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IS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. A-16 Date of filing: 25 Jan 84

** AWARD - Type of Award Final

- Date of Award 27 Dec 83

22 pages in English _____ 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: _____

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- Date _____

_____ pages in English _____ pages in Farsi

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

FULL TRIBUNAL

AWARD NO. 108-A-16/582/591-FT

AWARD

Cases Nos. A-16, 582 and 591

Question as to whether the Tribunal has jurisdiction over claims by Iranian banks against United States nationals, including United States banks, and the Government of the United States of America based on standby letters of credit issued by United States banking institutions.

Parties:

Case No. A-16

THE UNITED STATES OF AMERICA
and
THE ISLAMIC REPUBLIC OF IRAN

Case No. 582

BANK MELLAT,
Claimant,
and
THE GOVERNMENT OF THE UNITED STATES OF AMERICA,
MANUFACTURERS HANOVER TRUST CO.,
GTE INTERNATIONAL INC.,
Respondents.

Case No. 591

BANK MELLAT,
Claimant,
and
THE GOVERNMENT OF THE UNITED STATES OF AMERICA,
CROCKER NATIONAL BANK,
Respondents.

I. The issue

Iranian banks have filed more than 200 claims with the Tribunal based on standby letters of credit issued by United States banks ("Iranian bank standby letter of credit claims"). In a number of these cases the United States bank which issued the letter of credit has been named as the sole Respondent in the Statement of Claim. In other cases, the United States contractor or account party ("United States contractor") which sought issuance of the letter of credit has also been named as a Respondent. In still others the United States Government has also been named as a Respondent. A limited number of Statements of Claim name the Government of the United States as the sole Respondent.

The United States, in case No. A-16, has requested the Tribunal pursuant to Article II, paragraph 3, and Article VI, paragraph 4, of the 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 Republic of Iran, dated 19 January 1981 ("Claims Settlement Declaration") and paragraph 17 of the Declaration of the Government of the Democratic and Popular Republic of Algeria, also dated 19 January 1981, ("General Declaration"), to determine the extent to which the Tribunal

has jurisdiction over the Iranian bank standby letter of credit claims.

By an Order dated 4 May 1983 Chamber Two of the Tribunal relinquished jurisdiction over two Iranian bank standby letter of credit claims, cases Nos. 582 and 591, to the Full Tribunal for the limited purpose of hearing and deciding the following issue: Does the Tribunal have jurisdiction over the claims against the Respondents in these cases under Paragraph 2(B) of the Undertakings or on any other ground?

In accordance with a decision by the Tribunal the above-mentioned issue in cases Nos. 582 and 591 was heard by the Full Tribunal jointly with case No. A-16 at a Hearing on 6 and 7 October 1983.

In view of a joint request by the Parties in Case No. 582 to terminate this case, Chamber Two of the Tribunal, by an Order dated 22 November 1983, terminated the proceedings in Case No. 582. (1)

II. Background

The letters of credit which are the subject matter of the Iranian bank standby letter of credit claims were issued as parts of broader transactions involving contracts between a United States contractor, on the one hand, and Iranian

(1) On 2 December 1983, counsel for Ford Aerospace & Communications Corporation filed a request to participate in case A-16. In view of the fact that the same counsel had been permitted to participate in this case in accordance with Note 5 to Article 25 of the Tribunal Rules for GTE International Inc., one of the Respondents in case No. 582, the Tribunal did not deem it necessary to permit Ford Aerospace & Communications Corporation to participate in case A-16.

entities, on the other hand, for the purchase and sale of goods or services. Many of these contracts are the subject of other claims before the Tribunal presented by United States contractors who are the account parties to letters of credit, the subject matter of many of the Iranian bank claims. These underlying contracts usually provided that the United States contractor would cause one or more bank guarantees to be issued by an Iranian bank ("Iranian guarantor bank") in favour of the Iranian party to the contract ("Iranian party"). These bank guarantees were of different types, but generally their function was either to secure an accounting to the Iranian party for any advance payments made under the contract or to secure payment to the Iranian party for damages resulting from a default by the United States contractor.

Typically, the contracts provided that the Iranian guarantor bank would provide the Iranian party with a guarantee under which the guarantor bank in Iran was, on demand, to pay the Iranian party up to the amount of the guarantee. The guarantee usually specified certain conditions for payment on such demand. These conditions generally required a certification by the Iranian party that the United States contractor had defaulted in its contractual obligations.

