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65

Case No. 410

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** AWARD - Type of Award _____
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
 - Date _____
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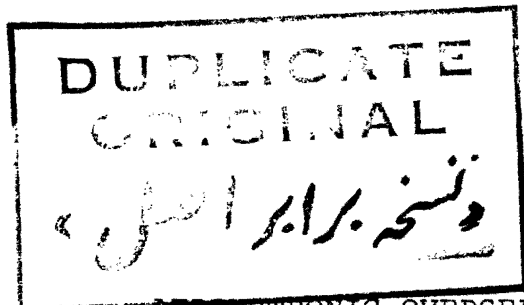
** SEPARATE OPINION of _____
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** DISSENTING OPINION of MR. ANSARI
 - Date 9 JULY 84
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IN THE NAME OF GOD



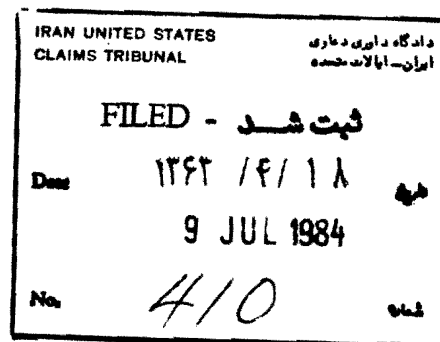
CASE NO. 410
CHAMBER THREE
AWARD NO. ITL-36-410-3

AERONUTRONIC OVERSEAS SERVICES,
INC., and HENKELS AND McCOY, INC.,

Claimants,

and

TELECOMMUNICATIONS COMPANY OF
IRAN, BANK MARKAZI IRAN and
THE GOVERNMENT OF IRAN,



Respondents.

DISSENTING OPINION OF PARVIZ ANSARI TO THE INTER-
LOCUTORY AWARD DECLARING JURISDICTION

On the basis of the following reasons, I dissent to the majority Decision, which holds that the Tribunal has jurisdiction over the claim brought by the Claimants.

I. ARTICLES OF THE CONTRACT IN QUESTION

Contract No. TDP. 038, concluded by the Claimants and Telecommunications Company of Iran (TCI) and dated 17 Aban 1356 (8 November 1977), includes articles relating to "the settlement of disputes" (Article 12) and to

"jurisdiction and service of process" (Article 13.20).
Paragraphs 1,2, and 3 of Article 12, provide that:

"ARTICLE XII - SETTLEMENT OF DISPUTES

12.1. All disputes or differences arising out of or resulting from this Agreement or its application or interpretation, which cannot be settled amicably, will be referred to a three-man Committee composed of one representative of TCI, one representative of Contractor and one representative to be nominated by the General Assembly of TCI. All members of the Committee shall be nominated within a period of fifteen (15) days from the date of notification that a request for a Committee hearing has been filed by TCI or Contractor. The Committee shall meet in Tehran, Iran.

12.2. If the dispute is not settled by the Committee or if a party refuses to accept the decision of the Committee, the dispute shall be referred to the competent courts of Iran.

12.3. The decision of the Committee, if accepted by the parties, or the decision of the courts of Iran, shall be final; judgement thereon may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the decision and an order of enforcement, as the case may be."

In light of Article II, paragraph 1 of the Claims Settlement Declaration, the above-cited contractual article ipso facto divests this Tribunal of jurisdiction. See: Interlocutory Award No. ITL2-51-FT, Part III, dated 5 November 1982 (Halliburton Company and IMCO Services (U.K.) Limited, and Doreen/IMCO and the Islamic Republic of Iran); also, the Order dated 18 November 1982 by Chamber One of the Tribunal in Case No.58 (G.T.E. and Telecommunications Company of Iran).

In the opinion of the majority, on the other hand, Article 13.20, cited below, which deals with jurisdiction and service of process, has given rise to ambiguity and stands in conflict with Article 12:

"13.20 Jurisdiction; Service of Process

Contractor agrees that any legal action or proceeding arising out of or relating to this Agreement may be instituted in any competent Iranian court. Contractor irrevocably submits to the jurisdiction of each such court in any action or proceeding. Contractor hereby irrevocably designates, appoints and empowers its Project General Manager to receive for it, and on its behalf, service of process in Iran in any action or proceeding with respect to this Agreement. Any failure of Contractor's Project General Manager to give notice to Contractor of such service of process shall not impair or affect the validity of such service or of any judgement rendered in any action or proceeding based thereon. Contractor further irrevocably consents to service of process upon it in any action or proceeding by the delivery in accordance with Paragraph 13.21 hereof with the exception of Item C thereof of certified copies of such process to Contractor at the address provided for notices to Contractor under this Agreement. The foregoing, however, shall not limit the right of TCI to bring any legal action or proceeding or to obtain execution of judgement in any appropriate jurisdiction."

In its Award, the majority holds that as a result of Article 13.20, that Article and the article relating to settlement of disputes (Article 12) are mutually inconsistent, and that as a result the Contract is ambiguous with respect to its settlement of disputes clause. In the view of the majority, this ambiguity derives from the fact that pursuant to Article 13.20, in fine, TCI has the right to bring actions against the Claimant in any other jurisdiction which it deems appropriate, in addition to the Iranian courts, and that in this respect, the situation is similar to that in the Halliburton Case (Part II of that Award).

