NEW TRENDS – NEW ACTORS IN IRANIAN LAW RELATING TO ARBITRATION*

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I. INTRODUCTION

Generally speaking, until fairly recently the attitude of most of the developing world could at best be characterized as "indifference" and at worst as "distrust," or even "suspicion" with respect to international commercial arbitration. This reaction went as far as leveling the charge that "international commercial arbitration was designed to promote European trading interests."[1] Quite recently, a major developing world forum, the Afro-Asian Legal Consultative Committee (AALCC) indicated that the rules of existing arbitral institutions were weighted against the interests of developing countries.[2]

The developing world's involvement and experience in the International arbitral practice of the sixties and seventies such as the famous oil nationalisation cases, did not allay its distrust in the institution of arbitration and inspire greater confidence. It is well known how this attitude of distrust or even suspicion spread to many parts of the world from the oil producing countries of the Middle East, to China, Africa and Latin America.

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[1] J. Paulsson, Third World Participation in International Investment Arbitration, 2 ICSID REV. 19 (1987). See also M. Somarajah, The UNCITRAL Model Law: A Third World Viewpoint, 6 J. INT. ARB. 4 7-20 (1989)

[2] AALCC, Report of the Seventeenth, Eighteenth and Nineteenth Sessions held in Kuala Lumpur (1976), Baghdad (1977) and Doha (1978), 131-138.

In this article I will attempt to examine the developments in this attitude with respect to my own country, Iran, and see if there is evidence that this attitude might be changing at the beginning of the 21st century, as there is an increasing opening towards arbitration across the major parts of the developing world in terms of the harmonization of laws and rules and the establishment of major arbitral institutions. I will then outline the prospects for the future, as well as the expectations, bearing in mind that these expectations could belong commonly to the developing world as a whole.

II. THE CURRENT STATE OF ARBITRATION IN IRAN

1. Background

In Iran, until the beginning of the 1980's, international commercial arbitration did not figure as a serious phenomenon. Iranian attitude towards domestic arbitration and international arbitration could at best be described as indifference towards the former and distrust towards the latter. In terms of legislative history, the rather extensive provisions on "Arbitration" in the old Civil Procedure Code of Iran dated back to 1939.

In the said Civil Procedure Code of 1939 (hereinafter referred to as the old CPC), Chapter Eight (Articles 632-676) was devoted to arbitration.[3] These provisions were primarily designed for the regulation of domestic arbitration. However, because there was no distinction between domestic arbitration and international arbitration, the provisions could also apply to international arbitration. Such application would nonetheless encounter difficulties with respect to the regulation of international arbitration, as the principles which have come to underlie the present-day international commercial arbitration were not necessarily taken into account.

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[3] It is not intended that the existing arbitration laws of Iran be dicussed here. Only a brief reference is made in order to explain its main features and shortcomings and to set the background which resulted in the adoption of the new Act.

Publications in English on the existing arbitration provisions are rather old and include: FOUVAD ROUHANI, INTERNATIONAL COMMERCIAL ARBITRATION, (Iran); *Union Internationale des Avocats*, III THE HAGUE, 47-71 (1965); David Suratgar, *Arbitration in the Iranian Legal System*, 20 ARBITRATION JOURNAL, 143-156 (1965); Jalal Abdoh, *National Report on Iran*, IV YEARBOOK COMMERCIAL ARBITRATION, 81-103 (1979).

The old CPC's provisions were quite detailed with respect to the regulation of domestic arbitration. Provision was made for the arbitrator's autonomy in determining the procedure and deciding the dispute. There also appeared, by way of inference, some freedom in respect of the law to be applied to the substance. Inspite of these, it cannot be said that the provisions of the CPC were able to create an ideal environment for the conduct of arbitration.[4] The following shortcomings can, *inter alia*, be identified.

- There was no clear recognition of institutional arbitration.[5] Thus, it was not possible to assign functions regarding appointment of arbitrators, decision-making on any challenge against such appointment, and removal of arbitrators, and as a whole, the administration of arbitration to an arbitration institution.

