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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

823-125

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** 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 _____

- Date _____

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** DISSENTING OPINION of _____

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- Date 14 July 2000

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

In His Exalted Name

CASE NO. 823
CHAMBER THREE
AWARD NO. 595-823-3

BANK MARKAZI IRAN,
Claimant,

and

THE FEDERAL RESERVE BANK OF NEW YORK,
Respondent.

CORRECTION TO DISSENTING OPINION OF MOHSEN AGHAHOSSEINI

The following corrections are hereby made to the English version of my Dissenting Opinion signed and filed on 13 June 2000:

1. Page 5, footnote 6, line 2 which reads as: "5 Iran-U.S. CTR 216 at 224" should read: "8 Iran-U.S. CTR 216 at 224".

2. Page 20, paragraph 2, line 6, the word "revealed" should read: "resolved".

3. Page 21, footnote 32 which reads as: "*Ibid*, at 110" should read: "2 Iran- U.S. CTR 100, at 110".

Copies of the corrected pages are attached.

Dated 14 July 2000, The Hague

Mohsen Aghahosseini

1. THE AWARD'S TREATMENT OF THE ISSUE OF JURISDICTION

1.1. The Need To Ascertain Jurisdiction

The Iran-United State Claims Tribunal (The "Tribunal") is a judicial forum with a limited jurisdiction clearly defined in the Tribunal's constituent instruments, the Algerian Declarations. As was stated by a full panel of the Tribunal back in 1982:

> It can easily be seen that the parties set up very carefully a list of the claims and counter claims which could be submitted to the arbitral tribunal. As a matter of fact, they knew well that such a Tribunal could not have wider jurisdiction than that which was specifically decided by mutual agreement.[4]

In order to be entitled to address the merits of a case, the Tribunal must therefore first ascertain that what is before it is included in the claims or counterclaims "set up very carefully" by Iran and the United States, the Parties to the Algerian Declarations.[5] And it must do so *ex officio*, that is to say, irrespective of whether or not the Tribunal's jurisdiction is objected to:

> The Islamic Republic of Iran has not raised any objections to the Tribunal's jurisdiction over the claims. However, the Tribunal holds that it has to determine *ex officio* whether it has jurisdiction in this case.[6]

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[4] *Iran* and *The United States* (*Case No. A/2*), 1 Iran-U.S. CTR 101 at 103. See, also, *Iran* and *the United States* (*Case No. A/19*), 16 Iran-U.S. CTR 288 at 289, where it is stated that: "The Tribunal must first determine whether the issue raised by Iran is one which it has jurisdiction to decide".

[5] This, indeed, is a requirement not only with respect to awards on litigated disputes, but with regard likewise to awards recording mutually agreed settlements where, according to the Tribunal's consistent precedent, jurisdiction must first be established at least on a *prima facie* basis. See, *e.g.*, *Iran* and *the United States* (*Case No. A/1*), 1 Iran-U.S. CTR 144 at 152.

[6] *The United States* and *Iran* (*Case No. B/24*), 5 Iran-U.S. CTR 97 at 99. See also *Component Builders Inc., et al.* v. *Iran, et al.*, 8 Iran-U.S. CTR 216 at 224 ("The Tribunal notes that it has to decide on its jurisdiction *ex officio*") and *Housing and Urban Services International, Inc.* v. *The Government of the Islamic Republic of Iran*, 9 Iran-U.S. CTR 313 at 333 ("Although the Parties have not addressed this question, the Tribunal must always be satisfied that it has jurisdiction, and therefore examines this issue.")

treatment of the issue, that the NYFED's institutional attachment to, and control by, the United States cannot be overlooked. Such a conclusion, as suggested earlier, was all that was needed for the determination of the Tribunal's jurisdiction in the present Case. *Secondly*, the contention that the merits of the dispute and the decision relating thereto have been of "relatively straightforward nature" is belied by the Award's own treatment of the issue in some 22 pages of its 48 pages, the rest being devoted, for the most part, to the "Procedural History" of the Case.

Thirdly, and more importantly, since the very right of this forum to address the merits of a dispute depends, as already seen, on the forum's prior determination that it has the authority to do so, it may not, clearly enough, begin by examining the merits and making a decision thereon in order to see whether, depending on the complexity of the merits and "the decision relating thereto", the issue of its authority, challenged by one Party, should be resolved. How, then, does the Award propose to do that – to put the cart before the horse, as it were? It relies on two legal authorities.

2.4. The Award's Legal Justifications

First, citing a number of Cases before the Tribunal, the Award contends that "[i]n several instances, the Tribunal has dismissed a claim on the merits without deciding the jurisdictional issue."[29] A glance at these Awards will reveal at once, however, not only that they do not support the Award's proposed course of action here, but that they all firmly militate against it.

In every single one of the cited Awards, the Tribunal has first dealt with, and expressed itself on, all the issues material to its jurisdiction. In every single one of them, the Tribunal has first addressed the statuses of the parties -- including the issue of their control -- and ascertained its jurisdiction over them, before reaching the merits. It has

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[29] The Award, para. 36.

done so even where the status of a given party has not been in dispute. They therefore directly reject the suggestion that the issue of the status of a party -- especially where that is in dispute and more especially where, as in the present Case, it forms a most important contentious issue -- may be bypassed.

If they have, on rare occasions, declined to determine certain tangential jurisdictional issues, it has been because of the mootness of those issues in the circumstances, or because no evidence in support of the claims were offered. The former was the case with three of the five Awards cited in the Award.

Thus, in *Ultrasystems Inc.* v. *Iran, et al*,[30] the Tribunal first examined the statuses of the parties and found that it had jurisdiction over them and over the submitted dispute. Turning to the merits, it found that the contract at issue had been terminated by the parties' mutual agreement on a certain date, and that the respondent was only liable to pay compensation for costs resulting directly from the termination.

Various items of the claim were then examined to see whether or not they were incurred in connection with the contract's termination. On one of these items -- the medical expenses for personal injuries assertedly sustained by an employee of the claimant -- the respondent had raised the defence of "popular movements".[31] The Tribunal found it unnecessary to address this jurisdictional defence since, in any event, personal injuries had nothing to do with the contract's termination.[32] In other words, a prior finding on the

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30 2 Iran- U.S. CTR 100.

31 Under Article 11 of the General Declaration, the United States undertakes, *inter alia*, to "bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this Declaration related to ... injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran."

32 2 Iran- U.S. CTR 100, at 110.