A33-83

TES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. A33
FULL TRIBUNAL
DECISION NO. DEC 132-A33-FT

THE UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

DECISION

Appearances:

For the Claimant :

Mr. Clifton M. Johnson,
Agent of the United States of America,

Mr. David A. Kaye,
Deputy Agent of the United States of America,

Mr. Ronald J. Bettauer,
Deputy Legal Adviser,
United States Department of State,

Mr. Mark A. Clodfelter,
Assistant Legal Adviser,
United States Department of State,

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United States Department of State,

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For the Respondent :

Mr. M.H. Zahedin-Labbaf,
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Dr. Ali Akbar Riyazi,
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I. INTRODUCTION

1. At issue in this Case is Iran's performance of its obligations under the Algiers Declarations[1] concerning the replenishment of the Security Account established pursuant to Paragraph 7 of the General Declaration ("Security Account") "for the sole purpose of securing payment of, and paying, claims against Iran" in accordance with the Claims Settlement Declaration.[2]

2. The Tribunal delineated Iran's Paragraph 7 replenishment obligations in United States of America, et al. and Islamic Republic of Iran, et al., Decision No. DEC 130-A28-FT (19 Dec. 2000) ("Decision" or "Decision in Case No. A28"). In that Decision, the Tribunal held that Iran had been in non-compliance with its obligation to replenish the Security Account to the required level of U.S.$500 million

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[1] Declaration of the Government of the Democratic and Popular Republic of Algeria ("General Declaration") and Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"), both dated 19 January 1981, reprinted in 1 Iran-U.S. C.T.R. 3.

[2] Paragraph 7 of the General Declaration ("Paragraph 7") reads in full:

> As funds are received by the Central Bank pursuant to Paragraph 6 [of the General Declaration], the Algerian Central Bank shall direct the Central Bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing Security Account in the Central Bank, until the balance in the Security Account has reached the level of U.S.$1 billion. After the U.S.$1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the Security Account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the Claims Settlement Agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the Security Account has fallen below U.S.$500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of U.S.$500 million in the Account. The Account shall be so maintained until the President of the arbitral tribunal established pursuant to the Claims Settlement Agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the Claims Settlement Agreement, at which point any amount remaining in the Security Account shall be transferred to Iran.

since late 1992. The relevant portions of the Tribunal's Decision in Case No. A28 are discussed infra.

3. Since the Tribunal's Decision in Case No. A28 was issued, Iran has continued to fail to replenish the Security Account, so in this Case the United States requests that the Tribunal render an award ordering Iran to replenish the Security Account immediately. The United States further requests that the Tribunal award it arbitration costs both for Case No. A28 and the present Case. Finally, the United States requests that the Tribunal suspend proceedings on Iran's remaining claims before the Tribunal until Iran has complied with its replenishment obligation.

4. Iran denies any liability for this claim, which, it contends, represents an impermissible attempt to reargue an issue that the Tribunal already decided in Case No. A28.

5. A Hearing in this Case took place on 29-30 September 2003 in the Peace Palace, The Hague.

II. FACTUAL BACKGROUND

6. In Case No. A28, the claimants, the United States and the Federal Reserve Bank of New York, asserted that the respondents, Iran and Bank Markazi Iran, had breached their obligations under the Algiers Declarations and the implementing Technical Agreement[3] by failing to maintain a balance of at least U.S.$500 million in the Security Account. Accordingly, the claimants requested that the Tribunal order the respondents to replenish the Security Account to U.S.$500 million and to maintain it at that level until the President of the Tribunal had certified that all awards against Iran had been

[3] Technical Agreement with N.V. Settlement Bank of the Netherlands, 17 August 1981, reprinted in 1 Iran-U.S. C.T.R. 38.

satisfied. In addition, the claimants requested that, at any time that the respondents had not replenished the Security Account to U.S.$500 million, the Tribunal allow the claimants to satisfy any awards rendered against them in favor of Iran by paying such awards into the Security Account until the required minimum balance was reached.

7. In paragraph 95 of its Decision in Case No. A28, the Tribunal held:

> 95. In view of the foregoing,
>
> THE TRIBUNAL DECIDES AS FOLLOWS:
>
> A. Paragraph 7 of the General Declaration requires that Iran replenish the Security Account promptly whenever it falls below the level of U.S.$500 million until such time as the President of the Tribunal has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied.
>
> B. Iran has been in non-compliance with this obligation since late 1992. The Tribunal expects that Iran will comply with this obligation. Consequently, the requests by the United States for an order to Iran for replenishment and for additional relief are denied.

