

CASE NO. A15 (I:C)

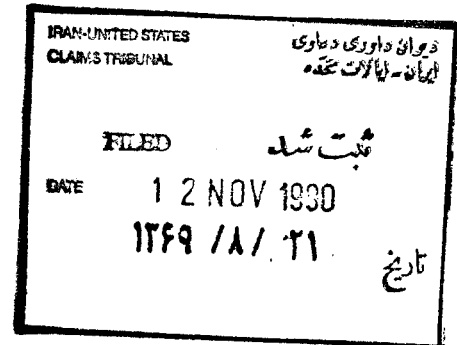
FULL TRIBUNAL

AWARD NO. ITL78-A15(1:C)-FT

THE ISLAMIC REPUBLIC OF IRAN,
Claimant,

and

THE UNITED STATES OF AMERICA,
Respondent.



INTERLOCUTORY AWARD

Appearances

For the Claimant :

- Mr. Ali Heyrani Nobari,
Agent of the Government of the
Islamic Republic of Iran,
- Mr. Mohsen Mohebi,
Legal Adviser to the Agent,
- Mr. Seifollah Mohammadi,
Legal Adviser to the Agent,
- Mr. Ali Ghassemi,
Legal Assistant to the Agent,
- Dr. Fereydoon Ahrabi,
Representative of Bank Markazi
Jomhuri Islami Iran,
- Mr. Aboulghassem Erfan,
Representative of Bank Markazi
Jomhuri Islami Iran,
- Mr. Daniel P. Levitt
Attorney for the Government of
the Islamic Republic of Iran.

For the Respondent :

- Ms. Lucy F. Reed,
Agent-Designate of the United
States of America,
- Mr. John A. Knox,
Attorney-Adviser, U.S. Depart-
ment of State,
- Mr. Mark De La Perouse,
Observer, Bank of America.

Also Present : Mr. Timothy Ramish,
Agent of the United States of
America,
Mr. Michael F. Raboin,
Deputy Agent of the United
States of America.

I. GENERAL BACKGROUND AND ISSUES

1. The dispute between the Parties in this part I:C of Case No. A15 is whether the United States is in breach of its obligations under the General Declaration¹ by not having rescinded regulations that prevent the transfer of proceeds of certain standby letters of credit, letters of guarantee, and other similar instruments ("standby letters of credit") to Iranian banks, by not having brought about the transfer of the proceeds of certain standby letters of credit, and by not having terminated and prohibited standby letter of credit litigation, including injunctive relief proceedings, in United States courts.

2. The standby letters of credit in issue were parts of broader transactions, each of which involved a contract between a United States contractor ("United States account party"), on the one hand, and an Iranian entity, on the other hand, for goods or services. These underlying contracts usually provided that the United States account party would cause one or more bank guarantees to be issued by an Iranian bank ("Iranian guarantor bank") in favor of the Iranian party to the contract ("Iranian party"). These bank guarantees were of different types, but generally their function was either to secure advance payments made by the Iranian party under the contract or to secure payment to the Iranian party of damages in the event of a default by the United States account party.

3. Typically, the contracts provided that the Iranian guarantor bank would, on demand, pay the Iranian party up to the amount of the guarantee. The guarantee usually specified certain conditions for making such a demand. Although

¹ Declaration of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981.

none of these guarantees has been submitted to the Tribunal in this Case, the Parties agree that, while in some instances these guarantees would be paid upon a simple demand, these instruments generally required a certification by the Iranian party that the United States account party had defaulted in its contractual obligations.

4. The United States account party was also obligated to secure the guarantee of the Iranian bank by a standby letter of credit to be opened by a United States bank in favor of the Iranian guarantor bank. Under this standby letter of credit, the United States bank normally undertook to pay the Iranian guarantor bank upon a certification by the Iranian bank that the latter bank had been required to pay under the bank guarantee. After making such a payment, the Iranian guarantor bank would be entitled to reimbursement by drawing on the standby letter of credit issued by the United States bank. The United States bank would ultimately look to the United States account party for reimbursement.

5. In early November 1979, several hundred of these standby letters of credit were outstanding. On 14 November 1979, in response to the seizure of the United States Embassy in Tehran, the President of the United States issued Executive Order No. 12170, which blocked the transfer of "all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States."

