

CASE NO. A15 (II:A AND II:B)

FULL TRIBUNAL

AWARD NO. 529-A15(II:A and II:B)-FT

THE ISLAMIC REPUBLIC OF IRAN,  
Claimant,

and

THE UNITED STATES OF AMERICA,  
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE 6 MAY 1992	
	تاریخ ۱۳۷۱ / ۲ / ۱۶

PARTIAL AWARD

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Table of Contents

	<u>Paragraph</u>
A. THE PROCEEDINGS.....	2
I. Submissions Concerning Iranian Properties....	2
II. The United States' Filings of 1 February 1991...	6
B. FACTS AND CONTENTIONS.....	10
I. Background.....	10
II. Part II:A.....	16
III. Part II:B.....	19
C. REASONS.....	25
I. Jurisdiction and Preliminary Issues.....	25
II. The Merits.....	29
1. Part II:A.....	29
a) The Scope of the Tribunal's Determinations.....	29
b) Issues.....	35
c) Executive Order No. 12281.....	40
d) The Treasury Regulations Subsequent to 19 January 1981.....	42
(i) Properties as to which Iran was not the sole owner...	43
(ii) Properties owned by Iran but where the right to possession was contested.....	44
(iii) Properties as to which the sale could be licensed...	55
(iv) Properties subject to U.S. export control laws.....	59
e) Relief.....	66
2. Part II:B.....	68
D. THE FURTHER PROCEEDINGS.....	71
E. AWARD.....	77

1. At issue in these Parts II:A and II:B of Case No. A15 is whether the United States has breached its obligations under the Algiers Declarations<sup>1</sup>. In Part II:A, Iran asserts that certain of the Executive Orders and Treasury Regulations which were issued by the United States after 19 January 1981 to modify its earlier blocking Orders and Regulations violated the United States' obligations under the Algiers Declarations to arrange for the transfer to Iran of all Iranian tangible properties subject to the jurisdiction of the United States, and/or to compensate Iran for its failure to do so. Iran requests that the United States be ordered to arrange for the transfer to Iran of all Iranian properties not yet so transferred and to compensate Iran for all direct and indirect damages resulting from the alleged violation of obligations after 19 January 1981. In Part II:B, Iran seeks compensation for any damages arising from the blocking of its properties from 14 November 1979 until 19 January 1981, and for any deterioration of these properties during this period.

A. THE PROCEEDINGS

I. Submissions Concerning Iranian Properties

2. In addition to legal briefs, the Parties have, pursuant to Orders issued by the Tribunal, filed extensive information regarding Iranian tangible properties in the United States. Iran requested several times that the United States be ordered to provide two official census reports it

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<sup>1</sup> 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.

had collected in 1980 and 1982 in order to identify Iranian properties subject to its jurisdiction. The United States stated that it was not in a position to provide the census reports, inter alia, because they contained privileged and confidential information of United States' nationals, partly relating to their claims before the Tribunal. The Tribunal then directed the Parties to file a joint report on the Iranian properties. Afterwards, as requested by Order of 4 September 1985, each Party filed a separate Consolidated Report describing each item of property and indicating its owner and present location.

3. On 10 September 1984, Iran filed a request for an interim measure ordering the United States to halt the public sale of certain nuclear fuel belonging to Iran. The United States opposed the request stating, inter alia, that the Atomic Energy Organization of Iran had been informed of the contemplated sale as early as 1 March 1984 and, therefore, Iran could have filed its request for interim measures much earlier. Iran, while denying any advance notice, insisted on the motion for interim measures. On 24 December 1984, the United States filed a letter informing the Tribunal that the sale of the nuclear reactor fuel had taken place as scheduled. By its decision of 5 March 1985<sup>2</sup>, the Tribunal noted that the sale of the property in question had already taken place and stated that the request of Iran was moot.

4. On 27 January 1986, Iran filed a request for interim measures of protection regarding properties removed by the United States from the Victory Van warehouse. The United States opposed the request. The United States stated

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<sup>2</sup> See Islamic Republic of Iran and United States of America, Decision No. DEC 35-A15 (II:A and II:B)-FT (5 Mar. 1985), reprinted in 8 Iran-U.S. C.T.R. 63.

that the goods in question were "classified" items which Victory Van was not certified to store and therefore had to be placed in another warehouse that was certified. The United States still recognized Iran's title to those items, held them in Iran's name, and gave assurance that they would not be changed, modified, or affected in any other way. It did not appear to the Tribunal that the risk of any mishandling or unintentional modification of the equipment was greater in the new location than it would have been had the equipment remained in the Victory Van warehouse<sup>3</sup>. The Tribunal also did not see how the mere removal of two boxes and their storage in a different location would increase the risk of impairing the relief sought by Iran in the present Case, i.e., return of the equipment to Iran. The Tribunal therefore did not find that irreparable harm had been caused to Iran by this action. Noting that the question of the final disposition of the two boxes or of any liability in connection with their removal was not at issue in the proceedings concerning the request for interim measures, the Tribunal dismissed Iran's request.

5. By Order of 30 March 1989, the Tribunal decided to hold a Hearing on all aspects of Parts II:A and II:B of Case No. A15 and requested each Party to file a Hearing Memorial and an Update of its previously filed information regarding Iranian properties in the United States. Both Parties filed such Hearing Memorials and Updates. Whereas the United States stated that it provided information "regarding tangible properties claimed by Iran in Claims II:A and II:B", Iran did "not include the list of property under Claim II:B" because, Iran asserted, the United States did not file such a list, nor did it provide the information it

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<sup>3</sup> See Islamic Republic of Iran and United States of America, Decision No. DEC 52-A15-FT (24 Nov. 1986), reprinted in 13 Iran-U.S. C.T.R. 173.

had collected specifically with regard to such properties, despite Iran's repeated requests.

## II. The United States' Filings of 1 February 1991

6. The Hearing described above was held in this Case on 21, 22 and 23 May 1991 in the Peace Palace, The Hague. In response to objections raised by Iran at the Hearing in connection with a "Reply" and "Consolidated Hearing Exhibits" that the United States had filed on 1 February 1991 pursuant to an earlier Tribunal Order, the Tribunal pronounced two sets of decisions during the Hearing. The Tribunal (i) postponed the decision on the admissibility of any new documents submitted by the United States on 1 February 1991 and invited Iran to file any comments it might wish to submit with respect to these new documents not later than 24 June 1991; and (ii) informed the Parties that they were not expected to answer at the Hearing the evidence concerning particular properties because the Tribunal did not anticipate deciding issues of particular properties at this stage of the proceedings.

7. On 24 June 1991, Iran filed Comments pursuant to the Tribunal's decision pronounced at the Hearing. Therein, Iran commented on the Reply filed by the United States on 1 February 1991, and in particular on the Charts and Lists contained in that document. Iran asserted that the Reply and Consolidated Hearing Exhibits filed by the United States on 1 February 1991 do not facilitate but rather complicate the proceedings, were filed against the Tribunal's Orders and contain a number of new documents. While Iran stated that its ministries and state organizations "will file their comments and rebuttal arguments and evidence with respect to said Documents and their correctness or incorrectness at the time of examination of particular properties", it requested

that the Tribunal "refuse to admit the purport" of the United States' documents and dismiss them.