8. In paragraph 93 of the Decision, the Tribunal explained its reasons for denying a request or order to Iran for replenishment in the following terms:

> The Tribunal sees no need in the present circumstances to include such a specific request or order, as the Tribunal expects both Parties to comply with their obligations under the Algiers Declarations. The Tribunal has determined in the present Decision that Iran's interpretation of Paragraph 7 is not correct and that Iran is not in compliance with its obligation under that provision. The Tribunal cannot assume that Iran will remain in non-compliance in the future.

9. It is undisputed that, since the Tribunal's Decision of 19 December 2000 in Case No. A28, Iran has not replenished the Security Account.

III. THE PARTIES' CONTENTIONS

10. The United States contends that Iran's continued failure to replenish the Security Account to the required level of U.S.$500 million, despite the fact that there has been no certification by the President of the Tribunal that all awards against Iran have been paid, represents a repeated and continuing breach of Paragraph 7 of the General Declaration. Iran's conduct, the United States asserts, flies in the face of the Tribunal's finding that replenishment is required and of the Tribunal's stated expectation that Iran would replenish.

11. In these circumstances, the United States urges, there is no reasonable basis to expect that Iran will comply with its Paragraph 7 replenishment obligation unless it is ordered to do so by the Tribunal. Requiring Iran to comply is not only within the Tribunal's authority, it is also necessary in order to preserve the careful balance struck by the Parties in the Algiers Declarations concerning their respective rights and obligations. If Iran were allowed unilaterally to repudiate its fundamental Paragraph 7 obligation, the United States asserts, the integrity of the Algiers Declarations as a whole as well as the process for dispute resolution established by those Declarations would be seriously compromised.

12. Accordingly, the United States requests that the Tribunal order Iran to replenish the Security Account to U.S.$500 million and to maintain it at that level until the President of the Tribunal certifies that all awards against

Iran have been satisfied. At the Hearing, arguing that such an order by the Tribunal, alone, may not suffice to bring Iran into compliance with its Paragraph 7 replenishment obligation, the United States also requested that the Tribunal suspend proceedings on Iran's remaining claims before the Tribunal until Iran has replenished the Security Account.

13. The United States further seeks at least U.S.$100,000 in damages for the costs it incurred in presenting Case No. A28. The United States contends that Iran's failure to comply with the Tribunal's Decision in Case No. A28 has caused the United States' expenditures in pursuit of that claim to be wasted, to the injury of the United States.

14. Iran raises several defenses. Iran argues that the present claim is identical, in all relevant aspects - cause of action, parties, and principal relief sought - to the United States claim in Case No. A28, which claim the Tribunal decided finally and adversely to the United States on 19 December 2000. Consequently, Iran urges, the present claim is non-justiciable and barred by the res-judicata effect attaching to the Tribunal's Decision in Case No. A28. In these circumstances, there exists no legal dispute which the Tribunal could adjudicate.

15. According to Iran, binding effect attaches only to the dispositif of the Decision and not to its statement of reasons. The dispositif of that Decision, Iran continues, is found in the final sentence of its paragraph 95(B), in which "the requests by the United States for an order to Iran for replenishment and for additional relief are denied."[4]

[4] Iran argues that paragraph 95A and the first two sentences of paragraph 95(B) of the Tribunal's Decision in Case No. A28, see supra, para. 7, are part of the reasoning and not part of the dispositif.

Accordingly, Iran concludes, because the Tribunal's denial of the replenishment order and of the additional relief in Case No. A28 is final and binding, the Tribunal is precluded from revisiting the issue and granting the relief sought by the United States in the present Case.

16. Moreover, Iran notes, after the issuance of the Decision in Case No. A28, on 30 August 2001, the United States submitted a request "for an Order that Iran Replenish the Security Account"; by Order of 17 September 2001 in Case No. A28, however, the Tribunal denied that request.

17. Iran contends, further, that the claim in the present Case, being identical to that in Case No. A28, was merged in the Tribunal's Decision No. DEC 130-A28-FT of 19 December 2000. Thus, the United States cannot base the present claim on Iran's alleged breach of Paragraph 7, because, after a merger, suit can be brought only on the judgment and not on the original claim.

