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IRAN-UNITED STATES CLAIMS TRIBUNAL

DUPLICATE  
ORIGINAL

نسخه برابر اصل

CASE NO. B58  
CHAMBER TWO  
AWARD NO. 572-B58-2ISLAMIC REPUBLIC OF IRAN RAILWAY,  
Claimant,  
and  
THE UNITED STATES OF AMERICA,  
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
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## I. INTRODUCTION

1. On 19 January 1982 the ISLAMIC REPUBLIC OF IRAN RAILWAY<sup>1</sup> (the "Railway") filed Case No. B58 contending that it sustained damage resulting from the use of the southern section of Iran's railways by THE UNITED STATES OF AMERICA ("United States") during the Second World War. As finally pleaded at the Hearing, the Railway seeks U.S.\$136,218,750 plus interest.<sup>2</sup>

2. The United States admits to taking over the operation of the southern railways of Iran but denies assuming financial responsibility. The United States submits that, in regard to the operation of the railways, it acted in Iran as an agent of Great Britain. It contends that the Claim falls outside the jurisdiction of the Tribunal because no contractual arrangement as required by Article II, paragraph 2, of the Claims Settlement Declaration ("CSD") exists between Iran and the United States. The United States further argues that even if the Tribunal finds that there exists or has been such an arrangement, the doctrine of extinctive prescription would operate to bar the Claim, and additionally, a 1948 settlement between Iran and Great Britain should estop the Railway from bringing this Claim.

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<sup>1</sup> The Tribunal notes that throughout the proceedings in this Case reference to the Claimant's title has varied. For example, the Tribunal's Orders have referred to the Claimant as "Iranian Railway" or "Iranian Railways" and, in certain filings, the Claimant has been named as "The Government of the Islamic Republic of Iran" or "Iranian State Railway." The Tribunal decides to refer to the Claimant as "Islamic Republic of Iran Railway" because it is the title which appears in the original Farsi texts of the Statement of Claim and the Claimant's Hearing Memorial.

<sup>2</sup> The amount claimed in the Railway's written pleadings was U.S.\$788,800,000 which included the interest calculated up to the date the Statement of Claim was filed, see infra, para. 36.

## II PROCEDURE

3. The Railway requests that this Case be consolidated with Case No. B36, United States of America and Islamic Republic of Iran, contending that the two Cases relate to the Second World War and are connected generally with the railways of Iran. Case No. B36 arises out of contracts for the sale of surplus Second World War military property.

4. The present Case 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. Consequently, both Cases are pending before this Chamber.

5. The Hearings in Cases Nos. B36 and B58 were held on 6 December 1995 and 8 December 1995, respectively.

6. In Case No. B36, Iran asserts that it paid U.S.\$1.8 million to the United States as a gesture of goodwill against which the United States undertook to consolidate the claims now presented as Cases Nos. B36 and B58. In contrast, the record shows that while the United States agreed to consider in good faith the merits of the claim now presented as Case No. B58, it consistently maintained that the two Cases were altogether distinct in law and in fact.

7. The Tribunal is of the opinion that the connection between the two Cases is not sufficient to justify consolidation. The contracts at issue in Case No. B36 bear no significant relation to the present Case. Accordingly, the Tribunal denies the Railway's request to consolidate Cases Nos. B36 and B58. See Pomeroy Corporation and Islamic Republic of Iran, Award No. 51-41-3, at 11 (8 June 1983), reprinted in 2 Iran-U.S. C.T.R. 391, 396.

### III. BACKGROUND

#### A. Occupation of Iran

8. In August 1941 Great Britain and the Soviet Union occupied Iran. At the time of occupation Iran was a neutral State in the Second World War. The British Prime Minister, Winston S. Churchill, subsequently gave the following explanation for the British-Soviet military action in and against Iran:

The need to pass munitions of all kinds to the Soviet Government and the extreme difficulties of the Arctic route, together with future strategic possibilities, made it eminently desirable to open the fullest communication with Russia through Persia. The Persian oilfields were a prime war factor. An active and numerous German mission had installed itself in Tehran, and German prestige stood high. The suppression of the revolt in Iraq and the Anglo-French occupation of Syria, achieved as they were by narrow margins, blotted out Hitler's Oriental Plan. We welcomed the opportunity of joining hands with the Russians and proposed to them a joint campaign. I was not without some anxiety about embarking on a Persian war, but the arguments for it were compulsive. I was very glad that General [Sir A.P.] Wavell should be in India to direct the military movements.<sup>3</sup>

