. In that telex, Highlands advised Mr. Morgan to "demand payment and withdraw your no. 1 and substitute my suggestions or something similar" because "broker [was] holding enough to pay part due account." Mr. Morgan has alleged that he called Mr. Mason of Cayzer on the same day, Friday 19 January 1979, to tell him that Option 1 was withdrawn. Mr. Mason confirmed this description of events in an affidavit; he did not appear at the Hearing. On Monday 22 January 1979 Cayzer informed HUA by telex that Bimeh Melli had accepted the settlement proposal. On 25 January 1979 HUA replied by telex that "Highlands withdrawing option 1." On 29 January 1979 Cayzer and HUA exchanged further telexes on this subject.

31. The Tribunal notes that the 22 January telex from Cayzer to HUA purporting to accept the offer makes no mention of the alleged withdrawal thereof just three days earlier. Moreover, although most communications between the parties took place by telex, HUA never confirmed its

²Mr. Morgan's statement that he called Mr. Mason at Cayzer on 19 January 1979 to retract Highlands' offer raises the issue whether the alleged message to Cayzer constituted proper notice to Bimeh Melli. The Parties disagree on the question whether Cayzer was acting as the agent of Bimeh Melli or Highlands or both in this transaction. Although the unequivocal affidavit testimony presented by the Respondent's own Mr. Ardakani in proceedings before a Texas court would seem to indicate that Cayzer was acting on behalf of Bimeh Melli, the Tribunal need not decide this issue in light of its findings concerning the evidence relating to the 19 January withdrawal.

withdrawal by telex or otherwise in writing. In fact, none of its (or Cayzer's) subsequent communications contains any explicit or implicit reference to the alleged telephone conversation of 19 January 1979. Instead, in its telex of 25 January 1979 HUA states that, because Highlands "see no hope of them meeting option 1 requirement . . . Highlands withdrawing option 1 and considering contract still in operation." (Emphasis added.) In view of these facts, the Tribunal is not satisfied that Highlands effectively withdrew its settlement offer prior to the 22 January telex from Cayzer to HUA purporting to accept the offer.

32. The next issue is whether the 22 January telex constituted acceptance of the offer. This issue raises two lines of inquiry: first, whether the settlement offer was capable of acceptance by a promise or rather whether it required acceptance by performance, and, second, whether the alleged acceptance of the offer on 22 January by Cayzer on behalf of Bimeh Melli matched the terms of the offer so as to create a binding agreement.

33. The starting point for this analysis must be the language of the offer itself. Option 1 of the 17 January telex entailed the offer "to cancel 1977 and 1978 contracts retroactively from inception provided all cash refunded immediately." (Emphasis added.) The first question is therefore whether the phrase "provided all cash refunded immediately" constituted an invitation to Bimeh Melli to create a contract by performance, or rather whether the offer could be accepted by a promise. In a joint study of the common, civil and socialist law on this issue it is stated that "[i]n the frequent cases in which the offeror does not make it entirely clear whether his offer calls for a promise or for an act, all legal systems which have considered the point seem to lean toward interpreting the

offer as calling for a promise."³ In this Case, the language of Option 1 could be construed to contemplate acceptance either by a promise to make immediate repayment or by the actual repayment itself. The Tribunal finds, in line with this general tendency, that a promise to meet the terms of the offer would have been sufficient to create a binding settlement agreement.

34. The Tribunal must then consider the related question whether the 22 January telex from Cayzer to HUA purporting to accept the offer constituted an unqualified acceptance of the terms of Option 1. It is a general rule of contract law that "[a]n acceptance, in order to bring about a contract, must unconditionally comply with the offer." Formation of Contracts at 125. The 22 January telex purporting to accept the offer provided as follows:

Yourtel 17.1.79 Dr Amirebrahimi of Bimeh Melli has agreed to option one of your telex and will cancel q share contract 1977/1978 and 1979 years from inception and refund all monies received stop Monies held by us at 2nd qtr 1978 will be returned immediately stop Please inform Highlands of companys decision

It is undisputed that the essential term of Option 1 was "provided all cash refunded immediately." The Tribunal notes that the first sentence of this telex purporting to accept Option 1 makes no explicit reference to the timing of the transfer of funds, stating merely that Bimeh Melli would "refund all monies received." On the other hand, the telex also states that Bimeh Melli "has agreed to option one." In the second sentence of the telex, Cayzer commits itself to immediate repayment of those funds it held for Bimeh Melli.

