

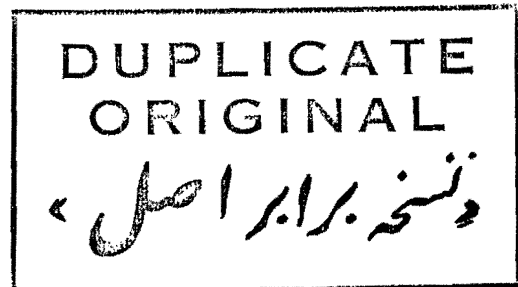
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IRAN UNITED STATES CLAIMS TRIBUNAL	دیوان داری دعاوی ایران - ایالات متحدہ	
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No.	112	شماره

CASE NO. 112

CHAMBER ONE

AWARD NO. 243 -112-1



CONTINENTAL GRAIN EXPORT  
CORPORATION,

Claimant,

and

UNION OF CONSUMERS' CO-OPERATIVES  
FOR IRANIAN WORKERS,

Respondent.

AWARD

1. This Award resolves the issue of the jurisdiction of the Tribunal over the claim of the Claimant, CONTINENTAL GRAIN EXPORT CORPORATION ("Continental"), against the Respondent, UNION OF CONSUMERS' CO-OPERATIVES FOR IRANIAN WORKERS ("EMKAN").

I. PROCEDURAL HISTORY

2. The Claimant filed its Statement of Claim on 18 November 1981 against four Respondents, GOVERNMENT TRADING CORP., FOREIGN TRANSACTIONS COMPANY, MINISTRY OF WAR-ETKA CO. LTD. and EMKAN. The Claimant sought damages for the alleged breach of contracts for the sale of wheat and rice entered into with each of these four Respondents.

3. On 5 September 1983, the Tribunal issued a Partial Award (Award No. 75-112-1) in this Case in which the first three Respondents were dismissed for lack of jurisdiction by virtue of the forum clauses in each of the contracts involving these Respondents. As to EMKAN, the Tribunal found that the Claimant's claim against it was not barred by any contract provision. The Tribunal noted, however, that the issue of whether EMKAN was an agency or instrumentality of the Government of Iran or entity controlled by that Government or any political subdivision thereof, and therefore a proper Respondent before the Tribunal, remained to be decided. Thus, the claim proceeded only against EMKAN.

4. Continental's claim against EMKAN is for demurrage charges incurred on a shipment of rice pursuant to a contract dated 15 June 1978. Continental requests \$82,416.00 for these charges plus interest and costs.

5. On 28 October 1983, a Pre-hearing Conference was held in this Case. On 14 November 1983, the Tribunal issued an Order directing the Parties, among other things, to file all the evidence on which they sought to rely with regard to

both jurisdiction and the merits. The Tribunal also stated that thereafter it intended to decide the jurisdictional issues on the basis of the documents filed.

6. Pursuant to this Order, Continental filed on 4 January 1984, its "Preliminary Statement" with respect to jurisdiction and the merits. On 15 May 1984, EMKAN filed its Response to Continental's "Preliminary Statement". Finally, on 27 September 1984, Continental filed a "Rebuttal Memorial".

## II. FACTS AND CONTENTIONS

7. The Claimant argues that EMKAN is an entity controlled by the Government of Iran as defined in Article VII, paragraph 3, of the Claims Settlement Declaration and that EMKAN is therefore a proper Respondent in this Case. In support of this argument, the Claimant has offered several pieces of evidence. First, it produced a summary in English of Circular No. 60564/N/16941 dated 20 October 1981 issued by the Iranian Ministry of Labour which describes the funding scheme for EMKAN. Continental argues that this Circular shows that EMKAN is funded by the Government of Iran by virtue of the fact that the Ministry of Labour required employers to deduct 10 percent of annual wages up to Rials 30,000 and to pay this amount to the account of the relevant consumer cooperative society under the control of EMKAN. Thus, by law the Government of Iran allegedly established a funding mechanism for EMKAN through a payroll deduction scheme. Furthermore, the Claimant submitted a letter dated 27 February 1982 and a press announcement dated 28 February 1982 bearing the official emblem of the Islamic Republic of Iran which, it argues, demonstrates that EMKAN is a controlled entity. In addition, to indicate the Government of Iran's supervision and control of EMKAN, the Claimant offered a Notice published in the Iranian Official Gazette on 6 July 1983 announcing that the Iranian Department of

Labour and Social Affairs had received and confirmed the minutes of the Board of Directors of the Workers' Consumer Cooperative of Zamzam and Khuzestan. Also, the Claimant produced various newspaper articles appearing in Iran between 1983 and 1984 indicating, it argued, that the Government of Iran furthered its social welfare policy by controlling the cooperatives administered through EMKAN. Finally, the Claimant presented various pieces of evidence dated between 1982 and 1984 allegedly demonstrating that the Government of Iran appointed the Managing Director of EMKAN during this period.

8. EMKAN denies that it is controlled by the Government of Iran. It maintains that it is a "non-governmental institution" established and funded by private individuals under Iranian commercial law. EMKAN argues that it is the central union of approximately ten workers' cooperatives whose purpose is to purchase food and clothing on behalf of their members who are workers in the private sector. EMKAN generally disputes the interpretation that the Claimant attaches to the evidence it offered, but argues that in any event the Claimant has failed to offer any proof of governmental control of EMKAN prior to 19 January 1981 as required by Article II, paragraph 1, of the Claims Settlement Declaration.

### III. REASONS FOR AWARD

9. Pursuant to Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal has jurisdiction over "claims of nationals of the United States against Iran" which were "outstanding" on 19 January 1981. The term "Iran" is defined in Article VII, paragraph 3, of the Claims Settlement Declaration to include "any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof". Thus, the Tribunal only has jurisdiction over an allegedly controlled entity if that

entity was controlled by the Government of Iran as of 19 January 1981.

10. The Tribunal concludes that on the basis of the record before it there is no indication that EMKAN was controlled by the Government of Iran on or before 19 January 1981. The earliest evidence of control offered by the Claimant is the summary in English of Circular No. 60564/N/16941 dated 20 October 1981 which describes the funding scheme for EMKAN. According to this Circular, the scheme was to be "in force as of 1360". The year 1360 began on 21 March 1981. There is also no evidence, nor has the Claimant alleged, that this scheme or any other circumstance evidencing control existed prior to 19 January 1981. Indeed, most of the Claimant's proposed evidence of control concerns documents dated or events having taken place between 1983 and 1984. Thus, there is no evidence that the Government of Iran controlled EMKAN prior to 19 January 1981, nor is there any reasonable basis on which to infer that such control existed before this date.

11. The Tribunal therefore has no jurisdiction over the Claimant's claim against EMKAN. Accordingly, the Tribunal dismisses this claim. Accord Shannon and Wilson, Inc. and Atomic Energy Organization of Iran, Award No. 207-217-2, para. 12 (5 December 1985).

#### IV. AWARD

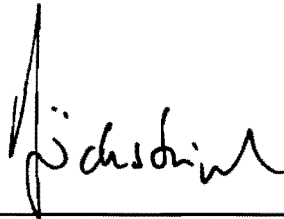
12. For the foregoing reasons,

#### THE TRIBUNAL DETERMINES AS FOLLOWS:

a) The claim of CONTINENTAL GRAIN EXPORT CORPORATION is dismissed.

b) Each Party shall bear its own costs of arbitration.

Dated, The Hague  
6 August 1986



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Karl-Heinz Böckstiegel  
Chairman  
Chamber One

In the Name of God



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Mohsen Mostafavi



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Howard M. Holtzmann