- The extent of validity of the arbitration agreement in terms of its form, though not restricted, was obscure.

- The enforceability of the arbitration agreement in terms of requiring the court to refrain from a concurrent exercise of jurisdiction on the merits was not clearly expressed.

- The extent of court intervention was not clearly delimited.

- The concept of independence and impartiality of the party-appointed arbitrator was not very clearly expressed and no provision for the challenge of arbitrators on grounds of lack of independence and impartiality was made under the CPC.

- The power of the arbitral tribunal to determine its own jurisdiction and to decide on the validity of the arbitration agreement was not only unexpressed but also remained in a state of serious doubt.

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[4] This is still a major question in many legal systems and not necessarily peculiar to Iran. Moreover, it needs to be studied whether it was the law or the judicial practice which was the main cause of the problem.

[5] Effectively there were no arbitration institutions in Iran. Fragmentary legislations such as the 1977 Act on the Amendment of Certain Laws of the Judiciary, envisaged the establishment of a form of commercial boards within the chambers of commerce of every city, without, however, specifying in any detail their rules of procedure and functions. This provision was not capable of enabling the creation of viable arbitration institutions, and did not result in the creation of any meaningful institution.

- The concept of autonomy of the arbitration clause vis-à-vis the main contract was not recognized.

- There was no provision for the arbitral tribunal to order interim measures.

- The extent of the arbitral tribunal's power to conduct a full scale examination of the case by all evidentiary means, including the hearing of witnesses and the determination of the language of the proceedings, was not clearly expressed.

- The power of the arbitral tribunal to determine and apply the substantive law which it saw appropriate was not well established, although, perhaps, there were implied indications to infer such a power.

In any case, and despite rather detailed arbitration provisions in Iranian laws, no serious use was made of arbitration domestically or internationally in the resolution of disputes. Arbitration as a topic was not seriously taught in the law schools. I personally recall that as a law student in the mid-seventies, the provisions of the CPC on Arbitration were almost bypassed when civil litigation or civil procedure was taught in the law schools. Nor was the topic of arbitration seriously disseminated in any other manner within the legal profession or in the business community. There were no serious, in fact, no arbitral institutions, engaged in the business of promoting or training or educating arbitration.

With respect to international arbitration or arbitration involving foreign parties or foreign elements the position was quite similar. Already the Chapter on arbitration of the old CPC contained a provision quite apprehensive of arbitration with non-Iranian parties. Article 633 of the old CPC attempted to protect Iranian parties vis-à-vis non-Iranian parties against an arbitration panel exclusively composed of the nationality of the other party.[6]

[6] The effect of this provisions is that, until the dispute occurred, the Iranian party could not bind itself to submit the dispute to arbitration by an arbitrator, or arbitrators, or a board which had the same nationality as the other party to the dispute. Any agreement to the contrary would be void in the respective part. Surprisingly, the provision of Article 633 of the old CPC is now repeated in Article 11(1) of the new International Commercial Arbitration Act and Article 456 of the new CPC.

In practice, although arbitral clauses were inserted in investment/trade agreements if insisted upon by the foreign party, the official policy was to provide for the jurisdiction of Iranian courts. Apart from the famous *Sapphire* Arbitration[7] in the 1960's involving the National Iranian Oil Company (NIOC), Iranian entities were not involved in any major international arbitral cases. Iranian apprehension with arbitration went as far as an enactment of a Directive by the Government *in effect* prohibiting public entities from entering into arbitration without prior permission of the Government. This feeling towards arbitration was echoed in Article 139 of the Constitution of the Islamic Republic of Iran adopted in 1979.[8]

2. Recent Developments

As there is evidence at the beginning of the 21st century that the attitude of the developing world towards international commercial arbitration is changing, there are signs that Iran's reaction towards arbitration is also becoming positive. Arbitral institutions in Latin America, China, Africa and Asia are developing. For this, national laws have been introduced to accommodate this change. There are now major international arbitration centres in China, Latin America, Cairo, Kuala Lumpur and many other places in the developing world. Institutions such as

