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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

FULL TRIBUNAL
DECISION NO. DEC 37-A17-FT

DECISION

Case No. A17

Question as to whether the Tribunal has jurisdiction over claims by Iranian banks against alleged United States banking institutions for principal of accounts of Iranian entities and/or interest thereon.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date 18 JUN 1985 تاریخ
۱۳۶۴ /۳/ ۲۸
No. A17 شماره

Parties:

THE UNITED STATES OF AMERICA

Represented by:

Mr. John R. Crook, Agent,
Mr. Daniel M. Price, Deputy Agent,
Ms. Loretta Polk, Adviser to the Agent,
Mr. Ronald W. Kleinman, Department of State,
Ms. Rochelle E. Stern, Department of the Treasury,

and

THE ISLAMIC REPUBLIC OF IRAN

Represented by:

Mr. Mohammad K. Eshragh, Agent,
Mr. Mohsen Mohebi, Legal Adviser and Representative,
Mr. Said Niazi, Financial Adviser and Representative of Bank Markazi Iran,
Mr. Akbar Shirazi, Legal Adviser to and Representative of the Agent,
Prof. Rahmatullah Khan, Attorney of the Government of the Islamic Republic of Iran,
Mr. Mohammad Sanaie Ekhteraie, Legal Expert of Bank Markazi Iran.

Also present:

Julian Chichester, Bank of America
(pursuant to Article 25, note 5, Tribunal Rules).

I. The Issue

Bank Markazi has filed with the Tribunal approximately 148 claims against entities asserted to be United States banking institutions claiming amounts of principal and/or interest allegedly owed to Bank Markazi or to other Iranian entities.[1] Where the alleged creditor is an Iranian institution other than Bank Markazi, the claims state that Bank Markazi is acting on behalf of the actual creditor. Those claims that seek return of amounts of principal assert that the Respondent holds for the account of the Claimant the amount claimed and has failed to repay it to the Claimant or to transfer it to the accounts stipulated by the Declaration of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981 ("General Declaration"). Those claims that seek amounts of interest assert that the Respondent held for the account of the Claimant certain principal sums upon which interest was payable but in respect of which either no interest or insufficient interest was paid.

The claims recite that the Claimant and the Respondent have been unable to agree upon amounts owing through direct negotiations or upon any other international arbitration panel. The claims demand arbitration pursuant to Article II 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 2(B) of the Undertakings of the Government of the

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[1] The Request of the United States for a Determination of the Tribunal's Jurisdiction over Certain Iranian Bank Claims, filed on 29 December 1982, referred to 148 claims. In the Memorial of the United States, filed on 5 March 1984, the United States identified 123 claims and at the Hearing on 4 March 1985 the Parties referred to 111 claims, the number having been reduced by settlement and withdrawals.

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, also dated 19 January 1981 ("Undertakings"). The claims seek "payment by the Respondent" of the amounts of principal and interest, with interest and costs.

In Case No. A17, the United States requests the Tribunal pursuant to Article II, paragraph 3, and Article VI, paragraph 4, of the Claims Settlement Declaration and to, paragraph 17 of the General Declaration to determine the extent to which the Tribunal has jurisdiction over these Iranian bank claims.[2] Iran invokes Paragraph 2(B) of the Undertakings as the source of the Tribunal's jurisdiction over the claims.

Paragraph 2 of the Undertakings 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:

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[2] In its request, the United States suggested that some or all of the nongovernmental respondents to the Iranian bank claims at issue here be permitted to participate in the proceedings in Case No. A17 in accordance with Note 5 to Article 15 of the Tribunal Rules. Iran objected to the participation of nongovernmental parties. On 5 July 1983, Bank of America N.T. & S.A., the nongovernmental respondent in certain of the claims at issue, filed a request to participate and to make written and oral statements in proceedings in Case No. A17. After receiving comments from both Governments, the Tribunal in an Order filed on 10 October 1983 declined the request of Bank of America N.T. & S.A. to participate. However, noting that both of the Agents for the Governments had declared that they did not object to the alternative motion of Bank of America N.T. & S.A. to attend the proceedings, the Tribunal permitted that Bank to be present and observe at the Hearing in Case No. A17. A representative of Bank of America N.T. & S.A. attended the Hearing on 4 March 1985.