II. REASONING

In my opinion, the majority's reasoning in this respect, and its analogy to Part II of the Interlocutory Award in the Halliburton Case, are invalid. In Part II of the latter Award, which concerns a loan agreement, the maker of the promissory note has submitted to the jurisdiction of the Iranian courts, and in the view of the Full Tribunal majority,

"The text of the instant clause in the promissory notes makes it clear that it is only the maker of the note who submits to the jurisdiction of the Iranian courts. Thus, the borrower has agreed to waive the objections against the jurisdiction of these courts that it otherwise might have invoked, but the clause should not be understood so as to deprive the lender of its right to sue the maker of the note before any competent court outside Iran. Therefore the clause does not meet the requirements in Article II of the Claims Settlement Declaration."

In the aforementioned Award, the majority holds that because only one party to the contract has submitted to the jurisdiction of the Iranian courts, the relevant clause does not meet the requirements of Article II, paragraph 1 of the Claims Settlement Declaration. However, the Decision by the Full Tribunal cannot be compared or applied to the present case, because in the latter instance, according to the express language of the settlement of disputes clause (Article 12.1 and 12.2), both parties have submitted to the jurisdiction of the Iranian courts, and the article relating to jurisdiction and service of process (Article 13.20) gives further expression of their submission to said jurisdiction in addition to specifying the method of serving

notice in the course of proceedings. Contrary to the opinion of the majority, Article 13.20, in fine, does not confer any additional right upon TCI to institute actions, in the sense that in reality Article 13.20, in fine, merely reiterates the provisions of Article 12.3, concerning enforcement of an award and application for a judicial order of enforcement or requests for interim measures, such as a request for a temporary injunction and the like.

III. SUPPORTING CIRCUMSTANTIAL EVIDENCE;
METHOD OF INTERPRETATION

This is, I believe, the logical conclusion to be drawn from the said two Articles taken in conjunction, is supported by other circumstantial evidence with which the majority failed to make itself familiar.

One such circumstantial evidence consists of the fact that on 23 December 1982, the Claimant filed a Statement of Claim in the court of Northern District of California under No. C 82 6910 SAW against TCI et al, wherein it stated in Paragraph 29 thereof:

"29. On January 18, 1982, AOSI filed a Statement of Claim with the Tribunal against TCI, Iran and Bank Markazi setting forth claims arising out of the Contract. On November 5, 1982, the Tribunal issued interlocutory decisions in certain cases in which it determined that it does not have jurisdiction over claims arising under contracts arguably similar to the Contract. The Tribunal may also determine that it does not have jurisdiction over claims by AOSI arising out of the Contract."

By virtue of Article VII, paragraph 2, in fine, of the Claims Settlement Declaration, claims referred to this

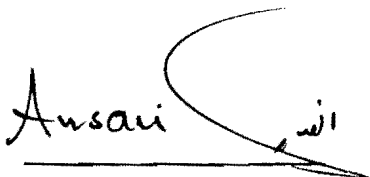
Tribunal "shall, as of the date of filing of such claims, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court." Nevertheless, months after having brought its claim before this Tribunal, and after nine Interlocutory Awards had been issued, the Claimant states that the Tribunal lacks jurisdiction over its claim and as a result it has brought its claim before the court of Northern District of California, and it has further deemed its contract to resemble contracts over which the Tribunal had declared its lack of jurisdiction. By this recent act, the Claimant has given color to the presumption that the Tribunal does not have jurisdiction over its claim, and such evidence aliunde must necessarily be entertained by the Tribunal. The majority's method of interpreting the articles of the Contract is also not the conventional method for interpreting contracts. As a result of this method, all of the provisions of Articles 12 and 13.20 have been set aside and nullified. The rational method of interpreting a contract, and of discovering and following up the mutual intent of the parties thereto, is to bring together its apparently inconsistent articles and correlate their provisions: "So far as possible, it is better to join than to reject." Where several articles may appear to be in conflict or in divergence, even their rubrics or titles are of assistance in determining the scope of each article and its provisions-- a rubro ad nigrum.

Furthermore, the jurisdiction of this Tribunal is exceptional and restricted, in comparison with that of the courts of a country, and the Tribunal may not in any manner extend its limited jurisdiction or add to the instances included within its jurisdiction. The exceptional and limited jurisdiction of this Tribunal has been attested to by numerous awards. See: the Full Tribunal's Decision of 21

December 1981 in Case No.A-2; and Award No. 25-71-1 dated 22 February 1983 (Lillian B. Grimm and The Government of the Islamic Republic of Iran).

IV. CONCLUSION

From the foregoing, I hold that by virtue of Article II, paragraph 1 of the Claims Settlement Declaration, the Tribunal lacks jurisdiction over the claim brought by the present Claimants, and that the settlement of disputes clause contained in the Contract at issue precludes jurisdiction of this Tribunal.


Parviz Ansari