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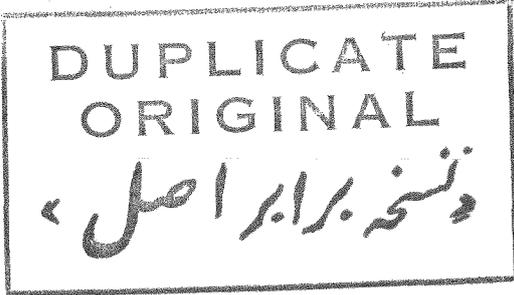
IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

CASE NO. 455

CHAMBER ONE

AWARD NO. 512-455-1



THE CONSORTIUM FOR INTERNATIONAL
DEVELOPMENT ("CID")

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
AGRICULTURAL DEVELOPMENT BANK OF IRAN,
MINISTRY OF AGRICULTURAL AND RURAL
DEVELOPMENT, BANK TEJARAT,

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	15 MAY 1991
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AWARD

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A. INTRODUCTION

1. On 18 January 1982, the Claimant, CONSORTIUM FOR INTERNATIONAL DEVELOPMENT ("CID") filed a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN, THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT, THE AGRICULTURAL DEVELOPMENT BANK OF IRAN and BANK TEJARAT. An amendment to the Statement of Claim was filed on 26 February 1982. CID is seeking payment of U.S.\$15,921¹ based on a breach of contract by the Agricultural Development Bank of Iran ("The Agricultural Bank"). Further it is seeking payment of \$174,660 as the amount it is owed for work done pursuant to contracts with the Ministry of Agriculture and Rural Development of Iran ("The Ministry"). CID's third claim is for payment of \$223,822 representing the balance in its bank account with Bank Tejarat (formerly Iranians Bank). After the Parties had exchanged their initial pleadings, the Tribunal invited them by Order to submit further legal briefs on the issues of jurisdiction; the parties were asked in particular to discuss the forum-selection clause contained in the contract between CID and the Ministry. The Tribunal also indicated in the Order that it intended to decide all issues of jurisdiction on the basis of the documents before it. This Award will do so, dealing with the three claims separately.

B. FACTS AND CONTENTIONS

I. The Claim for \$15,921 Due on the Contracts with the Agricultural Development Bank of Iran.

2. CID alleges in its Statement of Claim that the Agricultural Bank has breached both a contract entered into in 1977 and a letter of agreement signed in 1978, by failing to

¹All references to dollars in this Award are to United States dollars.

pay CID \$15,921, the balance of the amount owed under the contracts. On 11 October 1983, the Agricultural Bank filed a Statement of Defense, in which it stated that the Bank had paid that amount with two cheques. In its Reply filed on 16 August 1984, CID stated that upon further review of its documentation, it could confirm that the amount in question had been paid and, accordingly, withdrew its Claim against the Agricultural Bank. Subsequently, on 25 January 1985, the Agricultural Bank filed a submission requesting the Tribunal to dismiss the Claim and to be awarded \$5,000 as costs incurred in its defense. On 9 April 1985, CID filed a submission entitled "Response to Request for Dismissal of Claim and Award of Respondents' Expenses". In the submission CID agreed that the Claim against Agricultural Bank should be dismissed but objected to any award of costs. In the alternative, it requested the Tribunal to suspend its decision as to costs until it resolved the entire Claim. Finally, the Agricultural Bank submitted a response, entitled "Respondent's Motion for Requirement of Claimant to Reimburse Costs of Proceedings", in which it reiterated its request to be awarded \$5,000 in costs.

