

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعای ایران - ایالات متحدہ

CASE NO. A11

FULL TRIBUNAL

AWARD NO. 597-A11-FT

THE ISLAMIC REPUBLIC OF IRAN,
 Claimant,
 and
 THE UNITED STATES OF AMERICA,
 Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعای ایران - ایالات متحدہ
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Table of Contents

		<u>Para.</u>
I.	INTRODUCTION	1
II.	PROCEEDINGS	4
III.	FACTS	6
A.	<u>FACTUAL BACKGROUND</u>	6
B.	<u>IRAN'S PAHLAVI-ASSETS LITIGATION IN THE UNITED STATES</u>	28
1.	<u>Islamic Republic of Iran v. Mohammed Reza Pahlavi and Farah Diba Pahlavi, No. 22013/79 (N.Y. Sup. Ct.)</u>	28
2.	<u>Islamic Republic of Iran v. Ashraf Pahlavi, No. 4432/80 (N.Y. Sup. Ct.)</u>	44
3.	<u>Islamic Republic of Iran v. Fatemeh Pahlavi and fifty-nine Others, No. 81 Civ. 0186 (S.D.N.Y.) and No. 28127/81 (N.Y. Sup. Ct.)</u>	53
4.	<u>Litigation Against Shams Pahlavi</u>	59
a.	<u>Islamic Republic of Iran v. Shams Pahlavi, No. WEC 069489 (Cal. Super. Ct.)</u>	59
b.	<u>Islamic Republic of Iran and Bank Mellat v. Shams Pahlavi, No. WEC 070089 (Cal. Super. Ct.)</u>	82
c.	<u>Bank Melli Iran and Bank Mellat v. Shams Pahlavi, No. 92-CV-5479 (C.D. Cal.)</u>	89
IV.	THE PARTIES' CONTENTIONS	96
A.	<u>IRAN'S CLAIM AS TO PARAGRAPH 12 OF THE GENERAL DECLARATION</u>	96
1.	<u>Iran's Position</u>	97

a.	<u>Assets Controlled by the Estate of the Former Shah</u>	97
(1)	<u>The Requirement of Filing a Lawsuit against the Estate of the Former Shah</u>	100
(2)	<u>The Meaning of "Estate"</u>	104
b.	<u>Assets Controlled by the Close Relatives of the Former Shah</u>	108
	<u>The Meaning of "Served as a Defendant"</u>	109
c.	<u>Alleged United States Non-Compliance with Paragraph 12</u>	113
2.	<u>The United States Position</u>	116
a.	<u>The Requirement of Filing a Lawsuit against the Estate of the Former Shah</u>	116
b.	<u>The Meaning of "Estate"</u>	120
c.	<u>The Meaning of "Served as a Defendant"</u>	126
B.	<u>IRAN'S CLAIM AS TO PARAGRAPH 13 OF THE GENERAL DECLARATION</u>	133
1.	<u>Iran's Position</u>	134
2.	<u>The United States Position</u>	141
C.	<u>IRAN'S CLAIM AS TO PARAGRAPH 14 OF THE GENERAL DECLARATION</u>	148
1.	<u>Iran's Position</u>	149
a.	<u>Forum_Non_Conveniens_Dismissals</u>	149
b.	<u>Enforcement of Iranian Decrees and Judgments</u>	153
2.	<u>The United States Position</u>	155
a.	<u>Forum_Non_Conveniens_Dismissals</u>	156
b.	<u>Enforcement of Iranian Decrees and Judgments</u>	160
D.	<u>IRAN'S ARGUMENT THAT THE ALGIERS DECLARATIONS OBLIGATE THE UNITED STATES TO RETURN TO IRAN ALL PAHLAVI ASSETS</u>	166
1.	<u>Iran's Position</u>	166

2.	<u>The United States Position</u>	175
V.	JURISDICTION	180
VI.	MERITS	181
A.	<u>GENERAL</u>	181
B.	<u>IRAN'S ARGUMENT THAT THE ALGIERS DECLARA- TIONS OBLIGATE THE UNITED STATES TO RETURN TO IRAN ALL PAHLAVI ASSETS</u>	184
1.	<u>The Ordinary Meaning of the Terms of Point IV</u>	186
2.	<u>The Context of Point IV</u>	193
3.	<u>Preparatory Work</u>	200
C.	<u>PARAGRAPH 12 OF THE GENERAL DECLARATION</u>	205
1.	<u>Assets Controlled by the "Estate" of the Former Shah</u>	205
2.	<u>Assets Controlled by Certain Close Relatives of the Former Shah</u>	217
D.	<u>PARAGRAPH 13 OF THE GENERAL DECLARATION</u>	229
E.	<u>PARAGRAPH 14 OF THE GENERAL DECLARATION</u>	242
1.	<u>Forum_Non_Conveniens_Dismissals</u>	243
2.	<u>Enforcement of Iranian Decrees and Judgments</u>	253
F.	<u>THE UNITED STATES COMPLIANCE WITH PARAGRAPHS 12-14 OF THE GENERAL DECLARATION</u>	259
1.	<u>Paragraphs 12 and 13</u>	259
a.	<u>Assets Controlled by Farah Diba Pahlavi</u>	262
b.	<u>Assets Controlled by Ashraf Pah- lavi</u>	269
c.	<u>Assets Controlled by Fatemeh Pah- lavi and Her Codefendants</u>	276
d.	<u>Assets Controlled by Shams Pah- lavi</u>	281
2.	<u>Paragraph 14</u>	292

a.	<u>Sovereign Immunity Principles and the Act of State Doctrine</u> . . .	294
b.	<u>Enforcement of Iranian Decrees and Judgments</u>	295
(1)	<u>Islamic Republic of Iran v. Shams Pahlavi, No. WEC 069489 (Cal. Super. Ct.)</u> .	296
(2)	<u>Bank Melli Iran and Bank Mellat v. Shams Pahlavi, No. 92-CV-5479 (C.D. Cal.)</u> . .	305
VII.	AWARD	313

I. INTRODUCTION

1. At issue in this Case are the United States obligations under the Algiers Declarations¹ concerning the return to Iran of property and assets in the United States within the control of the estate or of close relatives of the former Shah ("Pahlavi assets"). This Case centers on Point IV of the General Declaration ("Point IV"). Point IV, which is entitled "Return of the Assets of the Family of the Former Shah," consists of Paragraphs 12 through 16. These provisions are quoted in full infra, at para. 25.

2. In this claim, Iran alleges manifold breaches by the United States of Point IV. Specifically, Iran contends that the United States breached its obligations: (a) by failing to freeze the United States assets of the former Shah on the date the Algiers Declarations entered into force; (b) by failing timely to freeze the United States assets of close relatives of the former Shah in the United States; (c) by failing timely to provide Iran with information concerning United States assets belonging to the former Shah or certain of his close relatives; (d) by failing to provide Iran with "full access" to United States courts to pursue on the merits its claims for the return of those assets; and (e) by failing to ensure the return to Iran of the Pahlavi assets.

3. According to its final pleadings, Iran seeks a declaration by the Tribunal that the United States is liable for breaches of the Algiers Declarations on all the above counts. Iran further requests that the Tribunal order the United States to perform its Point IV obligations with regard to any litigation

¹ Declaration of the Government of the Democratic and Popular Republic of Algeria ("General Declaration") and Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"), both dated 19 January 1981.

brought by Iran in United States courts to recover Pahlavi assets.

II. PROCEEDINGS

4. By Order of 13 September 1993, the Tribunal bifurcated proceedings in this Case "to the effect that the legal and factual basis of the United States' liability be dealt with as a preliminary issue and the issue of remedies be addressed in subsequent proceedings," if necessary.

5. A Hearing in this Case was held on 16-18 February 1998 in the Peace Palace, The Hague.

III. FACTS²

A. FACTUAL BACKGROUND

6. On 16 January 1979, following months of revolutionary turmoil and popular protests, the Shah of Iran, Mohammad Reza Pahlavi, and his wife, Farah Diba Pahlavi, left Iran for Egypt and, after a brief stay there, took up temporary residence in Morocco.

7. On 11 February 1979, the new revolutionary government acceded to power in Iran. On 28 February 1979, Imam Ruhollah Khomeini issued a decree charging the Islamic Revolutionary Council with the task of confiscating all movable and immovable properties of the Pahlavi Dynasty.

8. On 30 March 1979, the former Shah and Farah Diba Pahlavi left Morocco for the Bahamas. On 10 June 1979, the

² More details regarding certain facts will be given, as appropriate, in connection with the merits of the claim, infra.

Mexican Government granted them six-month tourist visas, and they left the Bahamas and took up residence in Cuernavaca.

9. On 22 October 1979, the former Shah, having been granted a temporary visa for entry into the United States, arrived in New York City to obtain medical treatment. The former Shah was accompanied by Farah Diba Pahlavi, who stayed at the home of the former Shah's twin sister, Ashraf Pahlavi, in Manhattan while the Shah was hospitalized. On 24 October, the former Shah underwent surgery in a New York hospital.

10. On 4 November 1979, Iranian militants seized the United States Embassy in Tehran including United States Embassy personnel and nationals. On 5 November 1979, United States consulates in Tabriz and Shiraz were also occupied.

11. On 12 November 1979, Iranian director of foreign policy Abolhassan Bani-Sadr told foreign diplomats in Tehran that the United States must turn over not only the former Shah but also all his wealth in order to resolve the crisis between the governments of Iran and the United States. On 13 November 1979, Iran released a letter from Mr. Bani-Sadr to the Secretary-General of the United Nations outlining Iran's demands with respect to the former Shah. Iran demanded, inter alia, that the former Shah's property in the United States be turned over to Iran. In a decree issued on 17 November 1979, Imam Khomeini stated that the handing over of the former Shah to Iran for trial and the return of his United States property to Iran were conditions for ending the crisis between the governments of Iran and the United States. See United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. (24 May) 3, at 35.

12. On 14 November 1979, the President of the United States issued Executive Order No. 12170, which blocked the transfer of Iranian governmental assets subject to the jurisdiction of the United States or in the possession or control of persons subject to the jurisdiction of the United States. The United States

Department of the Treasury subsequently issued a series of "Iranian Assets Control Regulations" implementing Executive Order No. 12170 (31 C.F.R. Part 535).

13. On 27 November 1979, Iran initiated a civil lawsuit against the former Shah and Farah Diba Pahlavi in the Trial Division of the New York Supreme Court, Special Term (the "New York trial court" or the "trial court"), seeking the impressing of a trust, an accounting, an injunction, and compensatory and punitive damages (Islamic Republic of Iran v. Mohammed Reza Pahlavi and Farah Diba Pahlavi, No. 22013/79 (N.Y. Sup. Ct.)). See infra, para. 28.

14. On 15 December 1979, the former Shah and Farah Diba Pahlavi left the United States and took up residence in Panama. On 23 March 1980, they left Panama for Egypt. On 27 July 1980, the former Shah died in Cairo. He apparently left no will; each of his six surviving distributees (Farah Diba Pahlavi and five children) was domiciled in Egypt or Switzerland.

15. On 12 September 1980, Imam Khomeini gave a speech in which he publicly announced four conditions for ending the crisis. One of these conditions was the return to Iran of the property of the former Shah located in the United States. A special Iranian commission investigating the Embassy incident subsequently recommended to the Islamic Consultative Assembly of Iran — the Majlis — that it approve the four conditions referred to by Imam Khomeini in his 12 September speech.

16. In the fall of 1980, Iran and the United States began negotiations, conducted through Algerian intermediaries, with a view to resolving the crisis between the two countries. Their respective delegations were led by Behzad Nabavi, then the Minister of State for Executive Affairs of the Government of the Islamic Republic of Iran, and Warren M. Christopher, then the Deputy Secretary of State of the United States. Iran's conditions for resolving the crisis were adopted by the Majlis on 2

November 1980, in a Resolution stating Iran's position concerning the release of the members of the United States diplomatic and consular staff detained in the United States Embassy in Tehran. This Resolution, which incorporated the four conditions Imam Khomeini had announced in his 12 September speech, constituted the basis of the Iranian position throughout the negotiations and is referred to in the Preamble of the General Declaration. The fourth of the conditions listed in the Resolution, in particular, refers to questions at issue in this Case. The Majlis demanded

[t]he return of all assets of the defunct Shah as well as official recognition as valid of the action of the government of Iran in exercising its sovereignty to expropriate the assets of the defunct Shah and his close relatives, which assets, according to the laws of Iran, belong to the Iranian nation, the issuance of an order by the American President that these assets be identified and frozen, and the taking of all administrative and legal measures necessary for transferring these assets and possessions to Iran.

17. In an initial written response to Iran's conditions ("first American response"), on 11 November 1980, the United States "accept[ed], in principle, the [Majlis] Resolution as the basis for ending the crisis" and expressed its willingness to do the following upon the safe departure from Iran of the members of the United States diplomatic and consular staff detained in the United States Embassy:

4. (a) The United States is prepared to deliver to the Government of Algeria a copy of a signed Presidential order prohibiting the transfer out of the United States of any properties owned by or derived from the estate of the former Shah.

(b) The same order will require the compilation, for delivery to the Government of Iran, of all information which is in the possession of U.S. nationals or in the financial records of the U.S. Government and which may serve to identify any properties of the former Shah in the United States.

(c) The order will also direct the Attorney General of the United States to give notice to all appropriate U.S. courts that it is the position of the

United States Government (i) that no claim of the Government of Iran to the property of the former Shah should be considered legally barred either by principles of sovereign immunity or the act of state doctrine, and (ii) that all decrees and judgments of the Government of Iran relating to such property may be enforced in the courts of the United States in accordance with U.S. law.

18. To its 11 November 1980 response, the United States attached, inter alia, a draft Executive Order entitled "Restrictions on the Transfer of Property of the Former Shah of Iran," which stated in relevant part:

1-101. For the purpose of protecting the rights of litigants in the United States courts, no property located in the United States over which the estate of Mohammad Reza Pahlavi, the former Shah of Iran, shall have direct or indirect control or in which it shall have an interest on or after the effective date of this Order shall be transferred outside the United States.

1-102. The Secretary of the Treasury shall promulgate regulations requiring all persons who are subject to the jurisdiction of the United States and who have actual or constructive possession of property of the kind described in Section 1-101, or knowledge of such possession by others, to report such property or knowledge to the Secretary of the Treasury in accordance with such regulation.

1-103. The Secretary of the Treasury is authorized and directed (a) to require all agencies within the Executive Branch of the United States Government to deliver to the Secretary all official financial books and records which serve to identify any property of the kind described in Section 1-101 of this Order and (b) to make available to the Government of the Islamic Republic of Iran or its designated agents all identifying information derived from such books and records to the fullest extent permitted by law.

1-104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Islamic Republic of Iran for recovery of property of the kind described in Section 1-101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the

request of counsel representing the Government of the Islamic Republic of Iran to present to the appropriate court or courts, suggestions of interest reflecting that such is the position of the Government of the United States, and that it is also the position of the United States that all Iranian decrees and judgments relating to the assets of the former Shah should be enforced by such courts to the extent permitted by United States law.

19. In a 26 November 1980 message replying to the first American response, Iran stated the following:

Regretfully, the American response and its attachments which were received through the representatives of the Algerian Peoples Democratic Republic, were not to the point[;] rather[,] they offered new proposals which were different from th[ose] of the Consultative Assembly's resolutions, and in several cases the matters are either left obscure, or even not mentioned.

Iran commented as follows on the United States offer to restrict the transfer of the United States property of the former Shah:

III. Resolution No. 4:

A. No reference is made concerning the attachment of deposed Shah's properties and assets, but only their transfer has been prohibited.

B. Nothing has been mentioned about the properties and assets of the close relatives of the deposed Shah.

C. No reference is made to the transfer of these properties and assets to Iran.

20. In reply to Iran's 26 November 1980 message, a second American response, dated 3 December 1980, stated the following:

III. Resolution No. 4:

A. The United States will put into force a freeze order requiring any person having custody or possession of any property or assets of the former Shah to retain such property and assets.

B. All undertakings by the United States with respect to the property and assets of the former Shah include the properties and assets of the close relatives of the former Shah.

C. Transfer of the properties and assets of the former Shah and his close relatives can occur pursuant to the procedures described in Comment 4.

Comment 4 stated:

4. With respect to the U.S. answer to Paragraph III(C), under the laws of the United States, the only entity within the United States Government which could lawfully transfer the property or assets of the former Shah or his relatives to the Government of Iran would be a U.S. court acting pursuant to a legal proceeding brought by the Government of Iran. In fact Iran has brought such a proceeding, which is now pending in an American court (Islamic Republic of Iran v. Mohammed Reza Pahlavi and Farah Diba Pahlavi, pending in the Supreme Court of the State of New York, Index No. 22013/79), and that pending case affords Iran an opportunity to prove its right to have the properties and assets in question transferred to Iran. The United States Government will facilitate efforts of the Government of Iran to obtain and enforce a judgment in the manner described in the United States position delivered by the Algerian delegation on November 12, 1980.

21. Together with its 3 December 1980 response, the United States submitted a revised draft of the Executive Order entitled "Restrictions on the Transfer of Property of the Former Shah of Iran." Sections 1-101 and 1-104 of the revised draft Executive Order, in particular, stated as follows:

1-101. For the purpose of protecting the rights of litigants in the United States courts, all property located in the United States over which the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or those members of his immediate family designated by the Secretary of the Treasury, has or shall have direct or indirect control or in which it or they have or shall have an interest on or after the effective date of this Order is hereby blocked.

. . . .

1-104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Government of Iran for recovery of property of the kind described in Section 1-101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts, suggestions of interest reflecting that such is the position of the United States, and that it is also the position of the United States that all Iranian decrees and judgments relating to the assets of the former Shah and of the designated members of his immediate family should be enforced by such courts in accordance with United States law.

22. The Iranian response of 21 December 1980 to the proposals contained in the second American response requested that the United States take, inter alia, the following steps:

A. . . . [T]he U.S. Government should take all legal and administrative measures, setting a 30-day time limit and determine fines and imprisonment, for the purpose of collecting information on the [properties and assets of the deposed Shah and his close relatives], and issue the necessary instructions in this respect.

B. Until final results are reached, the U.S. Government will continue the attachment of all the properties and assets of the deposed Shah and his close relatives.

C. In addition to all the above measures relating to determination of the properties and assets of the deposed Shah and his close relatives at the present time in the U.S.A., the U.S. Government will also determine all the properties and assets of the deposed Shah and his close relatives in the U.S.A. as at 3 November 1979 and notify this to the Government of the Islamic Republic of Iran within the period stipulated above.

D. The U.S. Government pledges to provide information on the amounts, origin, destination, and agents transferring out of U.S. jurisdiction, probably after the triumph of the Islamic Revolution and until the date of acceptance of this response, the properties and assets of the deposed Shah and his close relatives.

E. The U.S. Government [sic] to deposit with the Central Bank of Algeria a cash guarantee equal to 10 billion dollars, or any other guarantee acceptable to the Algerian Government, which is a percentage of the properties of the Iranian nation plundered by the deposed Shah and his relatives, as a guarantee for the bona fide discharge of its obligations, so that:

1. In case the U.S. Government refrains from declaring a part or parts of the properties and assets of the deposed Shah and his relatives to the Iranian Government, and this fact is later discovered and proven by the Iranian Government;

2. In case the U.S. Government refrains from issuing the attachment order on the properties of the deposed Shah and his relatives, or later cancels such an order;

3. In case the U.S. courts refrain from carrying out the U.S. Government's attachment order, and order [sic], confirmed by the Iranian courts, on the transfer of all the properties to the Government of the Islamic Republic of Iran;

then in such an eventuality the Algerian Government will place at the disposal of the Iranian Government an amount from the guarantee equal to the loss sustained from any one case or a number of cases of the aforementioned eventualities.

23. On 22 December 1980, the New York Times published verbatim the texts of the First and second American responses as well as of Iran's response of 21 December 1980.

24. On 30 December 1980, the United States delivered to the Algerian intermediaries five draft paragraphs setting forth proposed United States obligations with respect to the Pahlavi assets. The Parties left those five paragraphs untouched during the remainder of their negotiations and adopted them verbatim in the General Declaration as Paragraphs 12-16. See infra, para. 25.

25. On 19 January 1981, Iran and the United States adhered to the Algiers Declarations. In particular, the following provisions of the Declarations are relevant to the present claim:

- a. The Preamble to the General Declaration, which states in relevant part:

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the four points stated in the Resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran

- b. General Principle A of the General Declaration, which states in relevant part:

Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979

- c. Point IV of the General Declaration, the set of provisions at the heart of this claim, which states:

POINT IV: RETURN OF THE ASSETS
OF THE FAMILY OF THE FORMER SHAH

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above,³ the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a

³ Paragraph 3 of the General Declaration provided, among other things, that the Government of Algeria would make a certification to the Algerian Central Bank once "the 52 U.S. nationals ha[d] safely departed from Iran." The Algerian Government made that certification on 19 January 1981.

defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

16. If any dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the Claims Settlement Agreement. If the tribunal determines that Iran has suffered a loss as a result of a failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

26. As part of the measures taken by the United States aimed at implementing the Algiers Declarations, on 19 January 1981, the President of the United States issued Executive Order

No. 12284, entitled "Restrictions on the Transfer of Property of the Former Shah of Iran," which provides in pertinent part:

1-101. For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States within the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is hereby blocked as to each such estate or person until all such litigation against such estate or person is finally terminated.