18. Iran asserts that the Tribunal is also precluded from exercising jurisdiction over the present claim by Article IV, paragraph 1, of the Claims Settlement Declaration, which provides that "[a]ll decisions and awards of the Tribunal shall be final and binding." The issues of Iran's non-compliance with Paragraph 7 and of the appropriate remedies for that non-compliance, Iran asserts, were addressed and decided finally in Case No. A28 and therefore cannot be revisited.

19. Alternatively, Iran argues, the Tribunal lacks jurisdiction over the present claim, because it relates, not to a dispute concerning the interpretation or performance of any provision of the Algiers Declarations, but rather to a dispute arising with respect to the Tribunal's Decision in

Case No. A28. The United States is, in effect, seeking revision of the Tribunal's Decision in Case No. A28 - a revision for which there is no jurisdictional basis in the Algiers Declarations. Even if the Tribunal did have the power to reopen and reconsider a case on the merits after the issuance of an award or decision, Iran contends, it could do so only under exceptional circumstances, and no such circumstances are present in this Case.

20. Iran argues that, after a final award or decision has been made, the Tribunal may only give an interpretation of the award or the decision (Article 35 of the Tribunal Rules), correct certain errors in the award or the decision (Article 36 of the Tribunal Rules), or make an additional award or decision (Article 37 of the Tribunal Rules); a party has thirty days as of the receipt of the award or decision to request that the Tribunal take any of those actions.

21. Iran further contends that the present claim also represents an impermissible request to the Tribunal to enforce its Decision in Case No. A28.

22. Iran asserts, moreover, that the United States has failed to state a cognizable claim in accordance with Article 18 of the Tribunal Rules.

23. On the merits, Iran contends that it would be unfair and unnecessary to require Iran to replenish the Security Account, because, even now, after all Tribunal awards of United States nationals against Iran have been satisfied, there are still ample funds in the Security Account. Iran asserts that, while it has not complied with the letter of the Algiers Declarations, it has complied with the object and purpose of those Declarations and with the stated purpose of Paragraph 7: it has paid all awards rendered against Iran.

24. Finally, Iran contends that the United States' request that the Tribunal suspend proceedings on Iran's remaining claims appears to be a request that the Tribunal involve itself in the sphere of enforcement; consequently, it is not within the Tribunal's jurisdiction.

25. At the Hearing, the Agent of Iran, while maintaining that no replenishment was necessary and that the present Case did not involve a cognizable and justiciable claim, confirmed a pledge Iran had made before the Tribunal during the Hearing in Case No. A28: that if any additional funds should be needed in the Security Account to pay awards against Iran, Iran would provide such funds.[5] Noting that the circumstances had "changed dramatically since the hearing of Case A28," in that there were "no American private claims left unpaid," the Agent added that "this pledge would remain valid until the Tribunal dispose[d] of the US counterclaim [in Case No. B1], namely either dismisse[d] the counterclaim on jurisdictional grounds or assume[d] jurisdiction over the counterclaim to the level of offset or otherwise."

IV. REASONS FOR THE DECISION

A. Preliminary Questions and Jurisdiction

26. Iran's principal defenses are premised on the argument that the present claim is identical to the claim that the United States asserted in Case No. A28. This argument, in

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[5] The Agent of Iran made the pledge in Case A28 in the following terms:

> I have been instructed by my government to make a pledge to alleviate any possible concern that the balance of the Security Account might be insufficient to pay the prospective awards.
>
> I hereby commit my government [] in the most unlikely event that the balance of the [S]ecurity [A]ccount[] proves to be inadequate to immediately replenish the Security Account to the necessary extent for the payment of the awards.

Decision in Case A28, para. 89.

turn, builds on Iran's theory that the dispositif of the Tribunal's Decision in Case No. A28 is limited to the final sentence of its paragraph 95, subparagraph B, in which the Tribunal stated that "the requests by the United States for an order to Iran for replenishment and for additional relief are denied." See supra, paras. 14-15. The Tribunal cannot agree with Iran's position.

