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** DECISION - Date of Decision 23 Apr 93
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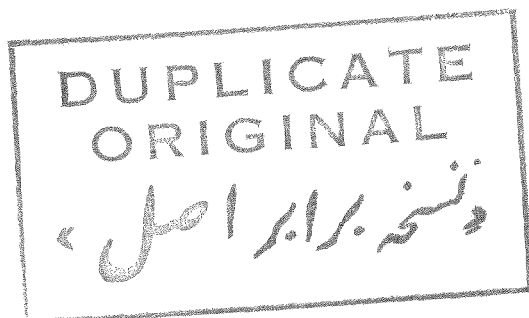
** CONCURRING OPINION of _____
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** SEPARATE OPINION of _____
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** DISSENTING OPINION of _____
- Date _____
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CASE NO. 287

CHAMBER TWO

DECISION NO. DEC 114-287-2

FIRST INTERSTATE BANK OF CALIFORNIA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
BANK MARKAZI IRAN,
BANK MELLI IRAN,
BANK SANAYE,
IRANIAN'S BANK,
INTERNATIONAL BANK OF IRAN AND JAPAN,
INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN,
BANK SAKHTEMAN,
DEVELOPMENT AND INVESTMENT BANK OF IRAN, and
PARSYLON CORPORATION,

Respondents.

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

DECISION

1. On 15 January 1982, FIRST INTERSTATE BANK OF CALIFORNIA ("FIBC") filed a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI IRAN, BANK MELLI IRAN, BANK SANAYE, IRANIAN'S BANK, INTERNATIONAL BANK OF IRAN AND JAPAN, INDUSTRIAL AND MINING DEVELOPMENT BANK OF IRAN, BANK SAKHTEMAN, DEVELOPMENT AND INVESTMENT BANK OF IRAN, and PARSYLON CORPORATION ("the Respondents") to recover the principal and interest due and payable on certain syndicated and non-syndicated loans.

2. Pursuant to a submission of the Parties, the Tribunal in its Order of 15 February 1984 terminated certain portions of this Case, as specified in Schedule 2 to Exhibit 2 to the Memorandum of Settlement. As a result, only claims relating to interest due on certain syndicated loans remained in dispute. On 19 July 1985, the Tribunal suspended the proceedings in this Case until further notice.

3. A separate case, Case No. 750, which involved a claim brought by Bank Markazi against FIBC relating to deposits held by FIBC 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. 750, 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. 750 "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." The Tribunal gave Bank Markazi a deadline of 31 January 1986 to file such request.

4. On 24 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. 750 which had not yet been settled. On 10 March 1986, FIBC objected to Bank Markazi's request on the grounds that Bank

Markazi had failed to properly assert the counterclaims within the time limits expressly set by the Tribunal, and even if the counterclaims had been timely asserted, they were outside the Tribunal's jurisdiction.

5. In its Order of 13 March 1986, the Tribunal noted FIBC's objection, invited Bank Markazi to file a reply to FIBC's submission by 10 May 1986 if it so wished, and indicated that after that date the Tribunal would take a decision regarding the admissibility of the counterclaim on the basis of the documents before it. On 12 May 1986, Bank Markazi filed its Counterclaim. On 11 June 1986, FIBC objected to the Counterclaim and requested that Bank Markazi's attempt to revive its claims from Case No. 750 be denied. The Tribunal in its Order of 16 June 1986 noted the Parties' submissions relating to the Bank Markazi Counterclaim, 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.

6. In its Order of 27 June 1990, the Tribunal noted that the arbitral proceedings in this Case were still in suspension, 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 final agreement had been signed by the Parties' representatives, and that upon payment of the agreed amount the Claim in this Case would be settled. The Agent also stated that the Counterclaim had not yet been resolved. FIBC filed its response on 31 October 1990, stating that the Parties had settled all claims set forth in the Statement of Claim,

including claims relating to interest on syndicated loans which were not dismissed by the Tribunal's Order of 15 February 1984. FIBC also renewed its request that the Counterclaim be dismissed.

8. On 2 November 1990, the Tribunal issued an Order requesting the Parties to inform the Tribunal by 2 January 1991 whether the payment 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." FIBC responded on 21 November 1990, confirming that all claims set forth in the Statement of Claim had been settled, but that the counterclaims had not been settled.

9. The Respondents have not filed any comments in response to the Tribunal's Order or FIBC's 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.

10. 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.

11. 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 750 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.

12. 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 FIBC's claim.

13. The Tribunal notes that FIBC seeks in this Case principal and interest from Bank Markazi in connection with certain syndicated and non-syndicated loan agreements with several Iranian entities whereas Bank Markazi's Counterclaim arises out of funds which the Claimant held in different accounts for various Iranian agencies. Bank Markazi has not identified any specific link between the agreements which form the basis of FIBC's claims and the account arrangements on which Bank Markazi bases its Counterclaim.

14. Consequently, the Tribunal holds that Bank Markazi's Counterclaim does not arise out of the "same contract, transaction or occurrence" as FIBC'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

15. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

- a) The Bank Markazi Counterclaim is dismissed for lack of jurisdiction;
- b) The remaining arbitral proceedings in this Case are

¹ 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.

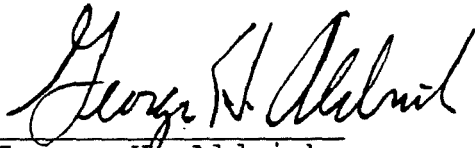
terminated pursuant to Article 34, paragraph 2 of the
Tribunal Rules.

Dated, The Hague
23 April 1993

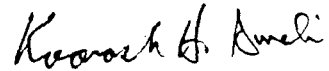


José María Ruda
Chairman
Chamber Two

In The Name of God



George H. Aldrich



Koorosh H. Ameli
Concurring