6. 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). According to the first version of the

Regulations issued in November 1979, a United States bank that received a call for payment by an Iranian bank based on a standby letter of credit could honor the call by depositing the resulting proceeds in a blocked account in a domestic bank in the name of the Iranian beneficiary if and when the issuing bank determined that, in its view, the call was timely, conforming and proper. By January 1980 the United States had amended these Regulations by the addition of Section 535.568, to require the issuing bank to notify the United States account party promptly when a demand for payment of a standby letter of credit was made. The account party was then allowed to apply "within five business days for a specific license authorizing [it] to establish a blocked account on its books in the name of the Iranian entity in the amount payable under the credit, in lieu of payment by the issuing or conforming bank into a blocked account and reimbursement therefor by the account party."² Under para. (a) of the same Section, United States banks were prohibited from effecting any payment into a blocked bank account under a standby letter of credit if either (1) a specific license had been issued pursuant to the above procedure, or (2) eight business days had not expired after notice to the account party.

7. Between the issuance of Executive Order No. 12170 on 14 November 1979 and 19 January 1981, a large number of calls were made by Iranian guarantor banks on standby letters of credit issued by United States banks. In some instances, the United States bank refused to honor the call on the ground that the attempted call did not on its face fulfill the requirements set forth in the standby letter of credit. In many other cases, the United States account

² All United States Treasury Regulations cited in this Award may be found in 3 A. Lowenfeld, Trade Controls for Political Ends (2d ed. 1983), DS-735, et seq.).

party, having been notified of the call by the United States bank, maintained that the attempted call was fraudulent or otherwise legally unjustified. In most such cases, the United States account party availed itself of the procedure established by Section 535.568, obtained a Treasury Department license, and established a blocked account on its own books, thus precluding the United States bank from paying funds into a blocked bank account. Some United States account parties obtained temporary restraining orders or preliminary injunctions in United States courts against payment by the United States bank of standby letters of credit. In other instances, the United States account party took no action upon notification of the call, and the United States bank paid the amount demanded under the standby letter of credit into a blocked bank account in the name of the Iranian guarantor bank.

8. On 19 January 1981, simultaneously with the adherence, by the two Governments, to the Algiers Declarations³, President Carter signed and issued Executive Orders Nos. 12279, 12280 and 12281, directing the transfer of Iranian Government assets. Executive Order No. 12279 dealt with Iranian assets held by domestic United States banks and directed, inter alia, "[a]ny branch or office of a banking institution subject to the jurisdiction of the United States" to transfer to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury, all "funds or securities legally or beneficially owned" by Iran and all "deposits standing to the credit of or beneficially owned" by Iran. Furthermore,

³ 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 and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"), both dated 19 January 1981.

"[a]ll licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment or otherwise," including Section 535.504 licenses, with respect to the properties described in this Executive Order were "revoked and withdrawn."

9. On 24 February 1981, subsequent to the signing of the Algiers Declarations on 19 January 1981, President Reagan issued Executive Order No. 12294, which directs the suspension of proceedings before United States courts concerning claims falling under the jurisdiction of this Tribunal. Executive Order No. 12294 as well as the related Treasury Regulations of the same date direct, however, that this suspension does not "apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument." (31 C.F.R. § 535.222 (g).) In addition, Section 535.438 of the Regulations states that nothing contained in the Regulations affects the licensing procedure, introduced by Section 535.568 prior to January 1980, that permits United States account parties to prevent payment on a standby letter of credit that has been called by establishing a blocked account on their books. Section 535.438 further states that the provisions of the Regulations requiring transfer of Iranian funds, securities and deposits do not authorize or compel payment of a standby letter of credit as to which a blocked account has been established on the books of a United States account party, or as to which payment is prohibited under a court injunction obtained by an account party.

10. Iran contends that the Executive Order and the Treasury Regulations of 24 February 1981, insofar as they relate to standby letters of credit, violate the United States' obligations under General Principle A of the General Declaration to restore the financial position of Iran, in so

far as possible, to that which existed prior to November 14, 1979 and to ensure the mobility and free transfer of all Iranian assets within its jurisdiction. Iran's position is that, following the signing of the Algiers Declarations, the United States should have rescinded the Regulations that affected the payments on standby letters of credit and that the United States banks should have transferred the proceeds of all standby letters of credit that had been called. Iran further alleges that the Regulations violate the United States' obligations under General Principle B to terminate and prohibit litigation in United States courts.

