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AIMS TRIBUNAL

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دیوان داوری دعوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No.

53

Date of filing:

6 March 86

\*\* AWARD

- Type of Award \_\_\_\_\_

- Date of Award \_\_\_\_\_

\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_

\_\_\_\_\_ pages in English \_\_\_\_\_ 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 Mr. Mask

- Date 6 Mar. 86

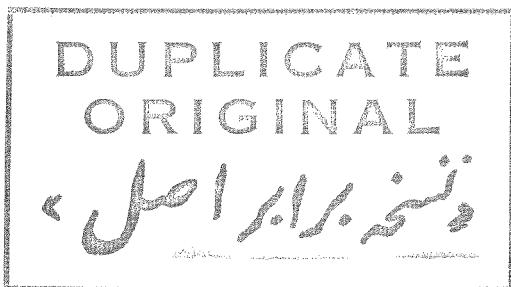
6 pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: \_\_\_\_\_

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## IRAN-UNITED STATES CLAIMS TRIBUNAL



CASE NO. 53  
CHAMBER ONE  
AWARD NO. 216-53-1

BLOUNT BROTHERS CORPORATION,  
Claimant,  
and  
THE ISLAMIC REPUBLIC OF IRAN,  
BANK TEJARAT, BANK SADERAT,  
BANK REFAH KARGARAN,  
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دادگاه دعوی ایران - ایالات متحده
FILED - ثبت شد	
Date	6 MAR 1986 مارچ ۱۳۶۶ / ۱۲ / ۱۰
No.	53 شماره

DISSENTING OPINION OF RICHARD M. MOSK

I respectfully dissent.

Blount Brothers Corporation ("BBC" or "Claimant") and its Iranian subsidiary, BCJ Development Co. ("BCJ"), had several checking accounts in various Iranian banks, all of which banks are now entities controlled by the Government of Iran. BBC had authority to withdraw and obtain money from the BCJ accounts. Claimant has been unable to obtain the funds in these accounts or convert the funds to dollars and transfer them out of Iran. The Tribunal has decided that Claimant's efforts to withdraw and transfer its monies out of Iran and into dollars were insufficient to constitute a claim outstanding on January 19, 1981, so as to be a claim within the jurisdiction of this Tribunal under Article II, paragraph 1, of the Claims Settlement Declaration.

I believe the Claimant's demands on the local Iranian banks, requests to the Iranian Central Bank or "Bank Markazi" ("Central Bank") for licenses and other actions were sufficient demands to create a claim outstanding prior to January 19, 1981.

The evidence shows that in late 1978 Claimant's agents attempted unsuccessfully to withdraw monies from its various accounts. Apparently the Iranian banks were unwilling or unable to permit the withdrawal of the monies -- even in rials. In early 1979, one of the Iranian banks involved, Bank Melli, informed Claimant that it could not transfer certain sums to the Bank Melli branch in London without the Central Bank's authorization. Claimant otherwise obtained information that it should apply to the Central Bank for a license in order to obtain permission to transfer funds to the United States or elsewhere. Accordingly, on July 27, 1979, BCJ wrote to the Central Bank requesting permission to convert rials in a specified Iranian bank account to dollars and setting forth reasons justifying that request. There is no evidence of a response by the Central Bank.

Similarly, on October 23, 1979, Claimant, through a subsidiary, wrote to the Central Bank requesting permission to transfer funds from its rial bank account in Tehran to dollar accounts in the United States and specifying the reasons supporting the request for such a transfer. In that letter, Claimant also requested, in effect, that a response to the request be sent to an address in Tehran. Again, there is no evidence of any response by the Central Bank.

Respondents concede that direct requests to the individual local Iranian banks for foreign exchange transfers would have been fruitless. In their filings before the Tribunal, Respondents asserted that local Iranian banks were powerless to transfer monies into dollars and out of Iran.

Respondents explained that "applicants for foreign exchange transfers are therefore required, under the new regulations, to apply to the Foreign Exchange Control Department at Bank Markazi Iran and may not transfer funds without obtaining a license from that Department and the applicant can only start foreign exchange transfer procedures on presentation of such a license."

In short, Claimant did exactly what Respondents said it should have done. It started foreign exchange transfer procedures by applying to the Central Bank for a license. Claimant received no response. There is no indication that the procedure must begin with a check or draft or request for a specific amount or that a license to effect a foreign exchange of whatever monies were in the account would be insufficient. The fact is that no articulated procedure for obtaining permission to transfer funds out of the country or into dollars existed. Moreover, Iran's foreign exchange restrictions and the practice of Iranian banks clearly precluded Americans from repatriating money from Iran, except perhaps in connection with the issuance of letters of credit for goods to be imported in the future.<sup>1</sup> Under these circumstances, no demand should be necessary to give rise to an outstanding claim, as any such demand would have been, and was, in fact, futile. Moreover, if demands were necessary, Claimant's requests were adequate demands in view of the instructions given at the time and the lack of guidelines.