The United States contractor was obligated to secure the guarantee of the Iranian bank by a standby letter of credit to be opened by a United States bank in favour of the Iranian guarantor bank. Under this letter of credit, the United States bank normally undertook to pay the Iranian guarantor bank upon a certification by the Iranian bank that the latter bank had been required to pay under the guarantee.

After making such a payment, the Iranian guarantor bank would be entitled to reimbursement by drawing on the standby letter of credit issued by the United States bank. The

United States bank would ultimately look to the United States contractor for reimbursement.

In the beginning of November 1979, there were several hundred such letters of credit outstanding, which involved considerable amounts of money. On 14 November 1979 the President of the United States issued Executive Order No. 12170, which blocked the transfer of "all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which were or became subject to the jurisdiction of the United States or which were in or came within the possession or control of persons subject to the jurisdiction of the United States".

The United States Department of the Treasury subsequently issued a series of "Iranian Assets Control Regulations", implementing Executive Order No. 12170.

Section 535.568 of these Regulations, 31 C.F.R. Section 535.568, issued on 28 November 1979 pertains to standby letters of credit issued in favour of Iranian entities. Under this section, a United States bank that received demands for payment of an Iranian standby letter of credit was obligated to give notice to its account party, the United States contractor. The account party was permitted to apply for a licence, which permitted it to establish a blocked account on its books in the amount sought by the drawer. The bank was then prohibited from paying the amount of the standby letter of credit. If no such licence was sought and obtained, however, the bank was permitted to pay the amount into a blocked account established by the bank for the Iranian beneficiary bank.

Between the issuance of Executive Order No. 12170 on 28 November 1979 and the beginning of 1982, a large number of calls were made on such standby letters of credit.

In some instances, the issuing bank refused to honor the call on the ground that the attempted call did not on its face fulfil the requirements set forth in the letter of credit. In many other cases, the account party maintained that the attempted calls were fraudulent or otherwise legally unjustified. In most such cases, the account party availed itself of the procedure established by Section 535.568 and established a blocked account on its own books, thus precluding the bank from paying funds into a blocked bank account. Some account parties obtained in United States courts interim measures (temporary restraining orders and preliminary injunctions) against the payment of the standby letters of credit. In other instances, the account party took no action upon notification of the call, and the issuing bank paid the amount demanded under the letter of credit into a blocked bank account in the name of the Iranian beneficiary bank.

All the Iranian bank standby letter of credit claims filed with the Tribunal were accompanied by identical letters signed by Bank Markazi Iran ("Bank Markazi") on behalf of the Iranian banks. In this letter Bank Markazi contends that Executive Order No. 12294, issued by the President of the United States on 24 February 1981 in lieu of the above-mentioned Executive Order No. 12170, and the related United States Treasury Regulations constitute a violation of the General Declaration, particularly of General Principle A by which the United States undertook to restore the financial position of Iran, in so far as possible, to that which existed prior to 14 November 1979 and of Paragraphs 4-9 of the General Declaration by which the United States undertook to ensure the mobility and free transfer of all Iranian assets within its jurisdiction. Executive Order No.

12294 directed the suspension of proceedings before United States courts in cases falling under the jurisdiction of the Tribunal, except proceedings concerning the validity or payment of standby letters of credit or the performance or payment of bonds or other similar instruments.

Bank Markazi refers to this alleged breach of the Algiers Declaration and requests the Tribunal to issue an award in each case which obligates the United States Government to perform its commitments under General Principles A and B of the General Declaration. Bank Markazi also requests the Tribunal to issue an award in each case which obligates the United States Government jointly and severally with the Respondent United States bank to pay the amount of the letters of credit and to indemnify the Iranian party for its damages incurred as a result of the non-payment of the amounts of the letters of credit.

Bank Markazi also refers to Paragraph 17 of the General Declaration and requests the Tribunal to determine that it has jurisdiction over all claims by Iranian banks concerning letters of credit issued by United States banks and financial institutions. In support of this request Bank Markazi contends that the Tribunal has jurisdiction over such claims under paragraph 2(B) of the 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 ("Undertakings"), dated 19 January 1981.