11. The United States' position with respect to the Regulations is that they were a reasonable and appropriate administrative measure for the purpose of facilitating resolution of disputes between United States account parties and Iran and its controlled entities as provided for in the Claims Settlement Declaration. According to the United States, Iranian banks made "wholesale claims" on large numbers of standby letters of credit without any regard for their terms or for the status of the performance on the underlying contracts. In these circumstances, if the Regulations pertaining to standby letters of credit had been rescinded, the United States account parties involved would have initiated legal actions in the United States courts to block payment on what they regarded as fraudulent calls on these letters of credit. The United States thus asserts that the Regulations forestalled widespread litigation by preserving the status quo with respect to standby letters of credit until such time as the underlying contractual disputes could be resolved - either by private settlement, by the resolution of claims before this Tribunal, or (in situations where this Tribunal lacks jurisdiction) by adjudication in national courts.

12. With respect to Iran's contention that the United States violated its duty to transfer assets, the United

States' position is that only those standby letters of credit proceeds that had been credited on the books of United States banks in favor of Iranian guarantor banks constituted Iranian assets that, pursuant to the General Declaration, had to be transferred to Iran. Where a United States account party had obtained a licence and had established a blocked account on its own books, or where payment of a standby letter of credit was enjoined by a preliminary injunction, the interest of the Iranian guarantor bank in the standby letter of credit was only a contingent one, the United States asserts, and the proceeds of such letters of credit did not have to be transferred to Iran until and unless the underlying disputes or claims were resolved in favor of the Iranian bank or beneficiary. Finally, the United States rejects Iran's contention that General Principle B has been violated. In view of its decision, infra, para. 38, with respect to that issue, the Tribunal need not summarize the arguments concerning General Principle B in this Interlocutory Award.

II. THE PROCEEDINGS

13. A first Hearing in this part I:C of Case No. A15 was held on 4 February 1987. The members participating were Messrs. Böckstiegel (President), Briner, Virally, Mostafavi, Bahrami, Ansari, Holtzmann, Aldrich and Salans (replacing Mr. Brower). In its Order of 18 May 1988, the Tribunal decided, inter alia, that Mr. Mostafavi and Mr. Bahrami were replaced by Mr. Noori and Mr. Khalilian, respectively. By Order of 9 March 1989 the Tribunal stated, inter alia, that Mr. Böckstiegel continued to act as an arbitrator and that Mr. Arangio-Ruiz replaced Mr. Virally.

14. By Order of 11 March 1987 the Tribunal, finding that it required additional information prior to making any decision in this Case, scheduled certain Post-Hearing submissions by the Parties. On 1 October 1987 Iran filed

its Supplemental Memorial. By Order of 18 May 1988 the Tribunal requested Iran to file complete information regarding the standby letters of credit identified in its Supplemental Memorial. Iran responded to that Order with a further submission of 12 September 1988. Iran amended that submission on 27 January 1989. On 12 May 1989 the United States filed its Post-Hearing Memorial together with Exhibits. Pursuant to a request by the United States, a second Hearing was held in this Case on 6 March 1990. The members participating were Messrs. Briner (President), Böckstiegel, Arangio-Ruiz, Noori, Khalilian, Ansari, Holtzmann, Aldrich and Salans.

15. With the permission of the Tribunal, the United States filed at the Hearing on 6 March 1990 three lists and a summary, updating its information with regard to the standby letters of credit at issue in this Case. As permitted during that Hearing, Iran filed on 15 March 1990 a Post-Hearing Submission with comments on the above United States lists and a list of standby letters of credit at issue. On 26 March 1990, the United States filed, as permitted during that Hearing, a Response to Iran's Post-Hearing Submission.

III. JURISDICTION

16. There is no dispute that the Tribunal has jurisdiction over this part of Case No. A15. The Parties disagree on the interpretation of both General Principles A and B of the General Declaration as far as they relate to the issues in Part I:C of Case No. A15, and over the obligations they impose on the United States. The Parties also disagree on the interpretation of Paragraphs 6, 8 and 9 of the General Declaration in this respect. Thus, there clearly is a dispute between the Parties as to the interpretation and performance of provisions of the General Declaration which,

pursuant to Paragraph 17 of that Declaration, falls within the Tribunal's jurisdiction.

