

ORIGINAL DOCUMENTS IN SAFE

Case No. 10812

Date of filing: 29. Aug 89

\*\* AWARD - Type of Award Final  
- Date of Award 29. Aug 89  
7 pages in English 8 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 \_\_\_\_\_  
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IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
شیت ثبت - FILED	
Date	29 AUG 1989
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CASE NO. 10812  
CHAMBER THREE  
AWARD NO. 432-10812-3

TELEDYNE INDUSTRIES, INCORPORATED,  
a claim of less than U.S.\$250,000 presented  
by THE UNITED STATES OF AMERICA,  
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,  
Respondent.

DUPLICATE  
ORIGINAL  
نسخه برابر اصل

AWARD

I. INTRODUCTION

1. The Claimant, TELEDYNE INDUSTRIES, INCORPORATED ("Teledyne"), is incorporated under the laws of the State of California. It has filed a claim against the Respondent THE ISLAMIC REPUBLIC OF IRAN ("Iran") on the basis of a contract concluded between Teledyne and the Iranian Air Force on 30 April 1978. The contract provided for the sale by Teledyne to the Iranian Air Force of certain aircraft testing equipment and spare parts, to be delivered over a period of fifteen months. Furthermore, Teledyne was to provide support services. Payment was to be made by way of irrevocable letter of credit upon shipment of the goods or rendering of the services.

2. The Claimant contends that it performed its contractual obligations until on or about 30 November 1979, when the Iranian Air Force, by its wrongful acts or omissions, breached the contract and prevented Teledyne from further performance. Teledyne seeks compensation of the losses which it allegedly has sustained as a result in the amount of U.S.\$247,519 and furthermore asks for interest and compensation of costs. The Respondent also seeks compensation of costs.

II. PROCEDURE

3. A Statement of Claim was filed on 19 January 1982. On 22 December 1982 the Claimant filed a Request for Interim Measures, explaining it had on 6 June 1982 received a summons from the Ministry of Justice of Iran to appear before Public Court No. 17 in Tehran on the previous day, 5 June 1982. Because the complaint in the Tehran court apparently sought recovery for alleged breaches of the same contract which is the subject of Teledyne's claim before the Tribunal, Teledyne requested that the Tribunal direct Iran to

dismiss its action in the Iranian court or, in the alternative, to stay that action until the Tribunal has ruled on the merits of the claim before it.

4. Pending reply by the Respondent to the Claimant's Request, the Tribunal, by Order of 9 September 1983, requested the Respondent to take all appropriate measures to ensure that the proceedings before the Public Court of Tehran be stayed until the Chamber decides on the Claimant's Request. On 11 October 1983 the Respondent filed a Reply to the Claimant's Request for Interim Measures. The Tribunal reiterated its above Order on 28 April 1986 and 5 September 1986.

5. Following several attempts by the Parties to settle their dispute, the Claimant on 28 October 1987 submitted a Request for Preliminary Determination as to Jurisdiction. The Respondent filed its Reply on 7 November 1988. Both submissions discuss the merits of the issue of the Tribunal's jurisdiction.

6. Noting that the Respondent concurs with the Claimant's Request, the Tribunal decides now to address the issue of its jurisdiction over the Claim as a preliminary matter.

III. JURISDICTION

A. Contentions of the Parties

7. The jurisdictional issue before the Tribunal arises out of the forum selection clause contained in the contract executed by the Parties on 30 April 1978. The clause reads as follows:

ARTICLE 20 - DISPUTES

The parties hereto agree that any disputes arising as a result of this Contract shall be settled between the

parties in an amicable manner. If, however, the parties cannot resolve any dispute between themselves, it is then agreed that final arbitration of the dispute will be carried out by an Iranian Court and the Farsi Translation shall prevail.

8. Article II, paragraph 1, of the Claims Settlement Declaration excludes from the Tribunal's jurisdiction "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position." The question is whether the above cited Article 20 is such a specific provision.

