

ORIGINAL DOCUMENTS IN SAFE

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Case No. 202

Date of filing: 19.5eP88

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

\*\* DECISION - Date of Decision 19. Jan 88  
\_\_\_\_\_ pages in English 6 pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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IRAN UNITED STATES  
CLAIMS TRIBUNAL

دادگاه داری دعوی  
ایران - ایالات متحدہ

ثبت شد - FILED

19 SEP 1988

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تاریخ

CASE NO. 202

CHAMBER TWO

DECISION NO. DEC83-202-2

DUPLICATE  
ORIGINAL

نسخه برابر اصل

THE FIRST NATIONAL BANK OF BOSTON  
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,  
IRANIANS' BANK,  
INDUSTRIAL CREDIT BANK,  
BANK IRANSHAHR,  
FOREIGN TRADE BANK OF IRAN,  
BANK PARS,  
AKAM BUILDING INDUSTRIES CO. LTD.,  
BEHSHAHR INDUSTRIAL CO. LTD.,  
HAMMADAN GLASS COMPANY,  
KHUZESTAN WATER AND POWER AUTHORITY,  
MINISTRY OF ENERGY,  
MINISTRY OF ECONOMIC AFFAIRS AND FINANCE,  
INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN,  
NATIONAL PETROCHEMICAL CO. OF IRAN,  
BANK SAKHTEMAN,  
KASHAN VELVET AND RAYON MILLS LTD.,  
INTERNATIONAL BANK OF IRAN AND JAPAN,  
MAZANDARAN TEXTILE COMPANY,  
IRAN NATIONAL AIRLINES CORPORATION,  
BANK MARKAZI IRAN,

Respondents.

DECISION

1. The FIRST NATIONAL BANK OF BOSTON ("FNBB") brought a claim against the ISLAMIC REPUBLIC OF IRAN ("Iran"), IRANIANS' BANK, INDUSTRIAL CREDIT BANK, BANK IRANSHAHR, FOREIGN TRADE BANK OF IRAN, BANK PARS, AKAM BUILDING INDUSTRIES CO. LTD., BEHSHAHR INDUSTRIAL CO. LTD., HAMMADAN GLASS COMPANY, KHUZESTAN WATER AND POWER AUTHORITY, MINISTRY OF ENERGY, MINISTRY OF ECONOMIC AFFAIRS AND FINANCE, INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN, NATIONAL PETROCHEMICAL CO. OF IRAN, BANK SAKHTEMAN, KASHAN VELVET AND RAYON MILLS LTD., INTERNATIONAL BANK OF IRAN AND JAPAN, MAZANDARAN TEXTILE COMPANY, IRAN NATIONAL AIRLINES CORPORATION, and BANK MARKAZI IRAN ("Bank Markazi") 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 12 September 1983 terminated the proceedings in this Case insofar as they were related exclusively to those parts of the claim specified as "Items 1 through 6." Consequently, only Item 7 of the claim, relating to nine syndicated loan agreements, remained in dispute. Subsequently, the Claimant informed the Tribunal that it had settled all its claims related to five of these nine loan agreements.

3. A separate case, Case No. 718, which involved a claim brought by Bank Markazi against FNBB relating to deposits held by FNBB for the account of Bank Markazi, was terminated by the Tribunal on 27 November 1985 as a result of the Tribunal's decision in Case No. A17, Decision No. DEC 37-A17-FT (18 June 1985). In terminating Case No. 718, the Tribunal reminded the parties that, if the Iranian bank claim involved in Case No. 718 "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 No. 202, requested the Tribunal to decide its claim in Case No. 718 as a counterclaim in Case No. 202. By its filing of 7 March 1986, FNBB objected to Bank Markazi's request. By its Order of 4 June 1986, the Tribunal deferred taking a decision regarding the admissibility of the counterclaim.

