IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

دونسخه برابر اصل

CASE NO. B36
CHAMBER TWO
AWARD NO. 574-B36-2

THE UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده

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AWARD

Appearances:

For the Claimant:

Mr. D. Stephen Mathias,
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Mr. Ronald J. Bettauer,
Assistant Legal Adviser, U.S. Department of State,
Mr. Joshua L. Dorosin,
Attorney-Adviser, U.S. Department of State,
Ms. Roxsena Charise,
Accountant, U.S. Department of the Treasury,
Prof. Richard B. Lillich,
Counsel to the Agent,
Ms. Laurie R. Levin,
Attorney-Adviser, U.S. Department of the Treasury,
Mr. Sean D. Murphy,
Deputy Agent of the United States of America.

For the Respondent:

Mr. M.H. Zahedin-Labbaf,
Agent of the Islamic Republic of Iran,
Dr. J. Niaki,
Mr. S. Mohammadi,
Mr. K. Tabassi,
Legal Advisers to the Agent,

Mr. Rasool Badri,
Legal Assistant to the Agent,
Mr. H. Akhoundzadeh,
Representative of the Iranian Ministry of Finance and Economic Affairs,
Mr. H. Mohammadi Motlagh,
Mr. A. Saeedi,
Representatives of the Islamic Republic of Iran Railway.

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I. INTRODUCTION

1. THE UNITED STATES OF AMERICA ("United States") filed this Claim on 19 January 1982 seeking U.S.$23,297,059.45 from THE ISLAMIC REPUBLIC OF IRAN ("Iran"). The United States presents two Claims which arise out of contracts between it and Iran relating to the purchase of certain U.S. surplus military property after the Second World War: a sales agreement dated 12 December 1945 (the "1945 Contract") on which the United States claims U.S.$1,907,213.98; and a credit sales agreement dated 29 July 1948 (the "1948 Contract") on which it claims U.S.$21,389,845.47. The United States further seeks interest and legal costs.

2. Iran denies any obligation to pay amounts due under the 1945 and 1948 Contracts and contends that they are odious debts. Additionally, it asserts that the Claims are time barred.

II. PROCEDURE

3. Iran has previously requested that this Case be consolidated with Case No. B58, see Islamic Republic of Iran Railways and United States of America, Award No. 572-B58-2 (9 Oct. 1996), contending that the two Cases related to the Second World War and were connected generally with the railways of Iran. In Case No. B58, the Claimant asserted that the United States was financially responsible for damage sustained by the southern railways of Iran during the Second World War.

4. Case No. B58 was originally pending before Chamber One. On 15 December 1986 it was reassigned to Chamber Two because it was considered more efficient to deal with Cases Nos. B36 and B58 in one Chamber. In its Award in Case No. B58, the Tribunal denied a request to consolidate the two Cases finding that the connection between them was not sufficient to justify consolidation. See Award No. 572-B58-2 at para. 7. The Tribunal

heard the two Cases sequentially. In view of the rendering of the Award in Case No. B58, the issue is no longer before the Tribunal.

5. The Hearing in this Case was held on 6 December 1995.

6. During the Hearing, the Agent of Iran circulated a document entitled "Decree of Council of Ministers," dated 20 October 1975. The United States objected to the admission of that document contending that it was untimely. On receipt of the document, the Tribunal reserved decision on its admissibility.

7. The Tribunal has given due consideration to that submission and notes that no justification was adduced by Iran for the late submission of that document. The said document is not a public document of which the Tribunal could appropriately take judicial notice. Moreover, the need for the orderly conduct of the Tribunal's proceedings also militates against the admission of this document at such a late stage. Consequently, the Tribunal finds no reason for the admission of the late-filed document into the record.

III. FACTS AND CONTENTIONS

A. Claim No. 1: The 1945 Contract

8. On 12 December 1945 the United States and Iran signed the 1945 Contract pursuant to which the United States sold to Iran a variety of fixed installations, fixed and moveable equipment, plant equipment, furnishings and railway stock (tank cars and cabooses) located in Iran. The property sold was surplus military property dating from the Second World War. In return for this property, Iran agreed to pay U.S.$2,819,983.47. No charge for interest was stipulated in the Contract.

9. The Appendix to the 1945 Contract set out the real values

of the a) installations; b) related equipment and furnishings; and c) tank cars and cabooses purchased by Iran, the total values of which amounted to U.S.$28,796,200.00, U.S.$803,263.48 and U.S.$600,023.71, respectively. The price charged for the installations was computed at 7½ percent of the cost of construction and in the case of equipment and furnishings, 7½ percent of their value. The price charged for the tank cars was U.S.$2,929.69 each, and for the cabooses it was U.S. $2,438.43 each.

10. Pursuant to paragraph 3 of the 1945 Contract, Iran effected the purchase by executing three promissory notes of U.S.$939,994.49 each, payable on 12 December 1948, 1950 and 1952.

11. In April 1949, Iran paid U.S.$912,769.49 on the first of the three promissory notes. The United States contends that Iran never paid the remaining U.S.$27,225.00 due on the first note or any amount on the other two. According to the United States, therefore, Iran owes U.S.$1,907,213.98 in principal under the 1945 Contract and the promissory notes executed pursuant thereto. Iran contends that it withheld U.S.$27,225.00 from its initial installment because it considered a warehouse listed in the Contract its own.