8. On 21 July 1991, the United States filed a Response to Iran's abovementioned Comments. Therein the United States commented on Iran's views made with respect to the United States 1 February 1991 Reply and Charts and Lists. The United States asserted that the only new documents contained in its 1 February 1991 submission were nine exhibits, and that Iran had failed to identify any prejudice caused to it by these nine documents. The United States therefore requested that the Tribunal admit its 1 February 1991 filings.

9. In view of its limited decision in this Partial Award with respect to individual properties and in view of the further proceedings in this regard (see infra, Section D), the Tribunal does not find that Iran suffers any prejudice from the format of presentation in the United States' 1 February 1991 Reply and Consolidated Hearing Exhibits, or from the new documents contained in this filing. The Tribunal therefore admits this filing.

## B. FACTS AND CONTENTIONS

### I. Background

10. Following the seizure of the United States Embassy in Tehran, on 14 November 1979 the President of the United States issued Executive Order No. 12170, which blocked the transfer of "all property and interests 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".



11. 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)<sup>4</sup>. These Regulations blocked all property in which Iran had "any interest of any nature whatsoever". Iranian property and property interests were defined in detail in Section 535.311 of the Regulations. The blocked property included numerous tangible properties that Iran owned or in which Iran held some type of interest, including properties that it had purchased from United States suppliers and properties that Iran had sent to the United States for repair.

12. On 19 January 1981, simultaneously with the adherence by the two Governments to the Algiers Declarations, President Carter signed and issued Executive Orders Nos. 12279, 12280 and 12281, effective immediately, directing the transfer of Iranian Government assets. Executive Order No. 12281 dealt with "properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities". All persons subject to the jurisdiction of the United States in possession or control of such properties were "licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent". The Order continued that "[e]xcept where specifically stated, this license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act". The Order further stated that "[a]ll persons subject to the

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<sup>4</sup> All United States Treasury Regulations cited in this Award may be found in 3 A. Lowenfeld, Trade Controls for Political Ends (2nd ed. 1983), DS-735, et seq.

jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to" Iranian properties. The Order also nullified all court-ordered attachments, injunctions, etc., obtained after 14 November 1979, including those derived from the Blocking Orders and Regulations relating to Iranian properties.

13. In implementation of Executive Order No. 12281, the Department of the Treasury, on 26 February 1981, issued Regulations that revoked the 1979 Blocking Regulations and further specified the order to transfer Iranian properties (31 C.F.R. Part 535). Repeating the transfer direction of Executive Order No. 12281, Section 535.215 of the Regulations makes that direction applicable to properties as defined in Section 535.333 of the Regulations. The latter Section, in subsection (a) defines the properties whose transfer is directed to include "all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts". Subsection (c) states that Iranian properties "may be considered contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the asset by virtue of the existence of a defense, counterclaim, set-off or similar reason". According to subsection (b), properties are "not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged".

14. Section 535.437 of the Treasury Regulations states that the transfer of properties pursuant to the Regulations remains subject to export control under United States law, including licenses for the transfer of military equipment.

15. Another Treasury Regulation, Section 535.540, issued on 22 July 1982, permits the sale of Iranian tangible property by the holder of that property under certain conditions and after obtaining a license from the Treasury Department and indemnifying the United States "for any monetary loss which may accrue to the United States from a decision by the Iran-U.S. Claims Tribunal that the United States is liable to Iran for damages that are in any way attributable to the issuance of such license."

II. Part II:A

16. It is Iran's position that the United States has breached its obligations under the Algiers Declarations by failing to arrange for the immediate transfer to Iran of all Iranian tangible properties subject to its jurisdiction or, in the alternative, by failing to compensate Iran for the United States' refusal to arrange for such transfer. Iran submits that such an obligation follows from General Principle A and paragraph 9 of the General Declaration. The United States has prevented the return of Iranian tangible properties, Iran contends, by issuing Executive Orders and Treasury Regulations that do not require their transfer if storage and other charges, as well as tax and warehouse liens, have not been paid, if the properties are otherwise not owned by Iran, or if they are subject to United States export controls. The United States has issued Treasury Regulations that permit licenses for the sale of Iranian properties, and it has granted a number of such licenses. Iran claims that, as a result of the various Executive Orders and Treasury Regulations, it has suffered damages for continued storage charges, lost use of the property, diminution in value, legal costs and other damages.

17. In the United States' view, the actions it took after 19 January 1981 with respect to Iranian tangible

properties were consistent with its obligation under paragraph 9 of the General Declaration which required it to arrange for the transfer of these properties "subject to the provisions of U.S. law applicable prior to November 14, 1979". Iran asserts that the United States' interpretation of this "U.S. law clause" is erroneous because (i) international law, not United States law governs the Parties' obligations under the Algiers Declarations and their interpretation; (ii) the United States' interpretation would make paragraph 9 superfluous; (iii) the U.S. law clause does not preclude the transfer of all Iranian properties as a matter of United States domestic law; and (iv) the U.S. law clause, in context, refers only to the procedural provisions of the law and is not a basis for refusing transfer. Iran also interprets the U.S. law clause as designed to ensure that general property law remains applicable to the extent that it does not conflict with the language or intent of the Algiers Declarations. Iran further argues that in the event the U.S. law clause is given the expansive interpretation the United States now contends, such clause should include the Treaty of Amity.

18. The United States denies any breach of its obligations under the Algiers Declarations. In the United States' view, paragraph 9 of the General Declaration did not create an unconditional duty for it to transfer all Iranian properties within its jurisdiction. Rather, the U.S. law clause imposed conditions on the United States' transfer obligation aimed at preserving the rights of individual property holders under United States property laws and at permitting the application of United States export control laws in effect prior to 14 November 1979. These conditions, as implemented by the United States Treasury Regulations, are consistent with the plain meaning of paragraph 9 as well as with the object and purpose of the Algiers Declarations, the United States asserts. It maintains that its interpretation is consistent with international law principles and with

applicable United States law, and that it is confirmed by the negotiating history of the Algiers Declarations and by subsequent practice of the Parties, as well as by Tribunal precedents. The United States also agrees that the U.S. law clause includes the Treaty of Amity.

III. Part II:B

19. In this Part II:B, Iran asserts that the United States' failure to consolidate and care for Iran's properties from 14 November 1979 to 19 January 1981 caused excessive and unnecessary storage charges, damage and deterioration of such properties. Iran bases its claim for compensation for these charges, the reduction in value of the properties, and the deprivation of their use, on General Principle A of the General Declaration. Iran submits that General Principle A contains an independent obligation for the United States to restore Iran's financial position to that which existed prior to the freeze of its assets on 14 November 1979, and that the above failure of the United States violated this obligation. Iran derives this interpretation from a textual analysis and finds it supported by the provision's negotiating history. Iran finds its interpretation also confirmed in Tribunal precedents.