IV. MERITS

1. Relief sought

17. Iran asserts that, with regard to standby letters of credit issued in favor of Iranian guarantor banks, the United States has breached its obligations under General Principles A and B of the General Declaration. While Iran initially claimed the face value of all outstanding standby letters of credit, it now seeks the following relief:

- (i) An order declaring that the United States has violated its obligations under General Principles A and B of the General Declaration.
- (ii) An order directing the United States to cancel all Orders and Regulations that permit United States account parties to maintain blocked accounts on their own books other than those related to claims pending before or resolved by the Tribunal or by settlement between the Parties (see paras. 18 and 32, infra).
- (iii) An order directing the United States to vacate all preliminary injunctions in United States courts and prohibiting further litigation concerning standby letters of credit issued before 14 November 1979.
- (iv) An order directing the United States to cause prompt payment to the Iranian guarantor banks of all standby letters of credit that have been called but have not been paid or resolved by settlements and are not at issue in any case filed with the Tribunal by the respective United States account party.

- (v) An order directing the United States to permit a 30-day grace period within which Iranian parties may make a demand to revive any standby letters of credit that expired between 14 November 1979 and 19 January 1981.
- (vi) Damages for loss of interest, from the date of call until the date of payment or cancellation, on unpaid standby letters of credit that were neither resolved by settlement nor at issue in any case filed with the Tribunal.
- (vii) Legal costs including costs of this proceeding and of United States court litigations since 19 January 1981.

18. The United States and Iran agree that the number of standby letters of credit that remain at issue has declined considerably from the time when Iran initiated this Case. The Parties disagree, however, as to precisely how many standby letters of credit are still at issue. Iran seeks various forms of relief with respect to at least 107 (and possibly as many as 131) standby letters of credit. These are letters of credit that have not been rendered moot by an award of the Tribunal on the underlying transaction or by a settlement between the parties concerning such transaction. The 107 standby letters of credit are those as to which Iran has furnished background information⁴; they have an aggregate face amount of \$108,893,632. Iran groups these letters of credit in the following categories: those letters of credit as to which (i) according to Iran, the United States does not question that the call was timely and conforming; (ii) the United States alleges that the call was late or non-conforming; (iii) the standby letter of credit is at issue in a pending Tribunal case; (iv) no call was made between 14 November 1979 and 19 January 1981. In categories (i) and (ii) Iran has included standby letters of credit that the United States maintains are presently not in

⁴ The remaining 24 letters are discussed in para. 20, infra.

blocked accounts on the books of United States account parties, as well as letters of credit that the United States agrees are in such accounts. With regard to the standby letters of credit in category (iii), Iran seeks no immediate relief but reserves the right to seek such relief in the future, in the event that claims now before the Tribunal relating to these letters of credit are subsequently dismissed for lack of jurisdiction or withdrawn.

19. Finally, as to the letters of credit in category (iv), Iran contends that such letters were not called prior to 19 January 1981 because the Iranian banks, recognizing that the United States Treasury Regulations barred payment on standby letters of credit or that, in certain instances, a court injunction specifically prevented such payment, concluded that it would be futile to call the letters of credit and thus did not do so. Iran therefore requests a 30-day grace period during which Iranian banks may have a new opportunity to call such letters of credit. The United States opposes such a new opportunity, noting that Iranian banks called hundreds of other standby letters of credit subsequent to 14 November 1979, and asserts that standby letters of credit that were not called cannot be at issue in this Case. The Parties give the following information about the letters of credit that have not been called. Iran lists 10 such standby letters of credit, all issued in favor of Bank Markazi, with an aggregate face value of \$16,518,536. Iran states that it has no information as to whether any of these letters of credit were or remain in blocked accounts on the books of United States account parties. The United States submits that none of these 10 standby letters of credit are in blocked accounts on the books of United States account parties, or enjoined by preliminary injunctions from United States courts.

20. In addition to Iran's list of 107 standby letters of credit, the Tribunal has been apprised of the existence

of an additional 24 standby letters of credit about which Iran itself has not given any information. These letters of credit were for the first time identified as being subject to blocked accounts on United States account parties' books in the Memorial filed by the United States on 12 May 1989. Because Iran has not provided the required particulars as to these standby letters of credit, the United States believes that they are not at issue.