5. Subsequently, in a submission dated 18 April 1988, FNBB indicated its willingness to withdraw the Seventh Item of the claim and terminate the proceedings in this Case. As a result of that submission, the Tribunal requested the Respondents to comment, including their views on the counterclaim filed by Bank Markazi. On 1 July 1988, the Agent of the Islamic Republic of Iran informed the Tribunal that Bank Markazi, representing the Respondents in Case No. 202, concurs with the closure of the Claimant's Case without, however, waiving its asserted counterclaim. In view thereof, and in accordance with its Order of 4 June 1986, the Tribunal must determine whether it has jurisdiction over the counterclaim.

6. Bank Markazi presents three alternative arguments. First, it asserts that its counterclaim in this Case is 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 United States of America and The Islamic Republic of Iran, Decision No. DEC-37-A17-FT (18 June, 1985) also reprinted in 8 Iran-U.S. C.T.R. 189, the Tribunal held that:

"To the extent that such claims purport to be based on Paragraph 2(D) 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 be referred to the Tribunal by either Bank Markazi or the United States banking institution involved, as to 'amounts owing' from Dollar Account No. 2."

Bank Markazi acknowledged, in its letter of 1 October 1985 in Case 718, that "none of the claims brought before the Tribunal, is payable from Dollar Account No. 2." Consequently, the Tribunal has no jurisdiction pursuant to the Undertakings over such claim whether styled a claim or a counterclaim. If jurisdiction exists, it must be found under the Claims Settlement Declaration.

7. To the extent that Bank Markazi argues that the Tribunal has jurisdiction over the counterclaim on the basis of principles of set-off, the Tribunal notes that, quite apart from the merits of that assertion<sup>1</sup>, set-off could not in any event be applicable in this Case as the claim has been withdrawn in its entirety.

8. Bank Markazi's third argument is that its counterclaim fulfills 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 FNBB's claim. Bank Markazi does not identify the "same contract, transaction or occurrence" of both the claim and the counterclaim, but merely bases its assertion on "taking into

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<sup>1</sup>See Interfirst Bank Dallas N.A. and The Islamic Republic of Iran, et al., Decision No. DEC 66-338-2 (9 October 1987) and the cases there cited.

consideration the nature and type of banking transactions the banks have with each other." The Tribunal does not find a basis for jurisdiction in this statement and must therefore itself determine whether the counterclaim arises "out of the same contract, transaction or occurrence" as FNBB's claim. The Tribunal notes that FNBB claimed in this Case interest from Bank Markazi in connection with certain syndicated loan agreements with several Iranian entities, i.e., Industrial and Mining Development Bank of Iran, National Petrochemical Company of Iran, Kashan Velvet and Rayon Mills Ltd., Iran National Airlines Corporation, whereas Bank Markazi's counterclaim arises out of funds which FNBB held in different accounts for various Iranian agencies none of which are named in the syndicated loan agreements. Consequently, the Tribunal holds that Bank Markazi's counterclaim does not arise out of the "same contract, transaction or occurrence" as FNBB's claim and therefore, that it has no jurisdiction over Bank Markazi's counterclaim under Article II, paragraph 1, of the Claims Settlement Declaration.

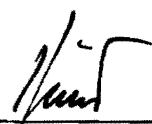
9. For the foregoing reasons,

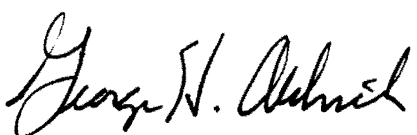
THE TRIBUNAL DECIDES AS FOLLOWS:

- a) The Tribunal has no jurisdiction over Bank Markazi's counterclaim.
- b) No justifiable grounds for objection to the termination of the present Case have been raised.
- c) The arbitral proceedings in this Case are hereby terminated pursuant to Article 34(2) of the Tribunal Rules.

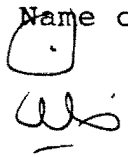
- d) The Registry Officers are instructed to strike the Case from the Register.

Dated, The Hague  
19 September 1988

  
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Robert Briner  
Chairman

  
\_\_\_\_\_  
George H. Aldrich

In the Name of God

  
\_\_\_\_\_  
Seyed K. Khalilian  
Separate Opinion