20. As a preliminary matter, the United States submits that Iran should be estopped from pursuing its claim in Part II:B because it abandoned it at the early stages of the proceedings in this Case. Iran having to date filed no report on the properties at issue in Part II:B, the United States would be substantially prejudiced should Iran be allowed to pursue this claim now. Alternatively, the United States asserts that this claim should be dismissed for lack of proof.

21. Iran maintains that it has not abandoned its claim in Part II:B. It explains its failure to submit a report on the properties at issue here by the fact that the United States did not file such a report in the first instance and by the assertion that the United States did not provide the necessary information available to it so as to enable Iran to prepare such a report. Acknowledging that "the status of this case from the viewpoint of damages is not yet fully clear", Iran submits that, with a large number of claims with respect to individual properties at issue in other Tribunal cases, the damages claimed in Part II:B can be determined only once the status of these claims is clarified in the other cases.

22. The United States argues that its actions in late 1979 could not violate obligations it undertook in 1981 and that its obligation to restore Iran's financial position pursuant to General Principle A is qualified by the introductory proviso "within the framework of and pursuant to the provisions of the two Declarations", none of which obligates the United States to compensate Iran for any losses it may have incurred during the period between 14 November 1979 and 19 January 1981. The United States also argues that General Principle A cannot provide a separate basis for Iran's claim in Part II:B because Article II, paragraph 1, of the Claims Settlement Declaration expressly excludes from the Tribunal's jurisdiction claims relating to the actions of the United States in response to the seizure of the United States Embassy and the detention of its nationals, as described in paragraph 11 of the General Declaration. Executive Order No. 12170 freezing Iran's assets in November 1979 was in response to those acts, the United States submits. In the United States' view, the Tribunal precedents invoked by Iran confirm the United States' interpretation of General Principle A.

23. The United States asserts that also under customary international law no obligation would exist for it to compensate Iran for charges or damages with respect to Iranian properties stored during the period prior to the release of the U.S. nationals on 19 January 1981, because the acts complained of by Iran constituted economic sanctions which were justified as nonforcible reprisals.

24. Iran asserts that the blocking of its properties could not be justified as reprisals because (i) the United States' actions were not taken in response to the Embassy incident; (ii) the United States did not exhaust other remedies; (iii) the actions were not proportional to the act complained of; and (iv) in any event, Iran's claim is based on the United States' undertaking in General Principle A, rather than on customary international law. Iran further argues that the provision of Article II, paragraph 1, of the Claims Settlement Declaration concerning the exclusion of claims arising out of the actions of the United States in response to the conduct described in paragraph 11 of the General Declaration does not apply to governmental claims or to disputes regarding the performance of the Declarations, as that provision covers only claims of nationals of either Iran or the United States.

### C. REASONS

#### I. Jurisdiction and Preliminary Issues

25. There is no dispute that the Tribunal has jurisdiction over Part II:A of Case No. A15. The Parties disagree on the interpretation of General Principle A as far as it relates to the issues in this Part of the Case, and over the obligations it imposes on the United States. The Parties also disagree on the interpretation of paragraph 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 the Declaration, falls within the Tribunal's jurisdiction.

26. As regards Part II:B, the Tribunal finds that Iran is not precluded from pursuing its claim. While the pleadings are less extensive here and Iran's written submissions have for some time not contained any reference to this Part of the Case, this has not amounted to an abandonment by Iran of its claim. Also, given the procedural posture of Part II:B with respect to individual properties (see infra, Section D), and the fact that the Algiers Declarations provide no time limit for the filing of such claims, the United States is not prejudiced by the continuation of this claim.

27. Iran bases its claim in Part II:B on an alleged breach by the United States of the latter's obligation under General Principle A of the General Declaration. The United States denies any such breach, and it disagrees with Iran's interpretation of General Principle A. Thus, there is a dispute between the Parties as to the interpretation and performance of General Principle A over which the Tribunal has jurisdiction pursuant to paragraph 17 of the General Declaration.

28. The Parties disagree, however, as to whether Iran's claims in Part II:B are excluded from the Tribunal's jurisdiction because they relate to "actions in response" to the conduct described in paragraph 11 of the General Declaration. The Tribunal notes that the provision excluding its jurisdiction over such claims is found in paragraph 1 of Article II of the Claims Settlement Declaration, a paragraph that deals solely with the Tribunal's jurisdiction to decide claims of nationals of the United States against Iran and claims of nationals of Iran against the United States. No



similar provision is found in either Declaration that would be applicable to paragraph 17 of the General Declaration or to paragraph 3 of Article II of the Claims Settlement Declaration, which are the provisions governing disputes as to the interpretation or performance of the Declarations. In view of the fact that Iran's claims in Part II:B are based upon its interpretation of General Principle A, a provision of the General Declaration, and that the United States disputes that interpretation, the Tribunal holds that it has jurisdiction over this dispute.

## II. The Merits

### 1. Part II:A

#### a) The Scope of the Tribunal's Determinations

29. At issue in Part II:A of Case No. A15 is the United States' obligation under the Algiers Declarations to arrange for the transfer to Iran of certain Iranian tangible properties within the United States' jurisdiction. Iran asserts that the United States has breached its obligations in this respect. Iran seeks a declaratory award finding such breach, compelling the United States to arrange for the transfer of Iran's properties which have thus far not been transferred, and ordering the United States to pay for all direct and indirect damages Iran allegedly suffered from this breach, with the amount of such damages to be determined at a later stage of the proceedings. The United States denies any breach of its obligations under the Algiers Declarations or that Iran is entitled to any of the relief sought.

30. Considering the status of the Parties' pleadings to date, the Tribunal is not in a position to make determinations in this Partial Award on all issues presented, and

particularly not on factual questions concerning specific properties or the extent and amount of the alleged damages for which Iran seeks compensation. In its Order of 30 March 1989, the Tribunal informed the Parties that it intended to hold a Hearing "on all aspects of Part II:A and II:B of Case No. A15". The Tribunal requested each Party to file a Hearing Memorial "dealing with all factual and legal issues in these parts of Case No. A15" and to address, inter alia, the question of the "relationship with this Case of the alleged non-performance by the United States of its obligations under the Algiers Declarations with respect to individual items of Iranian property". The Parties were requested to submit with their Hearing Memorials updates of "previously filed information regarding Iranian properties in the United States, describing, in so far as possible, each item and indicating its owner and location".

31. While considerable information was supplied by the Parties, their factual submissions on individual properties and damages are not yet complete. For example, it is not clear from the Parties' pleadings to date which individual properties are still at issue, and what specific damages are claimed by Iran.

32. Whereas Iran now seeks an award, inter alia, compelling the United States to pay damages, it requests the Tribunal, "in view of the nature and type of the items and properties claimed as well as the fact that the determination of other cases has been suspended pending the determination of this case ... to allow the parties, after the taking of the decision by the Tribunal concerning the liability of the [United States], to file submissions on the damages...." The United States requests that, should the claims not be dismissed, the Tribunal now decide at least as many legal issues as possible with respect to particular categories of Iranian properties.