II. The Claim Based on Breach of Contract in the Amount of \$174,660

3. CID submits that on 18 February 1978 it entered into a contract with the Ministry, whereby CID undertook to render technical and consulting services to Iran in the training of farm corporation managers, and other experts, in animal husbandry and dry farming. CID alleges that although it performed its obligations under the contract, the Ministry breached that agreement by failing to pay CID \$174,660, the balance of the amount owed under the contract. The Claim includes the costs of repatriation of staff, and costs incident to returning personnel to the United States, phasing out the office and contract activities, and the sum that the Claimant refers to as the "good performance withholding amount." Relying on the theory of breach of

contract, CID thus requests the Tribunal to award it the above-mentioned amount. Alternatively, in case the Tribunal were to find that it lacks jurisdiction with respect to the contract claim, CID also asserts its Claim on the basis of the theories of quantum meruit and unjust enrichment.

4. The Respondent, the Ministry, disputes the Claim both with respect to the Tribunal's jurisdiction and the merits. Regarding the Tribunal's jurisdiction, the Respondent asserts that Article 23 of the contract contains a forum-selection clause that divests the Tribunal of its jurisdiction. The provision reads as follows:

Settlement of Disputes

All the disputes that may arise between the parties concerning this Contract, or the interpretations of its contents, which cannot be settled through negotiations or correspondence in an amicable manner, shall first be referred to a committee consisting of a senior member of the executive agency (or his deputy), and a similar official of the Consortium; if such a settlement committee cannot solve the questions referred to it, the matter shall be submitted to an appropriate Iranian court, in accordance with Iranian law. Until such time as the matters have been finally settled, the Consortium agrees to carry out its commitments under this Contract and its Appendices. Likewise, pending the final settlement of such matters, the Employer will perform its commitments under the Contract and its Appendices.

The Respondent argues that this provision falls within the scope of the forum-clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration ("CSD"), which excludes jurisdiction over claims

arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian Courts, in response to the Majlis position.

The Respondent therefore requests the Tribunal to dismiss the Claim because of lack of jurisdiction.

5. In response, CID argues that Article 23 of the contract does not confer exclusive jurisdiction on Iranian courts, because it requires the parties to submit all disputes to a settlement committee. CID alleges that the settlement committee's decision is binding on the parties; only if the settlement committee cannot resolve the matter for some reason will the problem be subject to the jurisdiction of the Iranian courts. CID contends that such a "settlement committee provision" is equivalent to a provision requiring arbitration, which the Tribunal has held to lie outside the scope of the CSD's forum-clause exclusion. See Dresser Industries, Inc. and Iran, ITL 9-466-FT, (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 280.

6. CID further asserts that the forum clause at issue here is radically different from the clause found to confer exclusive jurisdiction on Iranian courts in T.C.S.B. Inc. and Iran, ITL 5-140-FT, (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 261, 264 ("T.C.S.B.") (construing the "BHRC Contract").

7. In response to CID's arguments, the Respondent makes a variety of arguments. First, it asserts that the settlement committee referred to in Article 23 is not a judicial forum; instead, it is a mechanism through which the parties can first attempt to resolve minor disputes arising from miscalculations in payments or similar matters. The Respondent argues that the settlement committee is not a forum "outside the parties", like an arbitral panel, because it consists exclusively of party representatives; moreover, only a unanimous decision by the settlement committee binds the parties. It further argues that although the parties can agree to adopt the "committee's proposal", such an agreement does not fall within the domain of arbitration. The Respondent argues that the forum-selection clause in the

present Case is therefore identical with the one in the BHRC Contract in T.C.S.B., and also with the provision in Tippets, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 (29 Jun. 1984), pp. 4-5, reprinted in 6 Iran-U.S. C.T.R. 222 ("Tippets").

8. With respect to CID's alternative legal theories of quantum meruit and unjust enrichment, the Respondent disputes that such theories can support a claim when a valid contract can provide a basis for recovery. In support of its argument, the Respondent refers to the Tribunal's findings in Dames and Moore and The Islamic Republic of Iran, et al., Award No. 97-54-3 (20 Sept. 1983) pp. 16, 17, reprinted in 4 Iran-U.S. C.T.R. 220 ("Dames and Moore") and Component Builders, Inc., et al., and The Islamic Republic of Iran, ITM/ITL 51-395-3 (27 May 1985) p.10, reprinted in 8 Iran-U.S. C.T.R. 223, 224 ("Component Builders").