21. According to the United States, only 5 standby letters of credit with an aggregate face value of \$498,739 remain at issue in this Case. The United States arrives at this number by noting that only 80 of the standby letters of credit listed by Iran are the subject of blocked accounts on United States account parties' books or of preliminary injunctions. The United States deducts from those 80 letters on Iran's list the following letters, which it contends are not at issue: standby letters of credit that (i) have been at issue in cases decided by the Tribunal and in settlements between the parties; (ii) are at issue in cases still pending before the Tribunal; (iii) were not called before 19 January 1981; (iv) form part of a transaction with a forum selection clause that excludes claims on that transaction from the jurisdiction of this Tribunal. With regard to one standby letter of credit, the United States stated that one account party declared its readiness to pay Iran the proceeds of such letter of credit.

2. General Principle A

22. As stated above, Iran contends that the failure of the United States to remove the licensing procedure established by Section 535.568 of the Iranian Assets Control Regulations and to transfer the proceeds of all standby letters of credit that have been called constitutes a breach

of the United States' obligation under General Principle A of the General Declaration. General Principle A describes the terms under which the United States undertook to restore Iran's financial position as follows:

"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. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9."

23. A considerable part of the Parties' argument is devoted to the question of what the obligations of the United States under General Principle A were and are with regard to the various categories of standby letters of credit described above. Iran contends that all standby letters of credit existing on 14 November 1979 in favor of its entities and that had been called by those entities were assets the transfer of which was required by General Principle A. According to Iran, absent the Iranian Assets Control Regulations, any questions of nonconformity would have been cleared between the United States and the Iranian banks and would not have changed the character of these standby letters of credit as assets. Also, given the independence of a standby letter of credit from the underlying transaction, Iran asserts that no allegation of fraud on the part of a United States account party would have deprived a standby letter of credit of its character as an asset. Iran maintains that, considering that no calls could be honored after the imposition of the licensing procedure, the standby letters of credit, the call of which the Iranian guarantor banks thereafter found to be futile, must also be regarded as assets.

24. The United States agrees that it was obligated to transfer Iranian "assets" to Iran, but it maintains that Iran's standby letters of credit only became "assets" when they were honored by United States banks between 14 November 1979 and 19 January 1981 and their proceeds were deposited in blocked accounts in domestic banks in the names of Iranian guarantor banks. The United States contends that all such deposits were transferred to Iran on 18 August 1981 along with all other Iranian deposits in domestic branches of United States banks. Iran does not dispute that such deposits were transferred, but does not agree with the United States' differentiation between blocked accounts established by United States banks and substitute blocked accounts established by United States account parties. Iran further contends that the United States should, at the very least, have ordered the proceeds of the latter accounts transferred to Iran.

25. The United States contends that Iran's rights in all other standby letters of credit, whether they are in blocked accounts on the books of United States account parties, or enjoined by preliminary injunctions, are merely contingent rights, not assets, the transfer of which was not required in 1981 and is still not required by the General Declaration until such time as Iran's rights to them are resolved. The United States argues that maintaining the licensing procedure under Section 535.568 and the right of account parties to seek preliminary injunctions was necessary to preserve the status quo as it existed on 14 November 1979, until the Tribunal or any other competent forum could decide (or the Parties could settle) the disputes surrounding these standby letters of credit.

26. The Tribunal has in an earlier decision in this Case No. A15 examined the legal effect of the General Declaration. In Islamic Republic of Iran and United States of America, Interlocutory Award No. ITL 63-A15(I:G)-FT,

para. 17 (20 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 40, 46, the Tribunal determined that the General Principles are not simply statements of purpose but form the legal basis of the parties' undertakings reflected in the General Declaration, and that it "would be inconsistent with the ordinary meaning to be given to the terms of this provision, as prescribed by Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties, as well as with the principle of effectiveness (ut res magis valeat quam pereat)" to hold that these Principles are deprived of any effect. Specifically with regard to General Principle A, the Tribunal held that this Principle contained a broad commitment of the United States to restore the financial position of Iran, in so far as possible, to that which existed prior to 14 November 1979, and that nothing in the second sentence of that Principle can "be construed as limiting the general commitment to restore the financial position of Iran to the more narrow obligation of ensuring the mobility of the Iranian assets." Id., at para. 20, reprinted in 12 Iran-U.S. C.T.R. at 48.

27. With regard to standby letters of credit that existed in favor of Iranian entities, Iran's financial position prior to 14 November 1979 was as follows. If an Iranian guarantor bank called such a letter of credit, the United States bank would pay the amount called if it found the call to be timely and conforming. If the United States bank refused payment because of alleged untimeliness or nonconformity, the Iranian guarantor bank could attempt to remedy this deficiency. In addition, a United States account party that contended that a call was clearly legally unjustified could seek a court injunction to prevent payment of such a standby letter of credit. There existed no provision for United States account parties to establish substitute blocked accounts on their own books.

