



ORIGINAL DOCUMENTS IN SAFE

Case No. 249

Date of filing: 23 APR 93

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

\*\* DECISION - Date of Decision 23 APR 93  
~~7~~ pages in English 8 pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
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CASE NO. 249

CHAMBER TWO

DECISION NO. DEC 113-249-2

THE FIRST NATIONAL BANK OF CHICAGO and  
FIRST CHICAGO INTERNATIONAL, NEW YORK,  
Claimants,

and

THE GOVERNMENT OF IRAN,  
BANK MARKAZI IRAN,  
BANK OMRAN, BANK PARS,  
INTERNATIONAL CONSTRUCTION MACHINES,  
TCC COMMERCIAL (PTY.) CO. LTD.,  
INDUSTRIAL BANK OF IRAN AND JAPAN,  
BANK MELLI IRAN,  
INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN,  
INDUSTRIAL CREDIT BANK,  
NATIONAL PETROCHEMICAL CO. OF IRAN,  
DOPAR LABORATORIES COMPANY LTD.,  
KARUN AGRO INDUSTRY INC., and  
BANK SADERAT IRAN,

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	23 APR 1933
	تاریخ ۱۳۷۲ / ۲ / ۳

DECISION

1. On 13 January 1982, THE FIRST NATIONAL BANK OF CHICAGO ("FNBC") and FIRST CHICAGO INTERNATIONAL, NEW YORK ("FCINY") (collectively "the Claimants") filed a Statement of Claim against THE GOVERNMENT OF IRAN, including its agencies, instrumentalities and controlled entities BANK MARKAZI IRAN, BANK OMRAN, BANK PARS, INTERNATIONAL CONSTRUCTION MACHINES, TCC COMMERCIAL (PTY.) CO. LIMITED, INTERNATIONAL BANK OF IRAN AND JAPAN, BANK MELLI IRAN, INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN, AGRICULTURAL DEVELOPMENT BANK OF IRAN, INDUSTRIAL CREDIT BANK, NATIONAL PETROCHEMICAL COMPANY OF IRAN, DOPAR LABORATORIES COMPANY LIMITED, KARUN AGRO INDUSTRY INC., and BANK SADERAT IRAN ("the Respondents"). The Claimants' claims relate to interest owing on loans and credits made by syndicates of banking institutions of which FNBC was a member, to, or guaranteed by, the Respondents, and other indebtedness held by the Claimants of, or guaranteed by, the Respondents. The Claimants also bring some miscellaneous claims relating to or arising out of the claims set forth above.

2. On 24 June 1983, the Parties filed a Joint Request to terminate this Case insofar as it relates to each of the claims referred to in paragraphs 1 through 3, 11 and 15 through 22 of Section E and paragraphs 1 through 6 of Section F of the Statement of Claim. The Tribunal in its Order of 18 July 1983 noted the Parties' Request, and indicated that it "shall take this into account when rendering any award in this case." On 28 June 1984, pursuant to a postponement agreement between the Parties, the Tribunal suspended the proceedings in this Case until further notice.

3. A separate case, Case No. 714, which involved a claim brought by Bank Markazi against FNBC relating to deposits held by FNBC for the account of Bank Markazi, was terminated 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), reprinted in 8 Iran-U.S. C.T.R. 189. In terminating Case No. 714, the Tribunal drew Bank Markazi's attention to paragraph 2 of its Order of 24

July 1985, reminding the parties that, if the Iranian bank claim involved in Case No. 714 "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 is named as a Respondent in this Case, requested the Tribunal to decide as counterclaim in this Case those portions of its claim in Case No. 714 which had not yet been settled. By its filing of 11 June 1986, FNBC objected to Bank Markazi's request on the grounds that the proposed counterclaim does not come within the Tribunal's jurisdiction. According to FNBC, "the claims of FNBC in this case and the proposed counterclaims of Bank Markazi have absolutely no relation to one another."

5. By its Order of 16 June 1986, the Tribunal noted FNBC's objection, invited the Respondents to file a reply to FNBC's submission if they so wished, and indicated its intention to defer taking a decision regarding the admissibility of the counterclaim until such time as the proceedings in this Case were no longer suspended. On 11 August 1986, Bank Markazi filed its Counterclaim.