9. The Ministry asserts a Counterclaim against CID for social security insurance fees in the amount of rials 2,277,525, and for damages caused by the delay in the payment of money it alleges it was owed by the Claimant. In support of its claim, the Ministry relies on a letter of the General Revenue Department of the Social Security Organization, dated 12 May 1982.

10. CID requests the Tribunal to deny the Counterclaim for the failure to present sufficient proof. In addition, the Claimant argues that the Counterclaim does not arise out of the same contract, transaction or occurrence as the Claim, and is thus barred by Article II, paragraph 1, of the CSD. Third, the Claimant alleges that there is no evidence that the Counterclaim was outstanding on 19 January 1981. Finally, the Claimant states that, in view of the practice of national courts not to enforce foreign revenue laws, the Counterclaim is not cognizable.

III. The Bank Claim in the Amount of \$223,822

11. CID asserts a third Claim based on expropriation of its bank account no. 562106 in Iranians Bank in Tehran, now Bank Tejarat. CID alleges that it conducted its business transactions and paid its personnel, including its American employees, through this account. In May 1979, the balance in the account was rials 15,677,569, which, according to CID, is equivalent to \$223,822.24. CID alleges that a prohibition against changing rials into dollars precluded it from transferring the rials to the United States. It therefore seeks the payment of \$223,822 with interest.

12. In the Statement of Defense filed on 3 November 1983, Respondent Bank Tejarat submits that it examined the account books and found that CID holds a balance of rials 15,677,569 in its account no. 562106. It states that the amount is presently available to CID, but that it has received no demand for payment from CID.

13. In response, CID states that in May 1984 its signatory on the account, Mr. Bruce Anderson, attempted to secure a visa to enter Iran to withdraw the account balance. He allegedly was informed by the Iranian authorities that any request for a visa by a United States citizen would be denied. Mr. Anderson then allegedly attempted in April and May 1984 to have the funds transferred from Iran to banks located in Cairo and London. CID states that the Government of Iran would not allow such a transfer of funds. Finally, CID alleges that Mr. Anderson unsuccessfully requested Bank Tejarat to provide the name and location of a correspondent bank through which it could obtain its funds. These actions by Bank Tejarat and the Government of Iran amount to an expropriation of the funds held by Bank Tejarat, CID argues.

C. REASONS FOR AWARD

I. The Claim in the Amount of \$15,921 against the Agricultural Development Bank of Iran

14. As noted supra, para. 2, CID has withdrawn its Claim against the Agricultural Bank; accordingly, the Bank has requested the Tribunal to dismiss the Claim and to award the amount of \$5,000 as costs incurred in its defense. CID subsequently objected to such an award of costs. The Tribunal will deal with the issue of costs in a separate paragraph that will also discuss the requests for costs presented by the other Respondents. See infra, para. 21.

II. The Claim against the Ministry of Agriculture and Rural Development

15. CID claims damages of \$174,660 from the Ministry of Agriculture based on the 1977 contract and its related agreement concluded in 1978. The contract contains, as noted supra, para. 4, a forum-selection clause. In an Order filed on 16 October 1986, the Tribunal invited the parties

to file by 15 January 1987 any further legal briefs they wish to submit on the issues of jurisdiction in this case, particularly regarding the forum-selection clause contained in the contract of 18 February 1978 between the Claimant and the Respondent the Ministry of Agriculture and Rural Development. The Tribunal thereafter intends to decide all issues of jurisdiction on the basis of the documents before it.

16. Article II, paragraph 1, of the CSD excludes jurisdiction over claims

arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian Courts, in response to the Majlis position.