33. At the Hearing, the Tribunal informed the Parties that it did not anticipate deciding issues of particular properties at this stage of the proceedings and that the Parties were not expected to answer the evidence concerning particular properties at that time.

34. Considering the described status of the pleadings, the Tribunal is in a position only to make legal determinations with respect to this claim as described in this section C.II.1.

b) Issues

35. Iran's claim is based on the alleged breach by the United States of its obligations under the General Declaration. The United States' obligations relevant to Part II:A of Case No. A15 are, pursuant to General Principle A, "to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9" and, pursuant to paragraph 9, to "arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs".

36. The actions taken by the United States after 19 January 1981 to fulfill its obligations under General Principle A and paragraph 9 of the General Declarations were the issuance of Executive Order No. 12281 and of Treasury Regulations for the implementation of that Order. The first question before the Tribunal is whether these actions with respect to Iranian tangible properties were consistent with the United States' obligations, and, if not, in what respects they constituted a breach of those obligations. In deciding these questions, the Tribunal will refer to the

different circumstances relating to each category of properties.

37. In their submissions, the Parties themselves have used a common categorization for the purpose of listing relevant information on the properties at issue. While the Parties do not agree on the legal consequences that flow from this categorization, and while they also disagree as to which categories of properties are still at issue in this Case, this categorization provides a useful starting point for the organization of the subject matter to be examined.

38. Considering the current status of the pleadings, the Tribunal finds that it is presently in a position to make determinations as to the following questions: (i) has the United States violated its obligations under General Principle A and paragraph 9 of the General Declaration by issuing and maintaining Treasury Regulations that failed to direct the transfer of Iranian properties where statutory liens had not been discharged, necessary obligations, charges and fees had not been paid, the properties could be considered contested by virtue of a defence, counterclaim, set-off, or similar reason, or where Iran's ownership of such properties was in issue; (ii) has the United States violated its obligations under General Principle A and paragraph 9 of the General Declaration by issuing and maintaining Treasury Regulations that permit the licensing of the sale of certain Iranian properties; and (iii) has the United States violated its obligations under General Principle A and paragraph 9 of the General Declaration by issuing and maintaining Treasury Regulations that failed to direct the transfer of Iranian properties subject to U.S. export control laws or by failing to offer compensation for such properties.

39. In order to decide whether the return of certain particular properties or groups of properties is still at

issue in this Case, whether there is liability with respect to those properties, and what damages are to be awarded where liability is to be found, and as to the damages claimed, the Tribunal requires additional information from the Parties and it will request further submissions in these respects (see infra, Section D).

c) Executive Order No. 12281

40. It seems clear from the reference in paragraph 9 of the General Declaration to "Iranian" properties, that the obligation of the United States with respect to tangible properties was limited to properties that were owned by the Government of the Islamic Republic of Iran, or its "agencies, instrumentalities, or controlled entities" as Executive Order No. 12281 specified. As stated in paragraph 9, the obligation extended to all such properties whether located in the United States or abroad. This geographical scope, as well as the words "mobility" and "free transfer" in General Principle A and the reference in paragraph 9 to U.S. law applicable prior to 14 November 1979, indicate that the obligations of the United States were, first, to remove all restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of Iranian tangible properties and, second, to direct persons subject to the jurisdiction of the United States holding any Iranian properties to transfer such properties as directed by the Government of Iran. In addition, whereas the obligation to "arrange for" the transfer of properties did not include an obligation for the United States itself to ship any Iranian properties to Iran, the United States had an obligation to take steps, upon indication from Iran, to ensure that the holders of those properties would transfer them to Iran.

41. The Tribunal finds, and the Parties agree, that the issuance of Executive Order No. 12281 by President Carter on 19 January 1981 did not violate any of the above obligations of the United States. The Order was addressed to all persons subject to the jurisdiction of the United States in possession or control of Iranian tangible properties. It directed and compelled those persons to transfer such properties as directed by the Government of Iran, and thereby took steps towards ensuring that such transfer would be made to a place selected by Iran. To remove existing obstacles to the transfer of the Iranian properties and to prevent the creation of new ones, the Order provided further that: (i) all prior authorizations for acquiring or exercising any right, power, or privilege with respect to the properties were revoked; (ii) all rights, powers, and privileges relating to the properties and that derived from attachments, injunctions, etc., in any litigation on or after 14 November 1979 were nullified; and (iii) all persons subject to the jurisdiction of the United States were prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties. These directions and prohibitions in Executive Order No. 12281 were consistent with the United States' obligation under the Algiers Declarations to arrange for the transfer to Iran of Iranian tangible properties.

d) The Treasury Regulations Subsequent to 19 January 1981

42. The Treasury Regulations adopted subsequent to 19 January 1981, however, are in certain respects inconsistent with the commitments undertaken by the United States in the Algiers Declarations, and by their issuance the United States has in those respects violated its obligations under General Principle A and paragraph 9 of the General Declaration. As previously stated (see supra Section C.II.1.b), the Tribunal will examine the provisions of these Treasury

Regulations as they apply to different categories of Iranian properties.

(i) Properties as to which Iran was not the sole owner

43. Treasury Regulations Section 535.333 defined the term "properties" (in subsection (a)) as all "uncontested and non-contingent liabilities and property interests" of Iran. The United States argues that this new definition was required because the old definition in the blocking regulations that covered any Iranian "interest" in property was too broad to be continued in regulations requiring transfer of the properties as directed by Iran. In its factual information, the United States has pointed out, for instance, particular properties where a part was owned by Iran and another part by a different party. The Tribunal and the Parties agree that Iran was not entitled to possession of properties owned by others or if it had only a partial or contingent interest in such property. Thus, it was not inappropriate for the United States to redefine the "properties" subject to the transfer direction to exclude those in which Iran's ownership was only partial or contingent. This would include properties as to which Iran's ownership was contingent on the fulfilment of certain contractual obligations.

(ii) Properties owned by Iran but where the right to possession was contested

44. Treasury Regulations Section 535.333 defined (in subsection (a)) the "properties" subject to the transfer direction as all "uncontested" properties and stated (in subsection (c)) that properties "may be contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the

asset by virtue of the existence of a defense, counterclaim, set-off or similar reason". The same Section of the Regulations (subsection (b)) stated: "Properties are not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged". As a result of these provisions, any holder of Iranian property who reasonably believed that Iran owed him money for storage, repair, breach of contract, expropriation or any other reason was not compelled by the Treasury Regulations to return the property to Iran. Section 535.215 of the Regulations, which contained the transfer direction, repeated the exception from Executive Order No. 12281 to the effect that this direction did "not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act".

45. Iran argues that the above provisions of the Treasury Regulations are in conflict with the United States' obligations under General Principle A and paragraph 9 of the General Declaration. The latter's plain language required that "all" Iranian properties had to be returned to Iran, and any limitation had to be stipulated expressly. Iran sees no such limitation in the Algiers Declarations to cover the assertion of a right to its properties by private parties. The intent to terminate all litigation as spelled out in General Principle B of the General Declaration required U.S. nationals to assert claims that they might have against Iran before the Tribunal. Considering this background, Iran asserts that the limitations imposed on the direction to transfer Iranian properties cannot be justified.