28. It is clear that this "financial position" with respect to standby letters of credit was not restored after the Algiers Declarations entered into effect. The Regulations issued by the United States Department of the Treasury on 24 February 1981 maintained the licensing procedure whereby United States account parties could establish blocked accounts on their own books. As has already been noted, once such accounts were established United States banks were prohibited from paying on the corresponding standby letters of credit and United States account parties did not have to seek court injunctions, which they might otherwise have obtained. The question remains whether these Treasury Regulations violated General Principle A by preserving a "financial position" for Iran that differed from Iran's position prior to November 1979. To resolve that question, the Tribunal must determine precisely what the United States' duties under General Principle A were. Pursuant to the general rule of treaty interpretation as confirmed in Article 31 (1) of the Vienna Convention on the Law of Treaties, General Principle A must be interpreted in accordance with its ordinary meaning in its context and in light of the object and purpose of the Algiers Declarations.

29. Article I of the Claims Settlement Declaration required the two Governments to promote the settlement of claims covered by the Declaration by the parties directly concerned and stated that claims not settled within a maximum period of nine months shall be submitted to the Tribunal. Article III, paragraph 4, of the Declaration established a one-year deadline for the filing of claims with the Tribunal, that is, 19 January 1982. The United States points out that, for the first year after the conclusion of the Algiers Accords, no one could know which claims would be settled by the parties concerned or which would ultimately be filed with the Tribunal. In addition, Article

II of the Claims Settlement Declaration established various requirements for claims to be within the jurisdiction of the Tribunal; as a result, no one could be certain that a claim filed with the Tribunal would ultimately be decided on the merits by the Tribunal. Moreover, it was apparent that any party seeking injunctive relief to preserve the status quo pending resolution of a claim could not seek it from the Tribunal until after the claim was filed with the Tribunal and would therefore be forced to seek relief from national courts in the interim.

30. In these circumstances, the United States asserts that its retention of the Regulations that licensed blocked accounts was - at least until 19 January 1982 - a reasonable measure, consistent with the United States' obligations under General Principle A. Had the Regulations been removed immediately, Iran likely would have been subjected to numerous law suits in United States courts, as United States account parties would have sought preliminary injunctions against what they regarded as wrongful calls on their letters of credit. In the United States' view, sudden, widespread litigation of that sort in United States courts in 1981, soon after the conclusion of the Algiers Declarations, by parties the vast majority of whom would eventually be able to submit their claims to the Tribunal would have been inconsistent with a basic purpose of the Declarations - to terminate national litigation and to bring about the settlement of such claims by the Tribunal, and it would have been a remarkably inefficient way to preserve the status quo pending such settlement.

31. The Tribunal notes that for a certain period after 19 January 1981, the United States' retention of the Treasury Regulations might well have been consistent with its obligations under General Principle A. General Principle A enjoins the United States to restore Iran's financial position "in so far as possible" and "within the framework of and pursuant to" other provisions of the General

Declaration. One of those other provisions requires the United States to "bring about the settlement and termination" of claims against Iran "through binding arbitration" at this Tribunal. The Tribunal has already held that "the undertaking [that General Principal A] contains is made only with very definite qualifications." Islamic Republic of Iran and United States of America, Interlocutory Award No. ITL 63-A15(I:G)-FT, para. 19 (20 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 40, 47. The Tribunal has also recognized that "the restoration of the financial position of Iran is a complex process" that "compris[es] several successive steps" and that "General Principle A does not imply that all Iranian funds within the United States . . . were to be returned to Iran immediately" after the Algiers Accords were concluded. Id. at paras. 21 and 22, reprinted in 12 Iran-U.S. C.T.R. at 48. However, the Tribunal need not now determine this issue or the precise date when such a period possibly ended. Since a decision of this issue is not relevant for the present Interlocutory Award, but would be relevant only for an eventual assessment of damages, the Tribunal leaves this issue to be determined, if necessary, in further proceedings.

32. Also, the Tribunal need not decide whether the United States' continued licensing of blocked accounts violated General Principle A as to those letters of credit that (i) are or were at issue in any claim brought before the Tribunal for so long as such claim is or was pending before the Tribunal, (ii) are or were at issue in any claim which the Tribunal resolves, or has resolved, on the merits, or (iii) were settled between the Parties. Iran no longer pursues any claims with regard to these letters of credit, and consequently this issue has become moot.