(A) To transfer U.S. $3.667 billion to the Federal Reserve Bank of New York to pay the unpaid principal of and interest through December 31, 1980 on (1) all loans and credits made by a syndicate of banking institutions, of which a U.S. banking institution is a member, to the Government of Iran, its agencies, instrumentalities or controlled entities, and (2) all loans and credits made by such a syndicate which are guaranteed by the Government of Iran or any of its agencies, instrumentalities or controlled entities.

(B) To retain U.S. $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.

II. Contentions of the Parties

a. United States

The United States contends that the Tribunal has no jurisdiction over claims by Iranian banks against United States banking institutions that seek to recover alleged indebtness of those banking institutions to Iran, except to the extent that such claims are proper counterclaims under Article II, paragraph 1, of the Claims Settlement Declaration. The United States asserts that the Tribunal's jurisdiction under Paragraph 2(B) extends only to "disputes" over amounts payable out of an escrow account containing $1.418 billion established by that Paragraph ("Dollar Account No. 2"), as opposed to claims for payment directly from a United States respondent, and that the only disputed deposits, assets, or interest payable out of that Account are some $130 million of interest on deposits in overseas branches of nine U.S. banking institutions that was paid under protest on 21 January 1981 and that formed part of the amount remitted to Dollar Account No. 2. In support of this contention, the United States offers the following arguments:

1. The United States contends that the Full Tribunal's Award in Case No. A16 (Award No. 108-A16/582/519-FT), filed 25 January 1984, disposes of several of the issues in this case: (i) the Tribunal determined, consistent with its decision in Case No. A2 (Decision No. DEC 1-A2-FT), filed 26 January 1982, that it has no jurisdiction under the Claims Settlement Declaration over "direct" claims against U.S. banks; (ii) the Tribunal held that Paragraph 2(B) relates only to disputes over amounts payable from Dollar Account No. 2; (iii) the Tribunal determined that under Paragraph 2(B) only Bank Markazi, not other Iranian entities, could bring disputes before the Tribunal, so that the entities for whom Bank Markazi purports to act are not proper parties under the Undertakings. The United States argues that Paragraph 2(B)

of the Undertakings confers jurisdiction only over disputes regarding amounts payable to U.S. banking institutions from Dollar Account No. 2, not amounts payable to Bank Markazi. To support this interpretation of the word "dispute," the United States points to the provision in Paragraph 2(B) that Bank Markazi is entitled to the residue remaining in Dollar Account No. 2 after all payments are made, and to the history of negotiations between Bank Markazi and the U.S. banking institutions. The United States asserts that Bank Markazi's entitlement to any residue explains why either Bank Markazi or the relevant U.S. banking institution was authorized by the Undertakings to terminate unproductive negotiations and resort to the Tribunal for determination of the Iranian liability.

2. The United States argues that the history of Dollar Account No. 2 shows that the only disputed amounts transferred into that account were the $130 million of interest. The assets that make up Dollar Account No. 2 are Iranian gold bullion, funds, and securities held by the Federal Reserve Bank of New York, and Iranian deposits and securities that stood upon the books of overseas banking offices of United States banks, together with interest thereon. The exact amount of these assets was calculated in advance at $7.955 billion, of which $1.418 billion was transferred to Dollar Account No. 2. There was for the most part agreement on the amount of overseas deposits and interest to which Iran was entitled. However, there was a last-minute dispute over whether Iran was entitled to $800 million or $670 million in interest on its overseas deposits. In the end, the banks agreed to transfer the $130 million as a "disputed amount" provided they would be able to settle or arbitrate their disputes individually and obtain return of all or part of the disputed interest from the escrow fund. No domestic deposits and no other disputed amounts were remitted to Dollar Account No. 2.