The latter, who was Commander-in-Chief in India, telegraphed the War Office in London (10 July 1941) adding yet another reason: "It is essential to the defence of India that Germans should be cleared out of Iran now."<sup>4</sup>

9. After an exchange of some diplomatic correspondence between London, Moscow and Tehran (which did not result in a settlement by peaceful means), British and Soviet troops entered Iran on 25 August 1941. There was some resistance. The Shah, Reza Pahlavi, appealed to the President of the United States "to take steps .

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<sup>3</sup> Winston S. Churchill, 3 The Second World War: The Grand Alliance 476-77 (U.S. ed. 1950).

<sup>4</sup> Id. at 477.

. . . to put an end to these acts of aggression."<sup>5</sup> But the fighting, limited as it was, was over as early as 28 August. Churchill referred to it as a "brief and fruitful exercise of overwhelming force against a weak and ancient state. Britain and Russia were fighting for their lives. Inter arma silent leges."<sup>6</sup> The occupying Powers compelled the Head of State of Iran, Shah Reza Pahlavi, to abdicate and they installed on the throne his son Mohammad Reza Pahlavi.

10. Within the aim of opening "the fullest communication with Russia through Persia," see supra, para. 8, the railway was of utmost importance. Even before the end of hostilities in Iran, Churchill asked Major-General Sir Hastings Ismay, Chief of Staff, for the plans to have "the railway in working order in our hands."<sup>7</sup> Shortly after the cessation of fighting Churchill telegraphed to General Wavell expressing his interest in the latter's "railway projects, which [were] being sedulously examined here [i.e., in London]."<sup>8</sup>

#### B. Treaty of Alliance

11. Transport of war supplies to the Soviet Union through Iran had to be settled on a trilateral plane, i.e. between the occupying Powers and Iran. In his messages to Joseph Stalin, Chairman of the Council of People's Commissions of the USSR, Churchill spoke of the motives prompting him to push forward with the signing of a tripartite agreement: "I am most anxious to settle our alliance with Persia and to make an intimate efficient working arrangement with your [i.e., Soviet] forces in Persia"

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<sup>5</sup> 3 Foreign Relations of the United States, Diplomatic Papers 1941, at 419 (1959).

<sup>6</sup> Churchill, supra note 3, at 482.

<sup>7</sup> Id. at 483.

<sup>8</sup> Id.

(16 September 1941).<sup>9</sup> And further: "In any case, the signing of the Tripartite Treaty is urgent to avoid internal disorders growing, with consequent danger of choking the supply route" (12 October 1941).<sup>10</sup> Speaking of the situation in the country after British and Soviet troops were withdrawn from Tehran (18 October 1941), and their detachments were left to guard the communications, Churchill emphasized that "[t]he creation of a major supply route to Russia through the Persian Gulf became our objective."<sup>11</sup>

12. The agreement which Churchill envisaged soon became a reality: the tripartite Treaty of Alliance<sup>12</sup> was signed by Iran on the one hand and Great Britain and the Soviet Union on the other in Tehran on 29 January 1942.

13. The Treaty of Alliance brought about a fundamental change in the legal relationship between Iran and the two Powers. That relationship was now one of alliance (instead of hostility, see Articles I and II) linked to the "presence" of Allied forces on Iranian territory (instead of occupation, see Article IV, paragraph 1). Iran ceased to be a neutral State.

14. The bonds of alliance were reinforced and broadened by Iran's adherence to the Declaration by United Nations of 1 January 1942.<sup>13</sup> In this multilateral act the members of the anti-Axis alliance incurred certain obligations regarding their common action during the War.

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<sup>9</sup> Id. at 484.

<sup>10</sup> Id. at 485.

<sup>11</sup> Id. at 486.

<sup>12</sup> 93 U.N.T.S. 279.

<sup>13</sup> For the text of the Declaration see 204 L.N.T.S. 381. Some sources indicate the date of adherence as 10 September 1943. See e.g., A Decade of American Foreign Policy, Basic Documents 1941-49, U.S. Senate, S. Doc. No. 123, 81st Cong., 1st Sess. 1 (1950).



