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** DECISION - Date of Decision 23 Apr
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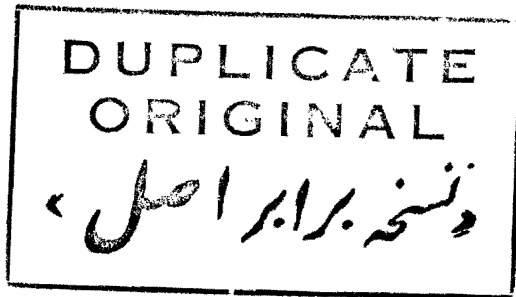
** CONCURRING OPINION of _____
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CASE NO. 204

CHAMBER TWO

DECISION NO. DEC 110-204-2

IRVING TRUST COMPANY,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
IRANIANS' BANK, BANK OMRAN,
BANK MARKAZI IRAN,
INTERNATIONAL BANK OF IRAN,
BANK OF TEHRAN, FOREIGN TRADE BANK OF IRAN,
BANK BAZARGANI, BANK SEPAH IRAN,
BANK SADERAT IRAN, BANK SHAHRYAR,
BANK MELLI IRAN,
INTERNATIONAL BANK OF IRAN AND JAPAN,
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعای ایران - ایالات متحدہ
FILED	ثبت شد
DATE	23 APR 1993
	تاریخ ۱۳۷۲ / ۲ / ۲

DECISION

1. On 11 January 1982, THE IRVING TRUST COMPANY ("Irving") brought a Claim against the ISLAMIC REPUBLIC OF IRAN ("Iran"), IRANIANS' BANK, BANK OMRAN, BANK MARKAZI IRAN ("Bank Markazi"), INTERNATIONAL BANK OF IRAN, BANK OF TEHRAN, FOREIGN TRADE BANK OF IRAN, BANK BAZARGANI, BANK SEPAH IRAN, BANK SADERAT IRAN, BANK SHAHRYAR, BANK MELLI IRAN, and INTERNATIONAL BANK OF IRAN AND JAPAN 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 20 December 1984 terminated the proceedings of all claims in this Case except for Claim XIX. Consequently, only Claim XIX, relating to interest for the period January 1 through January 18, 1981, on three syndicated loan agreements, remained in dispute.

3. A separate case, Case 694, which involved a claim brought by Bank Markazi against Irving, relating to deposits held by Irving for the account of Bank Markazi and several other banking institutions, was terminated by the Tribunal on 27 November 1985 as a result of the Tribunal's decision in Case No. A17, United States of America and Islamic Republic of Iran, Decision No. DEC 37-A17-FT (18 June 1985), reprinted in 8 Iran-U.S. C.T.R. 189. In terminating Case 694, the Tribunal reminded the parties that, if the Iranian Bank claim involved in Case 694 "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 204, requested the Tribunal to decide its claim in Case 694 as a counterclaim in Case 204. By its filing of 7 March 1986, Irving objected to Bank Markazi's request. By its Order of 4 June 1986 the Tribunal "defer[red] taking a decision regarding the admissibility of the Counterclaim until such time as the proceedings in this Case [were] no longer suspended." This had been the case since late 1983. On 9 May

1986, Bank Markazi filed its Counterclaim.

5. On 27 June 1990, the Tribunal issued an Order requesting the Parties to inform the Tribunal by 15 August 1990 of the present status of the Case. The Tribunal also requested the Parties to identify the extent to which there remained any disputes between the Parties with respect to the claims and counterclaims, if any, in the Case. The Parties were further requested to indicate whether the suspension should be continued and, if so, the reasons therefor.

6. In a submission of 15 August 1990 the Agent of the Islamic Republic of Iran informed the Tribunal that with respect to the remaining claim in Case 204 "final agreements have been signed by the respective banks' representatives, and, upon payment of the amounts involved, ... all claims ... will be settled. The counterclaims ... have not been resolved." The Claimant in its letter filed on 30 August 1990 stated that there had been no change in the status of the Case since October 1984.