3. The United States argues that, since under Paragraph 2(B) the balance of the funds in Dollar Account No. 2 remaining after all disputes are resolved is to be paid to Bank Markazi, payment of Iran's claims concerning domestic deposits, principal amounts of off-shore deposits, or interest on off-shore deposits over and above the disputed $130 million would, in effect, amount to paying Iran with its own money.

4. The United States points out that no mechanism was ever established for payments to Bank Markazi from Dollar Account No. 2. The Technical Arrangement between Banque Centrale d'Algerie as Escrow Agent and the Governor and Company of the Bank of England and the Federal Reserve Bank of New York as Fiscal Agent of the United States, dated 20 January 1981 ("Technical Arrangement"), contains the instructions to the Bank of England for distribution of Dollar Account No. 2. The Technical Arrangement does not provide for payments to Bank Markazi during the life of the account but only payments to the New York Federal Reserve Bank for remittance to U.S. banking institutions.

5. Noting that many of the Iranian bank claims in question relate to deposits in domestic offices of U.S. banking institutions, the United States argues that such disputes could not have been covered by Paragraph 2(B). That Paragraph anticipates that disputes over sums payable from Dollar Account No. 2 might be settled within 30 days of the conclusion of the Algiers Accords. However, no disputes over domestic deposits could arise until at least six months later, when deposits in domestic offices of U.S. banking institutions were required to be transferred. None of these later-transferred financial assets were deposited in Dollar Account No. 2.

The United States also contends that, should the Tribunal decide it has jurisdiction over some of the Iranian bank claims at issue here, many of the claims in any event

would have to be dismissed because the Respondents are not "U.S. banking institutions" within the meaning of Paragraph 2(B).[3] The United States contends that this term should be defined to mean any bank chartered or incorporated as a bank in the United States, and its subsidiaries. The term should not be defined to include foreign-chartered banks with branches or offices located in the United States, or all banks subject to the jurisdiction of the United States in some degree, as Iran argues. Otherwise, since the same term is used to define the banking syndicates to be paid out of the $3.667 billion transferred to Dollar Account No. 1, a foreign bank with even a single branch or agency in the United States could seek payment from that account on its syndicated debt. That has not been the practice, and it is doubtful that the account is large enough to cover those loans. Moreover, the United States contends, there is no reason to think that the two Governments would be concerned about such banks, as mere presence in the territory is not customarily related to the settlement of claims.

b. Iran

Iran contends that Paragraph 2(B) of the Undertakings provides jurisdiction over the Iranian bank claims at issue here. That provision gives the Tribunal jurisdiction over claims by Iran against United States banking institutions for "disputed amounts of deposits, assets, and interest, if any, owing on Iranian deposits in U.S. banking institutions." Iran asserts that this provision is clear and unambiguous and permits no restrictions except those expressly stipulated. In support of this contention Iran offers the following arguments:

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[3] At the Hearing in this case, the United States made clear that this argument was an alternative contention. It stated that the Tribunal did not need to address the proper definition of "U.S. banking institutions" if it held for the reasons already advanced that it had no jurisdiction over the claims at issue here, and that the issue could be left to be decided by the Chamber to which a claim was assigned should it have to be faced in any particular case.

1. Iran asserts that the Tribunal's observations in Case No. A16 regarding Bank Markazi's role in referring claims on behalf of Iranian banks pertained only to letter-of-credit claims. It points out that Bank Markazi acts only as an agent in representing the Iranian banks and effecting payment to them.

2. Iran contends that the Tribunal's jurisdiction under Paragraph 2(B) is not co-extensive with or contingent upon the existence or adequacy of Dollar Account No. 2. Otherwise, if all of Dollar Account No. 2 were exhausted with payment of syndicated and unsyndicated loans, the dispute over the $130 million of interest would remain unresolved. Under Paragraph 2(B), the Tribunal can avail itself of the payment procedure provided by that paragraph if the beneficiary of an arbitral award is the U.S. banking institution, or it can order direct payment from the U.S. banking institution if the award is in favor of Bank Markazi. In any case, the remedy provided by that paragraph is not extinguished with the exhaustion of funds in Dollar Account No. 2.