III. The contentions of the Parties

Paragraph 2(B) of the Undertakings, which the Government of Iran invokes in support of its contention that the Tribunal has jurisdiction over the Iranian bank standby letter of credit claims, reads as follows:

> 2. Iran having affirmed its intention to pay all its debts and those of its controlled institutions, the Algerian Central Bank acting pursuant to Paragraph 1 above will issue the following instructions to the Central Bank:
>
> - - - - -
>
> (B) To retain $1.418 billion in the Escrow Account for the purpose of paying the unpaid principal of and interest owing, if any, on the loans and credits referred to in Paragraph (A) after application of the U.S. $3.667 billion and on all other indebtedness held by United States banking institutions of, or guaranteed by, the Government of Iran, its agencies, instrumentalities or controlled entities not previously paid, and for the purpose of paying disputed amounts of deposits, assets, and interest, if any, owing on Iranian deposits in U.S. banking institutions. Bank Markazi and the appropriate United States banking institutions shall promptly meet in an effort to agree upon the amounts owing. In the event of such agreement, the Bank Markazi and the appropriate banking institution shall certify the amount owing to the Central Bank of Algeria which shall instruct the Bank of England to credit such amount to the account, as appropriate, of the Bank Markazi or of the Federal Reserve Bank of New York in order to permit payment to the appropriate banking institution. In the event that within 30 days any U.S. banking institution and the Bank Markazi are unable to agree upon the amounts owed, either party may refer such dispute to binding arbitration by such international arbitration panel as the parties may agree, or failing such agreement within 30 additional days after such reference, by the Iran-United States Claims Tribunal. The presiding officer of such panel or tribunal shall certify to the Central Bank of Algeria the amount, if any, determined by it to be owed, whereupon the Central Bank of Algeria shall instruct the Bank of England to credit such amount to the account of the Bank Markazi or of the Federal Reserve Bank of New York in order to permit payment to the appropriate banking institution. After all disputes are resolved either by agreement or by arbitration award and appropriate payment has been made, the balance of the funds referred to in this Paragraph (B) shall be paid to Bank Markazi.

The United States contends that the Tribunal has jurisdiction over Iranian bank standby letters of credit claims only to the extent they may properly be asserted as counterclaims

to claims of United States nationals pending before the Tribunal and over which the Tribunal has jurisdiction.

In support of this contention the United States argues that the standby letter of credit claims are direct claims by Iranian Governmental entities against United States nationals and that the Full Tribunal already has decided in its decision, rendered on 21 December 1981, in case No. A-2, that such claims can only be within its jurisdiction as counterclaims. The United States sets forth the following arguments in support of its position.

1. The text of Article II, paragraph 1, of the Claims Settlement Declaration provides expressly that claims and counterclaims are within the jurisdiction of the Tribunal if they arise out of "...contracts (including transactions which are the subject of letters of credit or bank guarantees) ...." This is the sole reference to letters of credit in the Algiers Declarations and was inserted at Iran's request. This paragraph suggests that the two Governments agreed to vest the Tribunal with jurisdiction over letter of credit claims by Iranian banks only if such claims could be raised as counterclaims to claims of nationals. Iran's reliance on paragraph 2(B) of the Undertakings necessarily means that the two Governments provided a second jurisdictional basis over the same category of claims, since claims falling under that paragraph can be determined by a separate arbitration panel. Iran's interpretation contradicts the basic procedural assumption laid down in Article II, paragraph 1, of the Claims Settlement Declaration, which is to permit the resolution in one proceeding of all claims arising out of both the standby letters of credit and the underlying transaction and avoid multiple proceedings regarding the same issue.

2. Paragraph 2(B) established a Dollar Account ("Dollar Account No. 2") for the purpose of paying certain claims. It follows clearly from the language in paragraph 2(B) that the jurisdictional provisions in that paragraph refer only to disputes as to amounts payable out of Dollar Account No. 2. The two Governments agree that Iranian bank standby letters of credit claims cannot be paid out of that account.

3. In the final stages of the negotiations regarding the Undertakings certain United States banks agreed to transfer an additional sum of $130 million to Dollar Account No. 2. This sum corresponded to "amounts in dispute" with respect to interest claimed by Iran on its deposits in overseas branches of United States banks. The expression "disputed amounts of deposit, assets, and interest, if any, owing on Iranian deposits" was intended to be limited to disputes over this $130 million or over the deposits and assets in overseas branches of United States banks on which the disputed interest had been calculated.