15. In this connection, one may recall what the British Ambassador in Tehran said in his Note No. 715 addressed to the Imperial Iranian Minister for Foreign Affairs in November 1945 when he considered "the conditions under which one Ally renders service to another in wartime":

Your Excellency will agree that no country can expect to be isolated from the military and economic effects of a world war, and the fact that Iran has been so fortunate as not to have been the scene of major operations, with the immense destruction which those operations involve, has been achieved only at the cost of enormous sacrifices in men and money by the Allied Powers.

The Ambassador referred to the "huge" war indebtedness of Great Britain "to Empire and foreign countries" and added that "[t]he British debt to Iran form[ed] only a small part of this . . . ." (paragraph 9 of the Note; as to the Anglo-Iranian final settlement, see infra, para. 33).

16. Under Article III, paragraph 2(b) of the Treaty of Alliance, Iran granted Great Britain and the Soviet Union "the unrestricted right to use, maintain, guard and in case of military necessity, control in any way that they may require, all the means of communication throughout Iran, including railways . . . ." While the Soviet Union took control of the northern section of the railways from Tehran to the border, Great Britain assumed control of the portion of the railways extending from the Persian Gulf ports to Tehran.

17. Article IV, paragraph 2, of the Treaty of Alliance provided that separate agreements "shall be concluded" in connection with any financial obligations to be borne by Great Britain and the Soviet Union as a result of the presence of their forces on Iranian territory "in such matters of local purchases, the hiring of buildings and plant, the employment of labor, transport charges etcetera."

C. 1942 Draft Agreement

18. Negotiations between Iran, Great Britain and the Soviet Union pursuant to Article IV, paragraph 2, of the Treaty of Alliance produced in March 1942 a draft agreement ("1942 Draft Agreement"). The intention of the three States was that the Agreement would govern Great Britain and the Soviet Union's operation of the Railway. It included provisions for the calculation of freight, discounts and profits, and for the disposition of capital investments during the presence of the Allied troops in Iran. The 1942 Draft Agreement, however, was never signed.

19. Article 13 of the 1942 Draft Agreement is of particular relevance to this Claim. The Article provided that the British and Soviet Governments

guarantee, and undertake to indemnify any damages whatsoever which have been or may probably be caused to the buildings and installations of the . . . Railway . . . from direct or indirect actions of the Allied troops, or from direct or indirect operations of War. The Transport Commission will be charged with the assessment of these damages. Likewise the Allied Governments guarantee and undertake to indemnify the damages which the . . . Railway . . . [has] sustained or may sustain as a direct or indirect result of the operations of the Allied Forces, or of operations of War. The assessment of such damages will likewise be carried out by the Transport Commission.

D. United States' Participation

20. On 22 August 1942 Prime Minister Churchill accepted President Roosevelt's suggestion that the United States Army undertake the development, operation and maintenance of the railways leading from the Persian Gulf ports to Tehran. The terms under which the United States Army was to assume this responsibility were approved by the Combined Chiefs of Staff on 23 September 1942. The primary objective of the United States forces in Iran was to ensure the uninterrupted and increased flow

of supplies to the Soviet Union.

21. At the request of Great Britain, the United States Army entered Iran on 23 September 1942.

22. The overall control of the railways, road routes and ports south of Tehran was to be exercised by the British General Officer Commanding-in-Chief of the Persia and Iraq Command. While the British were to provide the necessary military protection, to control priority of traffic, and to allocate freight along the railway, the United States Commanding General, Persian Gulf Service Command ("PGC") was given the task of developing, operating and maintaining the railways leading from five Gulf ports to Tehran.

23. In a note of 7 December 1942 from the British Legation in Tehran to Mr. Mohammad Sa'ed, the Iranian Minister of Foreign Affairs, it was stated that

His Majesty's Government in the United Kingdom and the United States Government have agreed that as part of their co-operation in the common Allied war effort that the United States military authorities will take over from the British military authorities the operation of the Southern Section of the Trans-Iranian Railway from the Persian Gulf Ports to Tehran.

[ ] The details of this transfer and the date have not yet been finally settled but I am instructed to inform Your Excellency officially of it and to invite the co-operation of the Imperial Iranian Government in this change. I understand that the British authorities will continue to be responsible for various questions such as movement control and traffic allocation, though, as I have already stated, full details are not yet available.