B. Claim No. 2: The 1948 Contract

1) Formation and Basic Terms

12. By diplomatic note of 15 October 1946, addressed to the United States Secretary of State, the Iranian Ambassador in Washington, Hossein Ala, acting on behalf of his government, requested that the United States grant Iran a U.S.$10 million line of credit that would

> be earmarked for the purchase of arms and equipment in the United States and abroad through the Foreign Liquidation Commission in America, as approximately

> detailed in the accompanying list . . . which are urgently required to render the Iranian Army more mobile and put it in a better position to fulfil its duty in the maintenance of law and order within Iran's borders and in defending the integrity and independence of the Country without any thought of aggression.
>
> . . . .
>
> Further particulars and detailed lists of the arms and equipment will be furnished as required.

13. On or about 19 June 1947 the United States and Iran signed a letter agreement under which the United States granted Iran a U.S.$25 million credit for the purchase of U.S. surplus military property from U.S. military supplies located outside of Iran. Under paragraph 4 of that agreement, Iran was solely responsible for all expenses related to care, repair, packing, safeguarding, and transportation of the property purchased ("PHT costs"). Paragraph 9 stipulated that the terms of the agreement would not "take effect until they [were] approved by the Majl[i]s," the Iranian parliament.

14. On 17 February 1948, the Majlis authorized the Iranian Ministry of War to purchase military supplies from the United States up to the amount of U.S.$10 million. However, because of a shortage of dollar exchange at the disposal of the Iranian government, the Majlis requested the latter to negotiate with the United States a credit that would also cover PHT costs on the same repayment terms as the credit for the purchase of the equipment itself.

15. The United States Congress approved a special appropriation to cover the PHT costs on or about 25 June 1948.

16. On or about 29 July 1948, the United States and Iran signed the 1948 Contract, a letter agreement superseding the 19 June 1947 agreement, supra, para. 13, and extending the credit granted by the United States also to cover PHT costs.

17. Pursuant to the 1948 Contract, the United States undertook to grant Iran a line of credit for the purchase of surplus property "of an aggregate sales value not in excess of [U.S.]$10,000,000," plus credit for PHT costs up to a U.S.$16,000,000 maximum. The contract specified that the quantities, types, and prices of the surplus property to be purchased by Iran, including PHT costs, and other terms of sale were matters for agreement between the Office of the U.S. Foreign Liquidation Commissioner and the government of Iran. Such terms and conditions were to be set forth in separate sales contracts.

18. Paragraph 1 of the 1948 Contract regulated the terms of repayment of the debt incurred by Iran under the contract. It provided that

> [a] sum in United States dollars equal to the total purchase price of individual sales of such property and the costs of care and handling thereof shall be paid in twelve [12] equal annual installments beginning on January 1, 1950, and continuing thereafter on January 1 of each year up to and including January 1, 1961 . . . .

19. In paragraph 2, Iran agreed to pay interest "on the outstanding unpaid balance of the total purchase price and [PHT costs]" which accrued "from the respective delivery dates specified in the individual sales contracts" at the rate of 2 and 3/8 percent per annum. Payment of the interest was due on 1 January 1949 and each year thereafter.

2) Individual Sales Agreements Pursuant to the 1948 Contract

20. The United States contends that soon after signing the 1948 Contract, Iran dispatched military purchasing teams abroad to examine and select appropriate items for purchase and that, between October 1948 and December 1949, the United States and Iran entered into 21 separate agreements relating to the sale of

surplus U.S. military property. The United States asserts that the separate agreements fell into two groups: eight concerned surplus property located in the United States, while thirteen concerned property located in Europe. For each group, a "Master Agreement" provided the framework for the conclusion of the individual sales.

21. The United States has proffered a copy of the Master Agreement, dated 30 September 1948, governing the sale of surplus military property located in the United States ("U.S.-origin property"). It has also proffered copies of three individual sales agreements, dated 20 October 1948, 30 November 1948 and 29 April 1949, amounting to approximately U.S.$7.4 million of the U.S.$10 million credit line. These agreements are accompanied by contemporaneous cover letters which the United States asserts evidence their due execution by the two governments.

22. The United States has not proffered a copy of the Master Agreement concerning the sale of surplus military property located in Europe ("European-origin property") and maintains that it could not be found. However, other documents have been proffered which, according to the United States, conclusively prove that such agreement was in fact executed by the parties. To establish the existence of the 18 remaining individual sales contracts, which cover approximately U.S.$2.6 million in sales, the United States has submitted the following documents:

a. A U.S. Department of State airgram to the U.S. Embassy in Tehran dated 17 May 1968 ("1968 Airgram"), listing all of the agreements in question and stating that copies thereof "are enclosed."

b. A report by the U.S. Field Commissioner for Europe for October, November, and December 1948, describing the purchases of European-origin property that Iran made during that period.

c. A letter dated 12 April 1949 from the U.S. Field Commissioner for Military Programs to the Military Attaché of Iran at the Iranian Embassy in the United States stating that, as of that date, Iran had used all but U.S.$430,160 of the U.S.$10 million credit available to it under the 1948 Contract.

d. An airgram dated 13 March 1964 from the U.S. Department of State to the U.S. Embassy in Tehran, providing certain background information on Iran's lend-lease and surplus property debts, exploring possible strategies for collecting, inter alia, the amounts due by Iran under the 1945 and 1948 Contracts, and enclosing a "Statement of Unpaid Lend-Lease and Surplus Property Accounts as of January 1, 1964."

e. A ledger sheet "Iran-Credit Agreements as of 28 February 1949," listing seventeen individual sales contracts concluded before that date. The date and sales price of the contracts listed in the ledger match with those listed in the 1968 Airgram and in the 1948 report of the U.S. Field Commissioner for Europe.

23. The total purchase price under the twenty-one contracts is U.S.$10,000,017.43. As a result of certain credit adjustments, by January 1960, this amount was reduced to U.S.$9,797,825.09.[1] The United States contends that Iran has never made any payments on this principal amount.