4. Standby letters of credit can only come within the terms of paragraph 2(B) if they are considered "assets" in U.S. banking institutions for jurisdictional purposes. As of 19 January 1981 many standby letters of credit had expired. Others were blocked by the United States Government regulations. Letters of credit that thus could not lawfully be drawn upon are not "assets" under the normal use of that term. Likewise, letters of credit that have not been called are not conventionally regarded as "assets", and they are not "in" U.S. banking institutions. It is therefore implausible to believe that the two Governments intended to confer jurisdiction over the standby letter of credit claims simply by the use of the word "assets".

5. The United States further contends that claims against it based on a breach of the Algiers Declarations must be

brought before the Tribunal under Article II, paragraph 3, of the Claims Settlement Declaration as a dispute concerning the interpretation and performance of the Algiers Declarations. The United States asserts that Iran in fact already has filed such a case, since Iran in one of the claims in case No. A-15 seeks to hold the United States responsible for the non-payment of standby letters of credit on the theory that the United States is in breach of the Algiers Declarations. Thus, the claims against the Government of the United States in the letter of credit cases must be dismissed, since they duplicate the above-mentioned issue in case No. A-15.

Iran argues that the Iranian bank standby letter of credit claims were brought before the Tribunal under the provisions of the Undertakings, specifically paragraph 2(B) thereof. It contends that special status was given to bank disputes in the Algiers Declarations, and that the Undertakings constitute a specific agreement, which defines these bank disputes and provides special mechanisms for settling and making payment on them. In support of this contention Iran makes the following arguments.

1. There is no reason why both the Claims Settlement Declaration and the Undertakings cannot provide for jurisdiction over letter of credit claims. The two Governments, when agreeing on the text of the Undertakings, indeed intended to vest the Tribunal with an additional specific ground for jurisdiction over claims between banks. Disputes over such claims should be settled completely under the Undertakings.

2. The jurisdictional provisions in the Undertakings are special provisions which override the general provisions of the Claims Settlement Declaration. Such an additional and independent ground for jurisdiction over claims based on standby letters of credit appears natural in view of the

well established international commercial practice that rights and liabilities which arise under such letters of credit are treated separately and independently from those which arise out of the underlying contract.

3. The jurisdictional provisions in paragraph 2(B) of the Undertakings do not refer only to disputes as to amounts payable out of Dollar Account No. 2. Whether the Algiers Declarations provide for security in respect of certain categories of claims is irrelevant with respect to the interpretation of the jurisdictional provisions relating to such claims.

4. Standby letter of credit claims must be regarded as "assets" within the meaning and in the context of paragraph 2(B) of the Undertakings. Many of the assets referred to in the Algiers Declarations were frozen or blocked prior to 19 January 1981. Nevertheless, the United States undertook to transfer and transferred to Iran the bulk of these assets. That the letters of credit were blocked by court orders or Government regulations in the United States cannot change the basic fact that the financial rights arising out of the letters of credit were and are assets belonging to Iran.

5. The subsequent settlement practice under the Undertakings shows that claims by Iran against United States banking institutions are within the jurisdiction of the Tribunal. Not only have the parties to the negotiations between the banks dealt with disputes regarding claims other than those to be paid out of Dollar Account No. 2, including letter of credit claims, but such settlements have been approved by the United States through the Federal Reserve Bank. But references to the Undertakings in the settlement documents and the payment procedures observed demonstrate that the parties also considered themselves to be acting pursuant to the Undertakings.

As to the procedure to be followed by the Tribunal in dealing with the Iranian bank standby letter of credit claims the United States and the other Respondent in case No. 591 request that each Iranian standby letter of credit claim potentially related to a pending claim of a United States national be identified promptly and referred to the Chamber in which the United States national's claim is pending. That Chamber should then determine whether Iran's standby letter of credit claim may properly be asserted as a counterclaim to the claim of the United States national. Such standby letter of credit claims may, according to the United States, be asserted as counterclaims only if the Iranian bank has been named as a Respondent in the claim by the United States contractor. Claims that can be asserted as counterclaims should be consolidated with the claim by the contractor for all purposes. The United States requests that all Iranian standby letter of credit claims that may not thus be consolidated with the related claim of a United States national be dismissed as not within the Tribunal's jurisdiction. The United States also proposes that both the issuing banks and the Iranian guarantor banks should be permitted to participate voluntarily in proceedings involving standby letters of credit.

Iran objects to this proposed procedure and argues that the United States banks in the letters of credit undertook to pay the Iranian guarantor bank promptly upon receipt of a conforming demand within a specified period of time. Iran contends that the banks have no obligation to investigate any possible dispute between the parties to the underlying contract. Iran also asserts that it would be contrary to the intention of the parties to the underlying contract to delay payment on the letter of credit until the dispute between these parties has been resolved.