33. There remains one other question involving the United States' compliance with General Principle A. Iran alleges that a duty of the United States to restore its financial position includes a duty of the United States to

permit a 30-day grace period during which Iranian banks may make calls on letters of credit they did not call prior to 19 January 1981 and which expired during that period. Iran argues that its banks failed to make timely calls on these letters because the Treasury Regulations barred United States banks from honoring such calls and it was therefore futile to make them.

34. The Tribunal notes that Iran presented no evidence to show that any of the banks that were authorized to call a letter of credit prior to 1981 was dissuaded from doing so by the Treasury Regulations. Indeed, Iran's own evidence suggests otherwise. In its most recent pleadings, Iran states that there are only 10 standby letters of credit as to which calls could have been -- but were not -- made prior to 19 January 1981. Yet, Iran also indicates that Iranian banks made calls on scores of other letters of credit in this same period. Thus, Iran has not substantiated its request for a new opportunity to call letters of credit that have expired. In this connection, the Tribunal notes that it has consistently dismissed, as not outstanding on 19 January 1981, claims for balances held in Iranian bank accounts if the claimants did not make appropriate efforts to demand payment of those balances prior to that date. In view of this finding the Tribunal need not decide the question of whether it would have the power to order United States banks to "revive" letters of credit that have long since expired.

35. The Tribunal therefore finds that the United States has not fulfilled its obligations under General Principle A to the extent that it has continued to permit blocked accounts on those standby letters of credit with respect to which the issue is not moot (see paras. 18 and 32, supra). This finding, however, confers no authority on the Tribunal to prescribe by what specific means such compliance is to be achieved. In an earlier case, where a State Party's obligation under General Principle B to provide for enforcement of Tribunal awards within its

jurisdiction was at issue, the Tribunal stated that it "has no authority under the Algiers Declaration to prescribe the means by which each of the States provides for such enforcement". Islamic Republic of Iran and United States of America, Decision No. DEC 62-A21-FT, para. 15 (4 May 1987), reprinted in 14 Iran-U.S. C.T.R. 324, 331. Likewise, in this Case the Tribunal cannot direct the United States how it should comply with its obligations under General Principle A as regards Iranian standby letters of credit subject to the Treasury Regulations licensing procedure.

36. Where it finds that one of the State Parties has not fulfilled its obligations under the General Declaration, the Tribunal has, according to Paragraph 17 of the General Declaration, authority to award the other State Party damages to compensate for a loss resulting from such a breach. At the present stage of the proceedings, the Tribunal does not deem it feasible to address the complex and detailed questions of such possible loss in connection with individual standby letters of credit. Rather, it seems to the Tribunal preferable that the Parties enter into negotiation, and negotiate in good faith toward agreement on (1) the identity of those blocked accounts currently in force that are not related to claims pending before or resolved by this Tribunal and (2) the consequences of the Tribunal's finding that, by maintaining these blocked accounts, the United States has not fulfilled its obligations under General Principle A. Two points should be understood as to the scope of potential damages. First, blocked accounts that have been removed by reason of a settlement by the parties to the underlying dispute cannot give rise to damages in this Case. Even if such blocked accounts did not relate to any claim before this Tribunal, the subsequent settlement by the parties signifies a final accounting as to those letters of credit and precludes any further recovery of damages. Second, if claims involving standby letters of credit that are presently pending before the Tribunal are subsequently dismissed for lack of jurisdiction or withdrawn, General Principle A would require the

United States to remove the license for any blocked accounts related thereto. Since the Tribunal retains jurisdiction in this Case, it can consider any claim for further damages if and when future circumstances warrant it.

37. If within a reasonable time after the issuance of this Award, the Parties are unable to arrive at an agreement as to the consequences of the Tribunal's findings in this Award, they may apply to the Tribunal, individually or jointly, in order to resolve the remaining difficulties.