3. Iran points to the terms of Paragraph 2(B), which explicitly provide for crediting the accounts of both Bank Markazi and the Federal Reserve Bank of New York. It is not, as the United States contends, a one-way street.

4. Iran argues that Paragraph 2(B) can not be re-written to apply only to interest, ignoring the words "deposits" and "assets." Under international law, reference to the preparatory history of a treaty is precluded if the express provisions are clear, as they are here. Moreover, the subsequent settlement practice of the parties has included a broad range of disputed claims beyond the disputed interest amount. These settlements have been made by reference to and in the framework of the Undertakings.

5. Iran contends that the term "U.S. banking institutions" in Paragraph 2(B) should be defined to mean "a corporation or association offering services of a banking nature, so as to hold or be capable of holding deposits or assets[,] . . . [t]hat . . . is located within the United States or, if outside the United States, is either an overseas branch or office of a United States banking institution or is considered by the United States to be subject to the jurisdiction of the United States." Contrary to the position of the United States, the phrase "U.S. banking institutions" makes no distinction between off-shore and on-shore banks under the territorial jurisdiction of the United States.

6. Finally, Iran argues that the Tribunal's decision in Case No. A16 does not govern this case for three reasons: (i) Iran is not here contending that Paragraph 2(B) establishes an independent and separate mechanism for the settlement of all disputes concerning bank claims (a contention rejected in A16), but only that that paragraph provides jurisdiction over those bank claims expressly defined in the provision; (ii) the Award in Case No. A16 was limited to letter-of-credit claims, and did not deal with the type of bank disputes at issue here; (iii) Case No. A17 involves the determination of the Tribunal's jurisdiction over the failure of the United States Government to bring about the transfer of deposits, assets, and interest on deposits held in United States banking institutions.

III. Merits

1. The Tribunal, in this case, has been requested to determine the extent to which it has jurisdiction over claims filed by Iranian banks against various alleged United States banking institutions. This request has been made by the United States as a dispute or question concerning the interpretation, performance or application of the Algiers Declarations. As jurisdiction in none of the claims in

question has been relinquished to the Full Tribunal, the final and conclusive determination of jurisdiction in each case rests with the Chamber to which that claim is assigned, and the present decision concerns merely interpretative guidance.

2. The Tribunal determined in its decision in Case No. A2 that it has no jurisdiction over direct claims by Iran against United States nationals under the Claims Settlement Declaration. This determination was reaffirmed in Case No. A16 in the context of claims by Iranian banks against United States banks and other United States nationals based on standby letters of credit. Thus, insofar as the claims involved in the present case against United States banks or other United States nationals are based on the Claims Settlement Declaration, the Tribunal has no jurisdiction over such claims.

3. To the extent that such claims purport to be based on Paragraph 2(B) of the Undertakings, the Tribunal determines that it has jurisdiction over such claims only to the extent, if any, that they are disputes as to amounts owing from Dollar Account No. 2, for the types of debts payable out of that account. It is evident from the text of Paragraph 2(B) that its payment provisions deal solely with the disposition of the funds deposited in that account.[4] Paragraph 2(B) gives no jurisdiction over "claims" by one bank

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[4] Cf. for instance the last sentence of Paragraph 2(B): "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 2(B) shall be paid to Bank Markazi." The only funds referred to in that paragraph are the funds held in Dollar Account No. 2, an escrow account opened at the Bank of England in the name of the Central Bank of Algeria as Escrow Agent. Paragraph 2(B) envisages only one mode of payment of amounts that are found to be owed by agreement between the interested parties or in awards rendered by ad hoc arbitration panels or by this Tribunal: crediting by the Bank of England of the amount owing to the appropriate account, upon instruction of the Escrow Agent.

seeking payment from another but establishes a limited jurisdiction over "disputes," which may be referred to the Tribunal by either Bank Markazi or the United States banking institution involved, as to "amounts owing" from Dollar Account No. 2. The Tribunal is authorized by Paragraph 2(B) to deal with such disputes only by determining the amount, if any, owed from Dollar Account No. 2. The President of the Tribunal is directed to certify such amount to the Central Bank of Algeria, which is then obliged to "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." Therefore, there can be no question under this provision of jurisdiction to issue enforceable awards against a bank or of jurisdiction over any bank claims except to the extent, if any, that such claims are "disputes" as to amounts owed out of Dollar Account No. 2[5]. The Tribunal thus reaffirms its holding to that effect in its Award in Case No. A16.