46. The United States argues that paragraph 9 of the General Declaration must be interpreted in light of the



limited objectives and scope of General Principle A, and that this justified the definition of Iranian properties as contained in the Treasury Regulations. The United States finds its interpretation to be consistent with one of the central purposes of the Algiers Declarations, namely that Iran satisfy its commercial obligations to U.S. nationals. The United States further argues that it should not be made responsible for debts of Iran resulting from Iran's commercial activities in the United States, or for otherwise improving, rather than restoring, Iran's financial position as it was prior to 14 November 1979.

47. The Parties' arguments with respect to Treasury Regulations Section 535.333 focus mainly on properties against which liens had not been discharged. The following discussion therefore deals first with this category of properties. The Tribunal finds it difficult to justify a definition that excludes properties admittedly owned solely by Iran in view of the scope of paragraph 9 of the General Declaration which extends to "all Iranian properties". The United States argues that the meaning of that phrase is not so clear as its plain wording may seem, and that it should be interpreted in light of the limited objectives stated in General Principle A. There, one finds, for instance, the limitation that the commitment of the United States is to ensure the mobility and free transfer of only those Iranian assets that are "within its jurisdiction" although this might include assets located outside the United States. It could also be argued that one should look to General Principle A for guidance as to whether the United States had committed itself to place Iran in a better position than it would have been in prior to 14 November 1979, for example, by the effective cancellation of liens existing at that time

on Iranian properties.<sup>5</sup> The commitment of the United States is stated in General Principle A to be to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979". On that basis the United States argues that it was justified in exempting from mandatory transfer those Iranian properties that remained subject to liens that arose prior to 14 November 1979 until those liens were released through payment of the related fees or otherwise.

48. The more convincing arguments, however, support the conclusion that the United States did commit itself to direct the transfer of Iranian properties that were subject to liens, no matter when those liens arose. The first reason is to be found in Executive Order No. 12281. Both Parties consider this Order to be in compliance with the Algiers Declarations. Thus, Executive Order No. 12281 forms part of the "practice" of the treaty for purposes of its interpretation as provided in Article 31 (3) of the Vienna Convention on the Law of Treaties. Executive Order No. 12281 clearly prohibited the exercise of all liens, no matter when they arose.

49. Another argument arises from General Principle B of the General Declaration, the main purpose of which was to remove and bar disputes with and claims against Iran from the courts of the United States and bring them before this Tribunal. Although General Principle B refers only to the termination of judicial proceedings and the substitution of arbitration, its purpose would best be effected by also preventing the exercise of liens, as was done by section

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<sup>5</sup> In view of its decision immediately below on "pre-14 November 1979" liens, the Tribunal need not decide whether liens had to be asserted or notified before that date in order to qualify for the exemption of Section 535.333 (b).

1-102(c) of Executive Order No. 12281, because otherwise the only way for Iran to contest a lien would be to litigate in United States courts. Moreover, the U.S. national holders of such liens were given access under the Claims Settlement Declaration to the Tribunal to recover any amounts due to them from Iran. This applies to liens whether they arose before or after 14 November 1979, and whether or not such litigation had been commenced before 19 January 1981.

50. If the possessory interests of persons subject to United States jurisdiction holding Iranian properties on which liens existed were to be protected, that had to be done overtly in the Algiers Declarations themselves, not by unilaterally redefining Iranian properties by subsequent regulation as non-Iranian properties.

51. The United States contends that it did act overtly to protect lienholders by providing in paragraph 9 of the General Declaration that the obligation of the United States to transfer Iranian tangible properties was made "subject to the provisions of U.S. law applicable prior to November 14, 1979". This U.S. law clause, the United States asserts, justified its Treasury Regulations protecting the rights of holders of such properties to contest under U.S. lien laws Iran's right to possession of the properties for the reasons stated in the Regulations. This defence, however, is not convincing. To begin with, even if it were accepted in principle, the Regulations were too broadly written in that they purported to protect holders of properties outside of the United States who claim rights under "applicable law". This argument cannot be justified by a U.S. law clause. More fundamentally, however, the U.S. law clause cannot reasonably be interpreted as covering rights and privileges accorded by that law to the holders of Iranian properties, as opposed to the restrictions and requirements imposed by that law upon movement of those properties. Three arguments speak against the interpretation proposed by the United

States. First, Executive Order No. 12281 clearly stated, in Section 1-102 (c), that all persons subject to U.S. jurisdiction "are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties" -- a provision that explicitly forbade the exercise of liens or similar claims. Second, Executive Order No. 12281, in Section 1-101, appears to have implemented the U.S. law clause by stating that persons subject to U.S. jurisdiction are not relieved "from existing legal requirements other than those based upon the International Emergency Economic Powers Act" (pursuant to which the blocking of Iranian properties was imposed between 14 November 1979 and 19 January 1981). Third, there is a complete absence in this Case of any evidence that the United States suggested during the negotiation of the Algiers Declarations that the U.S. law clause had any purpose other than the preservation of strategic export controls on military items -- an evidentiary vacuum that stands in sharp contrast to the evidence presented in Case No. B1 (Claim 4), where affidavits by U.S. negotiators stated that the U.S. law clause was drafted to preserve the right of the United States to apply its export control laws and that this purpose was explained to the Algerian intermediaries. In conclusion, the redefinition in the Treasury Regulations of the term "properties" to exclude properties on which liens existed cannot be justified on the grounds of the U.S. law clause in paragraph 9 of the General Declaration. The issuance by the United States of Treasury Regulations Section 535 constituted a violation of the United States' obligations under the Algiers Declarations, to the extent that they exempted from the transfer direction Iranian properties on which liens existed that Iran had not discharged. Where the holder of an Iranian property had only a possessory interest in that property by virtue of a lien, the United States was obligated to arrange for the transfer of that property to Iran. Whether a property-holder had a possessory right, as contrasted with an

ownership right, can only be determined after examination of the relevant facts with respect to that property. Thus, the Tribunal requires additional information from the Parties and will request further submissions in these respects.

52. This conclusion is supported by another argument, relating to immunity. Iran asserts that the U.S. state laws on which the liens at issue here are based violate the U.S. Foreign Sovereign Immunities Act, are unconstitutional under U.S. law and are not in conformity with general international law. While the issue of the alleged unconstitutionality of U.S. lien laws need not be addressed for the decision in this Case, the Tribunal notes in this context an argument that could be made based on the provisions of the U.S. Foreign Sovereign Immunities Act which, subject to the exceptions set forth in Sections § 1610 and 1611, grants property of foreign states immunity from execution of judgments in the United States. Whereas the Foreign Sovereign Immunities Act does not deal with non-judicial liens, it could certainly be argued a fortiori that a foreign state enjoys immunity from execution of private liens if even judicial execution is not allowed. In any event, it would seem that the Treasury Regulations are questionable under customary international law of immunity in so far as they require Iran to submit to the jurisdiction of U.S. courts in the event Iran challenges a lien asserted by a U.S. person in possession of any Iranian properties covered by said customary international law immunity.