1-102. The Secretary of the Treasury is authorized and directed (a) to promulgate regulations requiring all persons who are subject to the jurisdiction of the United States and who, as of November 3, 1979, or as of this date, have actual or constructive possession of property of the kind described in Section 1-101, or knowledge of such possession by others, to report such possession or knowledge thereof, to the Secretary of the Treasury in accordance with such regulations and (b) to make available to the Government of Iran or its designated agents all identifying information derived from such reports to the fullest extent permitted by law. Such reports shall be required as to all individuals described in 1-101 and shall be required to be filed within 30 days after publication of a notice in the Federal Register.

. . . .

1-104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Government of Iran for recovery of property of the kind described in Section 1-101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts within the United States, suggestions of interest reflecting that such is the position of the United States, and that it is also the position of the United States that Iranian decrees and judgments relating to the assets of the former Shah and the persons described in Section 1-101 should be enforced by such courts in accordance with United States law.

. . . .

1-106. This Order shall be effective immediately.

27. Pursuant to Executive Order No. 12284, on 25 February 1981, the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") issued a regulation, 31 C.F.R. § 535.217, effective 19 January 1981, entitled "Blocking of Property of the Former Shah of Iran and of Certain Other Iranian Nationals." The regulation, in relevant part, provided as follows:

a. For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States in the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is blocked as to each such estate or person, until all such litigation against such estate or person is finally terminated. This provision shall apply only to such persons as to which Iran has furnished proof of service to the Office of Foreign Assets Control and which the Office has identified in paragraph (b) of this section.

b. [Reserved]

B. IRAN'S PAHLAVI-ASSETS LITIGATION IN THE UNITED STATES

1. Islamic Republic of Iran v. Mohammed Reza Pahlavi and Farah Diba Pahlavi, No. 22013/79 (N.Y. Sup. Ct.)

28. As noted supra, at paras. 13 and 20, on 27 November 1979, Iran filed a complaint against the former Shah and Farah Diba Pahlavi in the New York trial court. The complaint alleged, inter alia, that the Shah and Farah Diba Pahlavi had misappropriated, embezzled, and otherwise diverted to their own use assets and funds belonging to the Government of Iran. The complaint sought, inter alia, the return of such property, the impressing of a trust on the defendants' assets worldwide,

compensatory damages in the amount of U.S.\$25 billion, and punitive damages in the amount of U.S.\$1.5 billion.

29. Iran served the complaint on Farah Diba Pahlavi by mailing the papers to her sister-in-law's residence in Manhattan and delivering them to a bodyguard there by a New York City deputy sheriff.

30. After unsuccessfully attempting to serve the former Shah personally at the New York hospital in which he was receiving treatment, on 30 November 1979, Iran obtained an ex parte order from the New York trial court authorizing alternative service personally upon the Administrator or Night Administrator of the New York hospital, as well as mailed service upon designated persons. On or after 30 November 1979, Iran effected service on the former Shah by personal delivery to the hospital Night Administrator permitted by the court order, as well as mailed service to the persons designated by the court order, the former Shah, and other individuals.

31. On 10 January 1980, the former Shah and Farah Diba Pahlavi moved to dismiss the complaint on the grounds that (1) the complaint raised non-justiciable political questions; (2) the court lacked personal jurisdiction over the defendants, because they had been improperly served with process; and (3) the New York forum was an inconvenient and inappropriate forum under the doctrine of forum non conveniens.

32. As noted supra, at para. 14, on 27 July 1980, the former Shah died in Egypt.

33. In September 1980, before the trial court had ruled on the former Shah's and Farah Diba Pahlavi's motion to dismiss, the United States Government requested the court to stay all proceedings pending resolution of the crisis between Iran and the United States. The court granted the stay. In late January 1981, shortly after the signing of the Algiers Declarations, the

United States Government requested a further stay until 26 February 1981 to give the incoming administration of President Ronald Reagan the opportunity to review the Declarations. Proceedings recommenced on or shortly after that date.

34. On 26 February 1981, counsel for Iran submitted to OFAC "affidavits of service and other papers" establishing, in his view, proof of service on the former Shah, Farah Diba Pahlavi, and Ashraf Pahlavi⁴ and requested OFAC to "designate these individuals in paragraph (b) of 31 CFR § 535.217 immediately," thereby freezing their United States assets.

35. Shortly thereafter, on 2 March 1981, counsel for Iran wrote to OFAC, objecting to the "wording of 31 CFR 535.217" (see supra, para. 27). Counsel for Iran stated, inter alia, that both Point IV and Executive Order No. 12284 required that the former Shah's property and assets be blocked "immediately," and that there was no need to effect service of process on the former Shah's estate in order to trigger the freeze of his assets pursuant to Paragraph 12 of the General Declaration. Counsel went on to write:

Farah Diba Pahlavi is not specifically mentioned; therefore, she must be served before her property is frozen. This does not mean that the service must be uncontested. To require the service to be uncontested would enable any close relative served as a defendant to interpose the defense of improper service to avoid the freeze

Service of process in the Ashraf Pahlavi case is unquestioned.

Thus, the names of Mohammad Reza Pahlavi, Farah Diba Pahlavi, and Ashraf Pahlavi must be added to paragraph (b) of 31 CFR 535.217 immediately

⁴ Iran had filed a civil lawsuit against Ashraf Pahlavi in the New York trial court in February 1980 (Islamic Republic of Iran v. Ashraf Pahlavi). See infra, para. 44.

36. On 19 March 1981, counsel for Iran again wrote to OFAC, reiterating his request that OFAC add the names of the former Shah, Farah Diba Pahlavi, and Ashraf Pahlavi to paragraph (b) of 31 C.F.R. § 535.217. Counsel also wrote:

You have intimated to our office over the telephone that you decline to accept the proffered proof of service on Mohammad Reza Pahlavi and Farah Diba Pahlavi because service of process was challenged by the Defendants' Motion to Dismiss in Islamic Republic of Iran vs. Mohammed Reza Pahlavi and Farah Diba Pahlavi

37. On 26 March 1981, counsel for Iran petitioned the New York trial court in which the action against the former Shah and Farah Diba Pahlavi was pending to appoint an administrator to represent the former Shah's estate. In his petition, Iran's counsel stated that the former Shah had been "the owner of vast amounts of property, both real and personal, now located within the confines of New York County, the full extent of which will be more clearly defined as the discovery processes of the Court become utilized." Iran's counsel also pointed out that it was "necessary for a representative of the estate to be appointed in order to fulfill various responsibilities and obligations of the decedent before the New York State Supreme Court with respect to this litigation." He further contended that it would be "impossible for the Government of the United States to carry out its obligations in the instant case [under Paragraph 12 of the General Declaration] unless a representative [was] appointed to represent the decedent."

38. While finding that it had personal jurisdiction over the former Shah and Farah Diba Pahlavi and that service on both of them had been proper, on 14 September 1981, the New York trial court dismissed Iran's lawsuit against them on grounds of forum non conveniens. In reaching this conclusion, the court stated the following:

[I]t is clear that New York is an inappropriate forum for this litigation. Quite simply, this case has no connection with New York and none is alleged, save for the suggestion that the Shah deposited funds in banks located in this State. The events complained of occurred in Iran, must be analyzed under the laws of Iran, and in general involve the people of Iran. It appears that the witnesses required to testify concerning the allegations of the complaint will be Iranians beyond the subpoena power of this State. An unnecessarily heavy burden would be placed on the courts of New York to accept jurisdiction of a suit between nonresident parties on a cause of action having no nexus with this State.

An important consideration is the availability of an alternate forum Iran is the logical forum for this litigation. Certainly it is a more convenient forum for the plaintiff Islamic Republic than New York, for the reasons set forth supra concerning the law to be applied and the availability of evidence. Iran is not necessarily a convenient or adequate forum for the Empress and the Shah's estate, in light of the political upheaval there following the defendant's departure in 1979.

39. The court further denied counsel for Iran's Petition for Letters of Administration because, in the court's view,

[t]he exhibits submitted by the petitioner are wholly inadequate to establish that the Shah owned any property of any kind within this jurisdiction, and [the petition] does not amount to the statement required by Surrogate's Court Procedure Act 1002(2) that the deceased left property in New York.

Iran's counsel did not appeal the denial of the Petition.

40. On 18 December 1981, Iran appealed the 14 September 1981 decision dismissing Iran's claim to the Appellate Division of the New York Supreme Court (the "Appellate Division"). On 5 January 1982, Farah Diba Pahlavi filed a cross-appeal, arguing, inter alia, that the court lacked personal jurisdiction over her. On 30 June 1983, the Appellate Division affirmed the dismissal of Iran's lawsuit on grounds of forum non conveniens, with one judge dissenting. See Islamic Republic of Iran v. Pahlavi, 464

N.Y.S.2d 487 (N.Y. App. Div. 1983). The Appellate Division did not reach the issue of the validity of service on Farah Diba Pahlavi. In affirming the lower court's decision, the Appellate Division stated the following:

Although the list of assets [in dispute] does include some assets with a relation to New York, this is not a case of a dispute as to the ownership of specific property in this state. The complaint asks to impress a constructive trust on assets of the defendants throughout the world; it asks for an accounting of all monies and property of any kind received by the defendants from the Government of Iran, together with all profits derived therefrom; it asks for general compensatory damages totalling \$35 billion, and total damages of over \$55 billion. This is plainly a transitory action arising in Iran.

41. Iran appealed this decision to the Court of Appeals, the highest court in the State of New York's judicial system. Again, Farah Diba Pahlavi cross-appealed, arguing that the court lacked personal jurisdiction over her because she had been improperly served with process. On 22 March 1984, the Court of Appeals dismissed her cross-appeal because she was not aggrieved by the Appellate Division's order. See Islamic Republic of Iran v. Pahlavi, 463 N.E.2d 623 (N.Y. 1984). On 5 July 1984, the Court of Appeals affirmed the Appellate Division's dismissal of Iran's lawsuit on grounds of forum non conveniens, with one judge dissenting. See Islamic Republic of Iran v. Pahlavi, 467 N.E.2d 245 (N.Y. 1984). In affirming the lower court's decision, the Court of Appeals stated:

Although the existence of a suitable alternative forum is a most important factor to be considered in applying the forum non conveniens doctrine, its alleged absence here does not require the Court to retain jurisdiction. Here plaintiff has failed to prove that no alternative forum exists. Moreover, even if it were assumed that normally an alternative forum is a prerequisite and that plaintiff has none, a forum non conveniens dismissal is still warranted when plaintiff's chosen forum is unable to afford the parties appropriate relief Despite the fact that plaintiff's complaint requests monetary relief,

it really seeks a sweeping review of the political and financial management of the Iranian government during the several years of the late Shah's reign with the object of accounting for and repossessing the nation's claimed lost wealth wherever it may be located throughout the world. For the many reasons stated, that relief cannot properly be afforded by a New York forum with little if any nexus to the controversy. Additionally, the taxpayers of the State of New York should not be compelled at the request of plaintiff here to assume the heavy financial burden attributable to the cost of administering the litigation contemplated in this instance when their interest in the suit and the connection of its subject matter to the State of New York is so ephemeral.

42. Iran petitioned the Supreme Court of the United States for a writ of certiorari. On 7 January 1985, the Supreme Court denied Iran's petition. See Islamic Republic of Iran v. Pahlavi, 469 U.S. 1108 (1985).

43. Meanwhile, after the New York trial court denied counsel for Iran's Petition for Letters of Administration, see supra, para. 39, he renewed that petition in the New York Surrogate's Court. On 19 March 1984, the Surrogate's Court denied the petition on the ground that there was insufficient evidence that the former Shah owned assets in New York State at the time of his death. As with the first denial of the Petition, Iran's counsel did not appeal the Surrogate's Court decision.

2. Islamic Republic of Iran v. Ashraf Pahlavi, No. 4432/80 (N.Y. Sup. Ct.)

44. On 25 February 1980, Iran filed suit against Ashraf Pahlavi, the former Shah's twin sister, in the New York trial court. The complaint alleged, inter alia, that Ashraf Pahlavi had conspired with the Shah to divert to her personal use (and that of other members of the Pahlavi family) money and property belonging to the Government of Iran. The complaint sought, inter alia, an accounting, the impressing of a trust on defendant's

assets, and compensatory and punitive damages in the amount of U.S.\$3 billion.

45. Iran served the complaint on the defendant personally in New York on 29 February 1980. On 21 January 1981, Ashraf Pahlavi moved to dismiss the complaint, inter alia, on the ground of forum non conveniens. She did not challenge the validity of the service of process effected on her.

46. As in the case filed against the former Shah and Farah Diba Pahlavi, court proceedings were stayed at the request of the United States Government from late 1980 through 26 February 1981. See supra, para. 33.

47. As noted, on 26 February, 2 March, and 19 March 1981, Iran requested that OFAC freeze, and require reporting about, Ashraf Pahlavi's United States assets pursuant to Point IV of the General Declaration. See supra, paras. 34-36. On 13 May 1981, OFAC amended 31 C.F.R. § 535.217, see supra, para. 27, by placing the name of Ashraf Pahlavi in paragraph (b) of that Section, thereby freezing her United States assets. OFAC also amended the last sentence of paragraph (a) of 31 C.F.R. Section 535.217 by adding "estate" to the "persons" as to which Iran was required to furnish proof of service. The amended sentence reads as follows: "This provision shall apply only to such estate or persons as to which Iran has furnished proof of service to the Office of Foreign Assets Control and which the Office has identified in paragraph (b) of this section." On the same date, OFAC instituted the reporting procedure pursuant to Paragraph 13 of the General Declaration: It issued a separate regulation, 31 C.F.R. § 535.619, requiring that Ashraf Pahlavi and any persons within the jurisdiction of the United States file written reports with OFAC with respect to their knowledge of United States assets controlled by Ashraf Pahlavi at any time between 3 November 1979 and 11 May 1981.

48. In July 1981, OFAC transmitted to Iran information reported to OFAC pursuant to 31 C.F.R. § 535.619. According to these reports, OFAC's 13 May 1981 order had frozen, inter alia, approximately U.S.\$4 million worth of real property belonging to Ashraf Pahlavi in New York City.

49. On 12 November 1982, the New York trial court denied Ashraf Pahlavi's motion to dismiss. See Islamic Republic of Iran v. Pahlavi, 455 N.Y.S.2d 987 (N.Y. Sup. Ct. 1982). The Court rejected, inter alia, Ashraf Pahlavi's forum non conveniens defense, on the ground that no alternative forum existed in which the claim could be litigated. Ashraf Pahlavi appealed this decision to the Appellate Division.

50. On 27 March 1984, the Appellate Division reversed the trial court's decision and dismissed Iran's claim against Ashraf Pahlavi on the ground of forum non conveniens, following its earlier decision in the companion case against Farah Diba Pahlavi. See Islamic Republic of Iran v. Pahlavi, 473 N.Y.S.2d 801 (N.Y. App. Div. 1984). Iran appealed this decision to the New York Court of Appeals.

51. By order of 7 February 1985, the Court of Appeals affirmed the Appellate Division's decision, citing as precedent its own decision affirming the dismissal of Iran's case against Farah Diba Pahlavi. See Islamic Republic of Iran v. Pahlavi, 476 N.E.2d 338 (N.Y. 1985). Iran did not file a petition for a writ of certiorari in the Supreme Court of the United States.

52. On 15 August 1991, OFAC amended 31 C.F.R. § 535.217, inter alia, by removing the name of Ashraf Pahlavi from paragraph (b) thereof, thereby unblocking her United States assets, due to the "final termination of all pertinent litigation against her."

3. Islamic Republic of Iran v. Fatemeh Pahlavi and fifty-nine Others, No. 81 Civ. 0186 (S.D.N.Y.) and No. 28127/81 (N.Y. Sup. Ct.)

53. On 13 January 1981, Iran filed suit against Fatemeh Pahlavi, a sister of the former Shah, and fifty-nine other relatives and associates of the former Shah in the United States District Court for the Southern District of New York (No. 81 Civ. 0186 (S.D.N.Y.)). Iran did not attempt to serve process on any of the sixty defendants.

54. On 16 December 1981, Iran voluntarily dismissed the case in the federal court. The following day, on 17 December 1981, Iran filed another civil lawsuit, naming the same defendants, in the New York trial court (No. 28127/81 (N.Y. Sup. Ct.)). The complaint alleged, inter alia, that the defendants had conspired with the Shah to misappropriate, embezzle, convert, and otherwise divert to their personal use money and property belonging to the Government of Iran.

55. On 18 December 1981, Iran obtained an ex parte order from the trial court authorizing service of the complaint upon the defendants by publication and by certified mail. Three months later, in March 1982, Iran effected substituted service by publication.

56. Six months later, on 29 September 1982, counsel for Iran wrote to OFAC, claiming that sixty close relatives of the former Shah had been served as defendants in the New York trial court and submitting copies of what he deemed proof of service. Accordingly, he requested that OFAC "implement the blocking and reporting provisions of Point IV" of the General Declaration with respect to those persons. OFAC declined to do so.

57. In December 1982, one of the defendants moved to vacate the service by publication effected on defendants in March 1982

and to dismiss Iran's complaint for lack of jurisdiction as to all defendants.

58. On 31 July 1984, the New York trial court sua sponte dismissed Iran's complaint on grounds of forum non conveniens. In reaching this decision, the court cited the Appellate Division's decisions in the cases against Farah Diba Pahlavi and Ashraf Pahlavi. The court did not rule on the defendant's motion to vacate the service by publication. Iran did not appeal.

4. Litigation Against Shams Pahlavi

a. Islamic Republic of Iran v. Shams Pahlavi, No. WEC 069489 (Cal. Super. Ct.)

59. On 30 June 1981, Iran filed suit against Shams Pahlavi (another sister of the former Shah), Mehrdad Pahlbod (her husband) and Ierspex Finance n.v., a Dutch Antilles corporation, in the Superior Court of the State of California for the County of Los Angeles (the "Los Angeles Superior Court" or the "Superior Court"). The complaint alleged that defendants had conspired with the Shah to embezzle, convert, and otherwise divert to their personal use money belonging to the Government of Iran. The complaint sought an accounting, the imposition of a constructive trust, an order setting aside certain allegedly fraudulent conveyances, and damages.

60. On 8 December 1981, Iran obtained an ex parte order from the Superior Court permitting service on the defendants by publication.

61. On 22 April 1982, Shams Pahlavi filed a Motion to Quash Summons, challenging the validity of service. In her motion, Shams Pahlavi argued that the court's ex parte order permitting service by publication was void because, inter alia, it was based on an "insufficient and patently defective affidavit on the

merits." On the same date, she also filed a Motion for Limited Discovery concerning jurisdiction.

62. In late April and May 1982, Iran effected substituted service on Shams Pahlavi by publication. On 7 June 1982, Iran's attorney, contending that Shams Pahlavi had been served as a defendant in United States litigation in accordance with Paragraph 12 of the General Declaration, wrote to OFAC requesting that it freeze her United States assets. Iran's attorney enclosed a copy of the court order permitting service by publication and affidavits authenticating publication in three newspapers. On 7 July 1982, Iran's attorney reiterated his request to OFAC. In a letter of 14 December 1982, OFAC replied as follows:

In your letter of June 7, you advised us that the prerequisites of service of process in [the lawsuits against Shams Pahlavi] had been met. We have learned from the Court, however, that the validity of the service is contested and has not been established. In the absence of a clear indication from the record in these actions that there has been valid service, we are not prepared to block the defendant's assets at this time. We are prepared to reconsider the question as future developments may warrant.

63. On 14 January 1983, Shams Pahlavi filed a motion to dismiss Iran's action with prejudice. The trial court heard this motion in conjunction with the previously filed Motion to Quash Summons. On 24 May 1983, the court filed a minute order granting Shams Pahlavi's motion to quash and dismissing with prejudice Iran's complaint against her. On 7 June 1983, the court issued a judgment quashing the attempted service of process by publication and dismissing Iran's complaint with prejudice as to Shams Pahlavi. Iran appealed the trial court's minute order to the Court of Appeal of the State of California (the "California Court of Appeal" or the "Court of Appeal").

64. On 1 October 1984, the Court of Appeal reversed the trial court's dismissal with prejudice of Iran's complaint but affirmed the lower court's nullification of service of process on Shams Pahlavi by publication. See Islamic Republic of Iran v. Pahlavi, 206 Cal. Rptr. 752 (Cal. Ct. App. 1984). Iran did not seek review in the California Supreme Court.

65. In 1990, Iran effected personal, in-hand service of process upon Shams Pahlavi. On 17 October 1990, the Superior Court held that the personal service on her was valid. On 13 December 1990, the California Court of Appeal affirmed the trial court order.

66. In an April 1991 letter, Iran notified OFAC that it had served Shams Pahlavi. On 7 June 1991, counsel for Iran informed OFAC by letter that the Court of Appeal had upheld service of the complaint on Shams Pahlavi and requested that OFAC freeze her United States assets.

67. On 15 August 1991, OFAC placed the name of Shams Pahlavi in paragraph (b) of 31 C.F.R. § 535.217, thereby freezing her United States assets and instituting the reporting procedure pursuant to Point IV of the General Declaration.

68. Meanwhile, on 20 June 1991, the Superior Court ordered Iran to post an U.S.\$80,000 bond to secure Shams Pahlavi's costs in defending against Iran's lawsuit. On 11 July 1991, Iran sent the United States Government a letter objecting to the requirement that Iran post a bond.