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[7] Sapphire International Petroleum Ltd. v. The National Iranian Oil Company, 13 I.C.L.Q. 1011 (1964). *Sapphire* initiated arbitration proceedings against the National Iranian Oil Company (NIOC). NIOC refused to participate in the arbitration. The arbitrator, a Swiss Federal Judge, decided the case and awarded against the NIOC. One of the peculiar features of the Sapphire Award was the exclusion of the application of Iranian law by the arbitrator despite all indications to the contrary, on the following justification:

> Under the present agreement, the foreign company was bringing financial and technical assistance to Iran, which involved it in investments, responsibilities and considerable risks. It therefore seems normal that they should be protected against any legislative changes which might alter the character of the contract and that they should be assured of some legal security. This would not be guaranteed to them by the outright application of Iranian law, which it is within the power of the Iranian State to change. [13 I.C.L.Q. 1012 (1964).]

NIOC refused to pay the award and obtained a judgement from a Tehran court nullifying the *Sapphire* Award. Later the parties reached a settlement under which NIOC only agreed to release Sapphire's good performance guarantees.

[8] Article 139 of the Constitution of the Islamic Republic of Iran, which is repeated in Article 457 of the new CPC, provides that the referral to arbitration of disputes relating to public and government property requires the approval of the Cabinet of Ministers and the notification of the Parliament, and where the other party to the dispute is non-Iranian or the subject of the dispute is regarded by law as serious, the approval of the Parliament is necessary.

CIETAC claim to handle more international disputes than any other arbitral institution, hearing cases from more than 40 different countries.[9] The extent to which the proliferation of arbitral centres is conducive to the uniformity of international arbitral practice is another issue. However, this level of activity is a sign of increased awareness of the role of arbitration in the developing world.

Iran's involvement in international arbitration in the past twenty years or so has also been extensive and unprecedented by all accounts. Paradoxically, it was the inward looking and religiously oriented Islamic government in Iran and its public entities which had the most extensive involvement in international arbitration in the past two decades. Iran has been a party to one of the "most important multi-claim arbitrations in recent history,"[10] namely, the Iran-United States Claims Tribunal, which has been working for almost two decades.

In the wake of the settlement of the American Embassy crisis, Iran and the United States agreed to set up an arbitration tribunal, the Iran-United States Claims Tribunal, to resolve outstanding claims between the two Countries.[11] The Tribunal was established in 1981. It consists of nine arbitrators, three chosen by Iran, three by the United States and three by mutual agreement of the Iranian and United States arbitrators.[12] Claims may be decided by the Full Tribunal or by a

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[9] See Russell Thirgood, *A Critique of Foreign Arbitration in China*, 17 J. INT. ARB. 3, 89-101 (2000); also John Mo, *Probing the Uniformity of Arbitration System in the PRC*, 17 J. INT. ARB. 3, 1-54 (2000).

[10] The Iran-United States Claims Tribunal 1981-1983, vii (R. Lillich ed., Virginia University Press, 1984). See also R. Khan, The Iran-United States Claims Tribunal-Controversies, Cases and Contributions, (Martinus Nijhoff Publishers, 1990); and Westberg, International Transactions and Claims Involving Government Parties- Case Law of the Iran-United States Claims Tribunal, (International Law Institute, 1991). Also, J. Seifi, *Procedural Remedies Against Awards of Iran-United States Claims Tribunal*, 8(1) Arbitration International 41-72 (1992); J. Seifi, *State Responsibility for failure to Enforce Iran-United States Claims Tribunal Awards by the Respective National Courts*, 16 J. Int. Arb. 3 5-28 (1999).