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[1] In its written pleadings, the United States erroneously cites U.S.$9,811,573.69 as the total principal amount outstanding under the 1948 Contract. The document relied on by the United States to support this figure -- a contemporaneous statement of Iran's total indebtedness under the 1948 Contract as of 1 January 1960 -- indicates that the correct amount is U.S.$9,797,825.09.

3) PHT Costs

24. As noted, under the 1948 Contract, Iran undertook to pay the care and handling costs related to the property purchased, the PHT costs, see supra, paras. 13-19. Article Six, paragraph 10, of the Master Agreement for U.S.-origin property defines these PHT costs as follows:

> [A]ll expenses and charges paid or incurred by the Seller for such care, handling, repairing, processing, packing, safeguarding, transportation, demurrage, lifting, wharfing, storage, and delivery. . . .[2]

25. Provisions for assessing PHT costs are found in the Master Agreements. In this connection, Article Seven, paragraph 15(c), of the Master Agreement for U.S.-origin property provides:

> (1) . . . An amount equivalent to one hundred fifty (150) per centum of the net purchase price of each . . . shipload [of purchased goods] shall be used to serve as the estimated amount of the expenses and charges to be tentatively utilized and charged at the time physical delivery thereof . . . is accomplished; and,
>
> (2) When the total sum of the actual expenses and charges . . . for all of said property . . . has been determined by the Seller [i.e., the United States], a comparison of such expenses and charges with the total estimated expenses and charges utilized in accordance with subparagraph (1) above will be made, and any upward or downward revision and adjustment of the latter expenses and charges as may be found by the Seller to be necessary by such comparison will be made.[3]

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[2] It appears from the 1968 Airgram that except for expenses incurred for repair, the Master Agreement for the European-origin property contained a similar definition of PHT costs.

[3] The 1968 Airgram indicates that the Master Agreement for European-origin property contained a similar provision.

26. According to the 1968 Airgram, the U.S. Army Office of Finance determined that the PHT costs actually incurred in relation to the sales amounted to U.S.$11,592,020.38. The United States maintains that Iran has made no payments on this amount.

4) Relief Sought

27. In sum, on Claim No. 2 the United States seeks a total of U.S.$21,389,845.47. This figure is based on the unpaid amount of the principal debt, U.S.$9,797,825.09, see supra, para. 23, plus the total PHT costs, U.S.$11,592,020.38, see supra, para. 26. The United States also claims the outstanding interest, see supra, para. 19.

C. United States' Efforts Seeking Repayment of Iran's Debts under the 1945 and 1948 Contracts

28. The United States asserts that over the years it has made repeated and timely efforts to collect Iran's debts under both the 1945 and 1948 Contracts.

In this regard, the following evidence is on record:

a. A letter dated 12 December 1950 from a U.S. Treasury Department official to the Iranian Ambassador in Washington requesting the payment of amounts owing under the first and second promissory notes executed pursuant to the 1945 Contract.

b. The 1968 Airgram, stating that between June 1949 and May 1954 the United States sent five billings to the Iranian Embassy in Washington in relation to Iran's debt under the 1948 Contract.

c. Notes from the U.S. Department of State to the Iranian

Embassy in Washington, dated 17 May 1954, 23 May 1955, and 23 May 1960, reminding Iran of its outstanding accounts with the United States together with statements of debt showing, inter alia, the status of the 1945 and 1948 Contracts.

d. An airgram from the U.S. Department of State to the U.S. Embassy in Tehran of 13 March 1964, stating, in relevant part:

> [ ] The Department has concluded that an approach must be made to the Government of Iran . . . in the near future to seek an agreed method by which [Iran] shall discharge its past due lend-lease and surplus property debts on a systematic basis.[4]
>
> . . . .
>
> [ ] In recent years the Department has several times considered urging [Iran] to begin meeting these commitments [under the 1945 and 1948 Contracts, as well as under other lend-lease and surplus property contracts] but has repeatedly refrained because of what it felt were overriding considerations, chiefly weaknesses in [Iran's] political and financial positions . . . . The Department has, of course, generally kept [Iran] aware of the debts even though not insisting on payment. The last reminder was a note of May 23, 1960 to the Ambassador of Iran in Washington . . . . Another note was prepared in 1961 but was withheld out of consideration for the special problems then facing [Iran]. No reminder was sent in 1962 . . . nor in 1963 . . . .

e. An airgram from the U.S. Department of State of 11 December 1968, requesting the U.S. Embassy in Tehran to deliver to

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[4] A memorandum dated 7 December 1972, prepared by the U.S. Embassy in Tehran states that the U.S. Department of State sent a letter to the Iranian Ministry of Finance on 4 May 1964 reminding Iran of its unpaid lend-lease surplus property debt.

the government of Iran a statement of Iran's lend-lease and surplus property debts as of 1 January 1969. This airgram further states:

> Since extensive documentation has been forwarded to Embassy for presentation [to] Iranian authorities, [Iran] no longer reasonably can cite lack of knowledge or evidence of obligation for failure [to] meet claims arising July 29, 1948 Surplus Property Agreement.

f. A telegram dated 25 September 1971 to the U.S. Secretary of State from the U.S. Mission to the United Nations according to which the Foreign Minister of Iran, A. Khalatbari, told the U.S. Secretary of State the previous day that, while Iran had hoped the debt, which by then had grown to U.S.$32 million, would be cancelled, it now understood that this was not possible and he proposed a 20-year rescheduling of the debt and its repayment in rials.