The Tribunal has applied Article II to several contractual provisions in cases decided previously. For example, in T.C.S.B., see supra, para. 6, the BHRC Contract contained a forum clause that reads as follows:

All disputes arising out of this Subcontract, or the interpretation and understanding of its provisions between the parties, which cannot be settled through amicable negotiations or correspondence, shall first be referred to a committee composed of a representative of each of the Employer, Housing Organization, and Subcontractor. In case no agreement can be reached or if one of the parties does not agree with the judgment of the majority of the committee, the dispute will be settled according to the laws of Iran by reference of it to competent courts of Iran.

The committee described in the BHRC Contract was thus similar to the settlement committee established by the contract provision in this Case. The Full Tribunal held that the provision in T.C.S.B. was subject to the forum-clause exclusion in the CSD, explaining that

[the] Claimant contends that this clause does not refer disputes to the sole jurisdiction of Iranian courts, since it provides for a dispute resolution procedure by a private committee. The Tribunal holds that the provision regarding the dispute resolution procedure must be understood so as to mean that any compromise solution arrived at in the course of such settlement discussion is binding on the parties only if expressly accepted by them. Thus, it does not in essence differ from any general obligation for the parties to a contract to engage in settlement discussions before referring disputes to court proceedings, and it cannot in any respect be compared with an arbitration procedure capable of bringing the contract outside the scope of the exclusion from the Tribunal's jurisdiction provided for in Article II, paragraph 1, of the Claims Settlement Declaration.

Again, in Tippets, see supra, para. 7, the Tribunal faced the same question with respect to a forum clause that provided as follows:

All the disputes that arise between the parties hereto over this Contract or the interpretation of its contents that cannot be settled through negotiation or correspondence, shall be primarily referred to a committee consisting of the highest authority of the executive agency (or his deputy) and the Consultant for settlement and in case they fail to settle the dispute on the basis of this Contract and the relevant regulations, the dispute shall be settled through competent Iranian courts and in accordance with Iranian Laws.

The Tribunal in Tippets did not find any significant distinctions between the clause in that Case and the one contained in the BHRC Contract. Similarly, with respect to the forum clause in the contract between CID and the Ministry, the Tribunal notes that it describes the procedure to be followed "if such a settlement committee cannot solve the questions referred to it". In light of this wording, the Tribunal concludes that such a settlement procedure obviously was not designed to assure reaching binding decisions in all disputes. The Tribunal therefore finds that the provision, as in T.C.S.B. and Tippets, is not equivalent to binding arbitration. Rather, the parties agreed to resort to the Iranian courts when it was necessary to adjudicate issues because the members of the settlement committee had not agreed. The exclusive jurisdiction of Iranian courts over disputes related to the contract between CID and the Ministry consequently is not impaired by the dispute-settlement procedure provided for in Article 23. Because the forum clause provides for exclusive jurisdiction of Iranian courts over contractual disputes, the Claim against the Ministry is dismissed for lack of jurisdiction.

17. CID has asserted an alternative basis for relief on the theories of quantum meruit and unjust enrichment. However, it has been well established by prior Tribunal cases that such a claim may not be maintained when a valid and enforceable contract exists. See Dames and Moore, and Component Builders, supra, para. 8. See also Aeronutronic Overseas Services, Inc. and The Government of the Islamic Republic of Iran et al., Award No. 238-158-1 (20 June 1986),

reprinted in 11 Iran-U.S. C.T.R. 223, 238. Therefore, because the Claim arises under a binding contract that is enforceable in the Iranian courts, the Tribunal cannot base an award on the theories of quantum meruit and unjust enrichment, and the Claim is dismissed.

18. Because the Claim is dismissed for lack of jurisdiction, it follows that the Counterclaim asserted by the Ministry is also dismissed for lack of jurisdiction. See, e.g., International Technical Products Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Partial Award No. 186-302-3 (19 Aug. 1985), at pp. 42, 43, reprinted in 9 Iran-U.S. C.T.R. 10, 38.