53. In conclusion, the issuance by the United States of Treasury Regulations Section 535 constituted a violation of the United States' obligations under the Algiers Declarations, to the extent that they exempted from their transfer direction Iranian properties on which liens existed that Iran had not discharged.

54. The same conclusions stated above with respect to liens apply to Iranian properties where the holder contested Iran's right to possession by asserting a defence, a counterclaim or a set-off. If such possessory interests of the holders of Iranian properties were to be protected by exempting them from the direction to transfer the properties, that should have been done overtly in the Algiers Declarations, not by redefining Iranian properties by subsequent regulation as non-Iranian properties. In addition, General Principle B of the General Declaration is directly relevant here: these U.S. holders of Iranian properties were given access to this Tribunal, while their claims against Iran were to be removed and barred from United States courts. Before determining the liability with respect to particular property, however, the Tribunal must first examine the relevant facts. Accordingly, the Tribunal requires additional information from the Parties and will request further submissions in this respect.

(iii) Properties as to which the sale could be licensed

55. Treasury Regulations Section 535.540 issued on 22 July 1982 permits the sale of Iranian tangible property under certain conditions and after obtaining a license from the Treasury Department. A license can be issued for the public sale of Iranian tangible property provided that the holder (1) certifies that good faith efforts over a reasonable period to obtain payment of any amount owed by Iran have been unsuccessful; (2) establishes (normally through an opinion of legal counsel) that he has, under United States law applicable prior to 14 November 1979, a right to sell the property by methods not requiring judicial proceedings; (3) guarantees that the sale will be at public auction and will be made in good faith in a commercially reasonable manner; and (4) agrees to give Iran at least 30 days' notice of the sale, as well as 30 days' notice to this Tribunal if

the holder has filed a claim with it. The proceeds of any sale (minus reasonable costs of sale) may be (1) deposited in a blocked account in the name of the licensee; (2) disposed of in accordance with United States law applicable prior to 14 November 1979, which may include unrestricted use of the proceeds, provided the licensee has posted a bond in the amount of the sale proceeds in favor of the United States. The Regulation provides that "[a]ny part of the proceeds that constitutes Iranian property which under §535.215 is to be transferred to Iran shall be so transferred in accordance with that section".

56. The United States asserts that it was in Iran's interest to allow the sale of Iranian properties under the conditions described because a number of those properties deteriorated and would have lost their value had they remained in the conditions they were at the time. Iran maintains that the authorization of any sale of its properties violated the Algiers Declarations. In Iran's view, the fact that the United States required an indemnification agreement from every license applicant (see supra, para. 15) demonstrates that the United States realized that these Regulations violated the Algiers Declarations. The United States maintains that this was merely a precautionary measure.

57. As noted above (see supra, para. 52), an argument can be made that, based on the provisions of the U.S. Foreign Sovereign Immunities Act, and subject to its limitations, a foreign State is immune from execution of a private lien through sale, considering that under that Act it is even immune from judicial execution. In any event, however, the provisions of the Treasury Regulations Section 535.540 are not in accordance with general principles of international law of state immunity insofar as they subjected Iran to the jurisdiction of the United States. The principle that a State's property is immune, albeit with certain

exceptions, from execution in another State must a fortiori apply to an execution which, although under certain conditions, is principally determined and effected by a private foreign citizen. The various theories of state immunity, whether they be more or less restrictive, would lead here to the same result.

58. The Tribunal is informed by the Parties that, while several licenses have been issued, there have to date only been very few sales pursuant to this Regulation. If any holder of Iranian property receiving a license to sell such property pursuant to the Regulation were a holder by virtue of one of the exemptions from the transfer obligation that are found elsewhere in the Regulations, liability already exists if the exemption is one that violates the obligations of the United States pursuant to General Principle A and paragraph 9 of the General Declaration, and licensing of the sale of the property cannot affect that liability. If, on the other hand, the exemption is consistent with the obligations of the United States, it is difficult to see how the licensing of the sale of the property held pursuant to that exemption would give rise to any liability of the United States. In the absence of further evidence and argument by the Parties, the Tribunal is not in a position to determine whether any actual sale pursuant to this Regulation is either consistent or inconsistent with the obligations of the United States, but the Tribunal holds that the Regulation is not, per se, inconsistent with those obligations.

(iv) Properties subject to U.S. export control laws

59. Section 535.215 of the Treasury Regulations is consistent with the Algiers Declarations. That provision states: "Except where specifically stated, this license,



authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act." The same wording appears in Executive Order No. 12281, paragraph 1-101. This is, as the Tribunal held in Islamic Republic of Iran and United States of America, Partial Award No. 382-B1-FT, para. 46 (31 Aug. 1988), reprinted in 19 Iran-U.S. C.T.R. 273, 287, the implementation of the U.S. law clause in paragraph 9 of the General Declaration. Consequently, as the Tribunal held in that Partial Award, the United States did not violate its obligations under the Algiers Declarations by issuing and maintaining Treasury Regulations that permit it to refuse to license exports of Iranian properties subject to U.S. export control laws applicable prior to 14 November 1979. Neither did the United States violate such obligations by refusing to issue such licenses.

60. In referring to U.S. export control laws, the Tribunal means those laws that authorize the President of the United States to prohibit exports for reasons of national security. Thus, not only the Arms Export Control Act that was in issue in Case No. B1 (Claim 4) (the part of Case No. B1 with which Partial Award No. 382-B1-FT dealt) but also the Atomic Energy Act of 1954, the Nuclear Non-Proliferation Act of 1978, and the Export Administration Act of 1979 are U.S. laws applicable prior to 14 November 1979 that may prevent the export of certain properties for reasons of national security. While most of the tangible Iranian properties that were not transferred pursuant to Iran's directions after 19 January 1981 because of export control laws are likely to have been military properties covered by the Arms Export Control Act, there apparently were at least a few non-military properties, including enriched nuclear fuel, covered by one or more of these other laws. All of these laws existed prior to 14 November 1979, and the Tribunal sees no reason to construe the U.S. law

clause in paragraph 9 of the General Declaration as limited to only one of them. The security implications of exports of enriched nuclear fuel are obvious, and it is well known that many properties with important military or other security uses are covered only by the Export Administration Act. The Tribunal notes, however, that prior to 14 November 1979 Iran was not listed among the countries for deliveries to which the United States prohibited the issuance of export licenses.