³I Formation of Contracts: A Study of the Common Core of Legal Systems 93 (R.B. Schlesinger ed. 1968) (considering American, Australian, Austrian, Canadian, Communist, English, French, German, Indian, Italian, New Zealand, (Footnote Continued)

35. The Tribunal notes that in its 25 January 1979 telex, which was in direct response to the purported acceptance, the Claimant did not question that the acceptance matched the terms of the offer and instead focused on whether Bimeh Melli would in fact be able to deliver on its promise to make immediate payment. HUA stated that it saw "no hope of them meeting option 1 requirement." The offeror has been referred to as the "master of his offer;" therefore, the fact that Highlands did not question that the acceptance was unqualified at the time, nor, in fact, in its pleadings before this Tribunal, also argues in favor of its validity. Against this background, the Tribunal finds that a fair reading of the 22 January telex is that it constituted an unqualified acceptance of Option 1.

36. Consequently, when Cayzer communicated Bimeh Melli's acceptance of Option 1, an accord came into being between Highlands and Bimeh Melli aimed at the settlement of all claims under the Treaty. Bimeh Melli could only discharge its duty under this accord by immediately refunding all monies received under the Treaty. The Tribunal must therefore investigate whether "all cash [was] refunded immediately." The record evidences the following.

37. On 19 January 1979 Cayzer informed HUA that "the monies held by us on this contract are U.S. dlrs 212,555 can dlrs 5,625." On 22 January 1979 Cayzer promised HUA that "monies held by us at 2nd qtr 1978 will be returned immediately" and on 29 January 1979 the Claimant received from Cayzer U.S.\$202,115 and Can. \$5,123.

(Footnote Continued)
Polish, South African, and Swiss law) (hereinafter
"Formation of Contracts").

38. The letter from Cayzer to Bimeh Melli of 21 February 1979 describes the next steps Bimeh Melli and Cayzer undertook with regard to the payment that remained to be made.

We acknowledge receipt of your letter no. 20202 dated the 28th January 1979, together with a cheque for US\$ 100,000, to be drawn on the Bank of Scotland, personally handed to us by your representative Mr. Akhtari on Tuesday, 13th February 1979. This cheque has been lodged with the bank and we are awaiting clearance, which should be in a few days. When clearance has been obtained the money due to the Highlands Insurance Company shall be put in a Special Suspense Deposit Account, designated "Reserved for Highlands Insurance Company"

Cayzer further informs Bimeh Melli in this letter that in addition to the check for U.S.\$100,000 it was already holding for Bimeh Melli an amount of U.S.\$48,540.92.

39. Cayzer's letter to Bimeh Melli of 22 February 1979 indicates that by that date the check for \$100,000 had cleared and the following amounts had been deposited in the special suspense deposit account: £46,445, U.S.\$61,646, and Can.\$6,650.⁴ Added to Cayzer's initial payment to Highlands of U.S.\$202,115 and Can.\$5,123, these amounts represent the sum payable under Option 1. In its 22 February letter Cayzer confirmed that "[t]hese amounts represent the balances due to Highlands Insurance Company from your company." Indeed, the Claimant has not contested that the total amount refunded was equivalent to the "all cash" referred to in Option 1.

⁴The Tribunal observes that the sum of these amounts is roughly equal to the sum of the U.S.\$100,000 check, the U.S.\$48,540.92 already held by Cayzer and the U.S.\$13,700.95 that Cayzer indicated in its 22 February 1979 letter as the balance due from Bimeh Melli to Cayzer. See supra para. 28. The Claimant has argued that the latter amount was not transferred to Highlands until September. However, the evidence presented, including a Statement of Account submitted by the Respondent, supports the conclusion that

(Footnote Continued)

40. Therefore, it appears that Highlands received about 57 percent of the amount due by Bimeh Melli on 29 January 1979, and that the remaining 43 percent became available not later than 22 February 1979. The Tribunal must now determine whether this satisfies the condition of immediate repayment laid down in Option 1. In making this difficult determination, the Tribunal gives special consideration to the following factors.