69. On 1 August 1991, Iran filed an amended complaint in the Superior Court. Iran abandoned all of its original causes of action and replaced them with a single cause of action: to enforce the 28 February 1979 Decree of Imam Ruhollah Khomeini "Concerning Confiscation of the Pahlavi Properties." The decree had charged the Islamic Revolutionary Council with the task of confiscating, "in favour of the needy . . . , all movable and

immovable properties of the Pahlavi Dynasty, its branches, agents and affiliates who during their illegal rule embezzled [those properties] from the Treasury." See supra, para. 7. Iran's amended complaint alleged that the Algiers Declarations obligated United States courts to enforce Iranian decrees and judgments. The amended complaint sought, inter alia, an order enforcing the Imam's decree impressing a trust on all of Shams Pahlavi's assets, an injunction restraining her from alienating or disposing of her property or assets, a lien on her property and assets, conveyance of the property to Iran, and compensatory damages.

70. On 6 August 1991, in a letter to the United States Department of State, counsel for Iran requested that the United States file a Suggestion of Interest informing the Los Angeles Superior Court and the California Court of Appeal that the Algiers Declarations "obligate U.S. Courts to enforce Iranian decrees and judgments."

71. On 27 September 1991, the United States filed a Suggestion of Interest in the Los Angeles Superior Court informing the court that, under Paragraph 14 of the General Declaration, the 28 February 1979 Decree of Imam Khomeini "may be enforced in U.S. court in accordance with the provisions of U.S. law, including due process for defendants." The Suggestion of Interest stated that

the Court should apply a flexible due process analysis that protects the rights of the individual defendants, but also preserves the rights of the Government of Iran under the Accords and the Executive Order, and promotes the purpose of Point IV of the General Declaration, which was to maintain access to U.S. courts on the part of Iran to recover assets that Iran could demonstrate were illegally taken from the Iranian Treasury.

The Suggestion of Interest also stated that it was the United States Government's position that Iran should not be required to post a bond securing payment of Shams Pahlavi's legal costs

because such a requirement "might be argued by Iran to be inconsistent with" a "basic purpose of Point IV": "to provide [Iran] with access to U.S. courts."

72. On 8 November 1991, Shams Pahlavi's attorneys submitted to OFAC a report on her United States assets.

73. On 27 January 1992, Shams Pahlavi requested that Iran produce, inter alia, the original 1979 decree of the Imam and respond to a set of written interrogatories. The interrogatories and production requests fell into three categories: first, the facts and documents supporting Iran's contention that the defendant misappropriated or embezzled the wealth of the people of Iran; second, the procedures, facts, and documents that Iran relied on in promulgating the 1979 decree; and third, the procedures that Iran followed in administering the decree to confiscate the defendant's assets in Iran. Iran refused to comply with these discovery requests, arguing that they violated "the purpose and the intent of the [Algiers Declarations, pursuant to which] the courts of the United States are obligated to enforce the Decree of February 28, 1979 which is the basis of IRAN'S amended Complaint."

74. On 4 May 1992, Shams Pahlavi filed a motion in the Los Angeles Superior Court for an order compelling discovery.

75. On 7 May 1992, counsel for Iran wrote to the United States Departments of State and Justice, stating that Iran's "primary remaining objection to [Shams] Pahlavi's discovery requests is based on the Algerian Accords." Iran's attorney indicated that he would welcome any "input" by the United States regarding Iran's objections to Shams Pahlavi's discovery requests and the pending motion to compel discovery. The United States declined to file a second Suggestion of Interest.

76. On 2 June 1992, the Los Angeles Superior Court granted Shams Pahlavi's motion to compel discovery. Iran refused to

comply with the court's order and responded that it would "stand on its [prior] responses."

77. On 20 August 1992, Shams Pahlavi filed a motion under California law to dismiss Iran's action for failure to comply with the court's order compelling discovery. At the dismissal hearing, Iran stated that it would "live or die" by its refusal to provide further responses.

78. On 17 September 1992, the Los Angeles Superior Court granted Shams Pahlavi's motion and dismissed Iran's complaint with prejudice. Iran appealed.

79. On 9 March 1994, the California Court of Appeal affirmed the trial court's dismissal of Iran's action. In reaching this conclusion, the Court of Appeal stated:

[N]othing in the Accords and the extraneous evidence submitted by the parties constituted a promise by the United States government that Iran need not comply with court-ordered discovery in its actions to enforce the decree against the former Shah and his close family members. The limited promises contained in the Accords included the agreement to notify the appropriate courts that Iranian decrees should be enforced in accordance with United States law. The United States government has complied with that promise in this action.

Concerning the act of state doctrine, the Court of Appeal concluded that the case fell within the "extraterritoriality exception" because Iran sought to confiscate property outside of Iran. The court stated:

[D]efendants' assets are in California and thus the seizure was not complete in Iran. On this record it appears that only an American court could compel defendants to turn over their assets located in California. We know of no basis for ordering such an involuntary transfer in the total absence of any proof of plaintiff's superior claim to those assets.

Plaintiff relies solely on the decree, which we deem insufficient to authorize its unquestioned judicial

enforcement in this state. Our determination is consistent with federal law.

80. On 30 June 1994, the California Supreme Court denied Iran's petition for review of the Court of Appeal's decision. On 14 November 1994, the Supreme Court of the United States denied Iran's petition for a writ of certiorari. See Islamic Republic of Iran v. Pahlavi, 513 U.S. 1001 (1994). Other litigation against Shams Pahlavi, however, continued. See infra, paras. 89-95.

81. On 1 March 1996, OFAC amended 31 C.F.R. § 535.217 by removing the name of Shams Pahlavi from paragraph (b) thereof, thereby unblocking her United States assets, due to the "final termination of all pertinent litigation against her."

b. Islamic Republic of Iran and Bank Mellat v. Shams Pahlavi, No. WEC 070089 (Cal. Super. Ct.)

82. On 30 July 1981, Iran and Bank Mellat, Jomhour Branch (formerly Bank Omran), filed a complaint against Shams Pahlavi in the Los Angeles Superior Court. The complaint alleged a breach of contract, specifically, that in 1977 Shams Pahlavi had defaulted on the repayment of a U.S.\$5 million loan that Bank Omran had extended to her in Iran in 1973. The complaint sought, inter alia, repayment of the U.S.\$5 million, plus interest and costs.

83. Having previously attempted unsuccessfully to serve Shams Pahlavi personally, Iran and Bank Mellat obtained an ex parte order from the Superior Court permitting substituted service by publication.

84. Shams Pahlavi moved to quash the service by publication. She also moved to dismiss the action on grounds of forum non conveniens.

85. As noted supra, at para. 62, by letters of 7 June and 7 July 1982, Iran's attorney requested that OFAC freeze Shams Pahlavi's United States assets. OFAC replied by letter of 14 December 1982, advising Iran's attorney that it would not freeze those assets because it had learned from the Superior Court that "the validity of the service [on Shams Pahlavi was] contested and ha[d] not been established."

86. On 27 February 1984, the trial court denied Shams Pahlavi's motion to quash service but dismissed Iran's complaint with prejudice on grounds of forum non conveniens, holding that the case should be "heard in Iran and not in Los Angeles, California." Before reaching this conclusion, the court had asked the parties whether, under the laws of Iran, Shams Pahlavi would be subject to Iranian jurisdiction, even if she were not amenable to such jurisdiction. While Iran "was unable to give an answer in the time allotted," Shams Pahlavi represented to the court that "she would be subject to suit in Iran." The court, therefore, declared itself to be "aware of no authority that would foreclose plaintiff from proceeding against the defendant in Iran without her cooperation." In rejecting Iran's contention that the Algiers Declarations required the California courts to entertain the case, the Superior Court stated:

The [Algiers Declarations] only require us to accept the case "in accordance with United States law." The law — forum non conveniens — mandates dismissal and the doctrine of forum non conveniens is not exempted under [Paragraph] 14 of the [General Declaration].

87. On 30 December 1985, the California Court of Appeal affirmed the trial court's dismissal on grounds of forum non conveniens, but ordered that it be without prejudice, thereby permitting Iran to refile the claim against Shams Pahlavi. Concerning the availability of an alternative forum, the Court of Appeal agreed with the Superior Court that an Iranian court could obtain personal jurisdiction over Shams Pahlavi.

88. After unsuccessfully seeking review in the California Supreme Court, Iran filed papers in the Supreme Court of the United States on 29 July 1986 purporting to "appeal" from the 30 December 1985 judgment of the California Court of Appeal. On 6 October 1986, the Supreme Court dismissed the appeal for want of jurisdiction and, treating Iran's appeal papers as a petition for a writ of certiorari, denied certiorari. See Islamic Republic of Iran v. Pahlavi, 479 U.S. 804 (1986).

c. Bank Melli Iran and Bank Mellat v. Shams Pahlavi, No. 92-CV-5479 (C.D. Cal.)

89. Between 1982 and 1991, Tehran courts rendered a series of default judgments against Shams Pahlavi, including a 7 October 1986 judgment for defaulting on, inter alia, the very same 1973 loan that had been at issue in Iran and Bank Mellat's action in the Los Angeles Superior Court, see supra, paras. 82-87. Specifically, the default judgments were: a U.S.\$3.1 million default judgment issued on 22 September 1982 by the Tehran Public Court; a U.S.\$3.1 million default judgment issued on 13 November 1982 by the Tehran Public Court; a U.S.\$28.5 million default judgment issued on 7 October 1986 by the Tehran Public Court; and a U.S.\$13.9 million default judgment issued on 18 September 1991 by the Tehran Civil Court.

90. On 9 September 1992, Bank Melli Iran and Bank Mellat filed a "Complaint to Obtain Domestic Judgment" against Shams Pahlavi in the United States District Court for the Central District of California (the "District Court"). The banks requested that the District Court enforce the Iranian default judgments pursuant to Paragraph 14 of the General Declaration or, alternatively, pursuant to the Uniform Foreign Money-Judgments Recognition Act (Cal. Code Civ. Proc. § 1713, et seq.). The complaint alleged that the District Court had federal-question jurisdiction because the banks' action was based on the Algiers Declarations and because, during the Shah's rule, Shams Pahlavi

had "held and exercised authority as a public minister in and for Iran."

91. On 11 February 1993, Shams Pahlavi filed a motion to dismiss the banks' complaint, inter alia, on the following grounds: that the banks' action was barred by the California Uniform Foreign Money-Judgments Recognition Act because the Iranian courts did not have personal jurisdiction over Shams Pahlavi and because the Iranian default judgments were rendered "under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law"; and that the banks' action was barred by the due-process requirement of the United States Constitution. Shams Pahlavi did not challenge the validity of service or move to dismiss on forum non conveniens grounds. At a hearing on 29 March 1993, the District Court decided to treat Shams Pahlavi's motion to dismiss as a motion for summary judgment.

92. On 28 April 1993, the District Court requested information from the United States Department of State about the Iranian court system. In response to the court's request, on 16 June 1993, the United States Department of Justice, on behalf of the United States, submitted certain information to the court.

93. In an oral ruling on 4 January 1994, the District Court dismissed the banks' complaint with prejudice, finding that, at the times the default judgments were entered, Shams Pahlavi could not have obtained due process of law in the courts of Iran. On 10 January 1994, the court issued a written order granting summary judgment in favor of Shams Pahlavi and dismissing the action.

94. On appeal, the United States Court of Appeals for the Ninth Circuit affirmed, holding that the Iranian default judgments against Shams Pahlavi could not be enforced because she could not have obtained due process in the Iranian courts at the time of judgment. See Bank Melli Iran v. Pahlavi, 58 F.3d 1406

(9th Cir. 1995). In dismissing the banks' argument that Paragraph 14 of the General Declaration required United States courts to enforce the Iranian judgments against Shams Pahlavi, regardless of the requirements of due process under United States law, the Ninth Circuit noted that Paragraph 14 of the General Declaration

provide[s] that enforcement of judgments shall be "in accordance with United States law." That law, of course, includes the due process requirement Thus, we hold that attempts to enforce judgments under the [General Declaration] are not exempt from due process defenses.

95. On 27 November 1995, the Supreme Court of the United States denied the banks' petition for a writ of certiorari. See Bank Melli Iran v. Pahlavi, 516 U.S. 989 (1995).

IV. THE PARTIES' CONTENTIONS⁵

A. IRAN'S CLAIM AS TO PARAGRAPH 12 OF THE GENERAL DECLARATION

96. Paragraph 12 of the General Declaration ("Paragraph 12") provides in full:

Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of

⁵ More details regarding certain contentions will be given, as appropriate, in connection with the merits of the claim, infra.

the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

1. Iran's Position

a. Assets Controlled by the Estate of the Former Shah

97. Iran contends that, according to its ordinary meaning, Paragraph 12 obligated the United States to freeze property in the United States within the control of the estate of the former Shah on 19 January 1981, the day the Government of Algeria made the certification specified in Paragraph 3 of the General Declaration. See supra, note 3.

98. Iran argues that this interpretation is supported by the plain language of the first sentence of Paragraph 12, the first clause of which provides that, upon the coming into force of the Algiers Declarations, "the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah"

99. The second clause of that sentence, Iran continues, is unrelated to the estate of the former Shah; it concerns exclusively the close relatives of the former Shah and describes the condition under which the United States must freeze their United States property and assets — namely, when a close relative is "served as a defendant in U.S. litigation brought by Iran."

(1) The Requirement of Filing a Lawsuit against the Estate of the Former Shah

100. Iran contests the United States argument that Paragraph 12 treats the former Shah's estate and the former Shah's close relatives identically and that either must be served as a defendant in United States litigation in order to trigger any United States freeze obligation. See infra, paras. 116-17. The

two phrases "of the estate of the former Shah" and "of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran" in the first sentence of Paragraph 12, Iran contends, are separate and independent; thus, "served as a defendant" exclusively modifies "any close relative of the former Shah." Furthermore, the phrase "served as a defendant" cannot apply to "the estate of the former Shah," Iran contends, because the two phrases are separated by the coordinating conjunction "or."

101. Iran contends, moreover, that the object and purpose of the service requirement of Paragraph 12 was to identify the particular close relatives of the former Shah whose assets the United States was obligated to freeze. Thus, because the estate of the former Shah required no identification, to serve it as a defendant in United States litigation would have been pointless.

102. In any event, Iran argues, the former Shah had already been served in the fall of 1979 in the lawsuit that Iran had brought against him in the New York trial court. In light of this, Iran urges, there would have been no need to re-serve after his death either the former Shah's estate or a personal representative for the estate if one had been appointed.

103. Continuing, Iran contends that the negotiating history of the Algiers Declarations confirms its interpretation of Paragraph 12. None of the documents that the Parties exchanged during the negotiations mentions that the freeze of the former Shah's United States assets was to be made contingent upon the filing of a lawsuit against his estate. Rather, in its written responses to Iran, the United States promised unconditionally that on 19 January 1981 it would freeze all United States assets within the control of the estate of the former Shah. In support, Iran points, inter alia, to Section 1-101 of the draft Executive Orders attached to the first American response of 11 November 1980 and to the second American response of 3 December, respectively. See supra, paras. 18 and 21.

(2) The Meaning of "Estate"

104. Iran argues that the ordinary meaning of the term "estate" in the first sentence of Paragraph 12 is the "property and assets" left by the deceased Shah or "the wealth — the aggregate of property of whatever nature — which the Shah had secreted in the United States at the time of his death; and the term 'any property or assets within the control of the estate of the former Shah' plainly means any property or assets over which the former Shah exerted any kind of dominion or control, even though the Shah did not own such property outright."

105. Iran denies that the term "estate" as used in Paragraph 12 means a "formally constituted decedent's estate acting through a court-appointed executor or administrator," as the United States argues. See infra, paras. 120-25. The United States, Iran asserts, has failed to prove that the High Contracting Parties intended to give the term "estate" this "special meaning." Article 31, paragraph 4, of the Vienna Convention on the Law of Treaties of 23 May 1969 ("Vienna Convention") (U.N. Doc. A/CONF.39/27, 8 I.L.M. 679 (1969)) ("A special meaning shall be given to a term if it is established that the parties so intended.").

106. Iran argues that, under United States law, an "estate" is a legal fiction created to bridge the interval between a person's death and the distribution of his property to his heirs. An estate is not a legal entity; thus, it cannot sue or be sued. Only a personal representative of the estate — an executor or an administrator — may be sued and served.

107. Iran asserts, further, that the documents exchanged during the negotiation of the Algiers Declarations show that, throughout the negotiations, the Parties used and understood the word "estate" as meaning the "property and assets" left by the deceased Shah. In support of its position, Iran also relies on the affidavit testimony of Mr. Nabavi (see supra, para. 16), who

stated that "[t]he word 'estate,' as employed by the United States in [the first and second American Responses] and as [Iran] understood it throughout the negotiations, was used as a synonym for 'property.'"

b. Assets Controlled by the Close Relatives of the Former Shah

108. Iran contends that the United States Paragraph 12 obligation to freeze United States assets within the control of a close relative of the former Shah arose once OFAC was informed that the close relative had been served as a defendant in United States litigation brought by Iran to recover that property. The relevant question thus becomes what constitutes "service of process" such that a defendant can be considered as "served" in accordance with Paragraph 12.

The Meaning of "Served as a Defendant"

109. As noted, Iran maintains that the object and purpose of the "served as a defendant" requirement in Paragraph 12 is to identify the persons whom Iran considers to be the former Shah's "close relative[s]." See supra, para. 101. To achieve that purpose, Iran continues, service of process in the strict legal sense is not required; it would be enough to "name the defendant" in United States litigation brought by Iran to recover Pahlavi assets. Hence, Iran concludes, when viewed in light of the object and purpose of the service requirement, the ordinary meaning of the phrase "served as a defendant" in Paragraph 12 can only be "sued as a defendant."

110. In the alternative, if the Tribunal finds that service of process in the strict legal sense is required in order to trigger the United States Paragraph 12 freeze obligation, then Iran contends that the "served as a defendant" requirement is satisfied once service has been made in accordance with the applicable law of the forum State, regardless of any subsequent

challenges that a defendant made to the service. Service effected in conformity with the applicable law is effective and valid until a court of competent jurisdiction has quashed it. Iran denies that, under United States law, service is valid only if it is uncontested and final, as the United States asserts. See infra, paras. 126-32.

111. Lastly, Iran contends that § 535.217 of the Iranian Assets Control Regulations, issued by OFAC on 25 February 1981, see supra, para. 27, and OFAC's subsequent interpretation of that Section, see supra, paras. 36, 62, and 85, are inconsistent with the United States obligations under Paragraph 12. Only the United States courts, and not the United States Department of the Treasury, an administrative agency, Iran urges, can determine the validity of Iran's service of process upon a close relative of the former Shah.

112. Iran contends that 31 C.F.R. § 535.217 and OFAC's practice were "nothing but a brazen invitation to any of the Shah's close relatives who were sued by Iran in a U.S. State court immediately to 'challenge' the manner in which they were served. This would permit them to remove their properties from the United States with impunity."

c. Alleged United States Non-Compliance with Paragraph 12

113. In this part of its claim, Iran contends that the United States, in breach of its obligations under Paragraph 12, (i) failed to freeze United States assets within the control of the estate of the former Shah on the date the Algiers Declarations entered into force; (ii) failed to freeze at any time United States assets within the control of Farah Diba Pahlavi and of Fatemeh Pahlavi and her codefendants; and (iii) failed timely to freeze United States assets within the control of Ashraf Pahlavi and of Shams Pahlavi. Iran asserts that all of those close relatives of the former Shah had been served as defendants

in United States litigation brought by Iran, as required by Paragraph 12.

114. Iran also alleges that the United States failure to satisfy its Paragraph 12 freeze obligations led to (i) the dismissal on grounds of forum non conveniens of Iran's lawsuits against Farah Diba Pahlavi, Ashraf Pahlavi, Fatemeh Pahlavi and her codefendants, and Shams Pahlavi (in Islamic Republic of Iran and Bank Mellat v. Shams Pahlavi); and (ii) the denial of the counsel for Iran's Petitions for Letters of Administration for the former Shah's estate.

115. Iran asserts, finally, that 31 C.F.R. § 535.217, as amended by OFAC on 13 May 1981, see supra, para. 47, is inconsistent with the United States obligations under Paragraph 12, because it explicitly makes the United States Paragraph 12 freeze obligations as to the former Shah's estate contingent on the estate's having been served as a defendant in United States litigation brought by Iran to recover Pahlavi assets.

2. The United States Position

a. The Requirement of Filing a Lawsuit against the Estate of the Former Shah

116. According to the United States, the ordinary meaning of the first sentence of Paragraph 12 is that the United States will freeze any property and assets in the United States controlled by the estate of the former Shah or by a close relative of the former Shah only after either the estate or the relative has been "served as a defendant" in United States litigation brought by Iran to recover such assets. Thus, Paragraph 12 treats the estate of the former Shah and the former Shah's close relatives identically: Each must be "served as a defendant" to trigger the United States Paragraph 12 freeze obligation.

117. The second sentence of Paragraph 12, the United States continues, confirms that the "served as a defendant" language in the first sentence applies to both the former Shah's estate and the former Shah's close relatives: "As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated." The United States argues that the phrase "any such defendant, including the estate of the former Shah" refers to the "served as a defendant" phrase in the first sentence of Paragraph 12. Thus, Paragraph 12 does not obligate the United States to freeze assets within the control of the estate if the estate is not served as a defendant in United States litigation. The United States asserts, further, that the last part of the second sentence of Paragraph 12 — "the freeze order will remain in effect until such litigation is finally terminated" — also explicitly ties the United States freeze obligations to United States litigation.

