IRAN-UNITED STATES CLAIMS TRIBUNAL

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** AWARD - Type of Award _____

- Date of Award _____

_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____

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** CONCURRING OPINION of Mr R. C. Allison

- Date 29 Aug 89

5 pages in English 5 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

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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.

CONCURRING OPINION OF RICHARD C. ALLISON

1. I have concluded, albeit reluctantly, that, given the close similarity of the facts of this Case to those in CBA International Development Corp. and The Government of Iran,[1] considerations of consistency and respect for Tribunal precedent require that the Tribunal's ruling in that case be applied so as to dismiss this claim on jurisdictional grounds. I would be remiss, however, not to emphasize my view that the holding in CBA International should be narrowly limited so that the result reached therein, as

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[1] Award No. 115-928-3 (16 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 177.

here, will not be extended beyond the strict bounds of the facts presented in these two cases.

2. The forum selection clause with which we are presently concerned reads:

> 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.

3. In CBA International the Tribunal interpreted an identical (except for minor differences of a typographical nature) forum selection clause as intending to submit any dispute arising under the contract to an Iranian court. To reach that result it projected a most unusual definition on the word "arbitration" and concluded that the term was employed in the sense of "resolution" or "adjudication" rather than in its usual English sense. The Tribunal supported its conclusion by the fact that, although neither party was aware of a Persian version of the contract, both parties believed that the contract was initially prepared by the Iranian party. This enabled the Tribunal to transfer a meaning arguably associated with a Persian usage to an otherwise unambiguous English term.

4. In his dissent in CBA International, Judge Mosk posed three possible interpretations for the clause:

> First, as the word "arbitration" was used, it can mean that the resolution of the dispute would be by arbitration, subject to normal judicial controls. The use of the word "final" is consistent with this interpretation. Generally, there are no non-final judicial proceedings. There can, however, be a non-final arbitration, such as one which permits de novo judicial proceedings. Thus, the parties provided for a "final" arbitration proceeding.

> Second, the clause can refer to a judicial resolution, as suggested by the Tribunal. The use of the word "arbitration" is inconsistent with such an interpretation.
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> Third, the parties, by error, could have provided a clause which simply is unintelligible, just as was the clause discussed in Dresser Industries Inc. v. Iran, [Interlocutory Award No. ITL 9-466-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 280,] which clause referred disputes to the Supreme Court of Iran. Since such a reference was not legally possible, the Tribunal held that the clause did not divest it of jurisdiction. In the instant case, "arbitration" in the courts of Iran is likewise not possible.

Dissenting Opinion of Richard M. Mosk in CBA International, Award No. 115-928-3, pp. 4-5 (16 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 181, 183-84. Judge Mosk therefore concluded: "In light of these three possibilities, I cannot understand how the Tribunal could conclude that the clause in question, 'unambiguously restricts jurisdiction to the courts of Iran', thereby fulfilling the requirements of Article II, Paragraph 1, of the Claims Settlement Declaration with 'sufficient clarity.'" Id. p. 5. It would seem that under the standards the Tribunal is bound to apply in forum selection clause cases[2] Judge Mosk was correct in considering that the clause in question fails to unambiguously restrict jurisdiction to the courts of Iran. Moreover, there are strong reasons supporting Judge Mosk's

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[2]According to Article II, paragraph 1, of the Claims Settlement Declaration, "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" are excluded from the Tribunal's jurisdiction. This standard has been interpreted by the Full Tribunal to require that a forum selection clause "unambiguously restrict[] jurisdiction to the courts of Iran" for the claim to be excluded from the Tribunal's jurisdiction. See Howard Needles Tammen & Bergendoff and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 3-68-FT, pp. 3-4 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 248, 250.

first point, which was characterized by the majority in CBA International as "technical" and one which would "deprive the whole Article of any sensible meaning and effect." See CBA International, supra, p. 7. In my view, for the reasons set out below the concept of an arbitration's being "carried out by an Iranian Court" is in no way oxymoronic.

5. The Civil Procedure Code of Iran expressly provides for court-administered arbitration. Indeed, Articles 632 through 676 of the Code set out in great detail an arbitration procedure in which Iranian courts play a significant though limited role in the arbitration process. For instance, Article 635 provides that a competent court is to appoint an arbiter upon a party's request in the event the other party fails to make such an appointment. Articles 636 and 637 provide for court appointment of arbiters in other situations. The court is also required pursuant to Article 647 to draw up a notice including the names and particulars of the parties, the subject of the suit, the names of the arbiters and the period of arbitration and to serve such notice on the arbiters. Articles 664, 666, 667 and 668 provide for correction and nullification of arbitral awards by a court. Additionally, Article 672 provides that the court is to establish the arbiter's fee in cases where relief is not monetary or where determining the value of relief is not possible.[3] Thus, it is evident that the relevant Iranian legislation contemplates a rather active role for the courts in the initiation, administration and review of arbitral proceedings. Such a role is entirely consistent with the intention of the parties when they provided that "final arbitration of the dispute will be carried out by an Iranian Court."

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[3]Article 671 sets out the arbiter's fee in other circumstances.

6. In the absence, however, of any distinguishing characteristics in the text of the clause here under consideration or any evidence that the draftsman was not Iranian, I am compelled to concur in the present decision.

Richard C. Allison