IV. Merits

The Tribunal, in this case, has been requested to determine

the extent to which it has jurisdiction over Iranian bank standby letter of credit claims. The Tribunal has determined in its decision, rendered on 21 January 1981, in case No. A-2, that it has no jurisdiction over direct claims by Iran against United States nationals under the Claims Settlement Declaration. Thus, insofar as the standby letter of credit claims by Iranian banks against United States nationals are based on the Claims Settlement Declaration, the Tribunal has no jurisdiction over such claims. The fact that the United States banks are alleged to be jointly liable with parties over whom the Tribunal has jurisdiction does not result in the Tribunal having jurisdiction over claims against the banks. The Claims Settlement Declaration makes no provision for extending jurisdiction over a non-Governmental party, such as a privately owned and operated bank, just because it may have joint liability with a party subject to the Tribunal's jurisdiction.

To the extent that such claims purport to be based on Paragraph 2(B) of the Undertakings, the Tribunal determines that the Undertakings do not confer jurisdiction on the Tribunal over such claims for the reasons set forth below.

Paragraph 2(B) establishes an escrow account containing $1.418 billion, referred to as "Dollar Account No. 2", "for the purpose of paying" three categories of bank claims. The first two categories consist of claims of U.S. banks against Iran based on non-syndicated debt and on any syndicated-loan indebtedness remaining after the transfer to the Federal Reserve Bank of New York for transfer to those banks of $3.667 billion under paragraph 2(A) of the Undertakings. The third category encompasses "disputed amounts of deposits, assets, and interest, if any, owing on Iranian deposits in U.S. banking institutions." Bank Markazi and each appropriate United States banking institution were then to meet to "agree upon the amounts owing." If they were

unable to agree upon the "amounts owed," either party may refer "such dispute" to binding arbitration, including, under specified procedures, arbitration by this Tribunal. Paragraph 2(B) thus granted this Tribunal jurisdiction only over "such dispute[s]" as to "amounts owed." These "amounts owed" refer to the specific types of bank claims that are listed by Paragraph 2(B) and that are payable out of Dollar Account No. 2. Thus, since only "such dispute[s]" specified in Paragraph 2(B) can be referred to arbitration, only those disputes fall under the jurisdiction grant of paragraph 2(B).

The Iranian banks and Iran focus on the language "disputed amounts of deposits, assets, and interest, if any, owing on Iranian deposits in U.S. banking institutions" and particularly on the word "assets". Clearly, the standby letters of credit in question do not constitute "deposits" or "interest on Iranian deposits". Whether or not they are "assets" as used in the Undertakings must be decided in accordance with the ordinary meaning of the term in its context and in the light of the object and purpose of the relevant provisions. The Tribunal does not have to determine whether assets generally have a broad meaning encompassing most or all kinds of property as contended by the Iranian banks and Iran. The use in Paragraph 2(B) of the expressions "deposits" and "interest on Iranian deposits" in addition to "assets" seems to indicate that the latter were given a more specific and detailed meaning, or else they would include deposits and interest.

If a standby letter of credit is an asset at all, however, it is clear from the context in which the word "assets" is used in the Undertakings and other portions of the Algiers Declarations, that standby letters of credit do not fall into the category of "disputed amounts of ... assets ..." in Paragraph 2(B) of the Undertakings. A standby letter of credit is not something to be considered to be "in" a

banking institution. In the General Declaration there is a heading preceding Paragraph 6 to "Assets in U.S. Branches of U.S. Banks." In Paragraph 6 these Assets are defined as "Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon...." Although headings are not necessarily determinative, in this case the heading is an indication that the parties did not contemplate that "assets in U.S. banking institutions" included rights in standby letters of credit. As to standby letters of credit called prior to the Algiers Declarations, they would have either been paid or enjoined and thus would not constitute an asset. As to those called after the Algiers Declarations, there is no indication that funds were actually set aside in United States banking institutions.

The establishment of Dollar Account No. 2 in Paragraph 2(B) of the Undertakings does not constitute an independent and separate mechanism which provides for a general and reciprocal settlement of all disputes concerning bank claims. It provides for payment of Iranian debts and carries out the purpose specifically laid down in the first sentence of Paragraph 2, that "... Iran having affirmed its intention to pay all its debts and those of its controlled institutions, the Algerian Central Bank ... will issue the following instructions to the Central Bank ...".