6. The Tribunal in its Order of 27 June 1990 noted that the arbitral proceedings in this Case had been suspended since the summer of 1984, and requested 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.

7. On 15 August 1990, the Agent of the Islamic Republic of Iran informed the Tribunal that the Claim in Case No. 249 had been entirely settled, but that the Counterclaim had not yet been

resolved. The Claimants in their status report filed on 13 September 1990 stated that all of their outstanding claims had been settled, and renewed their request for dismissal of the Counterclaim for lack of jurisdiction.

8. The Tribunal in its Order of 2 November 1990 noted the Parties' submissions of 15 August 1990 and 13 September 1990, and requested the Parties to inform the Tribunal by 2 January 1991 whether the Counterclaim had been settled. The Tribunal also expressed its intention to terminate the proceedings with respect to the Claim pursuant to Article 34 of the Tribunal Rules and to decide on the admissibility and jurisdictional aspects of the Counterclaim.

9. The Claimants in their response of 2 January 1991 stated that there has been and will be no settlement of Bank Markazi's Counterclaim, and again renewed their request for dismissal of the Counterclaim and termination of the Case in its entirety.

10. The Respondents have not filed any comments in response to the Tribunal's Order or the Claimants' submission. In view thereof, and in accordance with its Order of 2 November 1990, the Tribunal must now decide whether the Counterclaim is within its jurisdiction.

11. Bank Markazi presents three alternative arguments for the Tribunal's jurisdiction over the 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.

12. 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 No. 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 in its letter of 1 October 1985 in Case 714 acknowledged 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 as a claim or a counterclaim. If jurisdiction exists, it must be found under the Claims Settlement Declaration.

13. 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 the claimant'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 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 the Claimants' Claim.

14. The Tribunal notes that the Claimants' Claim in this Case relates to interest owing on loans and credits made by syndicates of banking institutions of which FNBC was a member to, or guaranteed by, the Respondents, other indebtedness held by the Claimants of, or guaranteed by, the Respondents, and miscellaneous claims relating to or arising out of the above claims, whereas Bank Markazi's Counterclaim arises out of funds which the Claimants held in different accounts for various Iranian agencies. Bank Markazi has not identified any specific link between the agreements which form the basis of the Claimants' Claim and the account arrangements on which Bank Markazi bases its Counterclaim.

15. Consequently, the Tribunal holds that Bank Markazi's Counterclaim does not arise out of the "same contract, transaction or occurrence" as the Claimants' Claim and, therefore, that it has no jurisdiction over Bank Markazi's Counterclaim under Article II, paragraph 1 of the Claims Settlement Declaration.<sup>1</sup>

16. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

- a) The Bank Markazi Counterclaim is dismissed for lack of jurisdiction;
- b) The claims referred to in paragraph 2 above are terminated

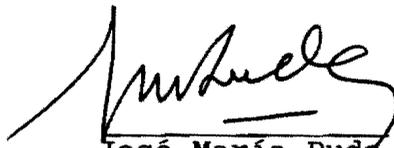
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<sup>1</sup> See also The First National Bank of Boston and Islamic Republic of Iran, et al., Decision No. DEC 83-202-2 (19 Sept. 1988), reprinted in 19 Iran-U.S. C.T.R. 307.

in accordance with the Parties' Joint Request of 24 June 1983, pursuant to Article 34, paragraph 1 of the Tribunal Rules;

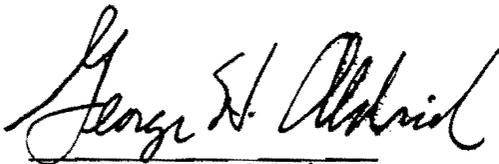
- c) The remaining arbitral proceedings in this Case are terminated pursuant to Article 34, paragraph 2 of the Tribunal Rules.

Dated, The Hague  
23 April 1993

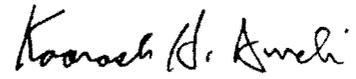


José María Ruda  
Chairman  
Chamber Two

In The Name of God



George H. Aldrich



Koorosh H. Ameli  
Concurring