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...یوان داوری دعاوی ایران - ایالات متحده

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Case No. A17 Date of filing: 18 June 85

** AWARD - Type of Award _____
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of & dissenting Bockstiegel, Mostafavi, Bahrami & Ansari

- Date 13 May 85
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** SEPARATE OPINION of _____

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** DISSENTING OPINION of _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

Case No. A17
Full Tribunal
Decision No. DEC 37 -A17-FT

THE UNITED STATES OF AMERICA
and
THE ISLAMIC REPUBLIC OF IRAN

Concurring and Dissenting Opinion

of

Karl-Heinz Böckstiegel (President)
Mohsen Mostafavi, Hamid Bahrami and Parviz Ansari

In this case we find relevant arguments on both sides, but on the other hand no interpretation suggested can really be considered as fully consistent with all aspects of 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"). More than most other provisions of the Algiers Declarations, this one has perhaps suffered from the time pressure on those drafting and from the extremely difficult circumstances of the indirect negotiating method used. One's conclusions in such a case depend more than usually on what relative weight one gives to the various

arguments. We come to a number of conclusions which are different from those of the majority and which we feel, though not entering into all details, we should at least shortly indicate.

1. The dispositif ("determinations") reached by the majority at the end of the decision in our view do not reflect to the necessary extent the relief sought in this case. The decision was to interpret the Undertakings due to the request by the United States of America filed 29 December 1982 pursuant to Articles II(3) and VI(4) of the Claims Settlement Declaration and to Paragraph 17 of the General Declaration. The relief sought by this request was expressly and clearly stated in the first paragraph of the "Conclusion" on pages 28/29 of the last memorial of the United States of America filed on 5 March 1984 (the request in the second paragraph was withdrawn in the Hearing). This paragraph reads as follows:

> "In accordance with its decision in Case No. A/16, the Tribunal should hold that, under Paragraph 2(B) of the Undertakings, it has no jurisdiction over claims by Iranian banks against United States banking institutions that seek to recover alleged indebtedness of those banking institutions to Iran, including disputed amounts of principal and interest on Iranian deposits in domestic offices and branches of U.S. banks. The Tribunal should also hold that it may have jurisdiction over such claims if they are proper counterclaims under Article II(1) of the Claims Settlement Declaration to claims of U.S. nationals."

The determination concluding the decision should have answered that request, no more and no less, since the Tribunal also in these interpretative disputes is only called upon to deal with disputes which the parties bring before it. The determination numbered 1. does not give the parties - nor the Chambers - the interpretative guidance requested in the first sentence of the paragraph cited above.

Furthermore, in our view, it would have been possible to answer the question raised by this first sentence of the request in the negative to the effect that indeed the Tribunal does have jurisdiction over the claims described in this sentence.

2. In the merits of the decision we first of all disagree with the conclusion that the jurisdiction of the Tribunal is limited to amounts payable out of Dollar Account No. 2. We recognize the relevance of the arguments put forward for that conclusion. But we think that finally the arguments against that conclusion weigh more heavily:

As rightly mentioned by the majority, in view of the indirect negotiating process, the terms themselves should be given primary weight in the analysis of the text. What the majority perceives as the two "ambiguities" in these terms appear to us to have an express wording which permits only one interpretation. The jurisdiction expressly includes "disputed amounts of deposits, assets ... in U.S banking institutions" and we do not consider it permissible to come to an interpretation which in fact renders these terms redundant for all practical purposes, which is the effect of the majority decision. And the second "ambiguity", namely that twice in Paragraph 2(B) express reference is made to payments to Bank Markazi, is equally not open to interpretation. Since payment of the final balance of Dollar Account No. 2 to Bank Markazi is mentioned separately in the very last sentence of Paragraph 2(B), only other payments to Bank Markazi can be meant by these two references. Neither the "deposits, assets" nor these payments to Bank Markazi can be exclusively limited to payments out of Dollar Account No. 2, since - as the decision rightly points out - the funds in this account belong to Iran and the balance will finally go to Bank Markazi in any case. The decision also suffers from the disability that it cannot satisfactorily deal with the

eventual case of Dollar Account No. 2 being exhausted and amounts still being owed, for which by this mere - for the Claimant accidental - exhaustion of the account no jurisdiction would any more be available. Both "ambiguities" really contain clear and express wording and make sense only - by themselves and together - on that basis. That a payment procedure is only expressly provided for payments from Dollar Account No. 2 is a situation not unfamiliar to the Algiers Declarations, since in a similar way the General Declaration creates a Security Account for awards in favour of US parties and leaves awards in favour of Iranian parties without any security account.

3. The merits of the decision express reluctance to come to a conclusion as to whether payments could be made to Bank Markazi. Again we disagree. The clear wording in two different sentences of Paragraph 2(B) in our view permits no other conclusion than that such payments are possible.

4. Finally, the majority in the merits of the decision find it unnecessary to decide whether disputed amounts in "domestic offices or branches" of United States banks are included in the jurisdiction of the Tribunal. Though it may be true that the original initiative for the inclusion of the paragraph arose out of the $130 million of disputed interest in overseas branches of certain U.S. banks, since Paragraph 2(B) expressly mentions "deposits, assets, and interest, if any, owing on Iranian deposits in U.S. banking institutions" and in no way indicates such a limitation to overseas branches, in our view it can only be interpreted as including domestic as well as overseas branches of U.S. banks. This is confirmed by the fact that, while the General Declaration expressly and separately provides for "Assets in Foreign Branches of U.S. Banks" in Paragraph 5 and for "Assets in U.S. Branches of U.S. Banks" in Paragraph 6, no such

distinction is provided for in Paragraph 2(B) of the Undertakings.

Dated, The Hague
13 May 1985

Karl-Heinz Böckstiegel

In the name of God

Mohsen Mostafavi

In the name of God

Hamid Bahrami

In the name of God

Parviz Ansari