

ORIGINAL DOCUMENTS IN SAFE

Case No. 330

Date of filing: 3 Dec 87

** AWARD - Type of Award _____
- Date of Award _____
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
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** DISSENTING OPINION of Mr Bahmani on DEC
- Date _____
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** OTHER; Nature of document: _____

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_____ pages in English _____ pages in Farsi

IRAN UNITED STATES CLAIMS TRIBUNAL		ثبت شد
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No.	338	شماره

In His Exalted Name

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CASE NO. 338

CHAMBER TWO

DECISION NO. DEC66-338-2

INTERFIRST BANK DALLAS, N.A.

(formerly, "FIRST NATIONAL BANK IN DALLAS")

Claimant,

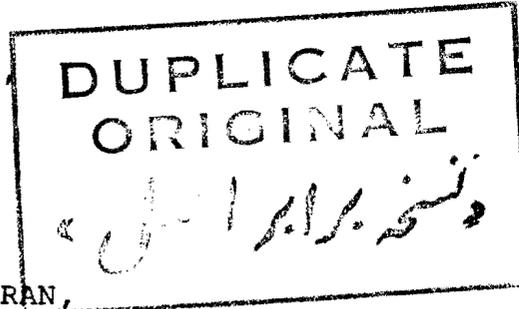
and

THE ISLAMIC REPUBLIC OF IRAN,

INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN,

and BANK SANAT VA MADAN,

Respondents.



DISSENTING OPINION OF HAMID BAHRAMI WITH RESPECT
TO DISMISSAL OF THE COUNTERCLAIM OF BANK MARKAZI
IRAN IN CASE NO.338

I do not endorse the legal grounds of the Tribunal's Decision in Case No.A17; moreover, the issue of set-off and counterclaims, as it relates to the Tribunal's jurisdiction, has been examined generally and repeatedly in various cases. Therefore, I shall here content myself, in stating those considerations which have lead to my dissent to the majority's Decision in this Case, with setting forth my objections to the present Decision alone.

1. The basic document relating to the Tribunal's jurisdiction over bank claims is the Undertakings, and Paragraph [2] B thereof does not accept any of the terms and conditions provided for in the Claims Settlement Declaration or

Tribunal Rules with respect to counterclaims. Rather, it expressly provides that if an (American) banking institution and Bank Markazi fail to reach agreement over settlement of their claims and the amounts owed, they shall, pursuant to the procedures set forth in said Paragraph, ultimately have recourse to arbitration by this Tribunal. It is especially necessary to note that in these claims, the Tribunal is the judicial forum to whose jurisdiction [the parties shall] submit, if no other arbitral arrangements are agreed upon.

From this brief explanation, the following obvious conclusion may be drawn: First, the two Governments did not intend that the rule that counterclaims are to arise out of the underlying contract in a claim was to apply to bank claims. Therefore, Bank Markazi may bring its counterclaims against the Claimant Bank, even assuming that they do not arise out of the Claimant's claim in particular, provided that such counterclaims are directed against the same Claimant.

Second, it is unclear why, if the Tribunal had any other intention, in dismissing Bank Markazi's claim in Case No.724, it advised Bank Markazi to bring its claim against the respondent Bank in that case, as a counterclaim in another case filed by the latter Bank as claimant.

Third, pursuant to the Undertakings, Bank Markazi has the right to bring claims both on its own behalf and on behalf of other Iranian banks as their legal proxy; and although the Iranian banks are independent banking institutions, they have conferred all their prerogatives and duties relating to the claims before the Tribunal, upon Bank Markazi. That is, in simpler terms, the Iranian banks have relinquished their claims against the United States banks to Bank Markazi, and therefore, the majority's decision in paragraph 6 of its Decision, where this simple

argument of Bank Markazi is not deemed to be decisive is, in my opinion, devoid of all legal merit.

2. Although the Tribunal dismissed Bank Markazi's claim in Case No. 724 solely on jurisdictional grounds, independently and in implementation of its decision in Case No.A17, nonetheless, as explained above, the claims of the Iranian banks are at any event at the disposal of Bank Markazi by virtue of the Undertakings. For this reason, Bank Markazi has a clear right, in bringing its claim against InterFirst Bank Dallas, to bring the counterclaim in Case No.338, wherein the Claimant is the same Bank which is the respondent in Case No.724. This is because the Respondent's claim in Case No.338 has also, legally and pursuant to the Undertakings, been transferred to Bank Markazi; thus, the majority's reasoning in paragraph 7 of the said Decision is also without legal justification.

3. As stated in paragraph 1 of the present Opinion, in adjudicating the bank claims, this Tribunal is acting in the stead of the arbitral process provided for in the Undertakings, and the Tribunal Rules ought, logically, to have been interpreted in the light of the said Undertakings. In my opinion, in adjudicating the bank claims, which generally involve settlement of the claims of Iranian banks and United States banks, and which, in accordance with normal banking practice in all cases, includes both claims by Iranian banks against United States banks and also debts owed by each of these banks to one another, the designation of "claimant" and "respondent" is an artificial one; the basic purpose is, to settle and then liquidate their accounts. This same approach has generally been followed in the banking settlements, and it is unclear to me, from an examination of the relevant case, why the claim in the present Case was not set off against the Claimant's debt to Bank Markazi, since by its own admission the Claimant on 4 April 1984 received payment on its claim

against Bank Markazi (representing Bank Sanat va Madan). Apart from this ambiguity, I am of the opinion that the Tribunal cannot now refuse to adjudicate a claim lying expressly within its jurisdiction, since as noted above, in the bank claims, the rubrics of "claimant" and "respondent" are artificial and formalistic ones.

4. Although on principle the Claimant is deemed to own the claim and is entitled to withdraw it, a withdrawal of claim results only in a waiver of the rights of the Claimant himself; a claimant who withdraws his claim will be liable for any damages incurred by a respondent as a result of such withdrawal.

It is well-established that the Claimant acted in bad faith, because it withdrew its claim upon learning of Bank Markazi's counterclaim, whereas it had continued to pursue it earlier, even though it had made recovery on it in April 1984, withdrawing the claim in Case No.338 only after Bank Markazi's counterclaim was filed. Briefly put, Bank Markazi may be time-barred from making recovery on its entitlement against the bank in question before any other forum, and so this Tribunal should not permit United States claimants to make such flagrant abuse of the Algiers Declarations, which should be implemented in full good faith.

The Hague,
3 December 1987

A handwritten signature in black ink, consisting of a large, sweeping oval shape with a smaller, more complex mark inside, all resting on a horizontal line.

Hamid Bahrami