g. A U.S. Department of State memorandum of conversation of 29 September 1971, reporting on a meeting held in September 1971, apparently in Washington, between the Iranian Ambassador at Large, Dr. Mehdi Samii, and U.S. government officials. Among other things, this memorandum relates that the Iranian Ambassador acknowledged that Iran's surplus property debts were "a clear legal obligation of the Government of Iran." The memorandum goes on to say that in response to the Iranian Ambassador's observation that the "absence of US pressure to pay" led Iranian officials to believe that the United States would not insist on repayment of the debt, the U.S. Director of Iranian Affairs, a United States official, inter alia, explained that

> the US attitude in not pressing Iran for repayment of these obligations during the 1950's was related to Iran's relatively weak

> economic situation in that period and the fact that [the United States was] simultaneously granting large amounts of aid to Iran. . . . He recalled that representations to the Government of Iran on this debt had been made periodically by the United States beginning about 1962.

h. A memorandum of conversation of 1 October 1971 stating that Iranian Prime Minister Hoveyda confirmed to U.S. Ambassador MacArthur that he had authorized the Iranian Foreign Minister and Ambassador at Large to propose settlement of the debt by payment in rials for agreed projects over 20 years.

i. Reminder notes from the United States Embassy in Tehran to the Iranian Ministry of Foreign Affairs dated 23 January 1969, 11 February 1970 and 21 June 1971.

j. A December 1972 telegram from the U.S. Embassy in Tehran to the U.S. Secretary of State mentioning that on 11 December a U.S. congressman, while visiting Tehran as part of a U.S. congressional delegation, discussed the question of Iran's lend-lease surplus property debts to the United States with the Iranian Foreign Minister, A. Khalatbari.

k. On 19 October 1975, the Deputy Minister of the Iranian Ministry of Economic Affairs and Finance, Hassanali Mehran, wrote to the U.S. Ambassador in Tehran stating:

> Reference to the United States' claims regarding Iran's surplus property and lend-lease agreement, the Imperial Government of Iran has made several payments to this effect in the past. . . .
>
> . . . I would like to inform you that the Imperial Government of Iran, as a gesture of goodwill, has arranged for the payment of $1.8 million towards Iran's surplus property and lend-lease obligations.

l. A 1979 U.S. government publication containing testimony

before a U.S. Senate subcommittee indicating that in the summer of 1978 the U.S. State Department discussed the outstanding lend-lease debts with Iran.[5]

29. Many of the above documented intergovernmental contacts between Iran and the United States in regard to the 1945 and 1948 Contracts are confirmed by additional evidence before the Tribunal. Other contacts between the two governments on the issue of the lend-lease debts have also been referred to in documents on record.

D. Payments made by Iran

30. As previously noted, in April 1949 Iran paid U.S.$912,769.49 on the 1945 Contract, see supra, para. 11.

31. During the 1960's Iran took the position that it lacked records of the existence of the 1948 Contract other than the letters from the United States asserting the claim now presented as Claim No. 2. In early 1970, in response to Iran's position, the United States submitted to the Iranian government comprehensive documentation concerning that Contract.

32. Negotiations between the two governments ensued thereafter and proposals for modifying the terms of payment of Iran's lend-lease and surplus property debts -- including, of course, Iran's debts under the 1945 and 1948 Contracts -- were discussed. Initially, Iran requested that the United States cancel those debts, pointing to Iran's contribution to the Allies' efforts during World War II, to the period of time that had elapsed without the United States pressing for payment, and to the fact that during the 1950's and 1960's, Iran was receiving

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[5] Foreign Indebtedness to the United States, Hearing before the Subcomm. on Taxation and Debt Management Generally of the Comm. on Finance, U.S. Senate, 96th Cong., 1st Sess. 11 (1979).

considerable grant aid from the United States.

33. In March 1973, Iran paid the United States U.S.$754,734.06. The United States contends, and there is evidence to support its position, that Iran paid this amount to discharge its obligations under lend-lease and surplus property agreements other than those at issue in this Case.

34. On 29 October 1975, Iran paid the United States U.S.$1,806,507.60, see supra, para. 28(k). Of this amount, the United States credited U.S.$1,668,366.96 against the outstanding interest on the 1948 Contract. The United States credited the remainder of Iran's payment to close out a lend-lease agreement and an air transportation service not involved in this Case.

35. It is undisputed that after its October 1975 payment, Iran made no further payments on its outstanding surplus military property debts to the United States.

IV. JURISDICTION

36. There is no dispute that the Claim based upon the 1948 Contract falls within the Tribunal's jurisdiction pursuant to Article II, paragraph 2, of the Claims Settlement Declaration ("CSD").

37. With respect to the Claim based on the 1945 Contract, the Tribunal notes that Article II, paragraph 2, of the CSD serves to limit the subject matter jurisdiction of the Tribunal over Claims between the two Governments to those "arising out of contractual arrangements between them for the purchase and sale of goods and services." See, for example, Iranian Customs Administration and United States of America, Award No. 265-B2-2, at para. 6 (13 Nov. 1986), reprinted in 13 Iran-U.S. C.T.R. 155, 156-7. That provision raises the question whether all or part of the Claim based on the 1945 Contract falls within the

Tribunal's jurisdiction.

38. It is the Tribunal's view that immovable property does not fall within the meaning of "goods" as contained in Article II, paragraph 2, of the CSD. Black's Law Dictionary defines "goods," inter alia, as "all things . . . which are movable at the time of identification to the contract for sale . . . ." (5th ed.) In light of this definition, it is clear that the fixed installations sold under the 1945 Contract cannot be classified as goods and, hence, fall outside the Tribunal's jurisdictional subject matter.