Paragraph 2(B) is part of these instructions and must be interpreted in accordance with the purpose they are to fulfil.

As noted above, the context of Paragraph 2(B) in the other parts of that paragraph and in other portions of the Algiers Declarations and related documents support this conclusion that Paragraph 2(B) relates only to disputes over amounts payable from Dollar Account No. 2.

The mechanics related to the payment of amounts owed in connection with Paragraph 2(B) are specified. Paragraph 2(B) empowers the presiding officer of the arbitration tribunal hearing the claim to "certify to the Central Bank of Algeria the amount, if any, determined by it to be owed," whereupon the Central Bank of Algeria is to direct the Bank of England to make payment, which it would do out of Dollar Account No. 2. Paragraph 7(d) of the Technical Arrangement between Banque Centrale d'Algérie, the Governor and Company of the Bank of England and the Federal Reserve Bank of New York, dated 20 January 1981, provides that monies in the Dollar Account No. 2 can only be paid to the Federal Reserve Bank until the end of the process when the "remaining funds" in that account will be paid to Bank Markazi.

Evidence presented in this case suggests that the $1.418 billion amount in Dollar Account No. 2 appears to be one that is estimated to cover all of the claims authorized by Paragraph 2(B). Unlike the security account provided for by Paragraph 7 of the General Declaration, there is no provision for replenishment of Dollar Account No. 2.

The Iranian banks concede that payments on awards arising out of its claims based on the standby letters of credit would not come out of the Dollar Account No. 2. All monies in that account had been in U.S. banks, in the name of Iran. It would make no sense for payments to be made out of Dollar Account No. 2 for the Iranian bank standby letter of credit claims because to do so would run afoul of the mechanism established by the Undertakings and Technical Arrangement and would, in effect, result in the satisfaction of Iranian claims with what Iran considers to be its own money or money to which it claims it is entitled as interest.

In addition, it appears that the types of claim referred to in Paragraph 2(B) were those which, because of their nature, could quickly be resolved. Thus, Paragraph 2(B) provides that "Bank Markazi and the appropriate United State banking institutions shall promptly meet in an effort to agree upon amounts owing" (emphasis added). If there was no such agreement within 30 days, the matter could be referred to arbitration. And after all of the claims are resolved the balance in Dollar Account No. 2 is to be transferred to Bank Markazi. The Claims Settlement Declaration on the other hand provides for a six month period of settlement discussion with a possible additional three month period before claims could be filed at all. Moreover, since most of the standby letter of credit claims have from the outset been the subject of contested cases in the United States and other courts, and many of them had not even been called by the time of the Algiers Declarations, it is unlikely that the two Governments contemplated their resolution under the accelerated mechanisms provided for by Paragraph 2(B).

The only explicit reference in the Algiers Declarations to standby letter of credit claims is contained in Article II, paragraph 1, of the Claims Settlement Declaration, according to which such claims could be brought so long as other jurisdictional prerequisites were met. Although there could be jurisdiction under both the Claims Settlement Declaration and Paragraph 2(B) of the Undertakings, this specific reference in the Claims Settlement Declaration suggests that the parties contemplated that standby letters of credit would be dealt with under the Claims Settlement Declaration. The Tribunal's jurisdiction is based on the agreement of the two Governments as laid down in the Algiers Declarations, and it cannot have wider jurisdiction than that which was specifically provided in the agreement. As the Tribunal already pointed out in its decision in case No. A-2, the parties set up very carefully a list of the claims and counterclaims which could be submitted to it. A competence

for the Tribunal to decide bank disputes in general, including those over standby letters of credit, would require a broader and more explicit jurisdictional basis than the one provided for in the specific and limited context of the Undertakings.