[11] The solution was reached through the Algiers Accords on January 19, 1981. The Accords are made up of two declarations and various technical arrangements: The Declaration of the Government of the Democratic and Popular Republic of Algeria (Relating to the Commitments made by Iran and the United States) (The General Declaration, GD) 20 ILM 223; Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria (The Undertakings), 20 ILM 229; Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republis of Iran (The Claims Settlement Declaration, CSD) 20 ILM 230.

[12] CSD, art. III(1).

chamber of three members consisting of one Iranian, one American and one mutually appointed arbitrator.[13] Generally, the Tribunal conducts its work in chambers of three. The full panel of nine arbitrators decides only interpretative disputes, and certain important cases.[14]

The framework of the Tribunal's jurisdiction is laid down in the Claims Settlement Declaration (CSD).[15] Decisions are to be made on the "basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable...."[16] The rules of procedure of the Tribunal are the UNCITRAL Arbitration Rules "except to the extent modified by the Parties or by the Tribunal...."[17] The Tribunal Rules, as modified by the Tribunal, have been adopted as the Final Tribunal Rules of Procedure (Tribunal Rules).[18]

As a general rule, "all decisions and awards of the Tribunal shall be final and binding"[19] and the parties are under an obligation to "carry out the award without delay."[20] Further, the CSD provides that "[a]ny award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws."[21]

Lessons from the Iran-US Tribunal are mixed and conflicting. A distinguished Indian scholar, Professor Khan, has drawn a lesson of cautiousness from the experience of the Iran-US Tribunal for the scholarship and decision-makers of whole developing world. He advises that the Third World scholarship

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[13] Id.

[14] Presidential Order No. 1, Annex X to 1992/93 Annual Report of the Tribunal.

[15] CSD, art. II(1), II(2), and II(3).

[16] CSD, art. V.

[17] CSD, art. III(2).

[18] 2 Iran-US Cl. Trib. Rep 405.

[19] CSD, art. IV(1). Also, Tribunal Rules , art. 32 (2).

[20] Article 32(2) of the Tribunal Rules provides that "[T]he award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay."

[21] CSD, art. IV(3). It is doubtful if a bilateral treaty such as the Algiers Declarations could create legal obligation for third States to enforce the awards of the Iran-United States Claims Tribunal. This provision of the CSD should primarily be seen as obligating the courts of the United States and Iran to enforce the awards of the Tribunal. Nevertheless, the courts of third states, apart from the obligations they may be thought to have under other multilateral treaties, such as the New York Convention of 1958, have as a matter of international comity felt it necessary to recognise the awards of the tribunal. For further details in this regard see, H. Fox, *States and Undertaking to Arbitrate*, 37 ICLQ 24-29 (1988).

and decision-makers who seem to be easily persuaded by the prestige of international arbitration should be aware of its pitfalls, as, he maintains, arbitration between a Third World country and a developed nation could be inherently hazardous, because of the unequal bargaining positions and the former's lack of expertise.[22] Yet the same commentator cannot help acknowledging the significance of resorting to arbitration between Iran and United States for the resolution of outstanding disputes, as he agrees that "never before have two powers so hostile to each other resorted to such a peaceful procedure for settlement of their disputes."[23]

Indeed, despite occasional tantrums, the Tribunal has continued to work for almost two decades and despite conflicting assessment of the Tribunal's record and contribution, it has served as a useful forum for the resolution of the very many outstanding disputes. Its decisions constitute a voluminous precedent with regard to many issues in the field of arbitration such as contract law, conditions for a lawful expropriation, and dual nationality. Indeed, given the level of distance or even hostility between the two governments, the mere fact of submission of disputes to arbitration speaks for the valuable role of this particular dispute settlement mechanism.

Iran's involvement in international arbitration in the recent years was not limited to the Iran-United States Claims Tribunal. In the last two decades, Iranian parties, mostly from the public and occasionally the private sector, have experienced arbitrating as a claimant or respondent with a variety of parties mostly from European countries. This experience, although not having fully met expectations, has helped increase the country's understanding of the environment in which international commercial arbitration operates.