24. On the previous day, the United States Minister in Tehran, Mr. L.G. Dreyfus, sent the following note to Mr. Mohammad Sa'ed:

I have the honor to inform Your Excellency that the British and American Governments have reached an agreement by which the American military authorities will take over from the British the operation of the southern sections of the Trans-Iranian railway as well

as the operation of certain ports and other transport facilities.

Before proceeding with this arrangement, my Government naturally desires to obtain the consent, in principle, of the Imperial Iranian Government. I should, therefore, appreciate receiving an early expression of the attitude of the Imperial Government in this respect. Studies are now being made as to various aspects of the contemplated transfer and details will be discussed at a later date.

25. In response to this note, on 14 December 1942 the Iranian Foreign Minister, Mr. Sa'ed wrote to Mr. Dreyfus stating that

[t]he Imperial Government has no hesitation to afford any facilities that may be needed by its Allies in this respect and to allow the American officials to help to operate the aforesaid sections of the railway in the same way and on the same terms resulting from the Tripartite Alliance Pact of January 29, 1942 (Bahman 9, 1320). However, as Your Excellency is doubtless aware it would be suitable to receive from the British and Soviet Governments an official statement of their consent addressed to the Imperial Government.

Inasmuch as Your Excellency's verbal statements and the note under reply show that the matter is urgent the Imperial Government, while making the necessary preparations and carrying out the formalities pertaining to the obligations resulting from the accomplishment of the above end, will be prepared upon the receipt of the said two notes to issue to the offices concerned the authorization for operations by the American expert officials. (Doc. 5, Exh. 3)

26. In this regard, Mr. Dreyfus, in a telegram of 4 May 1943 to the U.S. Secretary of State, wrote that the British Government had thought that it was not necessary to make a formal notification of the fact that the United States was taking over the operation of the southern section of the Trans-Iranian Railway.

27. The transfer of responsibilities from the British to the United States took place in April 1943.

E. 1944 Proposed Agreement

28. During the latter part of 1943 and early 1944, Great Britain proposed that the United States participate in a quadripartite financial agreement between those two countries, the Soviet Union and Iran ("1944 Proposed Agreement"). The objective of that Agreement was to specify the financial responsibilities of each party with respect to the Railway. However, the Department of State, on 22 May 1944, instructed the American Legation in Tehran to terminate negotiations relating to the 1944 Proposed Agreement and on 12 July 1944 the American Legation informed the British Embassy in Tehran that the United States had decided that it was unnecessary to join in that Proposed Agreement. The United States claimed that it had already borne its fair share of the total costs of Allied efforts in Iran and that it did not wish to assume any of Great Britain's financial responsibility to the Railway.

F. Post-War Settlement

29. The PGC's mission ended on 1 June 1945. It was instructed to inform British authorities that "the [United States] deems it a British responsibility to make certain financial settlement with Iran or its agencies." On 23 June 1945 the operation, control and supervision of the southern portion of the railways was handed back to Great Britain. The handing back agreement stated that the railway property and facilities were "in as good a condition as when received, normal wear and depreciation only excepted . . . ." Shortly thereafter, in late June 1945, Great Britain returned control of the railway to Iran. The agreement in connection with the latter handover stated that

[ ] ASSETS (excluding locomotives and rolling stock) originally belonging to the IRANIAN STATE RAILWAY are accepted by the IRANIAN STATE RAILWAY from the BRITISH ARMY, and are agreed to be in the same order and condition, fair wear and tear excepted, as when they first came under control of the BRITISH ARMY.

30. World War II related claims between the United States and Great Britain were finalized pursuant to a global settlement signed on 27 March 1946.<sup>14</sup> As part of that settlement, Britain waived any PGC incurred freight charge claims which it may have had against the United States.

31. The United States Ambassador in Iran, Mr. George Allen, received a letter dated 19 September 1946 from Mr. Ahmad Qavam, Iran's Minister of Foreign Affairs. That letter reads as follows:

I have the honour to enclose a copy of a letter which has been addressed to the British Embassy on the subject of settlement of accounts of the Railways and other departments of the Ministry of Roads, and to inform you that the greater part of the transit shipments has been transported by the officials of your Government by means of the Iranian Railways and your competent authorities have declared at the beginning of intervention in the Railway affairs that they will act upon the [1942 Draft Agreement].