61. The Tribunal noted in its Partial Award in Case No. B1 (Claim 4), at para. 65, that it does not necessarily follow that the General Declaration does not require compensation of Iran when the application of the United States law clause in paragraph 9 of the Declaration prevents the transfer of military properties. The Tribunal proceeded to hold (para. 66) that an obligation to compensate Iran in the event that certain articles are not returned because of the provisions of U.S. law applicable prior to 14 November 1979 was implicit in paragraph 9. The Tribunal explained that holding by stating (para. 67) that a contrary interpretation of paragraph 9 would be inconsistent with General Principle A which committed the United States to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979". The Tribunal also noted (para. 68) that its interpretation was consistent with the subsequent practice of the Parties, as the United States, which had retained possession of the articles at issue in that case, did not dispute Iran's right to the value of the properties and stated its willingness to pay compensation in order to avoid being unjustly enriched. Furthermore, the Tribunal stated (para. 70) that its interpretation was consistent with the rules of international law relating to takings or deprivations of property and also with general principles of contract law relating to the duties of bailees of property.

62. In the present Case, unlike Case No. B1 (Claim 4), it does not appear that many, if any, of the properties at issue are in the possession of the United States. The Tribunal, therefore, must determine whether a duty of compensation should also be found in the present Case.

63. The language of Partial Award No. 382-B1-FT, as Iran points out, certainly supports a positive answer to this question. In particular, the following statements must be noted:

"Although Paragraph 9 of the General Declaration does not expressly state any obligation to compensate Iran in the event that certain articles are not returned because of the provisions of U.S. law applicable prior to 14 November 1979, the Tribunal holds that such an obligation is implicit in that Paragraph." (Para. 66)

"Failure to transfer the monetary equivalent of Iranian-owned properties not themselves exportable certainly conflicts with such a purpose [the restoration of Iran's financial position]." (Para. 67)

"Iran, therefore, has been completely deprived of its property by the conduct of the United States, even if the United States never expressed its intention to appropriate this property and never attempted to dispose of it without Iran's authorization." (Para. 70)

64. On the other hand, as the United States argues, the situation is different in the present Case where the United States has neither ownership nor possession of the properties in issue. By definition, Iran owns these properties, and possession is held by private persons, including Iran's freight forwarders. In those circumstances, the United States asserts, Iran could have sold the properties at any time and can still do so; what it cannot do is export them from the United States. Iran's position is that its refusal to sell could not have shifted to it the risk of any diminution of value of these properties and that there was

no prospect that Iran would recover the market value of its properties through such sales.

65. The Tribunal finds that the General Declaration imposes upon the United States an implicit obligation to compensate Iran for losses it incurs as a result of the refusal by the United States to license exports of Iranian properties subject to U.S. export control laws applicable prior to 14 November 1979. Such an obligation derives from Paragraph 9 and General Principle A which requires that the United States restore Iran's financial position to that which existed prior to 14 November 1979. As the Tribunal held in its Partial Award in Case No. B1 (Claim 4), at para. 62, this does not require that the United States grant export licenses for Iranian properties, and by refusing to do so the United States did not violate its obligations under the Algiers Declarations. On the other hand, the Tribunal found in the same Award, at para. 66, that "[a]lthough Paragraph 9 of the General Declaration does not expressly state any obligation to compensate Iran in the event that certain articles are not returned because of the provisions of U.S. law applicable prior to 14 November 1979, [...] such an obligation is implicit in that Paragraph", and further that "[f]ailure to transfer the monetary equivalent of Iranian-owned properties not themselves exportable certainly conflicts with such a purpose" (at para. 67). While it is correct that the Partial Award in Case No. B1 (Claim 4) dealt with military items, the above finding of an obligation to compensate is not limited to such properties, but rather applies to Iranian properties in general. Neither does the Partial Award distinguish between properties in the possession of the United States (as was the case in B1 (Claim 4)), and those not in the possession of the United States (as is the case here), as far as the obligation to compensate in the event of a refusal to transfer or to grant export licenses is concerned. The Tribunal finds that in this respect the reasoning of the Partial Award in

Case No. B1 (Claim 4) applies equally in the present Case. The United States' implied obligation to compensate derives from the obligation to restore Iran's financial position to that which existed prior to 14 November 1979. With respect to properties subject to U.S. export control laws, the period from the time the relevant contracts were entered into up to 14 November 1979 must be considered in determining Iran's financial situation. Although the risk that the necessary export licenses would not be granted by the United States was in 1979, and particularly just before 14 November 1979, higher than it was at the time the relevant contracts were entered into, the reason why Iran's properties were not returned was due to decisions that the United States Government took as a result of the change in its relations with Iran after the Islamic Revolution and the seizure of the American Embassy in 1979. If the United States thereby caused losses to Iran, there was in the Algiers Declarations an implied obligation for the United States to compensate Iran for the full value of such losses, since Iran's financial position would otherwise not be restored fully. While the United States preserved in the Algiers Declarations its right to refuse the export of the properties at issue, it undertook to compensate Iran in cases where the latter suffered losses from such refusal. However, the evidence thus far presented in the pleadings is not sufficient to enable the Tribunal to establish whether such losses were in fact incurred by Iran, and if this was the case, what was the nature and extent of such losses, and whether any reasonable attempt was made to mitigate them.

e) Relief

66. Following from the preceding conclusions, the Tribunal holds that the United States has, to the extent determined, breached its obligations under the Algiers Declarations. As to Iran's request that the United States transfer to it particular properties, the Tribunal has determined (see supra, para. 40) that the only obligation the United States had beyond the removal of barriers to the

transfer of Iranian properties and the direction to persons subject to U.S. jurisdiction to transfer such properties as directed by Iran was to take steps to ensure that this directive would be complied with.

67. 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 losses resulting from such a breach. Iran seeks in this Part II:A of Case No. A15 all direct and indirect damages that it asserts resulted from the United States' breach. Given the insufficient extent of the pleadings on these issues, the Tribunal cannot at the present stage of the proceedings make any determination as to the nature of the damages Iran incurred or as to the amount of any such damages. In this respect, further pleadings are required (see infra, Section D).

2. Part II:B

68. The Tribunal does not construe Iran's claim for compensation for storage charges incurred and deterioration of Iranian properties suffered during the period from 14 November 1979 to 19 January 1981 to be based upon an alleged failure of the United States to consolidate and care for Iran's properties during that period, for actions taken or not taken prior to the Algiers Declarations could not constitute breaches of obligations undertaken only in those Declarations. Rather, the Tribunal understands Iran's claim as one based solely on General Principle A of the General Declaration. Iran contends, in effect, that the undertaking of the United States expressed there to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979" implicitly obligated the

United States to compensate Iran for losses and expenses of this sort incurred during the freeze period.

69. While the Tribunal has found that General Principle A can provide useful guidance in the interpretation of the provisions of the General Declaration, it cannot stand by itself. As the Tribunal held in its Interlocutory Award in Case No. A15(I:G), Award No. ITL 63-A15(I:G)-FT (20 Aug. 1986), at para. 19, "the provisions of the two Declarations not only describe and detail the specific acts that the United States will have to undertake in order to implement the broad commitment defined in General Principle A, but they also limit the obligations deriving from this commitment." There is no provision of the General Declaration that is addressed to compensation for costs incurred during the freeze period prior to the conclusion of the Declaration, and the structure of the Declaration suggests that this was not inadvertent. Most of the operative paragraphs begin either with the phrase "commencing upon" or "upon the making", thus the structure of the Declaration is entirely forward-looking, and its provisions deal solely with the return of frozen Iranian assets. Paragraph 9, which is the paragraph dealing with Iran's tangible properties, requires the United States only to arrange for their transfer; it makes no reference to any duty to compensate Iran for storage charges or depreciation for the freeze period. In that connection, the Tribunal notes that in the only place in the Declarations where jurisdiction is provided with respect to claims that were outstanding prior to the conclusion of the Declarations -- Article II of the Claims Settlement Declaration -- jurisdiction is excluded over claims of nationals of either State arising out of actions of the United States in response to the seizure and detention of U.S. nationals described in Paragraph 11 of the General Declaration. The existence of such an exclusion suggests that if the Declarations were intended to create any

liability of the United States to Iran for such actions, that would have been done expressly.