3. New Legislation on Arbitration

Most recently, Iranian laws have shown a renewed opening and a fresh confidence towards arbitration. It is possible that Iran's experience with numerous arbitrations with foreign parties, as well as the need to update arbitration regulations in line with requirements of present-day international commerce and the modern theory and practice of international arbitration were among the main reasons persuading Iranian authorities to enact new legislation on international

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[22] R. KAN, *op. cit.* note 10 at 258.

[23] *Id.*, at x.

commercial arbitration. The new International Commercial Arbitration Act of Iran, which was enacted and became effective in September 1997, will hopefully provide a neutral environment for the arbitration of international commercial disputes.[24]

The new Act is modeled on the UNCITRAL Model Law of 1985 in many respects, although there are some differences as well. Its enactment marked a distinction between domestic arbitration, to be regulated by the CPC,[25] and international arbitration, to be regulated under this new act. It applies to arbitration of disputes in international commercial relationships,[26] with a broad scope of the kind intended under the UNCITRAL Model Law, and where at least one of the parties to the arbitration agreement is not an Iranian national.[27]

The new Act contains major improvements with respect to the then existing CPC provisions. The following are notable:

- There is now a specific focus on international commercial arbitration.
- There is broad recognition of the validity of arbitral agreements in relation to its form.[28]
- There is a good deal of procedural autonomy for the parties and the arbitral tribunal.[29]
- There is a clear recognition of arbitration under the auspices of an arbitral institution.[30]
- The enforceability of the arbitral agreement has been clarified.[31]
- There is greater emphasis on the impartiality of all arbitrators, regardless of their mode of selection.[32]

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[24] See J. Seifi, The New International Commercial Arbitration Act of Iran - Towards Harmony with the UNCITRAL Model Law, 15 J. INT. ARB. 2 5-35 (1998).

[25] International Commercial Arbitration Act of Iran , art. 36(1).

[26] *Id.*, art. 2(1).

[27] *Id.*, art. 1(B).

[28] *Id.*, art. 7.

[29] *Id.*, art. 19.

[30] *Id.*, art. 6(2).

[31] *Id.*, art. 8.

[32] *Id.*, art. 12.

- The power of the arbitral tribunal to determine its own jurisdiction and the validity of the arbitral agreement has been recognized.[33]

- The power of the arbitral tribunal to determine the law applicable to the substance has been broadened.[34]

- The finality, recognition and enforcement of the award, though already recognized under the existing laws, has received greater emphasis.[35]

Interestingly, the legislature has taken steps to improve, to some extent, the regulation of domestic arbitration, along with the enactment of the new Civil Procedure Code in April 2000. These new CPC provisions on Arbitration[36] do not override the provisions of the International Commercial Arbitration Act, as the latter has a specific sphere of application. The new CPC contains improvements in terms of drafting and inclusion of some new provisions. It does, however, remain within the style of thinking of a domestic arbitration, already existing in the old CPC. The following matters in the new CPC are notable, in particular:

- The confirmation of the possibility of referring future disputes to arbitration.[37]

- The prohibition of resignation or non-participation of an arbitrator without cause,[38] and the reconfirmation of the authority of a truncated tribunal to decide.[39]

- Independence and impartiality of all arbitrators regardless of their mode of appointment.[40]

- The power of the arbitral tribunal to ask for further explanations from the parties and to appoint experts,[41] and to ascertain the

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[33] *Id.*, art. 16(1).
[34] *Id.*, art. 27.
[35] *Id.*, art. 33-35. (Jamal Seifi, *op. cit.* note 24 at 8).
[36] CPC of April 2000, Chapter 7 (Art. 454-501).
[37] *Id.*, Art. 455.
[38] *Id.*, Art. 473.
[39] *Id.*, Art. 474 and 484.
[40] *Id.*, Art. 469.
[41] *Id.*, Art. 476.