4. Whether "amounts owing" out of Dollar Account No. 2 can be owing to Iranian banks (other than as a residue) is a more difficult question. Dollar Account No. 2 was established by Paragraph 2(B) of the Undertakings for three specific purposes. First, it is to be available for the purpose of paying any unpaid principal or interest owing by Iran on syndicated loans in the event Dollar Account No. 1 proved inadequate for that purpose.[6] Second, Dollar Account No. 2 is to be available for the purpose of paying unpaid principal or interest owing on "all other indebtedness held by United States banking institutions of, or guaranteed by,

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5 For similar reasons the competence of any "international arbitration panel" established under the provisions of Paragraph 2(B) must be held to be equally restricted.

6 Pleadings in Case No. A15, Part I-G indicate that, in fact, Dollar Account No. 1 was more than adequate for that purpose.

the Government of Iran, its agencies, instrumentalities or controlled entities not previously paid." Claims for these debts were filed with the Tribunal by various banks as disputes under Paragraph 2(B), and the process of settling them through negotiations in London has continued to the present, apparently with considerable success. Third, Dollar Account No. 2 is to be available for the purpose of paying "disputed amounts of deposits, assets, and interest, if any, owing on Iranian deposits in U.S. banking institutions." The two Governments agree that this third purpose covers some United States $130 million of disputed interest that was transferred on 20 January 1981 from the overseas branches of certain United States banks to the Bank of England through the intermediary of the Federal Reserve Bank of New York. The two Governments disagree as to whether this final purpose of Dollar Account No. 2 covers any other possible payment out of the Account.

5. Paragraph 2(B) is ambiguous as to whether the "amounts owing" out of Dollar Account No. 2 can be owing to Bank Markazi (or other Iranian banking institutions represented by Bank Markazi), aside, of course, from any residue, which clearly is to be paid to Bank Markazi. The ambiguity arises from two provisions of Paragraph 2(B). First, there are the words "deposits" and "assets" in the statement of the third purpose of the Account. Disputes concerning interest are specifically referred to as is "all other indebtedness held by United States banking institutions." Therefore, it has been argued that if the words "deposits" and "assets" are to be given any meaning, they must necessarily refer to the deposits and assets of Iranian banks in United States banking institutions. In its Award in Case A16 the Tribunal decided that the words did not include standby letters of credit, but it was not necessary in that Case to determine what, if anything, they did add to the other purposes of Dollar Account No. 2.

6. One possible explanation of the word "deposits" is suggested by paragraph 4 of Bank Markazi's telex of 20 January 1981 (Exhibit 2 to the United States' Memorial filed on 5 March 1984), which made clear that the rights of United States banking institutions were being preserved to dispute whether principal, as well as interest, transferred from offshore branches of United States banks to the Bank of England was owed in the full amounts transferred. Paragraph 4 of Bank Markazi's telex said:

> (4) [A]ny question, difference or disputes concerning the amounts of any deposits to be tra[n]sfered pursuant to this instruction or any [i]nterest thereon shall be settled in accordance with the procedure stipulated in section (B) of Article (2) of Undertakings of [t]he Government of the United States of Americ[a] and the Government of the Islamic Republic of Ir[a]n with respect to the Declaration of the G[o]vernment of the Democratic and Popular Republic of Algeria.

The words "deposits" and "assets" could also have been included out of caution and uncertainty, for example, as to the description of certain types of indebtedness, such as escrow accounts or trust funds, which may more properly be considered "assets," rather than "deposits," or as to past interest, which may have been credited to accounts. In any event, the evidence and arguments presented in this case have not dispelled the ambiguity.