27. The dispositif, or operative part, of the Decision in Case No. A28 comprises the entirety of the Tribunal's holdings in paragraph 95 and not just the last nineteen words of the last sentence of subparagraph B, as Iran asserts. Specifically, the dispositif of that Decision, which is preceded by the words "In view of the foregoing, the Tribunal decides as follows," incorporates both subparagraphs A and B of paragraph 95 (see supra, para. 7). Dispositifs appearing in decisions of other international courts and tribunals are no different.[6]

28. In paragraph 95, subparagraph A, of the Decision in Case No. A28, the Tribunal positively stated what Iran's obligations under Paragraph 7 of the General Declaration are. To reiterate, it held that, under Paragraph 7, Iran is obligated to "replenish the Security Account promptly whenever it falls below the level of U.S.$500 million until such time as the President of the Tribunal has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied." In paragraph 95, subparagraph B, the Tribunal further held that "Iran has been in non-compliance with this obligation since late 1992." In light of those two holdings, the Tribunal stated that it "expects that Iran will

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[6] Concerning judgments of the International Court of Justice, Rosenne explains that the "judgment ends with its operative clause (dispositif) preceded by some such wording as 'For these reasons, the Court decides etc . . . .'" Shabtai Rosenne, The Law and Practice of the International Court, 1920-1996 1585 (1997).

comply with this obligation," and it added that, "[c]onsequently, the requests by the United States for an order to Iran for replenishment and for additional relief are denied." Id. All of the above holdings by the Tribunal form part of the dispositif of the Decision in Case No. A28, enjoy res-judicata effect, and, therefore, are final and binding on the parties.

29. The reasons the Tribunal provided in its Decision in Case No. A28, too, have binding force as between the Parties to the extent that those reasons are relevant to the actual decision on the question at issue.[7] "[E]very matter and point distinctly in issue" in a judgment by an international court or tribunal, "which was directly passed upon and determined" therein, "and which was its ground and basis, is concluded by said judgment"[8] and, accordingly, has binding force.[9]

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[7] See Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals 348 (Grotius Publications 1987)(1953) ("Views expressed by the Tribunal in its judgment which are not relevant to the actual decision on the question at issue . . . have no binding force and are not res judicata.").

[8] Company General of the Orinoco (Fr. v. Venez.), 10 R.I.A.A. 184, 276 (Fr.-Venez. Mixed Cl. Comm. 1905).

[9] See also Chorzów Factory (Ger. v. Pol.), 1927 P.C.I.J. (ser. A) No. 11, at 24 (16 Dec.) (dissenting opinion of Judge Anzilotti) ("When I say that only the terms [dispositif] of a judgment are binding, I do not mean that only what is actually written in the operative part constitutes the Court's decision. On the contrary, it is certain that it is almost always necessary to refer to the statement of reasons to understand clearly the operative part . . . ."); Pious Funds Case (Mex. v. U.S.), Hague Ct. Rep. (Scott) 1, 5 (P.C.A. 1902) ("[A]ll the parts of the judgment or the decree concerning the points debated in the litigation enlighten and mutually supplement each other, and . . . they all serve to render precise the meaning and the bearing of the dispositif . . . and to determine the points upon which there is res judicata and which thereafter can not be put in question. . . ."); Advisory Opinion No. 11, Polish Postal Service in Danzig, 1925 P.C.I.J. (ser. B) No. 11, at 29-30 ("[T]he reasons contained in a decision, at least in so far as they go beyond the scope of the operative part, have no binding force as between the Parties concerned. . . . [A]ll the parts of a judgment concerning the points in dispute explain and complete each other and are to be taken into account in order to determine the precise meaning and scope of the operative portion." (Emphasis added.)).

30. The reasons stated by the Tribunal in paragraph 93 of its Decision (see supra, para. 8) are of particular relevance and must therefore be taken into account to understand the meaning and scope of the portion of the dispositif that denied the United States' request for an order for replenishment and additional relief. In paragraph 93, the Tribunal explained that, in the circumstances of Case No. A28, it had considered it unnecessary to order Iran to replenish the Security Account, because "the Tribunal expects both Parties to comply with their obligations under the Algiers Declarations," and it "cannot assume that Iran will remain in non-compliance in the future."