118. The United States contends, moreover, that the object and purpose of Point IV — to afford Iran a measure of United States assistance in litigation brought by Iran to recover Pahlavi assets — confirms that the "served as a defendant" requirement of Paragraph 12 applies to both the estate of the former Shah and his close relatives. To pursue its claims to those assets, Iran had to pursue litigation in United States courts; and to pursue such litigation, Iran had to serve as a defendant the person who controlled the property that Iran sought to recover.

119. The United States contends, lastly, that the negotiating history of the Algiers Declarations shows that the phrase "served as a defendant" applies both to the estate of the former Shah and to his close relatives. In support, the United States relies, in particular, on the testimony of Mr. Christopher (see supra, para. 16). He testified in his affidavit and at the Hearing that the United States agreed in Paragraph 12 to freeze any assets controlled by the estate of the former Shah or any of

his close relatives only after Iran had served either the estate or the close relative in a lawsuit brought by Iran in a United States court to recover Pahlavi assets.

b. The Meaning of "Estate"

120. The United States rejects Iran's interpretation of the term "estate" in Paragraph 12. See supra, paras. 104-107. It contends, in contrast, that "estate" in the context of that Paragraph means a formally constituted decedent's estate acting through a personal representative (either an executor named in the former Shah's will, if any, or a court-appointed administrator).

121. Paragraph 12, the United States continues, presupposes that the former Shah's estate would be a potential defendant in any United States litigation brought by Iran to recover assets controlled by that estate. Thus, in using the word "estate," Paragraph 12 can only refer to the decedent's personal representative — an administrator or an executor — because only a personal representative can function as a defendant in a lawsuit asserting claims against a decedent.

122. The United States argues that the beginning of the second sentence of Paragraph 12 — "[a]s to any such defendant, including the estate of the former Shah" — makes clear that the term "estate" is used to refer to an entity capable of being served as a defendant in United States litigation. Iran obviously could not sue and serve process upon "the property and assets" controlled by the former Shah at his death.

123. The United States argues that, in order to initiate litigation against a decedent's estate in the United States, a plaintiff must serve the personal representative of the estate — either an executor named by the decedent in his will or, in the absence of an executor, an administrator appointed by the appropriate court. The same applies even when a lawsuit has been

pending against the decedent at the time of his death. Under United States law, when a defendant in a pending lawsuit dies, the lawsuit against him abates automatically. No further proceedings may be taken until a personal representative for the deceased is substituted as a party defendant; any proceedings taken against the deceased defendant are null and void.

124. The United States contends that the New York lawsuit against the former Shah abated when he died on 27 July 1980. Thus, in order to revive the lawsuit against his estate, Iran needed to obtain the appointment of a personal representative, who then would have to have been served with process. Without such a substitution, the United States contends, there would be no defendant whose United States assets could be frozen or against whom the court could enter a judgment ordering the return of assets to Iran.

125. The United States concludes that, because no personal representative of the former Shah's estate was ever appointed, no "estate" within the meaning of Paragraph 12 was ever constituted. Consequently, the United States argues, its Paragraph 12 freeze obligation as to the estate of the former Shah never arose.

c. The Meaning of "Served as a Defendant"

126. As an initial matter, the United States contends that, to trigger any of the United States Paragraph 12 freeze obligations, Iran was required to "serve" either the estate of the former Shah or a close relative of the former Shah "as a defendant" in United States litigation brought by Iran to recover Pahlavi assets.

127. Because Paragraph 12 specifically required Iran to serve defendants "in U.S. litigation," the United States urges, the ordinary meaning of the phrase "served as a defendant" can only be determined by looking to United States law — specifical-

ly, to the law of the United States forum where Iran brought a particular case. The ordinary meaning of a legal concept such as serving a defendant, the United States emphasizes, is the meaning that incorporates the specific legal requirements of the forum, even if they are technical or precise.

128. The United States contends that the ordinary meaning of "served as a defendant," as determined with reference to United States law, is "delivering documents according to the statutory mandate so that notice [of the lawsuit] is provided to the defendant, and jurisdiction over the defendant is obtained by the court." In his affidavit, Mr. Christopher stated that "served as a defendant" means "effectively served in accordance with U.S. law."

129. As to the method of service, the United States continues, it must be a procedure which, under ordinary circumstances, is reasonably certain to convey actual notice of the lawsuit to the defendant and to afford him the opportunity to respond. Valid service of process requires both conformity with local statutes and rules and compliance with United States constitutional due-process standards.

130. Continuing, the United States points out that under United States law a defendant may challenge a court's personal jurisdiction over him on the ground of invalid service of process. It is then for the court in which the relevant litigation is pending to decide whether the defendant has been validly served. Service upon a defendant within the context of Paragraph 12, therefore, means "effective service as determined by the court." Neither OFAC nor any other department or agency of the Executive Branch of the Federal Government is empowered to determine whether service is valid in a particular case. Thus, the United States concludes, OFAC has properly declined to freeze assets of any person who contests the validity of service pending the outcome of judicial proceedings on that issue.

131. With respect to implementation, the United States contends that OFAC did freeze the assets of the two defendants in United States Pahlavi-assets litigation whom Iran validly served, Ashraf and Shams Pahlavi; the United States therefore satisfied its obligations under Paragraph 12 with regard to those individuals. Concerning Iran's assertion that the United States unduly delayed in ordering the freezes of Ashraf Pahlavi's and Shams Pahlavi's assets, the United States contends that an approximately two-month delay from the date of Iran's notice of service before ordering a Paragraph 12 freeze was reasonable in light of the complexity of the freezing process and in light of the six-month delay Iran had in 1990-1991 before adequately notifying OFAC that Shams Pahlavi had been served.

132. With respect to Farah Diba Pahlavi, the United States asserts that its Paragraph 12 freeze obligation never arose because service on her remained contested, as she cross-appealed the New York trial court's 14 September 1981 decision upholding the validity of service of process on her, see supra, paras. 40-41. The United States freeze obligation never arose with respect to Fatemeh Pahlavi and her codefendants, either, because service on those individuals remained contested until the litigation against them was finally terminated, see supra, paras. 53-58.

B. IRAN'S CLAIM AS TO PARAGRAPH 13 OF THE GENERAL DECLARATION

133. Paragraph 13 of the General Declaration ("Paragraph 13") provides in full:

Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the re-

quirement will be subject to the civil and criminal penalties prescribed by U.S. law.

1. Iran's Position

134. According to its final pleadings, Iran contends that Paragraph 13 obligated the United States (i) to issue, on 19 January 1981, an order requiring all persons within the jurisdiction of the United States to submit information on any United States assets belonging to the former Shah or his close relatives; and (ii) to transmit any such information to Iran within thirty days of the signing of the Algiers Declarations.

135. Iran denies, in its final pleadings, that the United States Paragraph 13 obligations were contingent upon the former Shah's estate or any of his close relatives having been served as a defendant in United States litigation,⁶ as the United States argues. See infra, paras. 141-43. Such an interpretation allows for "an egregious delay" in the information collection and therefore conflicts with the object and purpose of Paragraph 13, which was to prevent the Pahlavi family from removing its assets from the United States once it became known that the Algiers Declarations had been concluded.

136. In Iran's view, moreover, the fact that Paragraph 13 also required reporting on any Pahlavi family's assets that had been removed from the United States before the conclusion of the Algiers Declarations demonstrates that the United States Paragraph 13 obligations were not contingent upon service of process on the former Shah's estate or on any of his close relatives. In this connection, Iran points to the language in

⁶ In its Reply of 28 June 1985, in contrast, Iran had argued that the United States Paragraph 13 obligations with respect to the assets of the close relatives of the former Shah were contingent upon a close relative having been served as a defendant in United States litigation brought by Iran to recover Pahlavi assets.

Paragraph 13 requiring that all persons within United States jurisdiction also submit Pahlavi-assets information known to them "as of November 3, 1979." Iran points out that information on any Pahlavi family's assets outside the United States would have been irrelevant to Iran's Pahlavi-assets litigation in the United States. Iran asserts that it needed this "information to institute legal proceedings in other parts of the world to which [Pahlavi family assets] had possibly been transferred."

137. Mr. Nabavi, Iran's head negotiator for the Algiers Declarations, testified that during or immediately after the negotiation of the Algiers Declarations, Iran provided the United States with a list of the persons whom Iran considered to be close relatives of the former Shah, so that the United States could include them in its order implementing Paragraph 13. There would have been no need to submit that list, Iran urges, if the United States Paragraph 13 obligations concerning assets controlled by the former Shah's close relatives were contingent upon the identification of a close relative through service of process in United States litigation. Furthermore, Iran contends that it identified the former Shah's close relatives in the complaint it filed against Fatemeh Pahlavi and fifty-nine others in the United States District Court for the Southern District of New York on 13 January 1981 — six days before the signing of the Algiers Declarations. See supra, para. 53.

138. Iran asserts, lastly, that the United States, in its written communications to Iran during the negotiation of the Algiers Declarations, promised unconditionally that it would provide Iran with all the necessary information concerning the United States assets of the former Shah and his close relatives. Iran points in this connection to Sections 1-102 and 1-103 of the draft Executive Orders attached to the first American response of 11 November 1980 and the second American response of 3 December 1980, respectively. See supra, paras. 18 and 21.

139. In this part of its claim, Iran contends that the United States, in breach of its obligations under Paragraph 13, (i) failed, on 19 January 1981, to institute any reporting procedure with respect to assets belonging to the former Shah, Farah Diba Pahlavi, or Fatemeh Pahlavi and her codefendants that were located in the United States between 3 November 1979 and 19 January 1981; and (ii) failed timely to institute reporting procedures with respect to assets belonging to Ashraf Pahlavi or to Shams Pahlavi that were located in the United States during that period.

140. Iran also alleges that the United States failure to satisfy its Paragraph 13 reporting obligations led to (i) the dismissal on grounds of forum non conveniens of Iran's lawsuits against Farah Diba Pahlavi, Ashraf Pahlavi, Fatemeh Pahlavi and her codefendants, and Shams Pahlavi (in Islamic Republic of Iran and Bank Mellat v. Shams Pahlavi); and (ii) the denial of the counsel for Iran's Petitions for Letters of Administration for the former Shah's estate.

2. The United States Position

141. The United States disagrees with Iran's interpretation of Paragraph 13. It argues that Paragraph 13 makes the United States reporting obligations contingent upon Iran having served as a defendant the estate of the former Shah or a close relative of the former Shah in United States litigation brought by Iran to recover Pahlavi assets. The United States contends that the last phrase in the first sentence of Paragraph 13 expressly ties the United States reporting obligations to the conditions imposed by Paragraph 12: That phrase makes clear that those obligations apply only "with respect to the property and assets referred to in Paragraph 12." Paragraph 12, in turn, defines that property and those assets as "property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S.

litigation brought by Iran to recover such property and assets as belonging to Iran." Paragraph 12, first sentence.

142. The United States points out that every term in a treaty must be given meaning. In the United States view, Iran's interpretation of Paragraph 13 deprives of any meaning Paragraph 13's reference to Paragraph 12. The phrase that limits the United States information-gathering obligation to "the property and assets referred to in Paragraph 12" defines the United States Paragraph 13 obligation and, thus, is a key component of Paragraph 13 that must be given effect.

143. Hence, the United States concludes, before the United States must order persons within its jurisdiction to report about any property, Iran must serve as a defendant either the estate of the former Shah or a close relative of the former Shah in United States litigation brought by Iran to recover Pahlavi assets. Thus, Paragraph 13 applies only to information about property and assets that the United States was required to freeze.

144. The United States next contests Iran's contention that one of the purposes of the reporting requirements of Paragraph 13 was to enable Iran to pursue its Pahlavi-assets litigation worldwide. See supra, para. 136. The United States contends that the text of Point IV directly contradicts Iran's assertion: The freeze and reporting requirements cover only "property and assets in the United States." Paragraph 12, first sentence.

145. The United States maintains, further, that until Iran initiated litigation, the United States could not know the identities of those whom Iran considered to be "close relatives" of the former Shah; thus, until then, the United States could not collect information about such persons' assets. In this connection, the United States denies that Iran provided the United States negotiators with a list of the former Shah's close relatives. See supra, para. 137. According to the United

States, Iran provided only a list of categories of close relatives — that is, spouse, siblings, etc. The United States goes on to say that it was not until September 1982, when Iran informed OFAC of its lawsuit against Fatemeh Pahlavi and fifty-nine others, see supra, para. 56, that the United States learned the identities of the individuals whom Iran considered to be "close relative[s] of the former Shah."

146. With respect to implementation, the United States contends that OFAC timely instituted reporting procedures with respect to the United States assets of the two defendants in United States litigation whom Iran validly served, Ashraf and Shams Pahlavi; the United States therefore satisfied its obligations under Paragraph 13 with regard to those individuals' assets. With respect to any United States assets controlled by Farah Diba Pahlavi or by Fatemeh Pahlavi and her codefendants, the United States asserts that its Paragraph 13 reporting obligations never arose, because service on those individuals remained contested until the litigation against them was finally terminated.

147. With respect to any United States assets controlled by the estate of the former Shah, the United States contends that its Paragraph 13 obligations also never arose. This is because no estate of the former Shah was ever formally constituted and therefore no personal representative of the estate could be substituted for the former Shah as "a defendant" in United States litigation brought by Iran to recover Pahlavi assets.

C. IRAN'S CLAIM AS TO PARAGRAPH 14 OF THE GENERAL DECLARATION

148. Paragraph 14 of the General Declaration ("Paragraph 14") provides in full:

Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the

United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

1. Iran's Position

a. Forum Non Conveniens Dismissals

149. As an initial matter, Iran contends that Point IV, at a minimum, obligates the United States to make available to Iran a United States forum in which Iran can pursue on the merits its claims to Pahlavi assets. Iran argues that the United States violated that obligation by allowing its courts to dismiss Iran's claims against Farah Diba Pahlavi, Ashraf Pahlavi, Fatemeh Pahlavi and her codefendants, and Shams Pahlavi (in Islamic Republic of Iran and Bank Mellat v. Shams Pahlavi) on grounds of forum non conveniens, see supra, paras. 38, 40-42, 50-51, 58, and 86-87. That those dismissals were inconsistent with the United States Point IV obligations, Iran urges, "is a matter of intuitive knowledge, or a[n a] priori truth, in need of no explanations." If United States courts decline to hear the merits of Iran's Pahlavi-assets claims on procedural or jurisdictional grounds, "then it is more than obvious that the requirement of Iran's access to the U.S. courts is not met."

150. In support of its position, Iran points, inter alia, to language from the Suggestion of Interest that the United States filed in the Los Angeles Superior Court in Islamic Republic of Iran v. Shams Pahlavi, see supra, para. 71, stating that "the purpose of Point IV of the General Declaration and the implementing Executive Order is to provide [Iran] with access to U.S. courts."

151. In response to an argument by the United States, see infra, para. 158, Iran contends that the United States Paragraph 14 obligation concerning sovereign immunity and the act of state doctrine is not limited to either of those principles. Paragraph 14 also obligates the United States to preclude its courts from applying any other legal doctrines or principles that could bar the consideration of Iran's claims on the merits; thus, it precludes them from applying the doctrine of forum non conveniens to Iran's claims. In Iran's view, the United States understood this when it filed the Suggestion of Interest in the Los Angeles Superior Court in Islamic Republic of Iran v. Shams Pahlavi, stating that it was the United States Government's position that Iran should not be required to post a bond securing payment of Shams Pahlavi's legal costs because such a requirement "might be argued by Iran to be inconsistent with" a "basic purpose of Point IV": "to provide [Iran] with access to U.S. courts." See supra, para. 71.

152. Iran also argues that, as a matter of United States law, a United States court may dismiss a claim on grounds of forum non conveniens only if the plaintiff has an alternative forum in which to bring its claim. Iran submits that, because it had no alternative forum in which to bring its actions against the estate and close relatives of the former Shah, the United States courts' dismissals of Iran's claims violated United States law.

b. Enforcement of Iranian Decrees and Judgments

153. Iran contends that Paragraph 14 also obligates the United States to enforce all Iranian decrees and judgments relating to the nationalization and expropriation of Pahlavi assets. Once Iran initiates an action for their enforcement in a United States court, the court must then enforce the decree or judgment without making any independent examination of its substance; the court, for instance, is not permitted to evaluate whether the issuance of the decree or judgment was consistent

with United States due-process standards. In this connection, Iran contends that the clause "should be enforced by such courts in accordance with United States law" at the end of Paragraph 14 should be interpreted as meaning "should be enforced by such courts in accordance with a flexible procedural United States law." Iran points out here that the United States Suggestion of Interest filed in the Los Angeles Superior Court in the Shams Pahlavi case noted that, in deciding whether to enforce Imam Khomeini's 28 February 1979 confiscation Decree, see supra, paras. 7 and 69, "the Court should apply a flexible due process analysis."

154. Accordingly, Iran contends that the United States violated Paragraph 14 because its courts failed to enforce both Imam Khomeini's 28 February 1979 confiscation Decree in Islamic Republic of Iran v. Shams Pahlavi, see supra, paras. 69-80, and the Tehran court default judgments at issue in Bank Melli Iran and Bank Mellat v. Shams Pahlavi, see supra, paras. 89-95.

2. The United States Position

155. The United States disagrees with Iran's interpretation of Paragraph 14. It argues that in Paragraph 14 it only agreed to make known to all appropriate United States courts (i) that they should not accept two specific defenses — foreign sovereign immunity and the act of state doctrine — in Iran's Pahlavi-assets litigation; and (ii) that they should enforce Iranian decrees and judgments relating to assets referred to in Paragraph 12 "in accordance with United States law." Paragraph 14, the United States argues, did not require the courts to follow the suggestions of the United States Executive Branch.

a. Forum Non Conveniens Dismissals

156. The United States asserts that Iran's conduct immediately following the entry into force of the Algiers Declarations demonstrates that Iran itself understood that the United States

Paragraph 14 obligations concerning the facilitation of Iran's Pahlavi-assets litigation were limited. The United States points out that, in a brief Iran filed on 13 March 1981 in Islamic Republic of Iran v. Mohammed Reza Pahlavi and Farah Diba Pahlavi in the New York trial court, Iran stated that "[t]he Declaration and Executive Order do not purport to guarantee Iran this forum for adjudication of its claims." In the United States view, this statement shows that Iran itself understood that Paragraph 14 did not guarantee Iran a forum on the merits in United States courts. Under Article 31(3)(b) of the Vienna Convention, this conduct by Iran should be considered to confirm the United States interpretation of Paragraph 14.

157. Concerning Iran's assertion that Paragraph 14 precluded United States courts from dismissing Iran's Pahlavi-assets claims on grounds of forum non conveniens, the United States points out that Iran itself was aware during the negotiation of the Algiers Declarations that that defense would be raised because, as early as 10 January 1980, the former Shah and Farah Diba Pahlavi had moved to dismiss the complaint pending against them in New York precisely on grounds of forum non conveniens. See supra, para. 31. Although it was on notice that such a defense would be raised, Iran chose not to address it during negotiations. In light of this behavior, the United States concludes, Iran cannot now argue that the High Contracting Parties implicitly intended to create a United States obligation with respect to the forum non conveniens defense.

158. Based on the principle expressio unius est exclusio alterius, the United States contends, further, that Paragraph 14's reference to only two specific defenses — sovereign immunity principles and the act of state doctrine — necessarily means that the United States was not obligated to provide Iran with any assistance with respect to other defenses the Pahlavi defendants might raise. On the contrary, the United States continues, by acknowledging in Paragraph 14 that a United States court might bar Iran's claims pursuant to those two principles, the High

Contracting Parties explicitly recognized that Iran's claims might not be adjudicated on the merits.

159. The United States asserts that, in the course of Iran's Pahlavi-assets litigation, no defendant ever raised, and no court ever considered, the defenses of sovereign immunity or act of state. Because these defenses were never at issue, the United States concludes, it was neither necessary nor appropriate for the United States to file suggestions of interest regarding these defenses.

b. Enforcement of Iranian Decrees and Judgments

160. Concerning its Paragraph 14 obligations relating to the enforcement of certain Iranian decrees and judgments, the United States contends that that provision obligates the United States only to inform the appropriate United States courts of its position that such decrees and judgments should be enforced "in accordance with United States law." Contrary to what Iran argues, Paragraph 14 contains no guarantee that United States courts will enforce those decrees and judgments. By making enforcement contingent upon Iran satisfying the requirements of United States law, the United States urges, Paragraph 14 reflects the fact that United States courts asked to enforce a foreign judgment must provide defendants with the due-process protections guaranteed by the United States Constitution.

161. United States courts, the United States continues, cannot enforce a foreign judgment if the foreign proceedings did not afford the party against whom enforcement is sought protections that meet United States constitutional standards. Mr. Christopher stated in his affidavit that the United States negotiators explained this to the Algerian intermediaries during the negotiation of the Algiers Declarations.

162. The United States argues, further, that according to its plain meaning, enforcement "in accordance with United States

law," Paragraph 14, last clause, means that both substantive and procedural United States law should apply to the enforcement of Iranian decrees and judgments relating to Pahlavi assets; this law includes jurisdictional and procedural rules, such as statutes of limitation and rules of standing, as well as the forum non conveniens doctrine and rules of discovery. If only procedural law applied, as Iran contends, then the Parties would have specifically referred to "United States procedural law" in Paragraph 14.