authenticity of a document alleged to be forged, if not pending in a criminal proceeding.[42]

- The articulation of the grounds for nullification of the award.[43]

- The liability of the arbitrator for damages arising from his misrepresentation, fraud and fault in the course of arbitration.[44]

III. TRENDS FOR THE FUTURE

1. Hopes on the New Legislation

The new Act is a great step forward in updating Iranian arbitration laws and adjusting them to the requirements of international arbitration. Indeed, it provides a flexible, and to a large extent, an autonomous mechanism for the arbitration of international commercial disputes. Briefly, the Act's significance lies in giving a new momentum and fresh attention to arbitration with respect to commercial disputes in the Iranian legal system. Such momentum can be sustained by the development of viable arbitration institutions as well as by the enthusiasm of academics and practitioners alike.

Generally, party autonomy is the prevalent feature of most of the provisions of the Act, including the procedure.[45] However, a tribunal sitting in Iran, as elsewhere, would have to be mindful of the public policy rules of the seat. In terms of the procedure, the public policy rules are mostly contained in the Act and are relatively articulate. For instance, violation of the fundamental rules of procedure such as equal treatment of the parties, or serious irregularities in the notifications would be a violation of public policy rules of the seat.

However, with respect to the substance, there is a need to develop a clearer concept of public policy in the context of international commercial relationships in Iranian law. It can be said, in hindsight however, that the principles of Islamic Sharia would be the central part of Iranian public policy rules. Fortunately, after some *de facto* controversy in the past years, Iranian laws are

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[42] *Id.*, Art. 478-479.
[43] *Id.*, Art. 489.
[44] *Id.*, Art. 501.
[45] *Id.*, Art. 19

almost back again in accepting formally such issues as the award of costs and interest. Articles 519 and 522 of the new CPC have, respectively, expressly recognised and reconfirmed award of costs and to a considerable extent award of interest. Further, the new CPC has given full priority to the agreement of parties with respect to the form and amount of damages.[46]

2. Supplementing the Arbitral Machinery

a. The Need for a Comprehensive Legislative Framework

Iranian laws still contain some provisions which, though not serious obstacles, may still cause some confusion.

(i) For instance, Article 633 of the 1939 CPC contained a prohibition which provided that until the dispute has occurred, the Iranian party cannot bind itself to submit the dispute to arbitration by an arbitrator, or arbitrators, or a board which has the same nationality as the other party to the dispute. Any agreement to the contrary would be void in the respective part. This provision is now inserted into Article 11(1) of the International Commercial Arbitration Act and Article 456 of the new CPC. It intends to protect an Iranian party against a prior submission to the jurisdiction of a tribunal, whether composed of a sole arbitrator or a panel of arbitrators, or a board, perhaps even predominantly, having the same nationality as the non-Iranian party to the dispute.

The above provision should not be read to extend to any panel, which may naturally include an arbitrator of the nationality of the non-Iranian party. Arbitral precedents have confirmed this. Recently, an International Chamber of Commerce Arbitral Tribunal rejected arguments by non-Iranian Respondents who were claiming that because of the provision of Article 633 of the of CPC, the arbitral clause referring the dispute to the ICC arbitration was invalid. The Tribunal held that Article 633 only prohibited referrals of future disputes to such tribunals that were exclusively, or at least predominantly, composed of the arbitrators having the same nationality as the other party.[47] In other words, in view of the provisions of Article 2(6) of the ICC Rules of 1988, an ICC arbitral clause is not a violation of the above-mentioned prohibition in Iranian laws.

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[46] *Id.*, Art. 515.

[47] Intl. Comm. Arb., Partial Award (1999), [Unpublished].

(ii) Article 139 of the Constitution of the Islamic Republic of Iran, which is now echoed in Article 457 of the new CPC, provides that the referral to arbitration of disputes relating to public and government property requires the approval of the Cabinet of Ministers and the notification of the Parliament, and where the other party to the dispute is non-Iranian or the subject of the dispute is regarded by law as serious, the approval of the Parliament is necessary.