31. It is undisputed that, since the Tribunal's December 2000 Decision, Iran has not replenished the Security Account to the level of U.S.$ 500 million and thus has remained in non-compliance[10] with its Paragraph 7 obligation, which obligation continues to run until the President of the Tribunal has certified to the Central Bank of Algeria that all awards against Iran have been satisfied. As long as Iran does not replenish the Security Account and does not thereafter maintain it at the required level until the Tribunal President's certification, Iran continues to be in non-compliance with its Paragraph 7 obligation.

32. The above conclusion is in line with international law. According to Article 14, paragraph 2, of the International Law Commission's Articles on State Responsibility ("ILC Articles"), "[t]he breach of an international obligation by an act of a State having a

[10] At the Hearing, Counsel for Iran seemed to suggest that the term "non-compliance" is not the same as the term "breach." It should be noted in this connection that the phrase "in non-compliance with" is synonymous with the phrase "in breach of." See Report of the International Law Commission, U.N. GAOR, 56th Sess., Supp. No. 10, at 125, U.N. Doc. A/56/10 (2001).

continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation."[11] Article 30, subparagraph (a), of the ILC Articles provides that "[t]he State responsible for the internationally wrongful act is under an obligation . . . [t]o cease that act, if continuing."[12] In accordance with Article 2 of the ILC Articles, the word "act" covers both acts and omissions.[13] These rules have also been applied by other international courts and tribunals.

33. For example, the Rainbow Warrior Case involved France's failure to confine two agents on the French Pacific Island of Hao for a period of three years, as required by an agreement between France and New Zealand. The France-New Zealand Arbitration Tribunal, approving the principle now expressed in Article 14, paragraph 2, of the ILC Articles (see supra, para. 32), stated:

> Applying this classification to the present case, it is clear that the breach consisting in the failure of returning to Hao the two agents has been not only a material but also a continuous breach.[14]

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[11] Article 14, paragraph 2, Articles on Responsibility of States for Internationally Wrongful Acts, reprinted in Report of the International Law Commission, supra, note 10, at 46.

[12] Id. at 51.

[13] See id. at 43. See also id. at 216; Rainbow Warrior (N.Z. v. Fr.), 20 R.I.A.A. 217, 270, para. 113 (Fr.-N.Z. Arb. Trib. 1990) (the provision on cessation covers "all unlawful acts extending in time, regardless of whether the conduct of a State is an action or an omission.").

[14] Rainbow Warrior, supra note 13, 20 R.I.A.A. at 264, para. 101. The France-New Zealand Arbitration Tribunal, however, could not order the return of the two agents to the island of Hao, because, on the date the award in Rainbow Warrior was issued, 30 April 1990, France's conduct, "namely to keep the two agents in Paris, [was] no longer unlawful, since the international obligation [had] expired on 22 July 1989[;] [on 30 April 1990] France [was] no longer obliged to return the two agents to Hao." Id. at 271, para. 114. In this connection, the Arbitration Tribunal noted that

> a breach ceases to have a continuing character as soon as the violated rule ceases to be in force. . . . The recent jurisprudence of the International Court of Justice confirms that an order for cessation or discontinuance of wrongful acts or omissions is only

. . .

> France committed a continuous breach of its obligations, without any interruption or suspension, during the whole period when the two agents remained in Paris in breach of the Agreement.[15]

34. In the Asylum Case between Colombia and Peru, the International Court of Justice ("I.C.J.") held that the Colombian Government's grant of asylum to Victor Raúl Haya de la Torre in Colombia's embassy in Lima "[had not been] made in conformity" with the 1928 Havana Convention on Asylum.[16] Colombia failed subsequently to terminate the asylum. New proceedings were then commenced in what became known as the Haya de la Torre Case. In Haya de la Torre, Peru requested, inter alia, that the I.C.J. declare that the asylum that Colombia had granted to Haya de la Torre "ought to have ceased immediately after the delivery of the Judgment of November 20th, 1950 [in the Asylum Case], and must in any case cease forthwith."[17] The I.C.J. held:

> In its Judgment of November 20th the Court held that the grant of asylum by the Government of Colombia to Haya de la Torre was not made in conformity with Article 2, paragraph 2 [], of the Convention. This decision entails a legal consequence, namely that of putting an end to an illegal situation: the Government of Colombia which had granted the asylum irregularly is bound to terminate it. As the asylum is still being maintained, the Government of Peru is legally entitled to claim that it should cease.[18]

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justified in case of continuing breaches of international obligations which are still in force at the time the judicial order is issued.