163. The United States contends that it fully complied with its Paragraph 14 enforcement obligations in the two cases in which Iran sought to enforce an Iranian decree or judgment in United States courts. At Iran's request, the United States filed a Suggestion of Interest in Islamic Republic of Iran v. Shams Pahlavi, see supra, para. 71, on 27 September 1991 indicating that Imam Khomeini's 28 February 1979 confiscation Decree "may be enforced in U.S. court in accordance with the provisions of U.S. law, including due process for defendants."

164. Concerning the United States District Court for the Central District of California's refusal to enforce a series of Tehran court default judgments against Shams Pahlavi in Bank Melli Iran and Bank Mellat v. Shams Pahlavi, see supra, paras. 89-95, the United States points out, first, that that case was not covered by Point IV, because it was not "litigation of the kind described in Paragraph 12," that is, "U.S. litigation brought by Iran to recover" property and assets located in the United States and allegedly "belonging to Iran"; rather, it was an action to enforce Iranian judgments for damages in breach of contract.

165. Second, the United States points out that, in any event, in that case counsel representing Iran did not request that the United States file a Suggestion of Interest on the question of the enforceability of the Iranian judgments at issue, as required by Section 1-104 of Executive Order No. 12284 supra,

para. 26. Nevertheless, the United States contends, the District Court enforced the judgments in accordance with United States law: After consideration, the court dismissed the banks' enforcement action, finding that, at the times the default judgments were entered, Shams Pahlavi could not have obtained due process of law in the courts of Iran. See supra, para. 93.

D. IRAN'S ARGUMENT THAT THE ALGIERS DECLARATIONS OBLIGATE THE UNITED STATES TO RETURN TO IRAN ALL PAHLAVI ASSETS

1. Iran's Position

166. Iran contends that the object and purpose of Point IV is the return to Iran of all Pahlavi assets; indeed, the return of those assets was one of the fundamental purposes of the Algiers Declarations. Consequently, Iran urges, the United States has an obligation of result to ensure that return. Iran asserts that, because no Pahlavi assets were ever returned to Iran, the United States breached Point IV.

167. Iran contends as an initial matter that the title of Point IV evidences "the nature of the U.S. obligation" and "the result to be achieved by the implementation of" the Point IV provisions: the "Return of the Assets of the Family of the Former Shah." See supra, para. 25.

168. Pointing to the introductory language of the General Declaration, which specifically mentions the Majlis Resolution,⁷ Iran contends, moreover, that that Resolution is an "instrument related to" the Algiers Declarations within the meaning of

⁷ The introductory paragraph of the General Declaration states that the Government of Algeria "has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the four points stated in the Resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran."

Article 31(2)(b) of the Vienna Convention.⁸ Iran contends in this connection that, in the first American response of 11 November 1980, the United States accepted "in principle" the Majlis Resolution as the basis for ending the crisis between the two governments. See supra, para. 17. The principle of good faith requires the conclusion that, by so accepting the Majlis Resolution, the United States also implicitly agreed to its fourth condition⁹ and, thus, to "the 'principle' of . . . returning the Pahlavi family's property and assets to Iran."

169. Iran adds that, by representing to Iran that under the laws of the United States only United States courts "acting pursuant to a legal proceeding brought by the Government of Iran" could lawfully transfer to Iran any Pahlavi assets and that Iran's action against the former Shah and Farah Diba Pahlavi in the New York trial court "afford[ed] Iran an opportunity to prove its right to have [any such assets] transferred to Iran" (second American response of 3 December 1980, Comment 4, supra, para. 20), the United States implied that Iran's Pahlavi-assets litigation would succeed.

170. Iran next contends that Point IV imposes on it only the following, limited obligations with regard to the procedures it should follow in obtaining the return of the assets of the former Shah and his family: (i) to bring litigation in United States courts to recover Pahlavi assets; and (ii) to initiate proceedings in United States courts to enforce Iranian decrees and judgments relating to such assets. Thus, Iran's United States litigation against the Pahlavis was merely a mechanism, a

⁸ Article 31(2)(b) of the Vienna Convention provides as follows: "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes[,] . . . any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."

⁹ The fourth condition of the Majlis Resolution called for the transfer to Iran of all assets of the former Shah and his close relatives, see supra, para. 16.

"procedure" for "implementing Iran's . . . demand" in the fourth condition of the Majlis Resolution that the United States return to Iran any United States assets of the Pahlavi family.

171. Concerning the significance of United States law for Iran's Pahlavi-assets litigation, Iran contends that, in light of the object and purpose of Point IV, that law must

be applied in a manner to promote, not to obstruct, the return of the Pahlavi family's assets to Iran . . . The U.S. law viewed in such a context becomes naturally limited to procedural, rather than substantive[,] law[,] to be applied in a manner to achieve the contemplated goal of the return of the Pahlavi family's assets to Iran. This means that the U.S. procedural law, too, has to be applied in a flexible manner towards that end.

Thus, in Iran's view, United States courts must apply United States law in such a way that any Pahlavi assets will be returned to Iran; United States substantive law "has no place in the determination of whether the Pahlavi family's assets should . . . be returned to Iran," because the United States Government, in Point IV, has already pledged to effect that return "through its judicial mechanism." Iran contends that Point IV prohibits United States courts from taking any action inconsistent with that pledge.

172. Continuing, Iran contends that the United States obligations specified in Paragraphs 12 through 15 of the General Declaration are "ancillary" to the United States principal obligation to ensure the return to Iran of all Pahlavi assets. The purpose of those obligations of means is simply to facilitate that result.

173. In Iran's view, the conduct of the United States subsequent to the conclusion of the Algiers Declarations confirms that Point IV imposes on the United States the obligation "of result" to return to Iran any United States assets of the Pahlavi family. Iran points here to the statement by the United States

in the Suggestion of Interest it filed in Islamic Republic of Iran v. Shams Pahlavi, see supra, para. 71, to the effect that Imam Khomeini's 28 February 1979 confiscation Decree "does not constitute . . . a 'naked confiscation of property,' and may be enforced in accordance with the provisions of U.S. law, including due process for defendants"; by this statement, Iran contends, the United States recognized that the Decree conforms to United States public policy and is therefore enforceable.

174. Iran contends that all of its efforts to achieve the return of the Pahlavi assets proved fruitless. Iran points out, first, that its claims against the former Shah, Farah Diba Pahlavi, Ashraf Pahlavi, Shams Pahlavi, and Fatemeh Pahlavi and her codefendants were all dismissed by the United States courts. Iran complains, second, that United States courts failed to enforce both Imam Khomeini's 28 February 1979 confiscation Decree in Islamic Republic of Iran v. Shams Pahlavi, see supra, paras. 78-81, and the Tehran court default judgments at issue in Bank Melli Iran and Bank Mellat v. Shams Pahlavi, see supra, paras. 89-95.

2. The United States Position

175. The United States denies that it accepted Iran's demand, in the fourth condition of the Majlis Resolution, that the United States return to Iran all Pahlavi assets. The text of Point IV, the United States contends, does not incorporate, either in substance or in spirit, that condition.

176. In making its textual argument, the United States points out that Point IV nowhere expressly includes any United States commitment to return Pahlavi assets to Iran. The context of the General Declaration as a whole, moreover, confirms that Point IV does not include any such commitment. The United States asserts that, where it agreed to order the transfer of assets to Iran, it did so expressly and in clear terms. For example, Paragraphs 2 through 9 of the General Declaration established a

mechanism through which the United States would cause or arrange for the return of certain specified Iranian assets. If the United States had agreed to a similar transfer of Pahlavi assets, the United States urges, the Parties would have likewise done so expressly.

177. The United States next refutes Iran's arguments based on the introductory language of the General Declaration and on the first American response of 11 November 1980. See supra, para. 168. The United States points out that the Preamble to the General Declaration does not expressly include the fourth condition of the Majlis Resolution as an "instrument related to" the Algiers Declarations. Rather, it recognizes the historical fact that Iran and the United States agreed in November 1980 that the Majlis Resolution would serve as the "framework" for negotiations to resolve the hostage crisis, a fact that is also reflected in the United States acceptance "in principle," in its Response of 11 November 1980, of the Resolution as a basis upon which to discuss the resolution of the crisis between the two governments.

178. Both statements, the United States continues, indicate a readiness on the part of the United States to include, within the ambit of negotiations, discussions centered on Iran's demand that the Pahlavi assets be returned to it. The ordinary meaning of that language, however, does not indicate that the United States accepted the substance of the fourth condition of the Majlis Resolution in the final text of the Algiers Declarations. Concerning Iran's argument based on the title of Point IV, see supra, para. 167, the United States points out that the title does not contain any operative provision; it merely announces the subject matter of Point IV.

179. The United States, furthermore, makes an argument based on General Principle A of the General Declaration, which states that, "[w]ithin the framework of and pursuant to the provisions of the two Declarations . . . , the United States will restore

the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979." The United States argues that agreeing to return (or to guarantee the return of) Pahlavi assets to Iran would have put Iran in a better position than it occupied on 14 November 1979 and thus would have violated General Principle A.

V. JURISDICTION

180. The Tribunal's jurisdiction over this Case is unquestioned. This is a dispute "between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15" of the General Declaration; thus, it falls squarely within the Tribunal's jurisdiction pursuant to Paragraphs 16 and 17 of the General Declaration. The grant of jurisdiction in Paragraphs 16 and 17 of the General Declaration is restated in Article II, paragraph 3, of the Claims Settlement Declaration.

VI. MERITS

A. GENERAL

181. The task of the Tribunal is first to ascertain the content and scope of the obligations undertaken by the United States in the Algiers Declarations with respect to the return to Iran of the Pahlavi assets (see para. 1) and then to determine whether the United States has complied with its obligations and, if not, to what extent it failed to do so. "The means to be employed in the process of interpretation of an international agreement . . . are set out in the Vienna Convention on the Law of Treaties." Islamic Republic of Iran and United States of America, Decision No. DEC 62-A21-FT, para. 8 (4 May 1987), reprinted in 14 Iran-U.S. C.T.R. 324, 328. Article 31 of that Convention provides:

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

The International Court of Justice, in discussing Article 31 of the Vienna Convention, has stated that "[i]nterpretation must be based above all upon the text of the treaty." Territorial Dispute (Libyan Arab Jamahiriya v. Chad), 1994 I.C.J. 22 (3 Feb.).¹⁰ In interpreting treaties, the International Court of Justice has looked to the intention of the parties as expressed in the text of the treaty itself. In this connection, it should be noted that "interpretation is not a matter of revising treaties or of reading into them what they do not expressly or by necessary implication contain, or of applying a rule of interpretation so as to produce a result contrary to the letter or spirit of the treaty's text." I Oppenheim's International Law

¹⁰ In the Territorial Dispute Case, the Court also observed that "a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose." 1994 I.C.J. at 21-22.

1271 (R. Jennings et al. eds., ninth ed. (paper) 1996). See also Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, 1950 I.C.J. 229 (18 Jul.). In interpreting treaties, "[r]ights cannot be presumed to exist merely because it might seem desirable that they should." South West Africa Cases, Second Phase (Ethiopia v. South Africa; Liberia v. South Africa), 1966 I.C.J. 48 (18 Jul.). See also Certain Expenses of the United Nations, 1962 I.C.J. 159 (20 Jul.). Thus, the Tribunal has held that, "[i]n interpreting the Algiers Declarations, the Tribunal cannot ignore the express terms agreed upon by the Parties, nor can it replace those terms with others that would unavoidably change the original meaning." Islamic Republic of Iran and United States of America, Partial Award No. 590-A15(IV) & A24-FT, para. 91 (28 Dec. 1998).

182. Turning to another preliminary matter, it should be noted that the English text of the General Declaration is the only text that was signed and initialed by representatives of both High Contracting Parties.¹¹ That text sets out "definitively the content of the treaty to which the negotiating states" subscribed. I Oppenheim's International Law, supra, at 1223. See Article 10 of the Vienna Convention.¹² In determining the content and scope of the United States obligations relating to the Pahlavi assets, the Tribunal shall look to the English text

¹¹ A Persian text of the General Declaration was signed and initialed by Mr. Nabavi, the representative of Iran, but not by Mr. Christopher, the representative of the United States.

¹² Article 10 of the Vienna Convention provides as follows:

The text of a treaty is established as authentic and definitive:

- (a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or
- (b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

of the Algiers Declarations. See Flegenheimer Case (U.S. v. Italy), 14 R.I.A.A. 382 (20 Sep. 1958).

183. The Tribunal will first address the question whether the United States agreed, in Point IV, to return the Pahlavi assets to Iran. The Tribunal will then interpret Paragraphs 12-14 of the General Declaration and determine whether the United States has complied with the obligations those Paragraphs impose.

B. IRAN'S ARGUMENT THAT THE ALGIERS DECLARATIONS OBLIGATE THE UNITED STATES TO RETURN TO IRAN ALL PAHLAVI ASSETS

184. As noted, Iran contends that the object and purpose of Point IV is the return to Iran of all Pahlavi assets. Consequently, Iran urges, the United States has an obligation "of result" to ensure that return. Iran asserts that, because no Pahlavi assets were ever returned to it, the United States breached Point IV. See supra, para. 166.

185. As noted supra, at para. 181, in determining the content and scope of the obligations that the United States undertook in Point IV, the Tribunal will follow the rules of interpretation laid down in the Vienna Convention on the Law of Treaties. Thus, pursuant to Article 31, paragraph 1, of that Convention, the Tribunal shall interpret the terms of Point IV "in good faith in accordance with [their] ordinary meaning . . . in their context and in the light of [the] object and purpose" of the General Declaration.

1. The Ordinary Meaning of the Terms of Point IV

186. Nowhere in the text of Point IV did the United States expressly obligate itself to return or cause to be returned to Iran Pahlavi assets even if Iran were unable to recover them through litigation in United States courts. The Tribunal holds that no such United States obligation can reasonably be inferred

from the text of the General Declaration as a whole. The Tribunal further holds that in Point IV, the High Contracting Parties left it to Iran to bring to United States courts claims for the recovery of any such assets.

187. The object and purpose of Point IV is to grant Iran, through the procedures laid down in Paragraphs 12-15 of the General Declaration, a certain degree of United States assistance in United States litigation brought by Iran to recover Pahlavi assets "as belonging to Iran." See infra, paras. 205-258. The assistance that the United States promised Iran is limited to the specific obligations enumerated in those Paragraphs; the United States did not obligate itself to do more. In particular, the United States in Point IV did not agree to give Iran unlimited assistance in its litigation, nor did it guarantee to return to Iran all Pahlavi assets. The United States, in Paragraph 15 of the General Declaration, guaranteed the enforcement of final judgments of United States courts calling for the transfer to Iran of Pahlavi assets to the extent those assets exist within the United States.¹³ To date, no United States court has rendered a final judgment calling for the transfer to Iran of any Pahlavi assets; as noted, all of the lawsuits that Iran has brought to United States courts to date to recover Pahlavi assets have been dismissed.

188. Further, there is no indication in the text of the Algiers Declarations that the fourth condition of the Majlis Resolution of 2 November 1980, demanding the return of the assets of the former Shah and his close relatives (see supra, para. 16), was somehow incorporated into Point IV. The Preamble to the

¹³ Paragraph 15 of the General Declaration provides:

As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

See supra, para. 25.

General Declaration refers to the "commitments" that the High Contracting Parties were willing to make in order to resolve the crisis between them "within the framework" of the four points stated in the Majlis Resolution. See supra, para. 25. But that language clearly falls short of incorporating the four conditions stated in the Majlis Resolution into the text of the Algiers Declarations.

189. There would be no justification for attributing to the provisions of Point IV a meaning different from that established by the letter and spirit of Paragraphs 12-15 of the General Declaration. The Tribunal has held that, "[i]n interpreting the Algiers Declarations, the Tribunal cannot ignore the express terms agreed upon by the Parties, nor can it replace those terms with others that would unavoidably change the original meaning." Islamic Republic of Iran and United States of America, Partial Award No. 590-A15(IV) & A24-FT, supra, para. 91. See also supra, para. 181. Moreover, reliance on the maxim ut res magis valeat quam pereat (the principle of effectiveness) could not justify the Tribunal in going beyond what the text of Point IV warrants, thereby creating a novel United States obligation to transfer to Iran all Pahlavi assets regardless of the outcome of Iran's Pahlavi-assets litigation. See I Oppenheim's International Law, supra, at 1281. See also Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, 1950 I.C.J. 229 (18 Jul.).

190. In the same vein, the text of Point IV does not support Iran's interpretation according to which the United States guaranteed that Iran's Pahlavi-assets litigation would succeed in United States courts and that the latter would apply United States law in such a way that Pahlavi assets would be returned to Iran. Such an interpretation would extend beyond the scope of the Parties' agreement in Point IV and therefore would contravene the requirement of Article 31, paragraph 1, of the Vienna Convention that treaties be interpreted in good faith. As quoted supra, at para. 181, "interpretation is not a matter of revising treaties or of reading into them what they do not

expressly or by necessary implication contain, or of applying a rule of interpretation so as to produce a result contrary to the letter or spirit of the treaty's text."

191. Point IV establishes the limits of the rights of Iran in this Case. If the Parties had intended the United States to return all Pahlavi assets regardless of the outcome of Iran's Pahlavi-assets litigation in United States courts, they could have agreed so expressly. But they did not. There is no trace of any such United States obligation in the text of Point IV.

192. In sum, the text of Point IV is clear: The United States obligated itself only to assist Iran in its Pahlavi-assets litigation by means of the actions specified in Paragraphs 12-15 of the General Declaration. A United States obligation to transfer to Iran all Pahlavi assets — that is, an obligation to bring about such a result — is nowhere to be found in the text of Point IV.

2. The Context of Point IV

193. As noted, Article 31, paragraph 1, of the Vienna Convention requires that a treaty be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty "in their context." The Tribunal examines whether the context of Point IV confirms the Tribunal's textual interpretation, supra, at paras. 186-92.

194. In Polish Postal Service at Danzig, 1925 P.C.I.J. (ser. B) No. 11, at 39 (16 May), the Permanent Court of International Justice stated that "[i]t is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context." See also Competence of the International Labour Organisation to Regulate the Personal Work of Employers, 1926 P.C.I.J. (ser. B) No. 13, at 22-23 (23 Jul.); Free Zones of Upper Savoy and the District of Gex (France v.

Switzerland), 1932 P.C.I.J. (ser. A/B) No. 46, at 140 (7 Jun.)). Furthermore, "[a] corollary of the principle of ordinary meaning is the principle of integration: the meaning must emerge in the context of the treaty as a whole and in the light of its objects and purposes." I. Brownlie, Principles of Public International Law 629 (1990).

195. The context, for purposes of interpretation, of a provision or set of provisions of a treaty is primarily the text of the treaty itself — in other words, the remaining provisions of the same treaty. See Article 31, paragraph 2, of the Vienna Convention.¹⁴ See also I Oppenheim's International Law, supra, at 1273.

196. Points II and III of the General Declaration imposed upon the United States the obligation to cause or arrange for the return to Iran of certain specified Iranian assets. In those Points, the High Contracting Parties established a detailed mechanism through which the United States would arrange for or cause the return of those assets to Iran. It is noteworthy that the Parties did not link the return of those assets to any litigation, either domestic or international, brought by Iran. By contrast, Point IV repeatedly refers to United States litigation brought by Iran to recover assets located in the United States.

¹⁴ Article 31, paragraph 2, of the Vienna Convention provides as follows:

The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

197. The implementation of the United States obligation to arrange for or cause the return of certain specified Iranian assets was left primarily in the hands of the Executive Branch of the United States Federal Government. The contrast between Points II and III, on the one hand, and Point IV, on the other hand, is striking: As noted, Point IV places the decision as to whether any Pahlavi assets should be transferred to Iran in the hands of United States courts applying United States law, not the Executive Branch. The Executive Branch's role with respect to the return to Iran of Pahlavi assets is specified in Paragraphs 12-15 of the General Declaration.

198. In contrast to Points II and III, in which the United States assumed the obligation to arrange for or cause the return of certain specified Iranian assets to Iran, in Point IV the United States did not assume any obligation to return any assets to Iran unless and until Iran won a final judgment in a United States court. By its very terms, Point IV does not guarantee the transfer to Iran of any Pahlavi assets except in a Paragraph 15 situation — after a United States court enters a final judgment in Iran's favor. See supra, para. 187 and note 13. If the High Contracting Parties had intended the United States to guarantee the return of Pahlavi assets regardless of the outcome of Iran's Pahlavi-assets litigation, they could have stated so expressly in Point IV.

199. While in Points II and III the United States assumed an obligation of result — i.e., the obligation to cause or arrange for the return to Iran of certain specified Iranian assets — in Point IV the United States assumed an obligation of conduct or means — i.e., the obligation to assist Iran in its Pahlavi-assets litigation in the fashion delineated in Paragraphs 12-15 of the General Declaration.