Consequently, the Imperial Government considers itself entitled to ask the USA to take prompt action in order that the amounts owed to the Railway and Ministry of Roads departments be settled.

In conclusion, we request you to arrange that the Department of Liquidation of the property of US Forces or any other competent authority should expedite payment of the balance of freight for the goods which the US Army have transported after completion of the period of cooperation with the Railways, and which is their direct debt.

32. An American official responded, in a letter addressed to Iran's Minister of Foreign Affairs and dated 27 September 1946:

Since the indebtedness of His Britannic Majesty's Government to the Imperial Government of Iran is a matter for the concern of those two Governments, I presume that the part of Your Highness' communication

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<sup>14</sup> See Memorandum pursuant to Joint Statement of December 6, 1945, regarding settlement for lend-lease, reciprocal aid, surplus war property, and claims, signed and entered into force 27 March 1946, together with, inter alia, Agreement on Settlement of Intergovernmental Claims, 4 U.N.T.S. 2.

which refers to the British indebtedness is merely for the information of the United States Government.

Insofar as indebtedness of my Government to the Imperial Government is concerned, the only such indebtedness known to me to be due to the Iranian State Railways or the Imperial Ministry of Roads is that incurred by the United States Army in moving personnel and supplies over the Iranian State Railways during the period July 1 to December 31, inclusive, 1945 [i.e., after the United States had already returned control of the railways to Great Britain]. I am happy to inform you that the debit notes of the Railways covering these services are now being examined with a view to discharging that indebtedness at the earliest practicable date. Should any further indebtedness exist it should be brought to the attention of the Embassy without delay.

33. On 19 June 1948 Great Britain proposed to settle finally the Iranian financial claims arising out of British use of the railways and ports of Iran during the War. In addition to a provisional cash payment of 1,682 million rials which had already been paid, Great Britain offered to pay Iran approximately 5.7 million Pounds Sterling and transfer to Iran installations and stores valued at approximately 1.5 million Pounds Sterling. The proposal stated that it would constitute

a full and complete discharge of all financial claims from HMG arising out of the use by British military forces of the railways and ports of Iran, when the [Treaty of Alliance] was in force including all liability on the part of His Majesty's Government for claims which the US Government may make in respect of the transfer of stores to the [Railway].

Iran agreed to the British proposal on 2 July 1948.

#### G. The Railway Claim Against the United States

34. According to Iran, its claim was first brought to the attention of the United States in September 1946 when the Iranian Minister of Foreign Affairs sent a letter to the United States Ambassador in Iran. See supra, para. 31.

35. On 16 November 1970 the Iranian Finance Minister, Dr. Jamshid Amouzegar, wrote to Douglas MacArthur, the United States Ambassador in Iran, concerning Iran's lend-lease and surplus property debts arising after the Second World War. The letter states that owing to the Allies' heavy use of the Iranian railways, damages were incurred by Iran which substantially exceeded the amount claimed by the United States on the debts. In light of this and other reasons, the letter stated that "the Government of Iran suggests that it would be in the interests of both countries to consider the issue [of the lend-lease and surplus property debts] as settled."

36. In December 1974, Iran claimed U.S.\$172 million against the United States for damage allegedly sustained by the Railway during the Second World War. This figure was reassessed at U.S.\$365 million after the addition of 6 percent interest. In its written pleadings before the Tribunal, the amount of damages claimed by Iran was U.S.\$788.8 million, which included accrued interest from the time the alleged damage occurred, up to the date the Statement of Claim was filed.<sup>15</sup> As finally pleaded at the Hearing, Iran's quantification of damages between April 1943 to the end of the Second World War is U.S.\$136,218,750. Interest is claimed from the end of the Second World War.

#### IV. FACTS AND CONTENTIONS

##### A. Jurisdiction

37. The Railway asserts that this Claim falls within the jurisdiction of the Tribunal pursuant to Article II, paragraph 2 of the Claims Settlement Declaration. Under that provision the Tribunal has jurisdiction "over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and

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<sup>15</sup> The rate and type of interest used to calculate this amount has not been specified.



services."