Id. at 270, para. 114. (Citations omitted.) Here, however, Iran's replenishment obligation is extant.

[15] Id. at 265-66, para. 105.

[16] See Asylum Case (Colom. v. Peru), 1950 I.C.J. 265, 288 (20 Nov.).

[17] Haya de la Torre Case (Colom. v. Peru), 1951 I.C.J. 70, 75 (13 Jun.).

[18] Id. at 82. See also Cheng, supra note 7, at 339 ("In the case of a judgment declaring an act to be unlawful, this decision entails an

Accordingly, in the dispositif of Haya de la Torre, the I.C.J. went on to find that "the asylum granted to Victor Raúl Haya de la Torre on January 3rd-4th, 1949, and maintained since that time, ought to have ceased after the delivery of the Judgment of November 20th 1950 [in the Asylum Case], and should terminate."[19]

35. Accordingly, the United States is entitled to assert a new claim based on Iran's non-compliance, since December 2000, with its Paragraph 7 obligation and to request that Iran's non-compliance cease. The United States' right to assert this new claim was not extinguished by the Tribunal's Decision in Case No. A28 - which, in any event, only addressed Iran's non-compliance from late 1992 until December 2000.

36. In light of the foregoing considerations, the Tribunal concludes that the United States' claim in the present Case and its claim in Case No. A28 are not identical. Iran's argument to the contrary is therefore dismissed. By this finding, Iran's further argument based on Article IV, paragraph 1, of the Claims Settlement Declaration (see supra, para. 18) is necessarily dismissed.

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obligation on the State which has committed the act to put an end to the illegal situation created thereby.").

[19] Haya de la Torre, supra note 17, at 83. (Emphasis added.) Thus, in Haya de la Torre, the I.C.J. ordered cessation of Colombia's breach of its international obligations. As it said in the authoritative, French text of the judgment: "La Cour . . . dit que l'asile octroyé à Victor Raúl Haya de la Torre les 3-4 janvier 1949 et maintenu depuis lors aurait dû cesser après le prononcé de l'arrêt du 20 novembre 1950 et doit prendre fin." (Emphasis added.)

In Haya de la Torre, the I.C.J. denied the parties' request that it "make a choice amongst the various courses by which the asylum may be terminated" on the ground that a "choice amongst them could not be based on legal considerations, but only on considerations of practicability or of political expediency"; thus, the I.C.J. concluded, "it is not part of the Court's judicial function to make such a choice." Id. at 79. In the present Case, however, the relief requested - an order for replenishment - is based on "legal considerations" arising from Paragraph 7 as interpreted in the Decision in Case No. A28, rather than on "considerations of practicability or of political expediency."

37. The Tribunal holds that the present claim concerns a dispute between the Parties as to the "performance of a[] provision" of the General Declaration; therefore, it falls squarely within the Tribunal's jurisdiction pursuant to Paragraph 17 of the General Declaration and Article II, paragraph 3, of the Claims Settlement Declaration and is clearly justiciable. Further, the United States Statement of Claim satisfies the requirements of Article 18 of the Tribunal Rules. By these holdings, Iran's arguments based on revision and merger of claim (see supra, para. 19) are necessarily dismissed.

B. Merits

38. Turning to the merits of the claim, in the more than three years since the Tribunal's Decision in Case No. A28, Iran has made no move toward complying with its replenishment obligation and has indicated that it sees no need and no justification to do so. The Tribunal is forced to conclude that its stated expectation of compliance, in paragraphs 93 and 95 of its Decision (see supra, paras. 28 and 30), did not materialize.

39. The language used in paragraph 95, subparagraph B, of the Decision in Case No. A28 (see supra para. 28) leaves no doubt that the Tribunal's expectation of Iran's compliance led to the denial of the United States' request for an order mandating replenishment. Thus, the denial of that request was based solely on that expectation. Once the expectation did not materialize, the basis for the denial disappeared; therefore, the Tribunal will now consider the United States' petition for a replenishment order. Doing so does not conflict with the Tribunal's Decision in Case No. A28. A request by the Tribunal to Iran to replenish the Security

Account follows naturally from Iran's Paragraph 7 obligation as delineated in the Decision in Case No. A28 once it becomes clear that the Tribunal's expectation of replenishment will not be fulfilled.