III. The Claim against Bank Tejarat

19. CID's third claim is based on the alleged expropriation of its bank account no. 562106 in Bank Tejarat (formerly Iranians Bank). It seeks the payment of \$223,822 with interest. The crucial jurisdictional question in this respect is whether the claim for the bank funds was outstanding on 19 January 1981 within the meaning of Article II, paragraph 1 of the CSD. The Tribunal has previously held that a mere right to payment from a bank account is not a "claim" within the meaning of the CSD; rather, to qualify as an outstanding bank claim, a demand for payment must have been made prior to 19 January 1981. See Harza Engineering Company and Islamic Republic of Iran, Award No. 19-98-2, pp. 8-9 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 504; Tippets, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2, p. 7 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 223; Computer Sciences Corporation and Government of the Islamic Republic of Iran, et al., Award No. 221-65-1, p. 39 (16 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 269, 299-300; Training Systems Corporation and Bank Tejarat, et al., Award No. 283-440-1, para. 24 (19 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 331, 337; Ali Ashgar and The Islamic

Republic of Iran, Award No. 475-11491-1, pp. 8-9 (14 March 1990), reprinted in, ___ Iran-U.S. C.T.R. ___, ___.

20. CID states and Mr. Anderson, its signatory on the account, confirms that the alleged attempts to have the funds transferred from Iran were not made earlier than April and May 1984. Based on Mr. Anderson's affidavit CID alleges that a transfer was not allowed by the Iranian Government at that time. Mr. Anderson states that he then requested Bank Tejarat to provide the name and location of a correspondent bank through which CID could obtain the funds. On the basis of CID's own pleadings and the affidavit of Mr. Anderson, it is thus clear that no demand for payment was made before 19 January 1981. The Tribunal concludes therefore that it has no jurisdiction over the Claim for the funds in the bank account with Bank Tejarat. The Tribunal notes, however, that Bank Tejarat has confirmed that CID holds bank account no. 562100 and that CID can use its balance of rials 15,677,569.

D. COSTS

21. As stated supra, see para. 14, Respondent the Agricultural Bank has demanded an award in the amount of \$5,000 as its costs incurred in defending the Claim. The Respondents the Ministry of Agriculture and Bank Tejarat also requested an award of costs incurred in connection with the presentation of their defense. In view of the circumstances of this Case, the Tribunal awards the amount of \$1,000 to the Agricultural Development Bank of Iran, and the amount of \$2,500 jointly to the Ministry of Agriculture and Bank Tejarat.

E. AWARD

22. For the foregoing reasons:

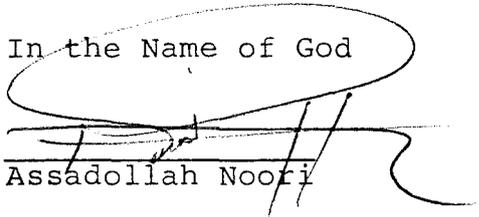
THE TRIBUNAL AWARDS AS FOLLOWS:

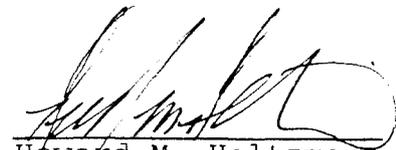
- a) the proceedings against THE AGRICULTURAL DEVELOPMENT BANK OF IRAN are terminated pursuant to Article 34(2) of the Tribunal Rules;
- b) the Claim against The MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT BANK is dismissed for lack of jurisdiction;
- c) the Counterclaim asserted by THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT is dismissed for lack of jurisdiction;
- d) the claim against BANK TEJARAT is dismissed for lack of jurisdiction;
- e) the Claimant THE CONSORTIUM FOR INTERNATIONAL DEVELOPMENT is obligated to pay THE AGRICULTURAL DEVELOPMENT BANK OF IRAN, costs of arbitration in the amount of \$1,000, and THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT and BANK TEJARAT jointly \$2,500.

Dated, The Hague
15 May 1991


Bengt Broms
Chairman
Chamber One

In the Name of God


Assadollah Noori


Howard M. Holtzmann