That Claimant's request to the Central Bank was an appropriate demand is supported by Hood Corporation and

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<sup>1</sup>The suggestion that Americans can withdraw their rials from Iranian banks and utilize them in Iran appears to be unrealistic. There is no indication that Americans can withdraw rials from rial checking accounts in Iran.

Iran, Award No. 142-100-3 (July 13, 1984), in which the Tribunal held that an Iranian bank's failure to seek the Central Bank's permission to repatriate money at the request of the Claimant in that case was not actionable, "as there is no showing that the required permission, which was denied in May, 1981, would have been granted by Bank Markazi at any earlier point in time . . . ." Thus, the Tribunal suggested, in effect, that action on a request for transfer was to be made by the Central Bank.

In Schering Corporation and Iran, Award No. 122-398-3 (13 April 1984), reprinted in 5 Iran-U.S. C.T.R. 361, the Tribunal held the Respondent in that case liable when the Central Bank instructed a local Iranian bank not to pay a Claimant certain amounts in dollars. Other claims were rejected on the ground that it was not "clear from the evidence that requests for permission to transfer payments were submitted to Bank Markazi but were not dealt with, or were rejected by the bank . . . ." In the instant case, unlike in Schering, it is clear from the evidence that requests for permission to transfer payments were submitted to the Central Bank, but "were not dealt with."

Simply put, the majority demands too much. Claimant, despite its requests, could not obtain its monies from its local Iranian banks - either in rials or in dollars. It requested a license to repatriate its monies from the Central Bank, but received no response. By requesting its monies from local banks and seeking permission from the Central Bank, Claimant did all that it could reasonably be expected to do to obtain the exchange of its monies. In view of these facts, it is clear that no matter what the Claimant would have done, Respondents would not have permitted Claimant to transfer its monies out of Iran and into dollars. Based on the evidence before the Tribunal, Claimant made whatever demands were necessary so that its claim was outstanding on January 19, 1981. Even had

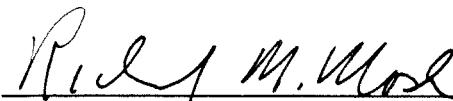
Claimant made no demand, in view of Iran's exchange restrictions and its practices thereunder, none was necessary to establish Tribunal jurisdiction over this claim. See my dissenting opinion in Schering Corporation and Iran, supra.

The Tribunal has rejected as untimely additional and conclusive evidence of Claimant's demand for the monies in the Iranian bank accounts before January 19, 1981. In 1979, Claimant filed a civil action in a United States court claiming the amounts in issue in this case. In that action there is on file a stipulation whereby Respondents accepted service of the complaint. The Tribunal did not accept copies of the actual court documents on the ground that they were not filed timely with the Tribunal. Nevertheless, there was other evidence of the United States court action and of notice to Iran of its existence, which evidence was presented to the Tribunal properly and in a timely fashion. Also, the Tribunal should be able to take judicial notice of the existence of official court documents showing the nature of the United States action and notice to Iran thereof when verification of these facts was made available to the Tribunal. This notice to Iran of Claimant's claim constitutes additional, irrefutable evidence that the claim in issue was outstanding on and prior to January 19, 1981. Therefore, the Tribunal has jurisdiction over the claim on this additional ground.

As I believe the Tribunal has jurisdiction over the claim, I note that in my view, Iran's foreign exchange restrictions violated international law, including provisions of the Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, signed 15 August 1955, entered into force, 16 June 1957, T.I.A.S. No. 3835, 8 U.S.T. 900, and of the Articles of the Agreement of the International Monetary Fund, signed 22 July 1944, entered into force 27 December 1945, 2

U.N.T.S. 39 as amended. See Hood Corporation and Iran, Award No. 142-100-3 (dissenting opinion of Richard M. Mosk, July 13, 1984). Also, retaining Claimant's monies under these circumstances constituted an improper taking of property and has resulted in the unjust enrichment of Respondents. Id.

The Tribunal bases its jurisdictional holding on the specific facts and circumstances of this case. In addition, the Tribunal does not discuss whether a demand was unnecessary as being futile, as there was no direct presentation by the Parties on this issue or on Respondents' practices in general. I hope that this is an indication that the Tribunal will, in the future, reach the issues concerning the validity of Iran's foreign exchange restrictions.



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Richard M. Mosk

Dated: 6 March 1986  
The Hague, The Netherlands