7. The other ambiguity in Paragraph 2(B) is found in the instructions to the Central Bank of Algeria, which, following agreement or arbitration of a dispute, is to 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." This language seems to contemplate credits and payments being made in both directions during the life of the Account, and therefore suggests that at least some amounts, other than the residue, might be owing out of the Account to Bank Markazi. On the

other hand, the only payment to Bank Markazi from Dollar Account No. 2 provided for in the implementing Technical Arrangement of 20 January 1981 between the Central Bank of Algeria, the Bank of England and the Federal Reserve Bank of New York is a single payment of the remaining funds in connection with the closing of the Account.

8. The Tribunal notes that the apparent object of Dollar Account No. 2 was to secure payment of debts owing to United States banking institutions. The introductory phrase of Paragraph 2 of the Undertakings indicates the purpose of establishing the several escrow accounts as follows: "Iran having affirmed its intention to pay all its debts and those of its controlled institutions . . . ." Moreover, the structure of the Undertakings and the Iranian source of the funds in escrow indicate a similar purpose. The funds comprising Dollar Account No. 2 came from the United States $7.955 billion in dollars, gold bullion and securities transferred by direction of the United States to the Bank of England pursuant to Paragraphs 4 and 5 of the General Declaration. United States $3.667 billion of that total became Dollar Account No. 1; United States $1.418 billion became Dollar Account No. 2; and the remainder was transferred to Iran after release of the hostages. Dollar Account No. 2 was clearly established as an escrow account from funds that otherwise would have been transferred to Iran, and Paragraph 2(B) expressly provides: "After all disputes [as to amounts owing from the Account] are resolved either by agreement or by arbitration award and appropriate payment has been made, the balance of the funds . . . shall be paid to Bank Markazi."

9. An interpretation of Paragraph 2(B) merely in the light of the apparent object of the establishment of Dollar Account No. 2 would seem to lead to the conclusion that any "amount owing" out of that account can be owing only to United States banking institutions. However, the "object and purpose" do not form any independent basis for interpre-

tation, but rather are factors to be taken into account in the determination of the "meaning to be given to the terms of the treaty."[7] The terms themselves should be given primary weight in the analysis of the text. This is even more than normally so in a case like the present one where the Declarations were not the result of direct negotiations between the Governments of Iran and the United States, but of indirect negotiations through a third Government. In such circumstances it is not always possible to ascertain behind a specific provision any common ratio or commonly accepted sole purpose, which could give guidance for the interpretation of that provision; a "meeting of minds" which would exclude the possibility of the parties having had in good faith differing expectations with regard to the application of the provision cannot in that case always be presumed. As previously pointed out, an analysis of the text of Paragraph 2(B) reveals certain ambiguities as to whether "amounts owing" out of Dollar Account No. 2 can be owing only to United States banking institutions or also to Bank Markazi. For the reasons indicated above the Tribunal is reluctant in the present proceeding where none of the claims are before it to make any definite conclusions as to how that issue should be resolved.

10. Iran has argued that the subsequent practice of settlement negotiations between the banks concerned shows that Paragraph 2(B) covers Iranian bank claims against United States banking institutions. 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. While some information with respect to settlement negotiations was made available to the Tribunal in the context of Case A16,

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[7] Article 31, paragraph 1 of the Vienna Convention on the Law of Treaties: "A Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

little relevant information was provided in the present case. In view of its limited holding in the present case, the Tribunal simply notes that the fact that United States banks and Bank Markazi, in connection with settlement negotiations pursuant to Paragraph 2(B), may have alluded to Iranian bank claims against United States banking institutions does not constitute evidence that such claims are disputes under Paragraph 2(B).

11. In its Memorial filed on 5 March 1984 the United States asked the Tribunal to hold, specifically, that it has no jurisdiction under Paragraph 2(B) over "claims" by Iran relating to disputed amounts of principal and interest owing on deposits in domestic offices or branches of United States banks, the argument being, inter alia, that Dollar Account No. 2 was not funded with moneys out of such deposits and that the delayed transfer of funds from domestic offices provided for in the Declarations was incompatible with the timing of disputes under Paragraph 2(B). While not all members of the majority find these arguments persuasive, the Tribunal does not need to decide this question in the present proceeding, as it is not deciding whether "amounts owing" out of Dollar Account No. 2 can be at all owing to Bank Markazi.