7. In its Order of 5 November 1990, the Tribunal noted the Parties' submissions and requested the Parties to inform the Tribunal by 2 January 1991 whether the payment by the Federal Reserve Bank had been made and whether the Counterclaim had been settled. The Tribunal also indicated that it "intends to decide as to the termination of the proceedings with respect to the Claim pursuant to Article 34 of the Tribunal Rules and as to the admissibility and jurisdictional aspects of the Counterclaim on the basis of the documents before it."

8. On 31 December 1990, Irving informed the Tribunal that "payment has been made with respect to the Claims for the interest for the period January 1, 1981 through January 18, 1981 ... and, accordingly, these Claims have been settled." Although the Claimant did not specifically refer to Claim XIX (the only claim not terminated by the Tribunal's Order of 20 December 1984, supra), the Tribunal notes this claim concerned interest for the

period January 1, through January 18, 1981 and accordingly concludes that with the payment referred to by the Claimant, Claim XIX has been settled. The Respondents have not filed any comment in response to the Tribunal's Order or Irving's submission. In view thereof, and in accordance with its Orders of 4 June 1986 and 5 November 1990, the Tribunal must now decide whether the Counterclaim is within its jurisdiction.

9. Bank Markazi presents three alternative arguments for the Tribunal's jurisdiction over this Counterclaim. First, it asserts 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, set-off could not in any event be applicable in this case as the Claim has been settled in its entirety.

10. Bank Markazi further argues 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 Tribunal held that:

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

Case No. A17, supra, at 11-12, 8 Iran-U.S. C.T.R. at 197 (footnote omitted). Bank Markazi acknowledged, in its letter of 1 October 1985 in Case 694, that "the ... claim does not involve an amount or amounts owing and payable to it from Dollar Account No. 2." Consequently, the Tribunal has no jurisdiction pursuant to the Undertakings over such claim whether styled as a claim or a counterclaim. If jurisdiction exists, it must be found under the Claims Settlement Declaration.

11. 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 Irving'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 consideration the nature and the type of banking transactions the banks have with each other." The Tribunal notes that Irving claimed in this Case interest from Bank Markazi in connection with certain syndicated loan agreements with several Iranian entities, whereas Bank Markazi's counterclaim arises out of funds which Irving held in different accounts for various Iranian agencies. Bank Markazi has not identified any specific link between the syndicated loan agreements and the accounts held by Irving.

12. Consequently, the Tribunal holds that Bank Markazi's counterclaim does not arise out of the "same contract, transaction or occurrence" as Irving's Claim and, therefore, that it has no jurisdiction over Bank Markazi's counterclaim under Article II, paragraph 1, of the Claims Settlement Declaration.¹

13. For the foregoing reasons:

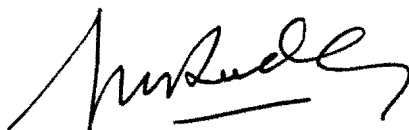
¹ See also The First National Bank of Boston and The Islamic Republic of Iran, et al., Decision No. 83-202-2 (19 Sep. 1988), reprinted in 19 Iran-U.S. C.T.R. 307.

THE TRIBUNAL DECIDES AS FOLLOWS:

- a) Bank Markazi's Counterclaim is dismissed for lack of jurisdiction.
- b) The remaining arbitral proceedings in this Case are terminated pursuant to Article 34, paragraph 2 of the Tribunal Rules.

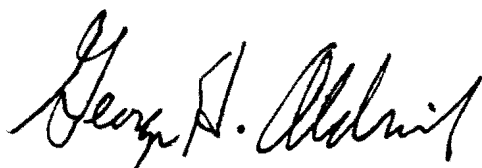
Dated, The Hague

23 April 1993

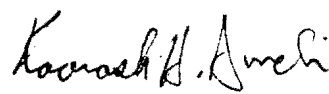


José María Ruda
Chairman
Chamber Two

In The Name of God



George H. Aldrich



Koorosh H. Ameli
Concurring