40. The Tribunal does not understand the request of the United States that the Tribunal order Iran to replenish to be a request for a separate document, such as a procedural order, but rather for the Tribunal, in the present Decision, to grant that request. The Tribunal has done so in paragraph 45A below, with the understanding that the Tribunal's orders to the Parties are regularly phrased as requests.[20] This request

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[20] See, e.g., E-Systems, Inc. and Islamic Republic of Iran, et al., Interim Award No. ITM 13-388-FT (4 Feb. 1983), reprinted in 2 Iran-U.S. C.T.R. 51, 57; QuesTech, Inc. and Islamic Republic of Iran, et al., Interim Award No. ITM 15-59-1 (1 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 96, 99; Ford Aerospace and Communications Corp. and Islamic Republic of Iran, et al., Interim Award No. ITM 16-93-2 (27 Apr. 1983), reprinted in 2 Iran-U.S. C.T.R. 281, 282; Rockwell International Systems, Inc. and Islamic Republic of Iran, et al., Interim Award No. ITM 17-430-1 (5 May 1983), reprinted in 2 Iran-U.S. C.T.R. 310, 311; Watkins-Johnson Co., et al. and Islamic Republic of Iran, et al., Interim Award No. ITM 19-370-2 (26 May 1983), reprinted in 2 Iran-U.S. C.T.R. 362, 363; Rockwell International Systems, Inc. and Islamic Republic of Iran, et al., Interim Award No. ITM 20-430-1 (6 Jun. 1983), reprinted in 2 Iran-U.S. C.T.R. 369, 371; Behring International, Inc. and Islamic Republic Iranian Air Force, et al., Interim Award No. ITM 25-382-3 (10 Aug. 1983), reprinted in 3 Iran-U.S. C.T.R. 173, 175; Shipside Packing Company, Inc. and Islamic Republic of Iran (Ministry of Roads and Transportation), Interim Award No. ITM 27-11875-1 (6 Sep. 1983), reprinted in 3 Iran-U.S. C.T.R. 331; Ford Aerospace and Communications Corp., et al. and Air Force of the Islamic Republic of Iran, et al., Interim Award No. ITM 28-159-3 (20 Oct. 1983), reprinted in 3 Iran-U.S. C.T.R. 384, 386; CBA International Development Corp. and Islamic Republic of Iran, Award No. ITM 31-928-3 (18 Nov. 1983), reprinted in 4 Iran-U.S. C.T.R. 53, 55; Islamic Republic of Iran and United States of America, Interlocutory Award No. ITL 33-A4/A15(III)-2 (1 Feb. 1984), reprinted in 5 Iran-U.S. C.T.R. 131, 133; Ford Aerospace and Communications Corp., et al. and Air Force of the Islamic Republic of Iran, et al., Interim Award No. ITM 39-159-3 (4 Jun. 1984), reprinted in 6 Iran-U.S. C.T.R. 104, 110; Aeronutronic Overseas Services, Inc. and Islamic Republic of Iran, et al., Interim Award No. ITM 44-158-1 (27 Aug. 1984), reprinted in 7 Iran-U.S. C.T.R. 217, 219; Aeronutronic Overseas Services, Inc. and Islamic Republic of Iran, et al., Interim Award No. ITM 47-158-1 (14 Mar. 1985), reprinted in 8 Iran-U.S. C.T.R. 75, 78; Linen, Fortinberry & Associates, Inc. and Islamic Republic of Iran, Interim Award No. ITM 48-10513-2 (10 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 85, 87-88; Behring International, Inc. and Islamic Republic Iranian Air Force, et al., Interim and Interlocutory Award No. ITM/ITL 52-382-3 (21 Jun. 1985), reprinted in 8 Iran-U.S. C.T.R. 238, 241; Tadjer-Cohen Associates, Inc. and Islamic Republic of Iran, Interim Award No. ITM 56-12118-3 (11 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 302, 305.

should make clear to the Parties that the Tribunal has done all that it can do in this matter to promote Iran's compliance with its Paragraph 7 obligation.