12. Given the facts that the Full Tribunal does not have any of the Iranian bank claims in question before it, and that the representative of Bank Markazi stated at the Hearing in this case that none of those claims sought payment out of Dollar Account No. 2, the Tribunal is reluctant to make a ruling either that no amounts could be owing to Bank Markazi out of Dollar Account No. 2, aside from the residue of the Account, or that certain types of debts may be owing to Bank Markazi out of that Account. If, contrary to the above-noted statement at the Hearing, a Chamber should discover that a particular case involves a claim by an Iranian bank for payment from Dollar Account No. 2, then this question will have to be decided in that case. Also

the issue raised by the United States of what constitutes a "United States banking institution" and whether a particular respondent is such an institution should be left to the Chambers for resolution, if necessary, in the context of the individual cases. As determined in paragraphs 2 and 3 above, any claim by an Iranian bank against a United States bank, or other private entity, that does not seek payment from Dollar Account No. 2 clearly is not within the jurisdiction of the Tribunal except to the extent it can be asserted as a counterclaim against a pending claim by the United States bank or other private entity. Whether an Iranian bank claim can be joined as a counterclaim against a pending claim is a matter that each Chamber will have to deal with in accordance with the Claims Settlement Declaration, the Tribunal Rules and this decision.

13. In the Response of the Islamic Republic of Iran to the Memorial of the United States Concerning the Tribunal's Jurisdiction over Certain Iranian Bank Claims, filed 26 June 1984, Iran stated that this case "involves, inter alia, the determination of the Tribunal's jurisdiction over the failure of the Govt. of United States to bring about the transfer of deposits, assets, and interest on deposits held in United States banking institutions." It appears, however, that the United States Government as such is not named as a respondent in any of the Iranian bank claims at issue here and that no claim against the United States Government for failure to fulfil its intergovernmental obligations is asserted. Nevertheless, to the extent that the Iranian bank claims are asserted against the Government of the United States, Iran's response in this case states that they duplicate issues involved in Case No. A15 in which Iran alleges violations by the United States of its obligations under the Algiers Declarations, including its obligation under Paragraphs 5 and 6 of the General Declaration to bring about the transfer of all Iranian deposits and securities in United States banking institutions. Whether a claim is duplicative can be determined by the Chamber to which that claim is assigned. Duplicate claims should be avoided.

Decision

For the above reasons, the Tribunal makes the following determinations:

1. Claims by Iranian banks against United States banking institutions are within the jurisdiction of the Tribunal only to the extent, if any, that they are disputes as to amounts owing from Dollar Account No. 2 for the types of debts payable out of that account which have been referred to the Tribunal in accordance with Paragraph 2(B) of the Undertakings.

2. Whether an Iranian bank claim is a dispute within the jurisdiction of the Tribunal and, if not, whether that claim can be joined as a counterclaim against a claim by the relevant United States banking institution or other private entity are matters that each Chamber will have to deal with in accordance with the Claims Settlement Declaration, the Tribunal Rules and this decision.

3. The decision in this case does not prejudice the claim filed by Iran against the United States in Case No. A15, in which Iran contends, inter alia, that the United States Government's alleged failure and refusal to bring about the transfer of certain Iranian banking deposits

constitutes a breach of the United States Government's obligations under the General Declaration.

Dated, The Hague
13 May 1985

Karl-Heinz Böckstiegel
President
Concurring in part, Dissenting in part

In the name of God

Nils Mangård

Willem Riphagen

Hamid Bahrami-Amadi
Concurring in part,
Dissenting in part

Howard M. Holtzmann
Concurring Opinion

In the name of God

Mohsen Mostafavi
Concurring in part,
Dissenting in part

George H. Aldrich

In the name of God

Parviz Ansari Moin
Concurring in part,
Dissenting in part

Charles N. Brower
Concurring Opinion