41. At the Hearing, the Claimant explained for the first time that it had made the settlement proposal to avoid having to include a debt in the financial reports that Highlands was under an obligation to submit periodically to the United States insurance regulatory authorities. The Claimant stated that, because payment by Bimeh Melli by 15 February 1979 would have enabled Highlands to avoid reporting the debt, that was the last date on which Bimeh Melli could have paid and still have met the immediacy condition of the settlement proposal. As Bimeh Melli did not complete its payment by that date, the Claimant contends that it did not meet the terms of the offer.

42. It cannot be disputed that Bimeh Melli wasted little time in instructing Cayzer to transfer the funds held by it and in dispatching a courier to deliver the check for U.S.\$100,000. In spite of these efforts, it took Bimeh Melli's representative until 12 or 13 February 1979 to hand over the check, which cleared by 22 February 1979. Bimeh Melli therefore completed its performance about five working days after the deadline introduced by the Claimant at the Hearing. The Tribunal finds, however, that if this date was of such vital importance to the Claimant as to cause performance by the Respondent beyond it -- even if only by a few

(Footnote Continued)

the U.S.\$13,700.95 was included in the sums transferred by Cayzer to the suspense account in February.

days -- to abrogate the settlement agreement and to revive the Treaty, Highlands could reasonably have been expected to notify Cayzer or Bimeh Melli at least once about this impending deadline.⁵ This is all the more so since Highlands was aware that Bimeh Melli insisted on settlement and that Bimeh Melli had already paid a substantial part of the amount due.

43. In these circumstances the Tribunal finds it reasonable to conclude that the actions undertaken by Bimeh Melli following its acceptance of Highlands' proposal complied with the terms of Option 1.

44. At the Hearing, on the basis of the text of Option 1, the Claimant advanced, again for the first time, the alternative argument that such compliance in any case could not operate to release Bimeh Melli from its obligations for the remaining period of the Treaty, i.e., 1979 and 1980. The record indicates, however, that this argument misinterprets the intent and purpose of the settlement proposal. Option 2 of the proposal states that, provided Bimeh Melli would meet certain conditions, Highlands was "prepared to accept them for 1979 contract." In the Tribunal's view, the structure and wording of Highlands' offer thus compel the conclusion that Option 1 was designed to cancel the Treaty altogether. This is confirmed by HUA's telexes of 25 and 29 January 1979, which establish a connection between the retraction of Option 1 and the continuation of Bimeh Melli's liability, stating, respectively, "Highlands withdrawing option 1 and

⁵The Tribunal also notes that on 16 February 1979 HUA telexed Cayzer concerning the placement of funds from the check in a suspense account. That telex, sent one day after the deadline, makes no reference to the failure of Bimeh Melli to meet the 15 February deadline.

considering contract still in operation" and "Highlands find position unacceptable regards option 1 and Melli considered still to be on risk."

45. In conclusion, the Tribunal finds that Bimeh Melli's fulfillment of the terms of the settlement proposal had the effect of cancelling the Treaty retroactively from inception and that, consequently, Bimeh Melli was released from its obligations under the Treaty. For this reason, Highlands' claim, which is based on the alleged breach of the Treaty by Bimeh Melli, must fail.

VI. AWARD

46. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

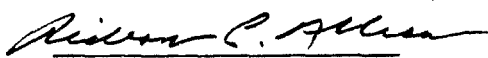
- a. The claim of HIGHLANDS INSURANCE COMPANY against BIMEH MELLI INSURANCE COMPANY and THE ISLAMIC REPUBLIC OF IRAN is dismissed.
- b. Each Party shall bear its own costs of arbitration.

Dated, The Hague

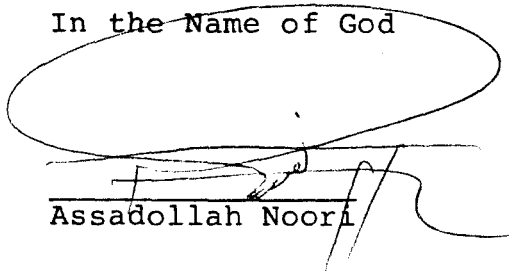
12 October 1990



Gaetano Arangio-Ruiz
Chairman
Chamber Three


Richard C. Allison

In the Name of God


Assadollah Noori