41. While the Tribunal is not empowered by those Declarations to enforce its decisions, it is empowered to request a Party to take action that is required to bring itself into compliance with its obligations under the Declarations. Indeed, it did so in an early Interim Award in E-Systems, where it requested Iran to move for a stay of proceedings in an Iranian court.[21] Also, in a later Award in Case No. A15(I:G), the Tribunal ordered the United States to "cause the Federal Reserve Bank of New York to transfer immediately" to Iran excess funds in Dollar Account No. 1, which had been established under the Algiers Declarations to pay off syndicated bank loans made to or guaranteed by Iran.[22] Further, in Case A15(I:C), the Tribunal ordered action by both Parties by stating that they "shall immediately enter into negotiation, and negotiate in good faith. . . ."[23] The conclusion that the Tribunal is empowered to fashion appropriate remedies for a Party's breach of the Algiers Declarations is also in keeping with the jurisprudence of other international courts and tribunals.[24]

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[21] See E-Systems, Inc., supra note 20.

[22] See Islamic Republic of Iran and United States of America, Award No. 306-A15(I:G)-FT, para. 26 (4 May 1987), reprinted in 14 Iran-U.S. C.T.R. 311, 319.

[23] Islamic Republic of Iran and United States of America, Interlocutory Award No. ITL 78-A15(I:C)-FT, para. 39 (12 Nov. 1990), reprinted in 25 Iran-U.S. C.T.R. 247, 263.

[24] See, e.g., Rainbow Warrior, supra note 13, 20 R.I.A.A. at 270, para. 114 ("The authority to issue an order for the cessation or discontinuance of a wrongful act or omission results from the inherent powers of a competent tribunal which is confronted with the continuous breach of an international obligation which is in force and continues to be in force."); LaGrand Case (Ger. v. U.S.), 40 I.L.M. 1069, 1082, para. 48 (I.C.J. 2001) (also available online at <www.icj-cij.org>) ("[A] dispute regarding the appropriate remedies for the violation of the Convention alleged by Germany is a dispute that arises out of the interpretation or application of the

42. On the other hand, the Tribunal is not empowered to grant the request by the United States to suspend proceedings on Iran's remaining claims until Iran has complied with its replenishment obligation. The Tribunal must fulfil the mandate for which it was established, that is, adjudicating claims in accordance with the Algiers Declarations.

43. The United States' claim seeking damages for the expenditures it incurred in pursuing its claim in Case No. A28 (see supra, para. 13) represents, in effect, a claim for arbitration costs in that Case. It is the Tribunal's longstanding practice not to award arbitration costs in disputes between the Parties concerning the interpretation or performance of the Algiers Declarations. Consequently, the United States' claims requesting costs it incurred in Case No. A28 and in the present Case are both dismissed.

V. COSTS

44. Each Party shall bear its own costs of arbitrating this claim.

Convention and thus is within the Court's jurisdiction. Where jurisdiction exists over a dispute on a particular matter, no separate basis for jurisdiction is required by the Court to consider the remedies a party has requested for the breach of the obligation."); Chorzów Factory (Ger. v. Pol.), 1927 P.C.I.J. (ser. A) No. 8, at 25 (26 Jul.) ("An interpretation which would confine the Court simply to recording that the Convention had been incorrectly applied or that it had not been applied, without being able to lay down the conditions for the re-establishment of the treaty rights affected, would be contrary to what would, prima facie, be the natural object of the clause; for a jurisdiction of this kind, instead of settling a dispute once and for all, would leave open the possibility of further disputes.").

VI. DECISION

45. In view of the foregoing,

THE TRIBUNAL DECIDES AS FOLLOWS:

A. Iran is requested to comply with its obligation to replenish the Security Account, as determined by the Tribunal in its Decision in Case No. A28.

B. The request by the United States that the Tribunal suspend proceedings in Iran's remaining claims pending such compliance is denied.

C. The claim by the United States for costs incurred in presenting Case No. A28 is denied.

D. Each Party shall bear its own costs of arbitrating this claim.

Dated, The Hague
09 September 2004

Krzysztof Skubiszewski
President

In the Name of God

Bengt Broms

Gaetano Arangio-Ruiz

Assadollah Noori

Concurring in part,
Dissenting in part.

In the Name of God

George H. Aldrich

Koorosh H. Ameli
Concurring in part,
Dissenting in part.
Separate Opinion

In the Name of God

Charles N. Brower

Mohsen Aghahosseini
Dissenting as to
Paragraph 45(A)

Gabrielle Kirk McDonald