70. The Tribunal cannot ignore the fact that General Principle A qualifies the undertaking of the United States by the phrase, "within the framework of and pursuant to the provisions of the two Declarations". Within that framework and considering those provisions, the Tribunal holds that the Declaration does not obligate the United States to compensate Iran for storage charges, deterioration, or other losses incurred with respect to Iranian properties prior to 19 January 1981. Consequently, the claims in Part II:B of Case No. A15 must be dismissed.

D. THE FURTHER PROCEEDINGS

71. At the present stage of the proceedings and upon the present record, the Tribunal does not deem it feasible to address the issue of specific properties or possible losses incurred by Iran with respect to those properties. Rather, the Tribunal will direct by a separate Order the filing of further pleadings and evidence, following which a Hearing will be scheduled.

72. The following points should be understood as to the scope of potential liability and damages:

73. First, liability of the United States exists where the United States has failed to fulfill its obligations under the General Declaration and Iran suffers losses as a result thereof.

74. Second, each Party shall have the burden of proving the facts relied on to support its claim or defence concerning the compensation at issue.



75. Third, in determining the amount of compensation, the Tribunal will take into account as to each property evidence of any loss by Iran, the position of Iran that existed prior to 14 November 1979 with respect to such property, and the contractual arrangements and other relevant circumstances of the transactions relating to such property.

76. Fourth, with respect to Iranian property that has not been transferred as required by the General Declaration because the United States has not fulfilled its obligations under the General Declaration, the withdrawal by Iran of a claim against the holder of that property or the settlement of such a claim between Iran and the holder of the property subsequent to 26 February 1981 does not per se relieve the United States from liability to Iran for losses caused by such non-transfer.

E. AWARD

77. In view of the foregoing,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- a) The obligations of the United States under the General Declaration of 19 January 1981 with respect to tangible Iranian properties were, first, to remove the restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of those properties and to direct persons holding those properties who were subject to the jurisdiction of the United States to transfer the properties as directed by the Government of Iran and, second, to take steps to ensure that this directive will be complied with.

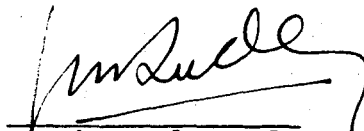
- b) United States Executive Order No. 12281 of 19 January 1981 was consistent with the obligations of the United States under the General Declaration.
- c) United States Treasury Regulations that excluded from the transfer direction properties in which Iran had only a partial or contingent interest were consistent with the obligations of the United States under the General Declaration.
- d) United States Treasury Regulations that excluded from the transfer direction properties which were owned solely by Iran but as to which Iran's right to possession was contested by the holders of such properties on the basis of any liens, defences, counterclaims, set-offs or similar reasons, were inconsistent with the obligations of the United States under the General Declaration. The Tribunal is not on the present record in a position to determine the relevant facts with respect to any particular property.
- e) United States Treasury Regulations that permit the sale of Iranian properties by the holders of those properties under certain conditions and pursuant to treasury licenses are not, per se, inconsistent with the obligations of the United States under the General Declaration, but the Tribunal is not presently in a position to determine whether any licenses authorizing sales pursuant to those Regulations were either consistent or inconsistent with the obligations of the United States under the General Declaration.
- f) United States Treasury Regulations authorizing it to refuse to permit exports of Iranian properties that were subject to United States export control laws applicable prior to 14 November 1979 and the refusal of the United States pursuant to those laws to permit exports of such properties were consistent with the

obligations of the United States under the General Declaration.


- g) The United States has an implicit obligation under the General Declaration to compensate Iran for losses it incurs as a result of the refusal by the United States to permit exports of Iranian properties subject to United States export control laws applicable prior to 14 November 1979.
- h) With respect to property that has not been transferred as required by the General Declaration because the United States has not fulfilled its obligations under the General Declaration, the withdrawal by Iran of a claim against the holder of that property or the settlement of such a claim between Iran and the holder of the property subsequent to 26 February 1981 does not per se relieve the United States from liability to Iran for losses caused by such non-transfer.
- i) The Respondent, THE UNITED STATES OF AMERICA, is obligated to compensate the Claimant, THE ISLAMIC REPUBLIC OF IRAN, for the damages it has suffered as a result of those actions the Tribunal has found or finds in further proceedings in Part II:A of Case No. A15 to have violated the obligations of the United States under the General Declaration.
- j) Further proceedings and submissions with respect to Part II:A, including issues related to individual properties and the determination of compensation and interest, will be described and scheduled by separate Order.
- k) The Respondent, THE UNITED STATES OF AMERICA, is not obligated by the General Declaration to compensate the Claimant, THE ISLAMIC REPUBLIC OF IRAN, for any storage charges, depreciation or other losses incurred with

respect to Iranian properties prior to 19 January 1981.  
Consequently, Part II:B of Case No. A15 is dismissed.


Dated, The Hague  
06 May 1992

  
José María Ruda  
President

In the Name of God

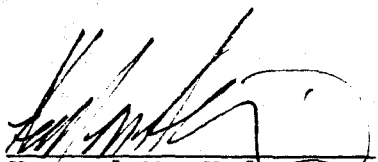
  
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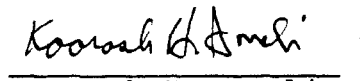
  
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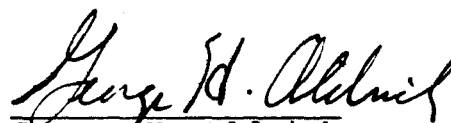
  
Assadollah Noori

Concurring in part II:A,  
dissenting to part II:B

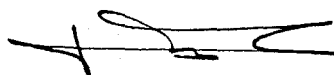
In the Name of God


  
Howard M. Holtzmann  
Concurring in part,  
dissenting in part.  
See Separate  
Opinion

  
Koorosh H. Ameli  
Concurring as to  
dispositif paras.  
77 (a) - (e) and  
(g) - (j);  
dissenting as to  
paras. 77 (f) and  
(k). See Separate  
Opinion

  
George H. Aldrich  
Concurring in part,  
dissenting in part.  
See Separate  
Opinion

In the Name of God

  
Mohsen Aghahosseini  
Concurring in part II:A,  
dissenting to part II:B

  
Richard C. Allison  
Concurring in part,  
dissenting in part.  
See Separate  
Opinion