39. It is unclear to the Tribunal to what extent the equipment and furnishings at each of the fixed installations should more properly be considered moveable goods or part of those installations. The railway tank cars and cabooses clearly were not part of any installation and must be considered moveable goods. Nevertheless, the Tribunal notes that the 1945 Contract valued the cost of the fixed installations at U.S.$28,796,200 and the cost of the equipment and furnishings at U.S.$803,263.48, of which amounts Iran was charged only 7½ percent, or a total of U.S.$2,219,959.76. The total price of the 148 tank cars and 25 cabooses was U.S.$600,023.71.

40. The question facing the Tribunal is whether it should find jurisdiction over the moveable goods that were included in this Contract, or whether all claims based upon the Contract should be considered excluded from its jurisdiction because the Contract was predominantly concerned with sale of fixed installations, not goods. In that connection, the Tribunal notes that, in addition to the price charged by the Contract (U.S.$2,819,983.47), the Contract stated that 'further consideration' was 'the assumption by the Purchaser of all past and future claims that may arise out of the use and occupancy of the fixed installations and the sites thereof.' While the question is a close one, the Tribunal concludes that the 1945 Contract was not the type of contractual arrangement envisioned by Article II, paragraph 2, of the CSD.

Consequently, the Tribunal finds that it has no jurisdiction over claims based upon the 1945 Contract. Accordingly, Claim No. 1 is dismissed for lack of jurisdiction.

41. This conclusion is supported by considerations which come into play in light of the fact that the overwhelming part of the 1945 Contract concerned the sale of installations. This would speak against a separate treatment of the tank cars and cabooses, i.e., against the assumption of jurisdiction exclusively with regard to their purchase. The delivery of tank cars and cabooses resulted from an operation which took place during the Second World War and involved the Government of Iran. The transaction relating to the rolling stock was part of a larger whole and, under the specific circumstances, the Tribunal should not assume jurisdiction over that particular part while it is unable to do so with regard to other property purchased under the 1945 Contract.

V. MERITS

A. Existence of the 1948 Contract

42. The Tribunal next turns to determine whether the United States has proved the existence of the 1948 Contract.

43. The United States has produced a copy of the executed July 1948 letter agreement; a copy of the Master Agreement relating to U.S.-origin surplus property; copies of three individual sales agreements covering approximately U.S.$7.4 million in sales; and several contemporaneous documents evidencing the conclusion of the Master Agreement relating to European-origin surplus property and of further eighteen individual sales contracts covering approximately U.S.$2.5 million in sales. Although not all the specific items purchased by Iran in accordance with the 1948 Contract are known, there is no dispute that the equipment purchased was in fact delivered.

44. The record shows, moreover, that over the years, the United States repeatedly reminded Iran of its surplus military property debts and submitted billings to it for those debts, see supra, para. 28-29. There is no evidence that Iran ever objected to the accuracy of these billings, or seriously disputed the existence of the debts.

45. On the evidence before it, the Tribunal is satisfied that the United States has established the existence of the 1948 Contract and that it was properly executed in July 1948 by fully authorized representatives of the United States and Iran.

B. The Principal Owed under Claim No. 2

46. The United States has proven to the satisfaction of the Tribunal that the amount of U.S.$21,389,845.47 remains unpaid on the principal of the 1948 Contract. There is no evidence of any partial payment having been made by Iran on the principal amount.

C. Odious Debts

47. Iran argues that the obligations under the 1948 Contract are invalid because they represent "odious debts." Iran submits that the 1948 Contract was imposed on Iran by the United States and that it is a "subjugation debt[] of the former regime" and as such is "not transferable to the Islamic Republic of Iran."

48. The Tribunal will first examine the Iranian assertion that the 1948 Contract was imposed on Iran by the United States. In conjunction with this question the Tribunal will consider the criterion of "subjugation."

49. The 1948 Contract was not imposed on Iran. It was entered into at the request of Iran, which selected the items it purchased under the Contract. Though the Tribunal has not been

provided with details of all the supplies purchased under that Contract, it can reasonably be assumed that they, being mainly military, served the purpose of external defence of the country. During the period the deliveries were secured there was no civil war or revolution in Iran. There is no evidence to the effect that the debt had been incurred by Iran for the purpose of suppressing any such war or revolution. Consequently, the facts, as far as the Tribunal has been able to ascertain them, do not warrant any reference to the category of "subjugation debts."

50. In particular, it is not possible to establish any connection between the Contract and the crisis in Iran which led to the Islamic Revolution in 1979. The Contract did not, and in fact could not, in any respect, detract from or undermine the new Constitution, the social order and the form of government of Iran as created in and after 1979. Also, the time gap is too considerable to allow for any such hypothesis.

51. The Tribunal is of the opinion that the debt under the 1948 Contract cannot be classified under the notion of "odious debts" as understood in international law. They were not contracted with a view to attaining objectives contrary to the legitimate interests of Iran nor were they contracted with an aim and for a purpose not in conformity with international law.[6]

52. The Tribunal will now consider the position of Iran that the debt under the 1948 Contract is not transferable as a debt personal to the former regime.

53. Iran does not assert that its situation is one of State succession. It does not deny that it is subject to rights and liable to obligations of the former regime, as shown by the fact that it has brought to this Tribunal numerous claims arising

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[6] See the definition of "odious debts" in Mohammed Bedjaoui, Ninth Report on Succession of States in respect of matters other than treaties, U.N. Doc. A/CN.4/301 and Add. 1, paras. 117-140, [1977] I.L.C. Yearbook, Vol. II, Part One, 45, 67-70.

between the former regime and the United States, including Case No. B58. See, supra, para. 3. Iran argues, however, that the debt based on the 1948 Contract was a debt personal to the former regime that should be considered non-transferable by analogy and that this position is supported by the principle of non-transferability of odious debts, which it asserts also is recognized in the field of State succession.