Interestingly, it is now settled that:

Article 139 (and Article 458 of the CPC) has no retroactive effect.

The mere shareholding of the government or a government-owned or controlled entity in a company does not bring it within the scope of application of Article 139.

In view of the enormity of arbitral agreements signed every day, even today government entities would normally enter into contracts and transactions which include an arbitration clause without necessarily observing strictly the procedures of Article 139. The public entities' quite *unofficial* interpretation is that Article 139 is a prohibition *rationae materiae* and that an arbitral clause signed before the occurrence of a dispute does not necessarily implicate public or government property, and rather when a dispute has materialized and relates to public property the procedure of Article 139 should be observed.

The Article 139 argument occupied a prominent place in some of the important arbitration cases of past two decades with foreign parties. Iranian or non-Iranian parties relied on Article 139 to avoid arbitration, however, with rare success. Arbitral tribunals sitting in Europe have not interpreted non-compliance with Article 139 requirements as a bar to the valid formation of the arbitral agreement. For similar reasons, international arbitral tribunals have rejected the arguments of the non-Iranian party that wanted to avoid arbitration based on Article 139.

(iii) Iran is not a party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Codified Iranian laws also have no express provisions regarding the enforcement of foreign arbitral awards. There are, however, provisions in Iranian laws regarding the enforcement of foreign judgments. This does not place the recognition and enforcement of foreign arbitral awards on a par with a state that is a party to the New York Convention. However, despite all these, recognition and enforcement of foreign

arbitral awards is not excluded and would be possible in Iranian law.[48] There are recorded instances of enforcement by Iranian courts of foreign arbitral awards on this basis. Recently, a Tehran court ordered the enforcement of an arbitral award rendered in Switzerland, in a decision rendered in May 1995.[49] Also, in a case decided some time ago a chamber of the Supreme Court of Iran extended the application of the treaty provision between Iran and Germany, providing for the enforcement of arbitral awards on the basis of the New York Convention criteria, to an award made in England.[50] This was regarded at the time as a voluntary reliance by the Iranian judiciary on the New York Convention criteria.[51]

However, all these cannot be said to place the recognition and enforcement of foreign arbitral awards in an environment provided for in the New York Convention. Thus, Iran's membership of the New York Convention is a must. I understand that a bill is being prepared by the government for submission to the Iranian Parliament for accession to the New York Convention, and I hope it will successfully be approved, as the government is at the same time attempting to update the laws relating to foreign investment. The new International Commercial Arbitration Act seems to have been a prelude to accession to the New York Convention.

b. Arbitral Institutions, Training and Education

Attempts are under way to establish a Tehran Regional Arbitration Centre (TRAC). As a result of the Agreement of 3 May 1997, between Iran and the AALCC, an understanding is in place to set up an Arbitration Centre in Tehran with the aim of promoting international commercial arbitration in the region and with the task of organising international arbitration under the auspices of the Centre, or assisting with *ad hoc* arbitrations.[52] It is hoped that the establishment of the TRAC will help the promotion of arbitration in the region and settlement of disputes.[53]

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[48] See J. Abdoh, *National Report on Iran*, IV YEARBOOK COMMERCIAL ARBITRATION 101-103 (1979).

[49] Order of May 15, 1995, No. 476/73/3, [Unpublished].

[50] Decision No. 1478 dated 27 December 1973, as reported in Laya Juneidi, "*The Law Applicable in International Commercial Arbitration* (in Persian), 165-166, Tehran (1997).

[51] *Id.*

[52] See M. Mashkour, Creating and Friendly Environment for International Arbitration in Iran, 17 J. INT. ARB. 2 79-83 (2000).

