



## Iran wins billion-dollar award against Israel

Sebastian Perry and Kyriaki Karadelis • Friday, 29 May 2015 (Yesterday)

Iran's national oil company has won a US\$1.1 billion award against a company owned by the Israeli government, concluding a 26-year arbitration over payment for oil shipments pre-dating the Iranian revolution of 1979.



The Tehran skyline (Credit: BornaMir/Thinkstock)

Iranian state news agency IRNA reported the award on 20 May, citing a source at the Legal Affairs Centre of Iran's Presidential Office. Israel's finance ministry has refused to confirm or deny the report, but told Israeli newspaper *Haaretz* that the transfer of money to an "enemy" country is forbidden under Israeli law.

The size and timing of the award are likely to make it a politically sensitive issue in both countries. Israel's recently re-elected prime minister Benjamin Netanyahu has been a vocal opponent of the US-backed negotiations with Iran over its nuclear programme, for which a deadline for a final deal is looming.

The ad hoc arbitration is understood to relate to a joint venture agreed between the two states in 1968, when Israel enjoyed close ties with Iran under the reign of the pro-Western Shah.

The deal provided for Iranian oil to be shipped to Europe via Israel through the Eilat-Ashkelon Pipeline. Iran and Israel established companies in Liechtenstein, Panama and Canada to implement the project. However, Israel took control of the pipeline and the joint venture companies in the wake of the 1979 Islamic revolution that installed Ayatollah Khomeini as Supreme Leader of Iran.

Fimarco, a Liechtenstein subsidiary of the National Iranian Oil Company (NIOC), brought the arbitration in 1989 against Israeli-owned Panamanian entity Trans-Asiatic Oil over its failure to pay for a final shipment of crude oil before the revolution.

An arbitral tribunal seated in Switzerland issued an award in 2003 that required Trans-Asiatic Oil to pay US\$455 million to Fimarco, but deferred a ruling on interest. A final award worth US\$1.1 billion was rendered this month, though it remains unclear whether that figure represents the interest alone or includes the sums awarded in 2003. The 12-year gap between the two awards raises the possibility that the tribunal also dealt with substantial counterclaims by the

Israeli side.

*Haaretz* reports that NIOC has already filed a court case to enforce the award in Panama.

The case is one of at least three arbitrations known to have arisen between Israeli and Iranian-owned entities relating to the 1968 pipeline deal.

NIOC filed an ad hoc arbitration against the Israeli government in 1994, which took 19 years to get under way because of procedural wrangles over the appointment of the tribunal. Unusually, the arbitration clause in that case provided for disputes to be heard initially by a two-person panel, and did not specify an arbitral seat or applicable law. Israel initially refused to appoint an arbitrator, then claimed the panel was illegitimate because the French courts had appointed a panel member on its behalf, despite the case having no connection to France.

The Swiss Federal Supreme Court allowed the arbitration to proceed in 2013 when it upheld a partial award rendered by the two-member tribunal, finding that it had been properly constituted. The arbitration is now being heard by a panel made up of Mohsen Aghahosseini appointed by Iran, and French-Israeli arbitrator Théo Klein, appointed by the French courts on Israel's behalf.

According to the Swiss court's decision of 2013, NIOC is seeking some US\$800 million in its arbitral claim against the Israeli government, representing the value of half the assets related to the 1968 pipeline agreement, as well as damages corresponding to the amount that another, unidentified company "could be found owing at the end of another pending arbitration."

GAR understands that the other arbitration referred to in the Swiss court decision is Fimarco's claim against Trans-Asiatic Oil – and that NIOC argues the Israeli government is directly liable for the Panamanian entity's debts.

NIOC also brought a third arbitration in 1985 against an Israeli-owned Swiss company over its failure to pay for crude oil shipments that were destined for three Israeli companies (identified as Sonol, Paz and Delek in a report in *The Jerusalem Post*). The Israeli companies were later added as co-respondents. In 2001, a tribunal seated in Tehran issued a US\$97 million award in NIOC's favour.

Some details of the third arbitration came to light after NIOC sought to enforce the award in Switzerland. The Israeli-owned company argued that enforcement would be in breach of Swiss public policy and international sanctions put in place following the Iranian revolution. The Swiss Federal Supreme Court rejected those arguments in an anonymised judgment in March last year.

Wolfgang Peter of Python & Peter in Geneva is understood to have been counsel for NIOC in all three arbitrations, as well as in the two Swiss court proceedings mentioned above. He declined to comment.

The Israeli government retained Dominique Brown-Berset of Brown&Page in Geneva for one of the Swiss court actions but her involvement in the arbitrations has not been confirmed. She too declined to comment for this article.

According to Israeli media, Trans-Asiatic Oil's counsel in the arbitration with Fimarco was E Landau Law Offices in Jerusalem. The firm's founding partner, the late Elhanan Landau, was a legal advisor to Israel's Ministry of Finance and acted in the case until his death in 2000, after which he was replaced by Canadian-born partner Zvi Nixon.

Trans-Asiatic Oil's original arbitrator in the case was former Israeli justice minister Haim Zadok, who died in 2002 and was replaced by Tel Aviv-based Avigdor Klagsbald. Klagsbald served a prison sentence of more than a year after being found guilty in 2006 of causing the deaths of a young woman and her son in a car accident, but did not stand down from the tribunal at that time, according to *Haaretz*. GAR understands that a Swiss national served as chair of the tribunal.

Meanwhile multi-country talks have been continuing in Vienna this week to reach a final deal on Iran's nuclear programme. The US, the UK, France, Britain, Germany, Russia and China reached a tentative agreement with Iran in April, but several issues remain unresolved. A deadline of 30 June has been set for a final agreement on the proposals, under which Iran would freeze its nuclear development for a decade in exchange for the lifting of certain international sanctions.

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