54. The Tribunal does not take any stance in the doctrinal debate on the concept of "odious debts" in international law. In any event, the Tribunal will limit itself to stating that the said concept belongs to the realm of the law of State succession. That law does not find application to the events in Iran. The revolutionary changes in Iran fall under the heading of State continuity, not State succession. This statement does not exclude a realist approach that recognizes that in practice the border between the concepts of continuity and succession is not always rigid.[7] However, without denying the legal complexities which characterize the revolutionary and post-revolutionary situation in Iran or, for that matter, in some other countries, it has to be emphasized that in this Case we do not deal with an instance of State succession. In spite of the change in head of State and the system of government in 1979, Iran remained the same subject of international law as before the Islamic Revolution. For when a Government is removed through a revolution, the State, as an international person, remains unchanged and the new government generally assumes all the previous international rights and obligations of the State.[8]

55. The foregoing conclusion of the Tribunal, that the debt arising out of the 1948 Contract is not "odious" in nature, justifies the view that in the present Case one has to rely on continuity and, consequently, on the duty of the new Government

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[7] See Ian Brownlie, Principles of Public International Law 82-85 (4th ed., 1990).

[8] See R. Jennings and A. Watts, Oppenheim's International Law, Vol. I, Part I, 234-6 (9th ed., 1992).

of Iran to respect the said financial obligation of the State in spite of basic constitutional changes. In the present Case, international law cannot be interpreted as allowing for a departure from that duty. Not only adherence to strict law (i.e., maintenance of the difference between circumstances of State succession and continuity of States), but also the "functional approach"[9] make the attitude adopted by the Tribunal sound. In the framework of this Case there is no room for making the obligations resulting from continuity less absolute. Finally, it may be observed that the nature of the debt involved would lead to its passing to the new Government and to that Government's consequential duty to repay, even if rules of State succession were here applicable and applied.

56. It is true that in contemporary international practice there is a distinct development and tendency in favor of alleviating the debt burden of the "newly independent States." But Iran does not belong to this category, its statehood is one of the oldest in the world; and, let this be repeated, in the present Case the Tribunal does not deal with an instance of State succession.

57. The conclusion, therefore, is that the Government of Iran cannot, by invoking the rule of odious debts, avoid the responsibility for the debt incurred by the Imperial Government under the 1948 Contract.

VI. TIME LIMITATION

58. The terms of the 1948 Contract did not contain a time limitation period. Nevertheless, the Tribunal must examine whether there has been any lapse of time which would be sufficient to bar the United States' presentation of Claim No. 2.

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[9] Brownlie, supra note 7, at 83.

59. Iran contends that because the United States has "instituted no legal proceedings to recover its claims for forty years," Claim No. 2 is time-barred. According to Iran, the 1974 U.N. Convention on the Limitation Period in the International Sale of Goods[10] ("the 1974 U.N. Convention") governs that Claim. The Convention adopts a limitation period of four years.

60. The United States argues that it repeatedly brought the debt to the attention of Iran over four decades and that there was never a considerable period of time during which it failed to press Iran for payment. It further contends that the 1974 U.N. Convention is irrelevant to this Case.

61. In the opinion of the Tribunal, the provision of Article 8 of the 1974 U.N. Convention that "[t]he limitation period shall be four years" is not expressive of a rule of customary international law. It is a provision of treaty law binding on the Parties to the said Convention alone. The Tribunal is not aware of State practice clearly supporting the period of four years, especially with regard to intergovernmental contracts of this type for the sale of goods. The period is much longer, though the length of such period is difficult to define and may vary in different circumstances.[11] It must also be observed that the Parties to the Convention have been motivated by the interests of international trade, and the express reason for the

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[10] U.N. Doc. A/CONF. 63/15, 5 U.N. Commission on International Trade Law Yearbook 210 (1974).

[11] There is some authority in favor of twenty years, see the Williams Case (1885) 4 Moore's International Arbitrations 4181, 4196 (1898). That case, however, admits a shorter period for business transactions. See also the Sarropoulos Case (1927), Greco-Bulg. Mixed Arbitral Tribunal, 7 Receuil des Décisions des Tribunaux arbitraux mixtes instituées par les Traités de Paix 47, 51, noted in Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals 381 (1953). But there is no rule of general international law that would fix a time period. In the absence of specific guidance the international judge or arbitrator enjoys a measure of discretion restricted by his duty to give due regard to the facts of the particular case, see infra, para. 72.

conclusion of the Convention was to "facilitate the development of world trade" (preamble). That was neither the cause nor the purpose of the 1948 Contract.

62. The Tribunal notes that the 1974 U.N. Convention came into force in 1988. Even if it were assumed that the 1948 Contract fell within its scope of application, the Convention's limitation period could not be applied to that Contract because Article 33 stipulates that the Convention is applicable only to contracts concluded on or after the Convention's entry into force. The Tribunal therefore rejects Iran's argument that the 1948 Contract is governed by the 1974 U.N. Convention.

63. The inapplicability of the 1974 U.N. Convention leaves open the question whether some other limitation period may be invoked to bar Claim No. 2 or parts thereof.

64. An express choice of law provision is not contained in the 1948 Contract. However, the Master Agreement for U.S.-origin surplus property contains the following provision:

> ARTICLE FOURTEEN
>
> [ ] This Agreement shall be interpreted and enforced in accordance with the laws of the United States of America, and more especially with reference to those in force within the District of Columbia.