3. Preparatory Work

200. Having concluded, in accordance with Article 31, paragraph 1, of the Vienna Convention, that the ordinary meaning to be given to the terms of Point IV in their context does not require that the United States transfer to Iran all Pahlavi assets regardless of the outcome of Iran's Pahlavi-assets litigation, the Tribunal may have recourse to other, supplementary means of interpretation in order to confirm that conclusion. Pursuant to Article 32 of the Vienna Convention, these supplementary means include the preparatory work of the Algiers Declarations and the circumstances of their adoption by the two governments.¹⁵

201. In past interpretive disputes the Tribunal has had recourse to the negotiating history of the Algiers Declarations. See, e.g., Islamic Republic of Iran and United States of America, Decision No. DEC 12-A1-FT, at 3 (3 Aug. 1982), reprinted in 1 Iran-U.S. C.T.R. 189, 190-91; Halliburton Company, et al. and Doreen/IMCO, et al., Interlocutory Award No. ITL 2-51-FT, at 5-6 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 242, 245-46; Islamic Republic of Iran and United States of America, Interlocutory Award No. ITL 63-A15-FT, paras. 47-50 (20 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 41, 56-57; Islamic Republic of Iran and United States of America, Award No. 382-B1-FT, para. 50 (31 Aug. 1988), reprinted in 19 Iran-U.S. C.T.R. 273, 290; Islamic Republic of Iran and United States of America, Partial Award No. 590-A15(IV) & A24-FT, supra, para. 86.

202. The Tribunal finds that the negotiating history of the Algiers Declarations confirms the Tribunal's interpretation

¹⁵ Article 32 of the Vienna Convention provides in relevant part:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31

supra, in paras. 186-99; thus, that history does not lend any support to Iran's contention that in Point IV the United States guaranteed that it would return to Iran all Pahlavi assets. As noted, in this connection Iran points, in particular, to the United States acceptance "in principle," in the first American response of 11 November 1980, of the Majlis Resolution as the basis for ending the crisis between the two governments (see supra, para. 17); Iran argues that by so accepting that Resolution, the United States implicitly agreed, inter alia, to its fourth condition, which called for the transfer to Iran of all Pahlavi assets, and, thus, to "the 'principle' of . . . returning the Pahlavi family's property and assets to Iran." See supra, para. 168. The Tribunal does not find this argument persuasive.

203. The United States acceptance "in principle" of the Majlis Resolution "as the basis for ending the crisis," by its very terms, falls far short of a United States acceptance of the demands that Iran put forward in the Resolution, including those articulated in its fourth condition. Clearly, by using the words quoted above, the United States went no further than to agree to adopt the Majlis Resolution as the starting point for the negotiations between the two governments. But a starting point need not be identical to the end result. Indeed, Iran itself understood, at the time, that the proposals included in the first American response did not amount to a United States acceptance of the demands contained in the Majlis Resolution: In its 26 November 1980 message replying to the first American response, Iran stated that,

[r]egretfully, the American response and its attachments which were received through the representatives of the Algerian Peoples Democratic Republic, were not to the point[;] rather[,] they offered new proposals which were different from th[ose] of the Consultative Assembly's resolutions, and in several cases the matters are either left obscure, or even not mentioned.

The 26 November 1980 message then went on to complain that the first American response had made "[n]o reference . . . to the

transfer of these [Pahlavi] properties and assets to Iran." See supra, para. 19.

204. The Tribunal concludes that the preparatory work of the Algiers Declarations concerning the issue of the return to Iran of all Pahlavi assets confirms the Tribunal's textual interpretation, supra, at paras. 186-99. The United States did not, in Point IV or any other provision of the General Declaration, undertake the obligation to bring about the transfer to Iran of those assets. No decision concerning the return of those assets to Iran figures in the Algiers Declarations. The High Contracting Parties left the matter to be resolved through litigation in United States courts.

C. PARAGRAPH 12 OF THE GENERAL DECLARATION

1. Assets Controlled by the "Estate" of the Former Shah

205. As noted, Iran argues that the ordinary meaning of the term "estate" in the first sentence of Paragraph 12 is the "property and assets" left by the deceased Shah; "and the term 'any property or assets within the control of the estate of the former Shah' plainly means any property or assets over which the former Shah exerted any kind of dominion or control, even though the Shah did not own such property outright." See supra, para. 104. The United States argues, in contrast, that "estate" in the context of Paragraph 12 means a formally constituted decedent's estate acting through a personal representative. See supra, para. 120.

206. The second sentence of Paragraph 12 reads: "As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated." By providing that a freeze will expire upon the final termination of litigation, Paragraph 12 explicitly ties the United States freeze obligations to litigation having been

brought by Iran against the estate of the former Shah; in other words, Paragraph 12 presupposes that the former Shah's estate has been made a party to "U.S. litigation brought by Iran to recover [Pahlavi assets]." Paragraph 12, first sentence.

207. It is clear, and there is no serious dispute, that litigation cannot be brought against "property and assets," as such, left by a deceased. The Tribunal therefore rejects Iran's interpretation of the term "estate" as meaning, simply, the "property and assets" left by the deceased Shah.

208. The Parties agreed in Point IV that the question of the return to Iran of all United States assets of the Pahlavi family would be resolved through "U.S. litigation." Paragraph 12. Thus, in interpreting the term "estate," as used by the Parties in the context of Point IV, the Tribunal must refer to United States municipal law. See Brownlie, supra, at 38.

209. Under the laws of the State of New York, where Iran brought its action against the former Shah and Farah Diba Pahlavi, see supra, para. 28, the death of a defendant in a pending action divests the court of jurisdiction until a duly appointed personal representative is substituted for the decedent. As to the decedent, all proceedings in the action are automatically stayed by the death, and any orders of the court that are made between the date of the death and the substitution are null and void. The failure to make a substitution within a reasonable time is a basis for dismissal of the action with respect to that defendant. See Vincent C. Alexander, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR C1015:3 (1997). Thus, all proceedings in Iran's action against the former Shah in the New York trial court were stayed when he died on 27 July 1980; and in order for the action to be revived against the estate of the former Shah, a personal representative for the estate needed to be substituted for the deceased Shah.

210. Iran itself recognized the importance of obtaining the appointment of a personal representative for the former Shah's estate in order to revive the action it had brought against the former Shah. In his 26 March 1981 Petition for Letters of Administration in the New York trial court, Iran's counsel stated that it was "necessary for a representative of the estate to be appointed in order to fulfill various responsibilities and obligations of the decedent before the New York State Supreme Court with respect to this litigation." The Petition further conceded that it would be "impossible for the Government of the United States to carry out its obligations in the instant case [under Paragraph 12 of the General Declaration] unless a representative [was] appointed to represent the decedent." See supra, para. 37.

211. Based on the foregoing, the Tribunal determines that the term "estate" as used by the Parties in Paragraph 12 can only mean a decedent's estate acting through a personal representative (either an executor named in the former Shah's will, if any, or a court-appointed administrator). The estate of the deceased Shah could be a party to "U.S. litigation," as required by Paragraph 12, see supra, para. 206, only if a personal representative of the estate were substituted for him.

212. As noted supra, at paras. 39 and 43, Iran's Petitions for Letters of Administration for the former Shah's estate were denied by the New York trial court and by the New York Surrogate's Court on 14 September 1981 and 19 March 1984, respectively, on the ground that Iran's counsel had not proven that the former Shah owned any assets in New York State at the time of his death.¹⁶ Neither Iran nor its counsel appealed either the 1981 or the 1984 denial of the Petition for Letters of Administration.

¹⁶ Under New York law, to obtain letters of administration, "it is essential to show that decedent left property of some character, since there is nothing to administer if decedent died without assets, and issuance of letters would be an idle and wasteful gesture." 41 N.Y. Jur. 2d Decedents' Estates § 1730 (1984) (citing cases).

213. Although, in his 26 March 1981 Petition to the trial court, Iran's counsel had announced that he would utilize the "discovery processes of the Court" to uncover the property of the deceased Shah allegedly "located within the confines of New York County," see supra, para. 37, Iran and its attorneys subsequently did not engage in any such discovery. Discovery, if carried out, might have improved Iran's chances of locating property of the former Shah in the State of New York and, thus, of obtaining the appointment of an administrator for his estate.

214. The Tribunal concludes that, because no personal representative of the former Shah's estate was ever appointed (see supra, paras. 39 and 40), no "estate" within the meaning of Paragraph 12 was ever constituted. Consequently, the United States Paragraph 12 freeze obligation as to the estate of the former Shah never arose.

215. The Tribunal is mindful of Iran's argument that, because it had already filed an action against the former Shah for the recovery of assets on 27 November 1979, there would be no reason to make the United States Paragraph 12 freeze obligation with respect to the former Shah's assets contingent upon the formal opening of his estate. While this argument carries equitable weight, the fact remains that in Paragraph 12, the Parties expressly agreed that the United States freeze obligation would be tied to litigation having been brought by Iran against the "estate" of the former Shah. See supra, para. 206. "This choice of words by the High Contracting Parties carries substantial weight In interpreting the Algiers Declarations, the Tribunal cannot ignore the express terms agreed upon by the Parties, nor can it replace those terms with others that would unavoidably change the original meaning." Islamic Republic of Iran and United States of America, Partial Award No. 590-A15(IV) & A24-FT, supra, para. 91. If the Parties had intended the United States to freeze, on 19 January 1981, all assets in the United States that had belonged to, or had been controlled by, the former Shah, they could have stated that expressly in

Paragraph 12. But they did not. They agreed instead that the United States would "freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah" (Emphasis added.)

216. In view of its conclusion, supra, at para. 214, the Tribunal need not address the question whether the estate of the former Shah must be served as a defendant in United States litigation in order to trigger the United States Paragraph 12 freeze obligation with respect to the assets controlled by the estate. It need only be noted here that, as the Tribunal has already concluded, Paragraph 12 requires, at a minimum, that United States litigation be brought by Iran against the estate of the former Shah.

2. Assets Controlled by Certain Close Relatives of the Former Shah

217. In the first sentence of Paragraph 12, the United States undertook, inter alia, to freeze "property and assets in the United States within the control . . . of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran." See supra, para. 25.

218. As a preliminary matter, the Tribunal must determine whether the proof-of-service requirement contained in 31 C.F.R. § 535.217(a), issued by OFAC on 24 February 1981, is consistent with Paragraph 12. As noted supra, at para. 27, that regulation requires that, before the United States issues a freeze order pursuant to Paragraph 12, Iran furnish OFAC with "proof of service" as to the particular defendant. A "proof of service" — a term not defined in the regulation — ordinarily should disclose enough facts to establish prima facie evidence of valid service, including the date, place, and manner of service, as well as the identity of the papers served (e.g., a summons and complaint). See 4A C. Wright & A. Miller, Federal Practice and

Procedure § 1130 (2d ed. 1987 and 1998 Supp.) (interpreting Federal Rule of Civil Procedure 4). See also Article 6 of the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 15 Nov. 1965 ("Hague Service Convention") ([1969] 20 U.S.T. 361, T.I.A.S. No. 6638, 4 I.L.M. 338 (1965), 16 I.L.M. 1339 (1977)). Requiring that Iran furnish such proof to OFAC would seem to the Tribunal to be the most practical means of acquiring information about Iran's Pahlavi-assets litigation. Moreover, it does not place an unduly onerous burden on Iran. In contrast, for the United States to monitor the dockets of all state and federal courts would be virtually impossible. Accordingly, the Tribunal holds that OFAC's regulation requiring that Iran furnish OFAC with proof that Iran has served a particular defendant is not inconsistent with the Algiers Declarations, except in cases where the United States was aware, during the negotiation of the Algiers Declarations, that Iran had already served as a defendant a particular close relative of the former Shah.

219. The text of Paragraph 12 makes clear that freeze orders are intended to follow the service of each defendant against whom Iran brings litigation pursuant to that Paragraph. The Algiers Declarations establish no time limit within which such orders are to be issued. In the absence of an express deadline, the Tribunal relies on the general treaty-interpretation principle of good faith and concludes that the United States was required to issue those orders "within a reasonable period of time." Islamic Republic of Iran and United States of America, Partial Award No. 590-A15(IV) & A24-FT, supra, para. 107. The Tribunal therefore must consider what, under the circumstances, would be such a reasonable period.

220. The purpose of freezing a defendant's assets — to prevent him from removing property or assets from the jurisdiction of the court in which the relevant litigation is pending so as to secure any judgment in that litigation — compels the conclusion that there is an implied obligation of the United

States to issue freeze orders promptly after the conclusion of the Algiers Declarations with respect to any close relative covered by Point IV whom the United States knew had previously been "served as a defendant" in United States litigation and promptly after Iran has furnished the required proof to OFAC that any other such close relative has been "served as a defendant" in United States litigation.

221. Both Iran and the United States recognize that, in order to trigger the United States Paragraph 12 obligation to freeze United States assets within the control of a close relative of the former Shah, Iran is required first to "serve" the close relative "as a defendant" in United States litigation brought by Iran to recover Pahlavi assets. The parties, however, disagree about the proper interpretation of the phrase "served as a defendant" in Paragraph 12.

222. As noted, Iran maintains that the object and purpose of the "served as a defendant" requirement in Paragraph 12 is simply to identify the persons whom Iran considers to be the former Shah's "close relative[s]." Iran argues that, to achieve that purpose, service of process in the strict legal sense is not required; it would be enough to "name the defendant" in Iran's Pahlavi-assets litigation. Hence, Iran contends that the phrase "served as a defendant" in Paragraph 12 means "sued as a defendant." See supra, para. 109.

223. In the alternative, if the Tribunal finds that service of process in the strict legal sense is required in order to trigger the United States Paragraph 12 freeze obligation, then Iran contends that the "served as a defendant" requirement is satisfied once service has been made in accordance with the applicable law of the forum State, regardless of any subsequent challenges that a defendant made to the service. Iran argues that service effected in conformity with the applicable law is effective and valid until a court of competent jurisdiction has quashed it. See supra, para. 110.

224. The United States, for its part, argues that service upon a defendant within the context of Paragraph 12 means "effective service as determined by the court." In other words, the United States contends that, in order to trigger any United States freeze obligation, service on a defendant in Pahlavi assets litigation must be either uncontested or, if contested, upheld by the highest court presented with the issue. See supra, paras. 127-30.

225. The Tribunal does not agree either with Iran's principal interpretation of the phrase "served as a defendant" or with the United States interpretation of that phrase.

226. The Tribunal does not accept Iran's argument that, in the context of Paragraph 12, that phrase should be understood, not "in the strict legal sense," but rather as "sued" or "named" as a defendant. The High Contracting Parties expressly agreed that the United States Paragraph 12 freeze obligation with respect to assets controlled by a close relative of the former Shah would accrue only once the close relative had been "served" with process "in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran." Paragraph 12, first sentence. The notion of "serving" a defendant in United States litigation has, unquestionably, a precise legal meaning quite different from "naming" or "suing" a defendant in such litigation. See infra. If the High Contracting Parties had wished to make the United States freeze obligation contingent solely upon naming or suing persons as defendants, they could have done so expressly.

227. Nor does the Tribunal accept the United States argument that Paragraph 12 requires that service on a defendant be valid, uncontested, and final. First, if the Parties to the Declarations had intended the service requirement to be so qualified, they could have stated that expressly. Second, to permit defendants in Pahlavi-assets litigation to avoid the freezing of their property by contesting service before the trial court and

on appeal would vitiate one important purpose of Paragraph 12, which is to prevent the removal of the property from the jurisdiction of the court. Plainly put, a requirement of "uncontested" service would void Paragraph 12 of any significance. The Tribunal therefore holds that the phrase "served as a defendant" in Paragraph 12 cannot reasonably be interpreted to mean that service on a close relative of the former Shah is accomplished only if it is not contested or is no longer contested.

228. On the other hand, the Tribunal largely agrees with Iran's alternative argument. Accordingly, the Tribunal determines that Paragraph 12's requirement that a close relative of the former Shah be "served as a defendant" in United States litigation is satisfied if service on the close relative reasonably appears to comply with the applicable law of the forum, which can include court rules and specific court orders, all of which tend to ensure that the method of service used is reasonably calculated to give the defendant actual notice of the lawsuit and to afford him an opportunity to present his defenses. Thus, a close relative of the former Shah should be considered as "served" within the meaning of Paragraph 12 once he has been served in apparent accordance with the applicable law of the forum, regardless of any subsequent challenges on his part to the service.

D. PARAGRAPH 13 OF THE GENERAL DECLARATION

229. Paragraph 13 provides as follows:

Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

230. As noted, Iran contends that Paragraph 13 obligated the United States (i) to issue, on 19 January 1981, an order requiring all persons within the jurisdiction of the United States to submit information on any United States assets belonging to the former Shah or his close relatives; and (ii) to transmit any such information to Iran within thirty days of the signing of the Algiers Declarations. See supra, para. 134.

231. The United States argues, in contrast, that Paragraph 13 makes the United States reporting obligations contingent upon Iran having served as a defendant the estate of the former Shah or a close relative of the former Shah in United States litigation brought by Iran to recover Pahlavi assets. Hence, the United States concludes, before the United States is required to order reports about any property and assets within a defendant's control, Iran must serve that defendant. See supra, paras. 141-43.

232. The main issue in this part of Iran's claim is when the United States Paragraph 13 reporting obligation arose — immediately upon entry into force of the Algiers Declarations, or only once the former Shah's estate or close relative was "served as a defendant" in United States litigation to recover Pahlavi assets.

233. The last phrase of the first sentence of Paragraph 13 requires that the United States institute reporting procedures "with respect to the property and assets referred to in Paragraph 12" — namely, with respect to the "property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran." Paragraph 12, first sentence. Consequently, the property and assets that fall within the scope of Paragraph 13 are those that also fall within the scope of Paragraph 12 and therefore are or should be frozen. Hence,

Paragraph 13 could not obligate the United States to transmit to Iran any information about property or assets that were not required to be frozen under Paragraph 12.

234. Thus, Paragraph 13, like Paragraph 12, presupposes that the former Shah's estate or a close relative of the former Shah has been made a party to "U.S. litigation brought by Iran to recover [Pahlavi assets]." The Tribunal has concluded that the estate of the former Shah could be a party to such litigation only if a personal representative of the estate were substituted for him. See supra, para. 211. Because no personal representative of the former Shah's estate was ever appointed (see supra, paras. 39 and 43), no "estate" that could be a party to United States litigation was ever constituted. Consequently, like the United States Paragraph 12 freeze obligation, the United States Paragraph 13 reporting obligation as to the estate of the former Shah never arose. See supra, para. 214.

235. In accordance with the foregoing conclusions, the Tribunal further determines that Paragraph 13, like Paragraph 12, presupposes that a close relative of the former Shah has been served with process in "U.S. litigation brought by Iran to recover [Pahlavi assets]." Consequently, in order to trigger the United States obligation to institute reporting procedures with respect to assets within the control of a close relative of the former Shah, Iran must first "serve[]" the close relative "as a defendant" in such litigation.

236. Serving a close relative as a defendant in United States litigation also serves a practical purpose — identifying the persons whom Iran considers to be "close relative[s] of the former Shah" and about whose property the United States is obligated to report pursuant to Paragraph 13.¹⁷ The United

¹⁷ Iran asserts that, during negotiations or immediately after the signing of the Algiers Declarations, it provided the United States with a list of the persons whom Iran considered to be close relatives of the Shah, so that the United States could
(continued...)

States cannot reasonably be expected to know the identities of those "close relatives" against whom Iran intends to bring litigation to recover Pahlavi assets. And, surely, the United States cannot be expected to freeze property and assets of individuals against whom Iran does not intend to bring any litigation. In this connection, it should also be noted that, with respect to the United States Paragraph 12 freeze obligation, Iran recognizes that the object and purpose of the service-of-process requirement is to identify the particular close relatives of the former Shah whose assets the United States is obligated to freeze. See supra, para. 101.

237. In reaching the above conclusions, the Tribunal rejects a number of Iran's contentions. First, as noted supra, at para. 136, Iran contends that Paragraph 13 also required reporting on Pahlavi assets that had been removed from the United States before the conclusion of the Algiers Declarations. In this connection, Iran points to the language in Paragraph 13 requiring that all persons within United States jurisdiction also submit Pahlavi-assets "information" known to them "as of November 3, 1979." In Iran's view, therefore, Paragraph 13 includes information about property or assets that were not required to be frozen under Paragraph 12.

238. The Tribunal cannot accept Iran's argument because it contradicts the plain text of Paragraph 13. Paragraph 13 requires the United States to gather "all information known to [all persons within U.S. jurisdiction], as of November 3, 1979, . . . with respect to the property and assets referred to in Paragraph 12." Clearly, the phrase "as of 3 November 1979" modifies the word "information," not the words "property and assets referred to in Paragraph 12." That property and those

¹⁷(...continued)
include them in its order implementing Paragraph 13. See supra, para. 137. The United States denies this and alleges, instead, that Iran provided it only with a list of categories of close relatives (that is, spouse, siblings, etc.). See supra, para. 145.

assets are, as the Tribunal has already held, the "property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant" in Pahlavi assets litigation brought by Iran. (Emphasis added.) See supra, para. 233.

239. Second, Iran contends that it identified the former Shah's close relatives in the complaint it filed against Fatemeh Pahlavi and fifty-nine other named defendants in the United States District Court for the Southern District of New York on 13 January 1981 — six days before the signing of the Algiers Declarations. Thus, Iran concludes, there was no need to identify those individuals again after the signing of the Declarations to enable the United States to require reporting about their assets. See supra, para. 137. The Tribunal disagrees.

240. In its lawsuit in the New York Federal District Court, Iran did not attempt to serve process on any of the sixty defendants before it voluntarily dismissed the case on 16 December 1981. See supra, paras. 53-54. The United States was not involved in that lawsuit. Absent any service of process on the defendants and, consequently, any notification to OFAC that a lawsuit was pending and that the defendants had been served, the United States could not reasonably be expected to have known, at that stage, the identities of the individuals whom Iran considered to be close relatives of the former Shah. As noted, on 17 December 1981, Iran filed suit, naming the same sixty defendants, in the New York trial court. In March 1982, Iran effected substituted service on the defendants by publication. Not until September 1982 did counsel for Iran write to OFAC, claiming that sixty close relatives of the former Shah had been served as defendants in the New York trial court. See supra, paras. 54-56. Hence, it is only on that date that the United States can be deemed to have learned the identities of those individuals.