[53] Unfortunately, the approval of the Bill establishing TRAC suffered a temporary set back when the previous Parliament refused to approve the Bill. This shows the difficulty faced

There are also arbitration associations such as the Iranian Arbitration Association involved in the process of promotion of international arbitration, whose activites include the organization of seminars and conferences. International commercial arbitration has been introduced into the curricula of the postgraduate law courses and a good deal of promotion and dissemination of the concept of arbitration is taking place through academic education.

c. Strengthening and Specializing the Role of the Supporting Judge

The drive towards the promotion of international arbitration is mostly lead by the academic community and the private legal profession in Iran. An effective arbitral regime is in need of not only strong arbitration-friendly judiciary but also a judiciary specialized in the details of arbitration. The full achievement of this aim needs further promotional action as well as the specialization of the judiciary in terms of designating special courts and judges familiar with arbitration matters.

IV. PROSPECTS AND EXPECTATIONS

In assessing the prospects of arbitration in the developing world one should distinguish between expectations from the arbitration community at large and the action needed on the part of the former to move ahead. In terms of the prospects, I feel that attempts for the development of arbitration in Iran are reflective of the wider trends in the developing world and are thus encouraging. At the legislative level, attempts have been made to update the laws and to provide a relatively modern framework for the arbitration of international commercial disputes and there are efforts to minimize other shortcomings. At the professional level there is now an increasing awareness of the role of arbitration as there is a relatively fair number of experienced lawyers who can help establish an effective arbitral regime. Work is under way to make operational arbitral institutions which would help in training lawyers and expanding the knowledge of arbitration, and perhaps in organizing arbitral proceedings. There is also increasing awareness of the advantages of arbitration among the business community of the public and private sector. All these will also help in developing an arbitration-friendly legal system which is vital for the success of an arbitral regime.

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by jurists in convincing the decision-makers of the virtues of arbitration. The Bill could be resubmitted to the new Parliament.

In terms of the expectations from the arbitral community at large, I believe that the interest of the legal and business community lies in narrowing and closing the gap between the developing and the developed world in terms of the harmony and uniformity of arbitral laws and practices. The countries in the developing world should move further and faster to narrow or even close this gap without expecting the developed world to stand still and wait. However, I have a feeling that as the developing world tries to expand its participation in international arbitration and acquaint itself with the concept and harmonize its laws, there is an attempt on the part of a section of the western legal and business community to maintain or even broaden that gap for short-term advantage, by introducing concepts into the body of arbitral practice which have the effect of increasing the gap between the developed and the developing world.

It might be unfair to say that certain devices are introduced into the body of arbitral theory and practice with the mere aim of maintaining a western advantage. However, it might be possible to say that certainly such new devices introduced into the body of international arbitration have the same effect. For instance, excessive utilization and introduction of concepts such as "security for costs" are primarily aimed at or result in preventing claimants from the developing countries from using arbitration in their disputes against European parties.

An extremist form of judicialization of arbitration within the parameters of western legal concepts would ignore cultural diversity as an inherent feature of international arbitration and might also be counter-productive in terms of maintaining arbitration's attraction to the developing world.

Occasionally, one gets a feeling of prejudice in the air from some circles directed against parties or arbitrators from the developing world. Statements, however isolated, with the effect of questioning *en bloc* the independence and impartiality of arbitrators from the developing countries[54] result in serious disadvantage for these countries in terms of playing an equal role in the world of arbitration. Recently, in a debate in an ASA Conference on the issue of costs it was even implicitly questioned whether arbitrators from the developing countries should receive equal fees on a par with their European colleagues.[55]

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[54] See J. Werner, The Independence of Arbitrators in Totalitarian States- talking Tough Issues, 14 J. INT. ARB. 1 (1997).

[55] ASA Conference of 31 January 1997 on Costs and their Allocation, 15 ASA BULLETIN 48-49 (1997).

Finally, it can be said that there is no turning back for the developing world with respect to arbitration as this mechanism has increasingly become a vehicle of dialogue as well as a method for resolution of disputes in international commerce. The work on all sides should concentrate on making the system more effective while at the same time maintaining its attractions such as flexibility and diversity.

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