9. Teledyne argues that Article 20 provides for arbitration under the auspices of the Iranian courts. It contends that the reference in the clause to an Iranian court is simply a recognition that the courts may, in accordance with the procedure set out in Articles 632 through 637 of the Civil Procedure Code of Iran, exercise some judicial control over the arbitration. Citing Tribunal precedent, including Dresser Industries, Inc. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 9-466-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 280, the Claimant argues that such control does not deprive the arbitration of its character as a means of out-of-court settlement.

10. The Claimant further indicates that, in order to meet the exclusion standard of Article II, paragraph 1, of the Claims Settlement Declaration as interpreted by the Tribunal, a provision must unambiguously restrict jurisdiction to the courts of Iran. See Howard Needles Tammen and Bergendoff and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 3-68-FT, p. 4 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 248, 250. Teledyne argues that the reference to arbitration in Article

20 precludes a finding that the clause clearly and specifically vests jurisdiction solely with Iranian courts.

11. The Respondent contends that the Claimant's interpretation of the Iranian court's involvement as a form of arbitration is rebutted both by the text of Article 20 and by the legal function of the Iranian courts. The Respondent asserts that the word "arbitration" as used in the clause is synonymous with "settlement of dispute" and "judicial adjudication adopting final decision" and relies on CBA International Development Corporation and The Government of Iran, Award No. 115-928-3 (16 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 177.

B. The Tribunal's Decision

12. The Tribunal notes that the forum selection clause addressed in CBA International, supra, is, except for some immaterial differences of a typographical nature, identical to Article 20 of the Teledyne contract. As is the case with the Teledyne agreement, neither party to the CBA contract had any knowledge that a Persian text thereof was ever prepared. The Tribunal therefore based its decision on the English text of the clause, as it must also do in the present Case.

13. In CBA International the Tribunal initially noted that the use of the word "arbitration" in the clause at first sight gives rise to confusion. Based on the context in which it appears, however, the Tribunal found that the only reasonable interpretation of the clause was

that, failing amicable settlement, the Parties intended to submit any dispute arising under the Contract to an Iranian Court. To insist upon any other, more technical, interpretation of the word "arbitration" would introduce an ambiguity that otherwise would not exist, and deprive the whole Article of any sensible meaning and effect.

Id. pp. 6-7. The Tribunal therefore concluded that the clause satisfied with sufficient clarity the requirements of the exclusion provision contained in Article II, paragraph 1, of the Claims Settlement Declaration.

14. Focusing on the legal interpretation of Article 20, Teledyne's pleadings do not provide particulars about the circumstances under which the Parties opted for this clause. The Tribunal finds that the Claimant has failed to advance a reason why the Tribunal's ruling in CBA International should not be adhered to in the present Case. In view of the foregoing, the Tribunal holds that Article 20 of the Teledyne contract meets with sufficient clarity the requirements of the exclusion provision set out in Article II, paragraph 1, of the Claims Settlement Declaration.

15. As a consequence of its holding, the Tribunal need not further address the Claimant's Request for Interim Measures of 22 December 1982. The Tribunal therefore hereby vacates its Order of 9 September 1983, reiterated through its Orders of 28 April 1986 and 5 September 1986.

#### IV. AWARD

16. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The claim of TELEDYNE INDUSTRIES, INCORPORATED against THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction.
- b. The Tribunal's Order of 9 September 1983, reiterated by its Orders of 28 April 1986 and 5 September 1986, is hereby vacated.

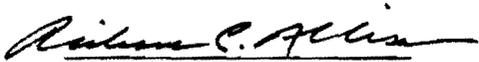
c. Each Party shall bear its own costs of arbitration.

Dated, The Hague  
29 August 1989

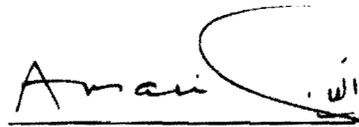


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Gaetano Arangio-Ruiz  
Chairman  
Chamber Three

In the Name of God



\_\_\_\_\_  
Richard C. Allison  
Concurring Opinion



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Parviz Ansari Moin