Moreover, there is no suggestion or indication that the parties complied with the formalities of Paragraph 2(B). Indeed, in the standby letter of credit claims by the Iranian banks there is no indication that the jurisdiction has been asserted under Paragraph 2(B). A number of the claims were by banks other than Bank Markazi, the only Iranian bank authorized by Paragraph 2(B) to be involved in the process established by that provision. It was after the Tribunal's decision in case No. A-2 and after the claims had been filed that Bank Markazi prepared and attached to each standby letter of credit claim a letter in which there was an assertion of jurisdiction under Paragraph 2(B) of the Undertakings. This would suggest that the Iranian banks did not originally conceive that jurisdiction was based on Paragraph 2(B). In that letter, Bank Markazi stated that it was to act as "proxy for (on behalf of) all the Iranian governmental banks, entities, agencies and companies, or those under control of Government of Islamic Republic of Iran". As noted supra, the Undertakings only refer to Bank Markazi and U.S. banking institutions as the appropriate parties; the entities for whom Bank Markazi purports to act are not proper parties under the Undertakings. Moreover, that the Undertakings did not provide that other Iranian banks or entities which had claims under letters of credit could avail themselves of the Undertakings' procedures, suggests that such claims were not intended to be covered by the Undertakings.

The Iranian banks assert that the subsequent practice of settlement negotiations between the banks concerned shows that Paragraph 2(B) covers disputes over letters of credit.

It is a recognized principle of treaty interpretation to take into account, together with the context, any subsequent practice in the application of an international treaty. This practice must, however, be a practice of the parties to the treaty and one which establishes the agreement of the parties regarding the interpretation of that treaty.

Whereas one of the participants in the settlement negotiations, namely Bank Markazi, is an entity of Iran and thus its practice can be attributed to Iran as one of the parties to the Algiers Declarations, the other participants in the settlement negotiations and in actual settlements, namely the United States banks, are not entities of the Government of the United States, and their practice cannot be attributed as such to the United States as the other party to the Algiers Declarations. Moreover, that the United States banks and Bank Markazi, in connection with settlement negotiations pursuant to Paragraph 2(B) have alluded to standby letters of credit or disputes concerning them, does not constitute evidence that such disputes are covered by Paragraph 2(B). Nor can it be deduced from the fact that some settlement documents or documents in connection with settlement discussions referred to letters of credit and to the Undertakings, that the parties to the Algiers Declarations agreed that letter of credit claims come under Paragraph 2(B). The evidence before the Tribunal indicates that the parties to these settlements referred to the Undertakings in a general way and did thereby not intend to express that all the claims settled were covered by Paragraph 2(B), for such settlements terminated also disputes clearly outside the scope of that provision.

Accordingly, for the foregoing reasons, the Tribunal holds that Paragraph 2(B) of the Undertakings is not applicable to standby letter of credit claims and consequently does not confer jurisdiction over such claims by Iranian banks

against United States banks or other United States nationals.

The Government of the United States has made various suggestions so that the Iranian bank claims could be heard with the claims of the United States contractors. In addition, the Government of the United States argued it should be dismissed from each of the claims involving the standby letters of credit since such claims against the United States duplicate the issues set forth in case No. A-15, in which Iran seeks to hold the United States responsible for the non-payment of standby letters of credit. The Tribunal agrees that duplicate claims should be avoided. Whether an Iranian bank claim on a standby letter of credit can be joined as a counterclaim against the relevant United States contractor is a matter that each Chamber will have to deal with in accordance with Tribunal Rules concerning jurisdiction over counterclaims. It is up to the Chambers to take the necessary steps in each case, in accordance with the Tribunal Rules and this decision.

The decision in this case does not prejudice the claim filed by Iran against the United States in case No. A-15, in which Iran contends, inter alia, that the United States Government's alleged failure and refusal to bring about the transfer of the proceeds of certain standby letters of credit constitutes a breach of the United States Government's obligations under the General Declaration.

The Tribunal determines in case No. A-16 that it does not have jurisdiction over the direct claims filed by Iranian banks against United States banks arising out of standby letters of credit issued by United States banks. Accordingly, the Tribunal decides that it does not have jurisdiction over the claim against Crocker National Bank in

case No. 591. Case No. 591 is referred back to Chamber 2 for further proceedings in accordance with this decision.

Dated, The Hague,
27 December 1983

Gunnar Lagergren
(President)

In the name of God,

Willem Riphagen
I concur on the understanding that this decision is without prejudice to the question of the competence of each Chamber to decide on the merits of any claim or counterclaim relating to an underlying relationship which is pending before it, and over which it has justidiction, and thereby to determine whether or not a call on a related letter of credit or bank guarantee is or was justified.

Nils Mangård

Mahmoud M. Kashani
Dissenting Opinion

In the name of God,

Howard M. Holtzmann

Shafie Shafeiei
Dissenting Opinion

George H. Aldrich

In the name of God,

Richard M. Mosk

Parviz Ansari
Dissenting Opinion