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ORIGINAL DOCUMENTS IN SAFE

Case No. 247

Date of filing: 23-4-1993

\*\* AWARD - Type of Award \_\_\_\_\_  
 - Date of Award \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

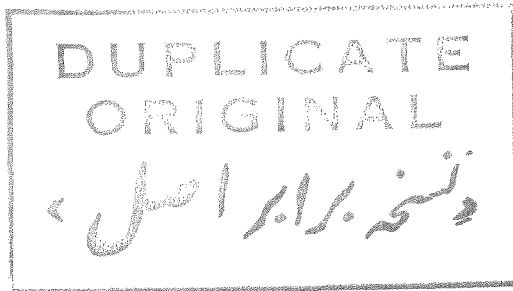
\*\* DECISION - Date of Decision 23 APR 1993  
 \_\_\_\_\_ 6 pages in English \_\_\_\_\_ 7 pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
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CASE NO. 247

CHAMBER TWO

DECISION NO. DEC 112-247-2

MELLON BANK N.A., on behalf of  
itself and its affiliates,  
MELLON BANK INTERNATIONAL and  
BANK MELLON INTERNATIONAL-MIAMI,  
Claimants,  
and

THE ISLAMIC REPUBLIC OF IRAN,  
THE GOVERNMENT OF IRAN,  
THE AGRICULTURAL DEVELOPMENT BANK OF IRAN,  
BANK MARKAZI IRAN,  
BANK MELLI IRAN,  
BANK SADERAT IRAN,  
DEVELOPMENT AND INVESTMENT BANK OF IRAN,  
INDUSTRIAL CREDIT BANK,  
INDUSTRIAL DEVELOPMENT AND  
RENOVATION ORGANIZATION OF IRAN,  
INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN,  
INTERNATIONAL BANK OF IRAN AND JAPAN,  
IRAN KNITTING COMPANY,  
NATIONAL IRANIAN OIL COMPANY,  
NATIONAL IRANIAN TANKER COMPANY,  
NATIONAL PETROCHEMICAL CO. OF IRAN,  
POLYACRYL IRAN CORPORATION,  
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	23 APR 1993
	تاریخ ۱۳۷۲ / ۲ / ۳

DECISION

1. On 13 January 1982, MELLON BANK N.A., on behalf of itself and its affiliates MELLON BANK INTERNATIONAL and MELLON BANK INTERNATIONAL-MIAMI ("Mellon Bank") brought a Claim against THE ISLAMIC REPUBLIC OF IRAN, THE GOVERNMENT OF IRAN ("Iran"), THE AGRICULTURAL DEVELOPMENT BANK OF IRAN, BANK MARKAZI IRAN ("Bank Markazi"), BANK MELLI IRAN, BANK SADERAT IRAN, DEVELOPMENT AND INVESTMENT BANK OF IRAN, INDUSTRIAL CREDIT BANK, INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION OF IRAN, INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN, INTERNATIONAL BANK OF IRAN AND JAPAN, IRAN KNITTING COMPANY, NATIONAL IRANIAN OIL COMPANY, NATIONAL IRANIAN TANKER COMPANY, NATIONAL PETROCHEMICAL CO. OF IRAN, and POLYACRYL IRAN CORPORATION, to recover the principal and interest due on a variety of banking and other financial transactions.

2. Pursuant to a Joint Request of the Parties, the Tribunal by its Order of 22 January 1985 terminated the proceedings of all claims in this Case except for those set forth in paragraphs 12, 13, and 14 (insofar as the said paragraph 14 relates to the said paragraphs 12 and 13) of the Statement of Claim. Consequently, only a claim relating to interest for the period January 1 through January 18, 1981, on six syndicated loan agreements, remained in dispute.

3. Two separate cases, Cases 701 and 711, which involved claims brought by Bank Markazi against Mellon Bank, relating to deposits held by Mellon Bank for the account of several banking institutions, were terminated by the Tribunal on 27 November 1985 as a result of the Tribunal's decision in Case No. A17, United States of America and Islamic Republic of Iran, Decision No. DEC 37-A17-FT (18 June 1985), reprinted in 8 Iran-U.S. C.T.R. 189. In terminating Cases 701 and 711, the Tribunal reminded the parties that, if the Iranian Bank claim involved in those Cases "relates to a claim by a United States banking institution ... then a party in such other Case may request that the Iranian bank claim be decided as a counterclaim in that other Case."

4. On 20 December 1985, Bank Markazi, which was a named Respondent in Case 247, requested the Tribunal to decide the not previously settled portions of its claims in Cases 701 and 711 as counterclaims in Case 247. By its filing of 20 March 1986, Mellon Bank objected to Bank Markazi's request. By its Order of 4 June 1986 the Tribunal "defer[red] taking a decision regarding the admissibility of the Counterclaim until such time as the proceedings in this Case [were] no longer suspended." This had been the case since late 1983. On 20 May 1986, Bank Markazi filed its Counterclaim.

5. On 27 June 1990, the Tribunal issued an Order requesting the Parties to inform the Tribunal by 15 August 1990 of the present status of the Case. The Tribunal also requested the Parties to identify the extent to which there remained any disputes between the Parties with respect to the claims and counterclaims, if any, in the Case. The Parties were further requested to indicate whether the suspension should be continued and, if so, the reasons therefor.