241. As to the timing of the United States Paragraph 13 obligation with respect to assets controlled by a close relative of the former Shah, the Tribunal holds, in line with its conclusions as to Paragraph 12, supra, at paras. 218-20, that there is an implied obligation of the United States to issue orders requiring reporting about such assets promptly after the conclusion of the Algiers Declarations with respect to any close relative covered by Point IV whom the United States knew had previously been "served as a defendant" in United States litigation and promptly after Iran has furnished the required proof to OFAC that any other such close relative has been "served as a defendant" in United States litigation. There is also an implied obligation of the United States promptly to transmit to Iran the information reported to OFAC.

E. PARAGRAPH 14 OF THE GENERAL DECLARATION

242. Paragraph 14 provides:

Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

1. Forum_Non_Conveniens_Dismissals

243. Iran contends that Point IV, at a minimum, obligates the United States to make available to Iran a United States forum in which Iran can pursue on the merits its claims to Pahlavi assets. Iran argues that the United States violated that obligation by allowing its courts to dismiss Iran's claims against Farah Diba Pahlavi, Ashraf Pahlavi, Fatemeh Pahlavi and

her codefendants, and Shams Pahlavi (in Islamic Republic of Iran and Bank Mellat v. Shams Pahlavi) on grounds of forum non conveniens. According to Iran, if any United States court dismissed on procedural or jurisdictional grounds any of Iran's Pahlavi-assets claims, that would constitute a United States breach of Point IV. See supra, paras. 149-52. The United States denies that Paragraph 14 or any other provision in Point IV obligates the United States to guarantee Iran access to United States courts for the consideration of Iran's Pahlavi-assets claims on the merits. See supra, paras. 156-58.

244. Access to United States courts in the sense that Iran suggests would mean, in effect, that United States courts must proceed directly to the merits of Iran's Pahlavi-assets claims without entertaining any of the ordinary jurisdictional and procedural defenses against those claims that would otherwise be at the disposal of any litigant in United States courts (e.g., statutes of limitation, rules of standing, or the forum non conveniens doctrine). In other words, access to United States courts in the sense intended by Iran would amount to granting Iran full immunity from all the procedural and jurisdictional defenses that could be raised by Pahlavi-assets defendants in United States courts.

245. Nowhere in the text of Point IV did the United States expressly obligate itself to provide Iran with access to United States courts for the consideration of Iran's Pahlavi-assets claims on the merits. Nor can such a far-reaching undertaking by the United States be reasonably inferred from Point IV. Paragraph 14 expressly confines the United States obligation to inform United States courts of the inapplicability of the defenses of sovereign immunity and the act of state doctrine. An interpretation of that Paragraph that extended its obligations to include the forum non conveniens or other defenses is not warranted. Expressio unius est exclusio alterius. See Mobil Oil Iran Inc., et al. and Islamic Republic of Iran, et al., Award No. 311-74/76/81/150-3, para. 80 (14 Jul. 1987), reprinted in 16

Iran-U.S. C.T.R. 3, 27; Islamic Republic of Iran and United States of America, Interlocutory Award No. ITL 63-A15-FT, para. 58 (20 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 40, 59; Behring International, Inc. and Islamic Republic of Iran, et al., Interim/Interlocutory Award No. ITM/ITL 52-382-3, at 37-38 (21 Jun. 1985), reprinted in 8 Iran-U.S. C.T.R. 238, 264. See also I Oppenheim's International Law, supra, at 1279.

246. Concerning, in particular, Iran's arguments relating to the forum non conveniens dismissals, it should further be noted that, even before the signing of the Algiers Declarations, Iran was on notice that the forum non conveniens defense could be raised in United States litigation, because the former Shah and Farah Diba Pahlavi, as early as 10 January 1980, had moved to dismiss, on that ground, the action pending against them in the New York trial court. See supra, para. 31. Yet, during the negotiation of the Algiers Declarations, neither Party raised the question whether forum non conveniens should be added to the two defenses explicitly mentioned in Paragraph 14 — namely, sovereign immunity and act of state. In these circumstances, the Tribunal cannot accept the argument that the High Contracting Parties implicitly intended the United States also to inform "all appropriate U.S. courts" that Iran's Pahlavi-assets claims "should not be considered legally barred" by the forum non conveniens doctrine.

247. The Tribunal also cannot accept Iran's contentions that the United States Suggestion of Interest in Islamic Republic of Iran v. Shams Pahlavi, see supra, paras. 71 and 150-51, supports Iran's assertion that United States courts must decide the merits of its claims. The Suggestion of Interest responded to three defenses that Shams Pahlavi had raised in the above-mentioned litigation. Specifically, she claimed, first, that Imam Khomeini's 28 February 1979 confiscation Decree (see supra, para. 69) could not be enforced in a United States court; second, that Iran's claim had to be dismissed because Iran had failed to comply with the court's order requiring it to post a bond to

secure Shams Pahlavi's costs (see supra, para. 68); and third, that the statute of limitations had expired on Iran's complaint. The United States responded to Shams Pahlavi's first defense by rejecting her contention that Imam Khomeini's 28 February 1979 confiscation Decree was a "naked confiscation of property" and asserting, rather, that it could be enforced in United States courts in accordance with the provisions of United States law, including due process for defendants. In this connection, the United States also advised the court to

apply a flexible due process analysis that protects the rights of the individual defendants, but also preserves the rights of the Government of Iran under the Accords and the Executive Order, and promotes the purpose of Point IV of the General Declaration, which was to maintain access to U.S. courts on the part of Iran to recover assets that Iran could demonstrate were illegally taken from the Iranian Treasury.

See supra, para. 71. In the same vein, the United States contested Shams Pahlavi's second defense stating that it believed that the Government of Iran should not be required to post the bond. Since, according to the United States, the purpose of Point IV was to provide Iran with "access to U.S. courts," "[r]equiring [Iran] to post a bond might be argued by Iran to be inconsistent with this principle." Id. Finally, the United States rejected Shams Pahlavi's third defense — that Iran's complaint was barred by the statute of limitations — on the ground that "the relation-back doctrine appear[ed] to apply"

248. In support of its position that Point IV guarantees Iran a United States forum to pursue on the merits its claims to Pahlavi assets, see supra, para. 243, Iran points to the language quoted above from the Suggestion of Interest — in particular, the United States statement that "the purpose of Point IV of the General Declaration . . . is to provide [Iran] with access to U.S. courts." Iran's argument based on this language is not convincing. In her first defense, Shams Pahlavi argued that Imam Khomeini's 28 February 1979 confiscation Decree was a "naked

confiscation of property" that could not be enforced in United States courts — in other words, that such a decree could not be brought to United States courts for enforcement. The United States rejected that contention, and its reference to "access" to United States courts, in this context, does not suggest its belief that Iran was entitled to access to those courts for the consideration of Iran's Pahlavi-assets claims on the merits but, rather, states its belief that the court could not simply refuse even to consider whether the Decree could be enforced. The same is true for the United States response to Shams Pahlavi's defense concerning Iran's posting of a bond: Making the consideration of Iran's claim contingent upon its posting a bond could be considered an impermissible obstacle to Iran's right to litigate in United States courts.

249. The above interpretation of the quoted language from the Suggestion of Interest is further supported by that document's treatment of Shams Pahlavi's defense regarding the statute of limitations. The fact that the United States addressed that defense by pointing to the relation-back doctrine, rather than by pointing to Point IV, refutes Iran's contention that the United States reference to "access to United States courts" signified access to those courts for the consideration of Iran's Pahlavi-assets claims on the merits. Had the United States believed that Iran was entitled to consideration of its claims on the merits, it would have told the court to disregard Shams Pahlavi's statute of limitation defense as contrary to Point IV.

250. The fact that the United States has no obligation under Point IV to guarantee Iran a United States forum for the consideration of Iran's claims on the merits does not mean, however, that the United States likewise has no obligation under Point IV to allow Iran access to United States courts to pursue Pahlavi-assets claims. A basic purpose of Point IV was to afford Iran an opportunity to prove, through prosecution of appropriate lawsuits in United States courts, its right to the return of the Pahlavi assets. Moreover, all the United States Point IV obliga-

tions are triggered by steps that Iran may take in United States litigation, see, e.g., supra, paras. 218-20 and 239. Thus, there is no question that United States courts must be open to Iran's Pahlavi-assets lawsuits, as the United States itself recognized in its Suggestion of Interest in Islamic Republic of Iran v. Shams Pahlavi, see supra, para. 71. In this connection, it should also be noted that, in a brief filed on 13 March 1981 in Islamic Republic of Iran v. Mohammed Reza Pahlavi and Farah Diba Pahlavi in the New York Supreme Court, Iran's attorney stated: "The [General] Declaration and Executive Order do not purport to guarantee Iran this forum for adjudication of its claims. They do, on the other hand, clearly imply that the Executive Department will not take extraordinary action to withdraw Iran's standing in or access to American courts."

251. Iran was afforded the opportunity to present its positions and to respond fully to the defendants' jurisdictional and procedural defenses, including forum non conveniens. The courts considered Iran's arguments and evidence and eventually dismissed Iran's claims on various grounds, including forum non conveniens. By agreeing to Point IV, Iran assumed the risks attendant to litigation in United States courts — including the possibility of dismissal on jurisdictional or procedural grounds.

252. For all the above reasons, the Tribunal rejects Iran's contention that in Point IV the United States guaranteed Iran access to United States courts for the consideration of Iran's Pahlavi-assets claims on the merits.

2. Enforcement of Iranian Decrees and Judgments

253. Iran argues that in Paragraph 14, the United States guaranteed Iran that United States courts would enforce all Iranian decrees and judgments relating to the nationalization and expropriation of Pahlavi assets. Guaranteed enforcement in the sense intended by Iran means, in effect, a United States promise that, once Iran initiates an action for the enforcement of such

a decree or judgment in a United States court, the court will enforce the decree or judgment without making any independent examination of its substance — for example, without evaluating whether the issuance of the decree or judgment was consistent with United States due-process standards. In Iran's view, Paragraph 14 requires that the United States give Iranian decrees and judgments more favorable treatment than other foreign decrees and judgments. See supra, para. 153. In addition, Iran contends that the words "should be enforced by such courts in accordance with United States law" at the end of Paragraph 14 should be interpreted as meaning "should be enforced by such courts in accordance with a flexible procedural United States law." (Emphasis added.) See id.

254. Paragraph 14 provides that "the United States will make known, to all appropriate U.S. courts, . . . that Iranian decrees and judgments relating to [Pahlavi] assets should be enforced by such courts in accordance with United States law." Thus, according to its plain text, Paragraph 14 does not require either that United States courts enforce any Iranian decrees and judgments or that the United States otherwise ensures that its courts adopt any particular course of action. It requires that the United States inform the appropriate United States courts that it is the United States Government's position that Iranian decrees and judgments relating to Pahlavi assets should be enforced by United States courts in accordance with United States law.

255. The Tribunal's interpretation is also supported by the negotiating history of the Algiers Declarations. Section 1-104 of the draft Executive Order that the United States negotiators submitted to Iran with the second American response of 3 December 1980 provides that

the Attorney General [of the United States] . . . is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts, suggestions of interest reflecting . . . that it is also the

position of the United States that all Iranian decrees and judgments relating to the assets of the former Shah and of the designated members of his immediate family should be enforced by such courts in accordance with United States law.

See supra, para. 21. There is no indication that Iran ever objected to this provision. The above-quoted language from Section 1-104 of the draft Executive Order was incorporated almost verbatim in Section 1-104 of Executive Order No. 12284, issued by the President of the United States on 19 January 1981. See supra, para. 26.

256. If the High Contracting Parties had intended the United States to guarantee the enforcement of all Iranian decrees and judgments relating to Pahlavi assets, they could have stated that expressly. Instead, in Paragraph 14 they used the words "the United States will make known, to all appropriate U.S. courts," that those decrees and judgments "should" be enforced "in accordance with United States law." Where, in contrast, the Parties did stipulate a guarantee of enforcement, they did so expressly and in clear terms. In Paragraph 15 of the General Declaration, they agreed as follows: "As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States." (Emphasis added.) See supra, para. 25.

257. Concerning the meaning of the words "in accordance with United States law" at the end of Paragraph 14, the Tribunal cannot accept Iran's argument that those words actually mean "in accordance with a flexible procedural United States law." There is no evidence that the High Contracting Parties intended that the phrase "in accordance with United States law" have either the special meaning stated by Iran or any other special meaning. Thus, that phrase should be interpreted in accordance with its ordinary meaning as covering both procedural and substantive federal and state law in force in the United States.

258. In light of the foregoing, the Tribunal rejects Iran's contention that in Paragraph 14 the United States guaranteed Iran that United States courts would enforce all Iranian decrees and judgments relating to the nationalization and expropriation of Pahlavi assets.

F. THE UNITED STATES COMPLIANCE WITH PARAGRAPHS 12-14 OF THE GENERAL DECLARATION

1. Paragraphs 12 and 13

259. The Tribunal has concluded, supra, at paras. 214 and 234, that, because no personal representative of the former Shah's estate was ever appointed (see supra, paras. 39 and 43), the United States Paragraphs 12 and 13 freeze and reporting obligations, respectively, relating to assets within the control of the estate of the former Shah never arose.

260. Concerning the United States Paragraphs 12 and 13 freeze and reporting obligations, respectively, as to assets controlled by a close relative of the former Shah, the Tribunal has found that there is an implied obligation of the United States to issue freeze orders and institute reporting procedures with respect to those assets promptly after the conclusion of the Algiers Declarations with respect to any close relative covered by Point IV whom the United States knew had previously been "served as a defendant" in United States litigation and promptly after Iran has furnished the required proof to OFAC that any other such close relative has been "served as a defendant" in United States litigation. The Tribunal has also found that there is an implied obligation of the United States promptly to transmit to Iran the information reported to OFAC. See supra, paras. 219-20 and 241.

261. The Tribunal has found, furthermore, that a close relative of the former Shah should be considered as "served"

within the meaning of Paragraph 12 (and, thus, Paragraph 13) if he has been served in apparent compliance with the applicable law of the forum, regardless of any subsequent challenges on his part to the service. See supra, para. 228.

a. Assets Controlled by Farah Diba Pahlavi

262. As noted, on 27 November 1979, Iran filed a civil lawsuit against the former Shah and Farah Diba Pahlavi in the New York trial court to recover Pahlavi assets allegedly belonging to Iran. Iran promptly served the complaint on Farah Diba Pahlavi by mailing the papers to her sister-in-law's residence in Manhattan, where Farah Diba Pahlavi was staying at the time, and delivering them to a bodyguard there by a New York City deputy sheriff. On 10 January 1980, Farah Diba Pahlavi moved to dismiss the complaint, inter alia, on the ground that she had been improperly served with process. See supra, paras. 28-31.

263. In September 1980, before the trial court had ruled on Farah Diba Pahlavi's motion to dismiss, the United States Government requested the court to stay all proceedings pending resolution of the crisis between Iran and the United States. The court granted the stay. In late January 1981, shortly after the signing of the Algiers Declarations, the United States Government requested a further stay until 26 February 1981 to give the incoming administration of President Ronald Reagan the opportunity to review the Declarations. Proceedings recommenced on or shortly after that date. See supra, para. 33.

264. On 26 February 1981, counsel for Iran submitted to OFAC papers establishing, in his view, proof of service on Farah Diba Pahlavi and requested that OFAC freeze her United States assets. On 2 and 19 March 1981, following OFAC's failure to issue the freeze order, counsel for Iran reiterated that request and also asked OFAC to require reporting about those assets. OFAC, however, refused to freeze, or require reporting about, Farah Diba Pahlavi's United States assets on the ground that she had

contested the validity of Iran's service of process on her. See supra, paras. 34-36.

265. While upholding the validity of the service of process on her, on 14 September 1981, the New York trial court dismissed Iran's lawsuit against Farah Diba Pahlavi on grounds of forum non conveniens. See supra, para. 38. Iran unsuccessfully exhausted its appellate remedies. No appellate court reached the issue of the validity of Iran's service. See supra, paras. 40-41.

266. The evidence shows that the United States was aware, during the negotiation of the Algiers Declarations, that Iran had already served Farah Diba Pahlavi as a defendant in New York litigation in apparent compliance with the applicable law of that forum. First, in September 1980 — several months after Farah Diba Pahlavi had challenged the validity of service — the United States had requested the New York trial court to stay all proceedings against Farah Diba Pahlavi. See supra, para. 263. Second, the United States, in Comment 4 of the second American response of 3 December 1980, had addressed the case pending against her in New York. See supra, para. 20.

267. In accordance with its conclusions supra, at paras. 219-20 and 241, the Tribunal holds that the United States should have frozen, and required reporting about, assets in the United States within the control of Farah Diba Pahlavi, in accordance with Paragraphs 12 and 13, respectively, promptly after 19 January 1981. By refusing to do so, the United States failed to fulfill its obligations under Point IV.

268. The Tribunal shall determine in a subsequent proceeding whether Iran has established that it has suffered a loss as a proximate result of that failure by the United States. If so, the Tribunal "shall make an appropriate award in favor of Iran." Paragraph 16 of the General Declaration.

b. Assets Controlled by Ashraf Pahlavi

269. As noted, on 25 February 1980, Iran filed a civil lawsuit against Ashraf Pahlavi, the former Shah's twin sister, in the New York trial court to recover Pahlavi assets allegedly belonging to Iran. Iran served the complaint on the defendant personally in New York on 29 February 1980. On 21 January 1981, Ashraf Pahlavi moved to dismiss the complaint on various grounds. She did not challenge the validity of the service of process effected on her. See supra, paras. 44-45.

270. As in the case pending against Farah Diba Pahlavi, court proceedings against Ashraf Pahlavi were stayed at the request of the United States Government from late 1980 through 26 February 1981. See supra, para. 46.

271. On 26 February, 2 March, and 19 March 1981, counsel for Iran submitted to OFAC papers establishing, in his view, proof of service on Ashraf Pahlavi and requested that OFAC freeze, and require reporting about, her United States assets. See supra, para. 47.

272. On 13 May 1981, almost four months after the signing of the Algiers Declarations and two and one-half months after Iran's counsel had first made the request, OFAC amended 31 C.F.R. § 535.217 by placing the name of Ashraf Pahlavi in paragraph (b) of that Section, thereby freezing her United States assets. On the same date, OFAC instituted the reporting procedure pursuant to Paragraph 13 of the General Declaration: It issued a separate regulation, 31 C.F.R. § 535.619, requiring that Ashraf Pahlavi and any persons within the jurisdiction of the United States file written reports with OFAC with respect to their knowledge of United States assets controlled by Ashraf Pahlavi at any time between 3 November 1979 and 11 May 1981. In July 1981, OFAC transmitted to Iran information reported to OFAC pursuant to 31 C.F.R. § 535.619. See supra, paras. 47-48.

273. In line with its findings supra, at para. 266, with respect to Farah Diba Pahlavi, the Tribunal finds that the United States was aware, during the negotiation of the Algiers Declarations, that Iran had already served Ashraf Pahlavi as a defendant in New York litigation in apparent compliance with the applicable law of that forum. As in the case against Farah Diba Pahlavi, in late 1980 — several months after Iran had served Ashraf Pahlavi with process — the United States had requested the New York trial court to stay all proceedings against Ashraf Pahlavi. See supra, para. 270.

274. In accordance with its conclusions supra, at paras. 219-20 and 241, the Tribunal holds that the United States should have frozen, and required reporting about, assets in the United States within the control of Ashraf Pahlavi, in accordance with Paragraphs 12 and 13, respectively, promptly after 19 January 1981. Instead, the United States delayed until 13 May 1981 before doing so. Accordingly, the Tribunal holds that the United States was impermissibly tardy in carrying out its Paragraphs 12 and 13 obligations and that, as a result, it failed to fulfill its obligations under Point IV.

275. The Tribunal shall determine in a subsequent proceeding whether Iran has established that it has suffered a loss as a proximate result of that failure by the United States. If so, the Tribunal "shall make an appropriate award in favor of Iran." Paragraph 16 of the General Declaration.

c. Assets Controlled by Fatemeh Pahlavi and Her Codefendants

276. As noted, on 13 January 1981, Iran filed a civil lawsuit against Fatemeh Pahlavi, a sister of the former Shah, and fifty-nine other relatives and associates of the former Shah in the United States District Court for the Southern District of New York to recover Pahlavi assets allegedly belonging to Iran. Iran did not attempt to serve process on any of the sixty defendants.

On 16 December 1981, Iran voluntarily dismissed the case in the federal court. The following day, on 17 December 1981, Iran filed another civil lawsuit, naming the same defendants, in the New York trial court. See supra, paras. 53-54.

277. On 18 December 1981, Iran obtained an ex parte order from the trial court authorizing service of the complaint upon the defendants by publication and by certified mail. Three months later, in March 1982, Iran effected substituted service by publication. See supra, para. 55.

278. Six months later, on 29 September 1982, counsel for Iran submitted to OFAC papers establishing, in his view, proof of service on Fatemeh Pahlavi and her codefendants and requested that OFAC freeze, and require reporting about, their United States assets. See supra, para. 56. OFAC did not do so.