3. General Principle B

38. Iran's request for further relief by which it seeks to have preliminary injunctions vacated and to prohibit further litigation in United States courts concerning Iranian standby letters of credit, is based on the United States' alleged violation of its obligations under General Principle B of the General Declaration. General Principle B declares that "[i]t is the purpose of both parties . . . to terminate all litigation as between the government of each party and nationals of the other" In view of the fact that the United States' compliance with General Principle B is at issue in Part IV:C of this Case No. A15 and that it is being briefed by the Parties in a comprehensive way in the context of Part IV as a whole and that a Hearing on Part IV is due to be scheduled in the near future, the Tribunal does not, for the time being, consider and decide this issue here. Rather, the Tribunal would welcome it if the Parties would include in their negotiation disputes in connection with preliminary injunctions obtained by United States account parties against payment of Iranian standby letters of credit. Should the Parties in the course of their negotiation reach an agreement on these issues, Part IV:C could then be excluded from the rest of Case No. A15 (IV). Should the Parties be unable to arrive at such an agreement, these issues can then be taken up in the context of the Hearing to be scheduled on Part IV of Case No. A15.

V. AWARD


39. In view of the foregoing,

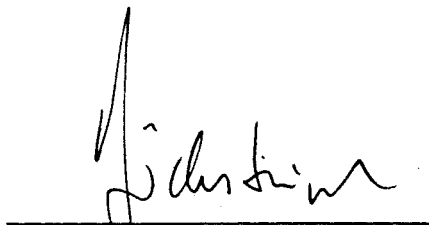
THE TRIBUNAL DETERMINES AS FOLLOWS:

- (a) The United States has not fulfilled its obligation under General Principle A of the General Declaration to restore the financial position of Iran, in so far as possible, to that which existed prior to 14 November 1979, by maintaining Treasury Regulations that permit United States account parties to establish blocked accounts on their books in respect of standby letters of credit in favor of Iranian banks other than those referred to in subparagraph (b) infra.
- (b) The issue of whether the United States has not fulfilled its obligation under General Principle A of the General Declaration to restore the financial position of Iran, in so far as possible, to that which existed prior to 14 November 1979, by maintaining Treasury Regulations that permit United States account parties to establish blocked accounts on their books in respect of standby letters of credit in favor of Iranian banks that (i) are or were at issue in any claim brought before the Tribunal for so long as such claim is or was pending before the Tribunal, (ii) are or were at issue in any claim which the Tribunal resolves, or has resolved, on the merits, or (iii) were settled between the Parties, is moot.
- (c) The two Parties shall immediately enter into negotiation, and negotiate in good faith, with a view to arriving at an agreement on the consequences of the Tribunal's determination, supra, in paragraphs 35 and 36.
- (d) Should the Parties be unable to arrive at such an agreement in the four (4) months following the issuance of this Award, they may apply to this Tribunal,

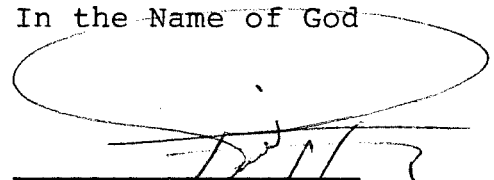
individually or jointly, in order to resolve the remaining difficulties.

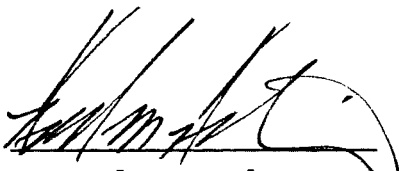
Dated, The Hague
12 November 1990


Robert Briner
President

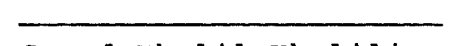

Karl-Heinz Böckstiegel

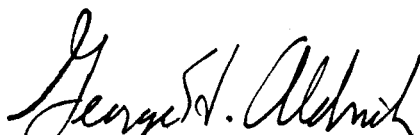

Gaetano Arangio-Ruiz


In the Name of God

Assadollah Noori
Concurring in part,
Dissenting in part

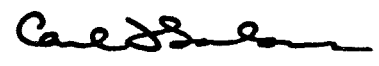

Howard M. Holtzmann

In the Name of God


Seyed Khalil Khalilian
Concurring in part,
Dissenting in part


George H. Aldrich

In the Name of God

Parviz Ansari Moin
Concurring in part,
Dissenting in part


Carl F. Salans

individually or jointly, in order to resolve the remaining difficulties.

Dated, The Hague
12 November 1990

Robert Briner
President

In the Name of God

Karl-Heinz Böckstiegel

Gaetano Arangio-Ruiz

Assadollah Noori
Concurring in part,
Dissenting in part

In the Name of God

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Carl F. Salans