6. In a submission of 13 August 1990 Mellon Bank informed the Tribunal that it "ha[d] received payment of its claims with respect to the syndicated loan agreements identified in paragraph 13 of its Statement of Claim and ha[d] no further claims with respect to such loan agreements." Subsequently on 15 August 1990, the Agent of the Islamic Republic of Iran informed the Tribunal that with respect to the remaining claim in Case 247, "final agreements have been signed by the respective banks' representatives, and, upon payment of the amounts involved, ... all claims ... will be settled. The counterclaims ... have not been resolved."

7. In its Order of 5 November 1990, the Tribunal noted the Parties' submissions and requested the Parties to inform the Tribunal by 2 January 1991 whether the payment by the Federal Reserve Bank had been made and whether the Counterclaim had been settled. The Tribunal also indicated that it "intends to decide

as to the termination of the proceedings with respect to the Claim pursuant to Article 34 of the Tribunal Rules and as to the admissibility and jurisdictional aspects of the Counterclaim on the basis of the documents before it."

8. In response, on 31 December 1990, Mellon Bank informed the Tribunal that it had received the payments due, and that the "Claimant has no further claims with respect to any portion of its Statement of Claim."

9. The Respondents have not filed any comment in response to the Tribunal's Order or Mellon Bank's submission. In view thereof, and in accordance with its Orders of 4 June 1986 and 5 November 1990, the Tribunal must now decide whether the Counterclaim is within its jurisdiction.

10. Bank Markazi presents three alternative arguments for the Tribunal's jurisdiction over these Counterclaims. First, it asserts that the Tribunal has jurisdiction over the Counterclaims on the basis of principles of set-off. The Tribunal notes that, quite apart from the merits of that assertion, set-off could not in any event be applicable in this Case as the Claim has been settled in its entirety.

11. Bank Markazi further argues that its Counterclaims in this Case are based on Article 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, dated 19 January 1981 ("Undertakings") and that Article 2(B) does not restrict counterclaims to those arising out of the same contract, transaction, or occurrence as the claim. However, in Case A17, the Tribunal held that:

"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. Paragraph 2 (B) gives no jurisdiction over 'claims' by one bank seeking payment from another but establishes a limited jurisdiction over 'disputes', which may have been referred to the Tribunal by either Bank Markazi or the United States banking institution involved, as to 'amounts owing' from Dollar Account No. 2."

Case No. A17, supra, at 11-12, 8 Iran-U.S. C.T.R. at 197 (footnote omitted). Bank Markazi acknowledged, in its letters of 1 October 1985 in Cases 701 and 711, that "the ... claims brought before the Tribunal [are not] payable from Dollar Account No. 2." Consequently, the Tribunal has no jurisdiction pursuant to the Undertakings over such claims whether styled as a claim or a counterclaim. If jurisdiction exists, it must be found under the Claims Settlement Declaration.

12. Bank Markazi's third argument is that its counterclaims fulfill the requirement of Article II, paragraph 1, of the Claims Settlement Declaration, according to which a counterclaim must arise "out of the same contract, transaction or occurrence that constitutes the subject matter" of Mellon Bank's Claim. Bank Markazi does not identify the "same contract, transaction or occurrence" of both the claim and the counterclaim, but merely states that "all [banking] transactions are reckoned as parts of a prolonged general agreement for reciprocal transactions."

13. The Tribunal notes that Mellon Bank claimed in this Case interest from Bank Markazi in connection with six syndicated loan agreements with several Iranian entities, whereas Bank Markazi's counterclaims arise out of funds which Mellon Bank held in different accounts for various Iranian agencies i.e. International Bank of Iran and Japan, Bank Saderat-Iran, Development & Investment Bank of Iran, and Bank Melli, none of which are named in the syndicated loan agreements. Consequently, the Tribunal holds that Bank Markazi's counterclaims do not arise out of the "same contract, transaction or occurrence" as Mellon

Bank's Claim and, therefore, that it has no jurisdiction over Bank Markazi's counterclaims under Article II, paragraph 1, of the Claims Settlement Declaration.<sup>1</sup>

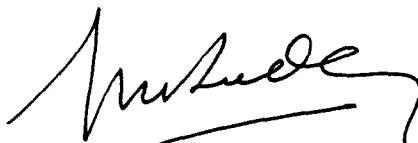
14. For the foregoing reasons:

THE TRIBUNAL DECIDES AS FOLLOWS:

- a) Bank Markazi's Counterclaims are dismissed for lack of jurisdiction.
- b) The remaining arbitral proceedings in this Case are terminated pursuant to Article 34, paragraph 2 of the Tribunal Rules.

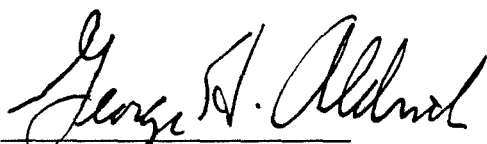
Dated, The Hague

23 April 1993



José María Ruda  
Chairman  
Chamber Two

In The Name of God



George A. Aldrich



Koorosh H. Ameli  
Concurring

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<sup>1</sup> See also The First National Bank of Boston and The Islamic Republic of Iran et al., Decision No. DEC 83-202-2 (19 Sept. 1988), reprinted in 19 Iran-U.S. C.T.R. 307.