279. In accordance with its conclusions supra, at paras. 219-20 and 241, the Tribunal holds that the United States should have frozen, and required reporting about, assets in the United States within the control of Fatemeh Pahlavi and those of her codefendants who were "close relative[s] of the former Shah" within the meaning of Point IV (but excluding Farah Diba Pahlavi, Ashraf Pahlavi, and Shams Pahlavi), in accordance with Paragraphs 12 and 13, respectively, promptly after 29 September 1982, the date Iran had furnished the required proof to OFAC that Fatemeh Pahlavi and her codefendants had been served as defendants in New York litigation in apparent compliance with the applicable law of that forum. In this connection, it should be noted that Iran had obtained a court order authorizing substituted service by publication and had complied with the order. The United States therefore failed to fulfill its obligations under Point IV.

280. The Tribunal shall determine in a subsequent proceeding whether Iran has established that it has suffered a loss as a proximate result of that failure by the United States. If so,

the Tribunal "shall make an appropriate award in favor of Iran." Paragraph 16 of the General Declaration.

d. Assets Controlled by Shams Pahlavi

281. As noted, on 30 June 1981, Iran filed a civil lawsuit against Shams Pahlavi and other defendants in the Los Angeles Superior Court to recover Pahlavi assets allegedly belonging to Iran. On 8 December 1981, Iran obtained an ex parte order from the Superior Court authorizing service on Shams Pahlavi by publication.

282. On 22 April 1982, Shams Pahlavi filed a Motion to Quash Summons, challenging the validity of service. In her motion, Shams Pahlavi argued that the court's ex parte order authorizing service by publication was void because, inter alia, it was based on an "insufficient and patently defective affidavit on the merits." See supra, para. 61.

283. In late April and May 1982, Iran effected substituted service on Shams Pahlavi by publication. See supra, para. 62. On 7 June 1982, counsel for Iran submitted to OFAC papers establishing, in his view, proof of service on Shams Pahlavi and requested that OFAC freeze her United States assets. OFAC failed to issue the freeze order. On 7 July 1982, counsel for Iran reiterated that request. OFAC refused to freeze Shams Pahlavi's assets on the ground that "the validity of the service [was] contested and ha[d] not been established." See id.

284. On 24 May 1983, the court dismissed with prejudice Iran's complaint against Shams Pahlavi. On 7 June 1983, the court issued a judgment quashing the attempted service of process by publication and dismissing Iran's complaint with prejudice as to Shams Pahlavi. Iran appealed. On 1 October 1984, the California Court of Appeal reversed the trial court's dismissal "with prejudice" of Iran's complaint, but affirmed the lower

court's nullification of service of process on Shams Pahlavi by publication. See supra, paras. 63-64.

285. In 1990, Iran effected personal, in-hand service of process upon Shams Pahlavi. The Los Angeles Superior Court held that the personal service on her was valid; and in December 1990, the California Court of Appeal affirmed the trial court order. See supra, para. 65.

286. In April 1991, Iran notified OFAC that it had served Shams Pahlavi. On 7 June 1991, counsel for Iran informed OFAC by letter that the Court of Appeal had upheld service of the complaint on Shams Pahlavi and requested that OFAC freeze her United States assets. See supra, para. 66.

287. On 15 August 1991, OFAC amended 31 C.F.R. § 535.217 by placing the name of Shams Pahlavi in paragraph (b) of that Section, thereby freezing her United States assets and instituting the information-reporting procedure pursuant to Point IV of the General Declaration. OFAC subsequently transmitted the information to Iran. See supra, para. 67.

288. As also noted, on 30 July 1981, Iran and Bank Mellat filed a complaint against Shams Pahlavi in the Los Angeles Superior Court alleging breach of contract. See supra, para. 82. Iran and Bank Mellat obtained an ex parte order from the Superior Court permitting substituted service by publication. See supra, para. 83. Shams Pahlavi moved to quash the service by publication and moved to dismiss the action on grounds of forum non conveniens. See supra, para. 84. On 27 February 1984, the trial court denied Shams Pahlavi's motion to quash service but dismissed Iran's complaint on grounds of forum non conveniens. See supra, para. 86. The dismissal was upheld on appeal, and the litigation finally terminated on 6 October 1986. See supra, paras. 87-88.

289. The claim that Iran and Bank Mellat filed against Shams Pahlavi alleged a breach of contract. The question thus becomes whether such a claim represents "U.S. litigation brought by Iran to recover" Pahlavi assets "as belonging to Iran" — and, consequently, whether it falls within the ambit of Point IV. The Tribunal cannot resolve this question on the current record.

290. In accordance with its conclusions supra, at paras. 219-20 and 241, the Tribunal holds that the United States should have frozen, and required reporting about, assets in the United States within the control of Shams Pahlavi, in accordance with Paragraphs 12 and 13, respectively, promptly after 7 June 1982, the date Iran had furnished the required proof to OFAC that Shams Pahlavi had been served as a defendant in California litigation in apparent compliance with the applicable law of that forum. In this connection, it should be noted that Iran had obtained a court order authorizing substituted service by publication and had complied with the order. The United States, however, delayed until 15 August 1991 before ordering the freeze and instituting the reporting procedure. Accordingly, the Tribunal holds that the United States was impermissibly tardy in carrying out its Paragraphs 12 and 13 obligations and that, as a result, it failed to fulfill its obligations under Point IV. During any interim period when Shams Pahlavi was not a served defendant in any United States litigation brought by Iran to recover Pahlavi assets as belonging to Iran or when she was a served defendant in such litigation but Iran had not yet furnished the required proof to OFAC, Paragraphs 12 and 13 did not obligate the United States to keep her United States assets frozen or to require the reporting of assets.

291. The Tribunal shall determine in a subsequent proceeding whether Iran has established that it has suffered a loss as a proximate result of that failure by the United States. If so, the Tribunal "shall make an appropriate award in favor of Iran." Paragraph 16 of the General Declaration.

2. Paragraph 14

292. The Tribunal has held that, according to its plain text, Paragraph 14 only requires that the United States inform the appropriate United States courts that it is the United States Government's position that Iran's Pahlavi-assets claims should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to Pahlavi assets should be enforced by United States courts in accordance with United States law. See supra, paras. 243-58.

293. Thus, Paragraph 14 neither obligates the United States to preclude its courts from applying any legal doctrines or principles that could bar the consideration of Iran's Pahlavi-assets claims on the merits (including the forum non conveniens doctrine) nor requires United States courts to enforce any Iranian decrees or judgments. Indeed, Paragraph 14 does not require that the United States ensure in any way that its courts adopt any particular course of action. See supra, para. 245-58.

a. Sovereign Immunity Principles and the Act of State Doctrine

294. No defendant in Iran's Pahlavi-assets litigation ever raised, and no court ever considered, the defenses of sovereign immunity or act of state. Consequently, it never became necessary for the United States to inform any court that neither of those defenses should be applied to bar Iran's claims.

b. Enforcement of Iranian Decrees and Judgments

295. The enforcement of Iranian decrees or judgments was at issue in only two of the Pahlavi-assets cases that Iran brought in United States courts. The Tribunal discusses each case in turn.

- (1) Islamic Republic of Iran v. Shams Pahlavi, No. WEC 069489 (Cal. Super. Ct.)

296. As noted, on 30 June 1981, Iran filed a civil lawsuit against Shams Pahlavi, Mehrdad Pahlbod (her husband), and Ierspex Finance n.v., a Dutch Antilles corporation, in the Los Angeles Superior Court. The complaint alleged that defendants had conspired with the Shah to embezzle, convert, and otherwise divert to their personal use money belonging to the Government of Iran. On 1 August 1991, Iran filed an amended complaint abandoning all of its original causes of action and replacing them with a single cause of action: to enforce the 28 February 1979 Decree of Imam Ruhollah Khomeini "Concerning Confiscation of the Pahlavi Properties." See supra, paras. 59-69.

297. On 6 August 1991, in a letter to the United States Department of State, counsel for Iran requested that the United States file a Suggestion of Interest informing the Los Angeles Superior Court and the California Court of Appeal that the Algiers Declarations "obligate U.S. Courts to enforce Iranian decrees and judgments." See supra, para. 70.

298. On 27 September 1991, the United States filed a Suggestion of Interest in the Los Angeles Superior Court informing the court that, under Paragraph 14 of the General Declaration, the 28 February 1979 Decree of Imam Khomeini "may be enforced in U.S. court in accordance with the provisions of U.S. law." See supra, para. 71.

299. On 27 January 1992, Shams Pahlavi requested that Iran produce, inter alia, the original 1979 decree of the Imam and respond to a set of written interrogatories. Iran refused to comply with these discovery requests, arguing that they violated "the purpose and the intent of the [Algiers Declarations, pursuant to which] the courts of the United States are obligated to enforce the Decree of February 28, 1979 which is the basis of IRAN'S amended Complaint." Thus, on 4 May 1992, Shams Pahlavi

filed a motion for a court order compelling discovery. See supra, paras. 73-74.

300. On 7 May 1992, counsel for Iran wrote to the United States Departments of State and Justice, stating that Iran's "primary remaining objection to [Shams] Pahlavi's discovery requests is based on the Algerian Accords." Iran's attorney indicated that he would welcome any "input" by the United States regarding Iran's objections to Shams Pahlavi's discovery requests and the pending motion to compel discovery. The United States declined to file a second Suggestion of Interest. See supra, para. 75.

301. On 2 June 1992, the Superior Court granted Shams Pahlavi's motion to compel discovery. Iran refused to comply with the court's order and responded that it would "stand on its [prior] responses." On 20 August 1992, Shams Pahlavi filed a motion under California law to dismiss Iran's action for failure to comply with the court's order compelling discovery. At the dismissal hearing, Iran stated that it would "live or die" by its refusal to provide further responses. See supra, paras. 76-77.

302. On 17 September 1992, the Superior Court granted Shams Pahlavi's motion and dismissed Iran's complaint with prejudice. Iran's appeals of this dismissal were unsuccessful. See supra, paras. 78-80.

303. The Tribunal holds that, by timely filing a Suggestion of Interest informing the Los Angeles Superior Court that, under Paragraph 14 of the General Declaration, the 28 February 1979 Decree of Imam Khomeini "may be enforced in U.S. court in accordance with the provisions of U.S. law," the United States fully complied with its obligations under Paragraph 14. See supra, para. 254. That Paragraph did not require the United States also to file a suggestion of interest supporting Iran's position that Point IV exempted Iran from discovery in its Pahlavi-assets litigation. Nor did it require the California

courts to enforce the 28 February 1979 Decree of Imam Khomeini once the courts determined that such enforcement would not be in accordance with United States law. See supra, paras. 292-93.

304. Moreover, the Tribunal has held that the phrase "in accordance with United States law" at the end of Paragraph 14 covers both procedural and substantive federal and state law in force in the United States. See supra, para. 257. To exempt Iran from discovery in its Pahlavi-assets litigation would not conform to that law; rather, by granting Iran a more favorable position than that accorded to other foreign or domestic litigants seeking to enforce foreign decrees or judgments in United States courts, it would place Iran above United States law. There is no evidence, and it has not been alleged, that foreign nationals and foreign governments are entirely immune from discovery procedures in United States courts.

(2) Bank Melli Iran and Bank Mellat v. Shams Pahlavi, No. 92-CV-5479 (C.D. Cal.)

305. Between 1982 and 1991, Tehran courts rendered a series of default judgments against Shams Pahlavi, including a 7 October 1986 judgment for defaulting, inter alia, on the same 1973 loan that had been at issue in Iran and Bank Mellat's action against Shams Pahlavi in the Superior Court of the State of California, see supra, para. 89.

306. On 9 September 1992, Bank Melli Iran and Bank Mellat filed a "Complaint to Obtain Domestic Judgment" against Shams Pahlavi in the United States District Court for the Central District of California. The banks requested that the District Court enforce the Iranian default judgments pursuant to Paragraph 14 of the General Declaration or, alternatively, pursuant to the Uniform Foreign Money-Judgments Recognition Act (Cal. Code Civ. Proc. § 1713, et seq.). See supra, para. 90.

307. On 11 February 1993, Shams Pahlavi filed a motion to dismiss the banks' complaint, inter alia, on the grounds that the Iranian default judgments were rendered "under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law"; and that the banks' action was barred by the due-process requirement of the United States Constitution. See supra, para. 91.

308. On 28 April 1993, the District Court requested information from the United States Department of State about the Iranian court system. In response to the court's request, on 16 June 1993, the United States Department of Justice, on behalf of the United States, submitted certain information to the court. See supra, para. 92.

309. In January 1994, the District Court dismissed the banks' complaint with prejudice, finding that, at the times the default judgments were entered, Shams Pahlavi could not have obtained due process of law in the courts of Iran. The United States Court of Appeals for the Ninth Circuit affirmed, and the United States Supreme Court denied the banks' petition for a writ of certiorari. See supra, paras. 93-95.

310. As an initial matter, it should be noted that the claim that Bank Melli Iran and Bank Mellat brought against Shams Pahlavi in the District Court — like the claim that Iran and Bank Mellat brought against Shams Pahlavi in the Los Angeles Superior Court — was based upon claims for breach of contract following Shams Pahlavi's alleged defaults on promissory notes. The question again becomes whether such a claim represents "litigation of the kind described in Paragraph 12," Paragraph 14 — namely, "U.S. litigation brought by Iran to recover" Pahlavi assets "as belonging to Iran" — and, consequently, whether it falls within the ambit of Point IV. As held supra, in para. 289, the Tribunal cannot resolve this question on the current record.

311. Assuming arguendo that the claim was covered by Point IV, the Tribunal holds that the United States complied fully with its Point IV obligations with respect to Bank Melli Iran and Bank Mellat's enforcement action against Shams Pahlavi. First, the United States was under no obligation to file a suggestion of interest informing the District Court that the Iranian judgments in question "should be enforced" by the court "in accordance with United States law" because counsel representing Iran did not request the United States to file one. Second, Paragraph 14 did not require the District Court to enforce those judgments. See supra, para. 293.

312. Moreover, the Tribunal has held that the phrase "in accordance with United States law" at the end of Paragraph 14 covers both procedural and substantive federal and state law in force in the United States. See supra, para. 257. Clearly, that phrase includes protections under U.S. law, including the due-process protections for defendants guaranteed by the United States Constitution. The United States courts therefore acted "in accordance with United States law" when they considered the due-process issues raised by Shams Pahlavi. See supra, paras. 91-95.

VII. AWARD

313. In view of the foregoing,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- A. Pursuant to Point IV of the General Declaration, the United States is obligated to assist Iran in its Pahlavi-assets litigation by means of the actions specified in Paragraphs 12-15 of the General Declaration, and the United States is neither obligated to ensure that such litigation by Iran would be successful nor is it obligated to return or cause the return

of any Pahlavi assets in the United States to Iran unless and until Iran won a final judgment in a United States court calling for the transfer of any property or assets to Iran.

- B. With respect to Paragraph 12 of the General Declaration:
- a. The term "estate" as used in Paragraph 12 means a decedent's estate acting through a personal representative (either an executor named in the former Shah's will, if any, or a court-appointed administrator). Because no personal representative of the former Shah's estate was ever appointed, no "estate" within the meaning of Paragraph 12 was ever constituted, and therefore there never were any "property and assets in the United States within the control of the estate of the former Shah" as referred to in Paragraph 12. Consequently, the United States obligation to freeze, and prohibit any transfer of, such property and assets never arose.
 - b. With respect to property and assets within the control of any close relative of the former Shah, the requirement that such close relative be "served as a defendant" as used in Paragraph 12 is satisfied if service on the close relative reasonably appears to comply with the applicable law of the forum, which can include court rules and specific court orders, all of which tend to ensure that the method of service used is reasonably calculated to give the defendant actual notice of the lawsuit and to afford him an opportunity to present his defenses. Thus, a close relative of the former Shah should be considered as "served" within the meaning of Paragraph 12 once he has been

served in apparent accordance with the applicable law of the forum, regardless of any subsequent challenges on his part to the service.

- c. The requirement set forth in 31 C.F.R. § 535.217(a) issued by the United States Office of Foreign Assets Control ("OFAC") requiring that Iran furnish OFAC with proof that Iran has served a particular defendant is not inconsistent with the obligations of the United States under the Algiers Declarations, except in cases where the United States was aware, during the negotiation of those Declarations, that Iran had already served as a defendant a particular close relative of the former Shah.
 - d. The United States has an implied obligation to issue freeze orders promptly after the conclusion of the Algiers Declarations with respect to any close relative of the former Shah covered by Point IV whom the United States knew had previously been served as a defendant in United States litigation and, with respect to any other close relative covered by Point IV, promptly after Iran has furnished the required proof to OFAC that such close relative has been served as a defendant in United States litigation.
- C. With respect to Paragraph 13 of the General Declaration:
- a. The obligation of the United States to issue orders requiring reporting of information with respect to the property and assets in the United States within the control of the estate of the former Shah never arose.

- b. The United States has an implied obligation to issue orders requiring reporting of information with respect to property and assets in the United States within the control of a close relative of the former Shah covered by Point IV whom the United States knew had previously been served as a defendant in United States litigation promptly after the conclusion of the Algiers Declarations and, with respect to any other close relative covered by Point IV, promptly after Iran has furnished the required proof to OFAC that such close relative has been served as a defendant. There is also an implied obligation of the United States promptly to transmit to Iran the information reported to OFAC.
- D. With respect to Paragraph 14 of the General Declaration:
- a. Iran has not been denied access to United States courts to pursue its Pahlavi-assets claims, and the United States did not guarantee Iran access to United States courts for the consideration of Iran's Pahlavi-assets claims on the merits.
 - b. The United States is obligated to make known to all appropriate United States courts in which Pahlavi-assets litigation is pending that it is the United States Government's position that Iranian decrees and judgments relating to Pahlavi assets should be enforced by United States courts in accordance with United States law. The phrase "United States law" covers both procedural and substantive federal and state law in force in the United States. The United States did not guarantee that United States courts would enforce all Iranian decrees and judgments

relating to the nationalization and expropriation of Pahlavi assets.

E. With respect to specific United States litigation:

- a. Iran's claims with respect to the former Shah are dismissed.
- b. The United States should have frozen, and required reporting about, assets in the United States within the control of Farah Diba Pahlavi, in accordance with Paragraphs 12 and 13, respectively, promptly after 19 January 1981. By not doing so, the United States failed to fulfill its obligations under Point IV.
- c. The United States should have frozen, and required reporting about, assets in the United States within the control of Ashraf Pahlavi, in accordance with Paragraphs 12 and 13, respectively, promptly after 19 January 1981. The Tribunal holds that, by delaying until 13 May 1981 before doing so, the United States was impermissibly tardy in carrying out its Paragraphs 12 and 13 obligations and that, as a result, it failed to fulfill its obligations under Point IV.
- d. The United States should have frozen, and required reporting about, assets in the United States within the control of Fatemeh Pahlavi and those of her codefendants who were "close relative[s] of the former Shah" within the meaning of Point IV (but excluding Farah Diba Pahlavi, Ashraf Pahlavi, and Shams Pahlavi), in accordance with Paragraphs 12 and 13, respectively, promptly after 29 September 1982, the date Iran had furnished the required proof to OFAC that Fatemeh Pahlavi and her codefendants had been

served as defendants in New York litigation in apparent compliance with the applicable law of that forum. The United States therefore failed to fulfill its obligations under Point IV.

- e. The United States should have frozen, and required reporting about, assets in the United States within the control of Shams Pahlavi, in accordance with Paragraphs 12 and 13, respectively, promptly after 7 June 1982, the date Iran had furnished the required proof to OFAC that Shams Pahlavi had been served as a defendant in California litigation in apparent compliance with the applicable law of that forum. The United States, however, delayed until 15 August 1991 before ordering the freeze and instituting the reporting procedure. Accordingly, the Tribunal holds that the United States was impermissibly tardy in carrying out its Paragraphs 12 and 13 obligations and that, as a result, it failed to fulfill its obligations under Point IV. During any interim period when Shams Pahlavi was not a served defendant in any United States litigation brought by Iran to recover Pahlavi assets as belonging to Iran or when she was a served defendant in such litigation but Iran had not yet furnished the required proof to OFAC, Paragraphs 12 and 13 did not obligate the United States to keep her United States assets frozen or to require the reporting of assets.

- F. The Tribunal will describe and schedule by separate Order further proceedings and submissions in this Case.

Dated, The Hague
07 April 2000

Krzysztof Skubiszewski

Krzysztof Skubiszewski
President

Bengt Broms

Bengt Broms

Concurring and
Dissenting Opinion

Gaetano Arangio-Ruiz

Gaetano Arangio-Ruiz

In the Name of God

Assadollah Noori

Assadollah Noori
Dissenting as to the
overwhelming bulk of the award,
particularly the dispositif,
paragraph 313: B.a., C.a.,
C.b., D.a., D.d., E.a., and
E.e. (in part).

George H. Aldrich

George H. Aldrich

In the Name of God

Koorosh H. Ameli

Koorosh H. Ameli
Concurring, other than
dissenting as to the
dispositif, paras. 313 B(a),
C(a) & (b), D(a) & (b), and
E(a). Separate Opinion.

In the Name of God

Charles T. Duncan

Charles T. Duncan

Mohsen Aghahosseini

Mohsen Aghahosseini
Dissenting as to parts
B.a., C.a., C.b., D.a.,
D.b., E.a., E.e. (in part)
of the dispositif (paragraph
313)

Richard M. Mosk

Richard M. Mosk
Separate Opinion