65. In Alan Craig and Ministry of Energy of Iran, et al., Award No. 71-346-3 (2 Sept. 1983), reprinted in 3 Iran-U.S. C.T.R. 280, the Tribunal held:

> Municipal statutes of limitation have not been considered as binding on claims before an international tribunal, although such periods may be taken into account by such a tribunal when determining the effect of an unreasonable delay in pursuing a claim.

Id., at 15, 3 Iran-U.S. C.T.R. 287.

66. The Tribunal's position in Craig may be the case when the claim is based exclusively on international law. However, such a general rule does not necessarily exclude the application of municipal statutes of limitation to an international claim where certain aspects of the case are properly governed by municipal law. See Bin Cheng, supra note 11 at 382.

67. In view of Article Fourteen of the Master Agreement for U.S.-origin property, the question is raised whether that Agreement is properly governed by municipal law and, if so, could a municipal statute of limitation of the United States be invoked to time-bar any part of Claim No. 2? The Tribunal need not address this issue because the insignificance of the Master Agreements in the determination of Claim No. 2 as discussed infra, at paras. 68 and 69, renders the question moot.

68. The sale of surplus military property under the 1948 Contract involved three stages of agreement -- the 1948 Contract itself, the Master Agreements and the individual sales contracts. The first stage granted a line of credit, stipulated the terms of repayment and the rate of interest. The second provided a framework for the conclusion of the individual sales agreements. At this stage various terms and conditions associated with the sale and delivery of the goods, including the method of computing PHT costs, were agreed upon. Finally, the individual sales contracts described the goods selected for purchase, their quantity and stated the agreed sale price.

69. The first stage of agreement is of particular importance to Claim No. 2 because the United States claims specifically for the breach of financial obligations under the 1948 Contract. The second and third stages of agreement are less significant for present purposes given that there is no dispute on such matters as the delivery, quality or quantity of the goods sold, which are the sort of matters for which reference to municipal statutes of limitations might reasonably be expected. Moreover, there is no evidence that the two Parties in their dealings prior to the

present proceedings ever considered Article 14 of the Master Agreement or any laws of the District of Columbia as relevant to the claim by the United States for payment by Iran of the amounts owed under the 1948 Agreement. Consequently, it is the opinion of the Tribunal that the Master Agreements are not significant in the determination of Claim No. 2. Therefore, the issue whether or not a municipal statute of limitation applied to the Master Agreements, or for that matter, the individual sales agreements, is irrelevant to the present Case.

70. Since the 1948 Contract does not specify either a time limitation on claims or any applicable law, the issue whether there has been a sufficient lapse of time to bar Claim No. 2 is to be determined by the Tribunal's choice of the applicable law. Article V of the Claims Settlement Declaration grants the Tribunal a wide discretion in determining the applicable law. In the absence of a choice of law specified by contract, the Tribunal must decide what is the applicable law by taking into consideration all the circumstances that it deems relevant. See Anaconda-Iran, Inc. and Islamic Republic of Iran, et al., Award No. ITL 65-167-3, para. 130 (10 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 199, 232; and Mobil Oil Iran Inc., et al. and Islamic Republic of Iran, et al., Award No. 311-74/76/81/150-3, para. 81 (14 July 1987), reprinted in 16 Iran-U.S. C.T.R. 3, 27-8.

71. In the Tribunal's view, several factors in the present Case give strong support to the conclusion that the 1948 Contract was of an intergovernmental character, the governing law of which should be international law. The Contract was concluded between two sovereign States. It concerned the sale of military equipment belonging to the United States government. The terms of the Contract took effect on approval by the Majlis (the Iranian parliament), and the U.S. Congress approved a special appropriation to cover PHT costs. When the debts became due, the United States pursued the matter at the highest diplomatic levels and did not take the matter before any municipal forum. The foregoing points, in the absence of a choice of law provision,

compel the Tribunal to determine that the applicable law of the 1948 Contract is international law.

72. In finding that international law applies to the 1948 Contract, the Tribunal must determine whether the public international law principle of extinctive prescription operates to bar Claim No. 2. The principle extinguishes a right of action where a party entitled to exercise that right neglects to do so after a period of time.[12] No rule of international law specifies the time period which must elapse in order to render extinctive prescription operative. The principle is flexible and the decision as to its applicability is left at the discretion of the Tribunal. See Jennings and Watts, supra note 8 at 526-7 and Brownlie, supra note 7 at 504-5. That discretion, of course, is not unlimited, for the Tribunal must consider all the relevant circumstances of the case, see supra, note 11.

73. In this context, the Tribunal may cite Bin Cheng who writes that "where the evidence has been well established and there can be no doubt as to truth, there will be no prescription, although the claim is not presented for a long time." Cheng, see supra, note 11 at 382. He adds that "[w]here the facts are not disputed, prescription also does not operate." Id. at 383. Cheng further comments that unless a "claim can be considered as waived or abandoned, if it has been duly notified to the plaintiff, prescription will not run even though it is not continually pressed for some reason which is at least plausible." Id. at 385-86 (footnote omitted). It has also been observed in Oppenheim that

> [d]elay in the prosecution of a claim once notified to the defendant state is not so likely to prove fatal to the success of the claim as delay in its original notification, as one of the main justifications of the principle is to avoid the embarrassment of the defendant by reason of its inability to obtain evidence in regard to a claim of which it only becomes

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[12] See the Gentini Case, Italian-Venezuelan Mixed Claims Commission 720, 726 (1903); 10 R.I.A.A. 551, 557.

aware when it is already stale . . . .

Jennings and Watts, supra note 8 at 527 (footnote omitted).

74. Mindful of the above considerations, it is the view of the Tribunal that no justification for the operation of the principle of extinctive prescription exists with respect to Claim No. 2. The reasons for this conclusion are as follows. First, there is no considerable dispute as to the existence and the amount of the debt. Second, there was no delay in notification by the United States when the debt first became due, providing Iran with a reasonable opportunity to gather contemporary evidence to contest the claim. Third, although the United States did not continuously press for payment, over the decades it repeatedly reminded Iran of its debt. Fourth, there is no evidence that the United States ever waived or abandoned the debt owed by Iran. To the contrary, the evidence shows that, in response to a request to that effect by Iran, the United States expressly declined to do so.

75. Accordingly, the Tribunal finds that the principle of extinctive prescription does not bar the United States' presentation of Claim No. 2.

VII. INTEREST

76. In its written pleadings, the United States claimed interest on the 1948 Contract at the contractual rate of 2 and 3/8 percent through 20 January 1981. Also claimed by the United States is the commercial rate of interest for the amount owed under the 1948 Contract from 20 January 1981 until the date an award is issued in this Case. At the Hearing, however, Mr. Bettauer argued that the United States should be awarded interest on the Contract at the rate of 10 percent per annum accruing after 30 days from the date the payments became due.

77. In the present Case, the agreement between Iran and the United States is manifested in the 1948 Contract which specified a rate of 2 and 3/8 percent per annum. Where the relevant contract specifies an interest rate, the Tribunal has consistently used that rate, even when it was considerably different from the rate the Tribunal would otherwise have found appropriate. See, e.g., Pepsico, Inc. and Islamic Republic of Iran, et al., Award No. 260-18-1 (11 Oct. 1986), reprinted in 13 Iran-U.S. C.T.R. 3; Anaconda-Iran, Inc. and Islamic Republic of Iran, et al., Interlocutory Award No. ITL 65-167-3 (10 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 199; and Reading and Bates Drilling Co. and Islamic Republic of Iran, et al., Award No. 355-10633-2 (16 March 1988), reprinted in 18 Iran-U.S. C.T.R. 164. On interest rates in general, see McCollough Company Inc. and Ministry of Post, Telegraph and Telephone, et al., Award No. 225-89-3 (22 Apr. 1986), reprinted in 11 Iran-U.S. C.T.R. 3, 29. Accordingly, the Tribunal calculates the interest presently owed on the basis of the rate agreed upon in that Contract. The Tribunal therefore awards interest on the 1948 Contract at a rate of 2 and 3/8 percent.

78. With reference to the date from which interest is to be calculated, paragraph 2 of the 1948 Contract stated that interest would accrue "from the respective delivery dates specified in the individual sales contracts."[13] The Tribunal cannot ascertain from the evidence before it the specified delivery dates for a large number of the items purchased. Although the exact delivery dates from which interest began to accrue cannot be ascertained from the record, the United States has submitted a note dated 23 May 1960 from the U.S. Secretary of State to the Iranian Ambassador in Washington D.C., attached to which was a statement

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[13] Article Seven, paragraph 15(c), of the Master Agreement for U.S.-origin surplus property defines "respective delivery dates" as the "actual dates of physical delivery at a water-port or water-ports in Iran . . . . " Article Eight, paragraph 20, adds that physical delivery "will be effectuated upon [the property's] physical release from control of ship's tackle into the custody or possession of [Iran] . . . ."

showing the principal and interest due under the 1948 Contract as of 1 January 1960. The statement indicates that, after the deduction of certain credits, on 1 January 1960 accrued interest in the amount of U.S.$5,317,670.84 was due on the 1948 Contract. There is no evidence to suggest that Iran contested this figure. Consequently, the Tribunal determines that the interest awarded to the United States under the 1948 Contract is to be calculated on the basis that as of 1 January 1960 the amount of interest totalled U.S.$5,317,670.84.

79. Also to be considered when assessing the interest to be awarded is the payment by Iran in 1975, of which U.S.$1,668,366.96 was credited by the United States against the outstanding interest on the 1948 Contract, see supra, para. 34.

80. In finding that as of 1 January 1960 interest in the amount of U.S.$5,317,670.84 was due on the 1948 Contract and taking into account U.S.$1,668,366.96 credited against the outstanding interest, the Tribunal awards to the United States interest consisting of a) the fixed sum of U.S.$3,649,303.88[14] and b) interest at the rate of 2 and 3/8 percent from 1 January 1960.

VIII. COSTS

81. Each party shall bear its own costs of arbitrating these Claims.

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[14] The interest due on 1 January 1960 less the credited U.S.$1,668,366.96.

IX. AWARD

82. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) Claim No. 1 is dismissed for lack of jurisdiction.

(b) On Claim No. 2 the Respondent, THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, THE UNITED STATES OF AMERICA, Twenty One Million Three Hundred Eighty Nine Thousand Eight Hundred Forty Five United States Dollars and Forty Seven Cents (U.S.$21,389,845.47), plus interest consisting of

i) a fixed sum of Three Million Six Hundred Forty Nine Thousand Three Hundred Three United States Dollars and Eighty Eight Cents (U.S.$3,649,303.88); and

ii) simple interest on Twenty One Million Three Hundred Eighty Nine Thousand Eight Hundred Forty Five United States Dollars and Forty Seven Cents (U.S.$21,389,845.47) at the rate of 2 and 3/8 percent per annum (365-day basis) from 1 January 1960 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(c) This obligation shall be satisfied by payment out of the Security Account established by paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.

(d) Each Party shall bear its own costs of arbitrating these Claims.

Dated, The Hague
03 December 1996

Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God

George H. Aldrich

Koorosh H. Ameli

Concurring as to Paragraphs 82 (a) and (d) of the dispositif; dissenting as to Paragraphs 82 (b) and (c) thereof. See, Separate Opinion.