38. The United States denies the existence of a contractual arrangement as alleged by Iran. In the alternative, it contends that the alleged contractual arrangement is not a "purchase and sale of goods and services" as required by Article II, paragraph 2, of the CSD. Consequently, the United States seeks the dismissal of the Claim for lack of jurisdiction.

B. 1942 Draft Agreement: Position of the Railway

39. The Railway states that from the date the United States Army took over the maintenance and operation of the southern Iranian railways the United States acted in accordance with the 1942 Draft Agreement, assumed rights and obligations thereunder, and benefitted from freight rate discounts provided in the 1942 Draft Agreement. The United States' conduct, submits the Railway, demonstrates the existence of a contractual arrangement. The Railway further contends that the United States could not have entered Iran and used the southern railways without any agreement with Iran.

40. The Railway submits that the United States cannot avoid financial liability by asserting that its sole obligation was to operate the railways. The Railway draws attention to Great Britain's obligations under Article IV, paragraph 2, of the Treaty of Alliance to conclude an agreement or agreements regarding any financial obligations and the 1942 Draft Agreement which the Railway claims "was, in practice, carried out by Britain and Article 13 of the [Draft Agreement] provided for guaranteed compensation of any direct or indirect damages to Railways." In conjunction with these alleged obligations of Great Britain, the Railway refers to the following evidence in order to prove that the United States assumed the same obligations as the British:

a. A diplomatic note from the Iranian Minister of Foreign

Affairs, Mr. Mohammad Sa'ed, to Mr. L.G. Dreyfus, American Minister, Tehran, 14 December 1942 stating that

The Imperial Government has no hesitation to afford any facilities that may be needed by its Allies in this respect and to allow the American officials to help to operate the aforesaid sections of the railway in the same way and on the same terms resulting from the [Treaty of Alliance].

- b. A letter from Major General Connolly to Mr. L.G. Dreyfus, 21 June 1943 stating that

railway troops have arrived and the section of the Iranian State Railway, Tehran and South, has been taken over by American personnel replacing personnel formerly furnished by the British. In general, the railroad is being operated by the Americans under the same procedure as existed when it was under British operation.

- c. A dispatch from the Chargé d'Affaires, U.S. Embassy, Tehran to the U.S. Secretary of State dated 7 March 1944 stating that the writer and the fiscal officer of the PGC agreed that, in general, the 1944 Proposed Agreement appeared to be satisfactory.

- d. A letter from the Iranian Minister of Foreign Affairs to the United States Ambassador in Iran, dated 19 September 1946, see supra, para. 31, stating that

the greater part of the transit shipments has been transported by the officials of your Government by means of the Iranian Railways and your competent authorities have officially declared at the beginning of intervention in the Railway affairs that they will act upon the [1942 Draft Agreement].

41. It is the view of the Railway that the above evidence refutes the United States' assertion that its involvement with the Railway had been only for operational purposes. The Railway

contends that the Respondent's operational responsibility "is nothing more than the total of the rights and duties under the [Treaty of Alliance], first delegated to Britain and then to the United States under the same conditions from [1 April 1943]."

42. The Railway submits documentation which it says indicates the payment by the United States to the Railway of certain freight charges calculated at preferential rates under the 1942 Draft Agreement and asserts that such payments show the existence of contractual arrangements between the parties under that Agreement. Also submitted are requests for transportation by U.S. Army representatives to the Railway and certain railway freight bills in which the U.S. Army is named as the consignor.

C. 1942 Draft Agreement: Position of the United States

43. The position of the United States is that its involvement with the Railway was governed by an agreement between it and British military officials, see supra, para. 20, an agreement to which Iran was not a party. The United States denies any implied contract, claiming that it did not by its conduct give Great Britain or the Railway reason to believe that it assumed the financial obligations of Great Britain. It asserts that the Railway looked to Great Britain in relation to the settlement of all financial questions arising between the Allied powers and the Railway.

44. The United States contends that all obligations, especially financial, previously assumed by Great Britain under the 1942 Draft Agreement, were not transferred to the United States. It argues that Iran acknowledged, indeed repeatedly protested, the absence of an agreement with the United States. Further, the United States submits that it could not have agreed to assume Britain's obligations to Iran "on the same terms" because, at the time, Britain and Iran had yet to agree what those obligations were. Great Britain, in the opinion of the United States, had never accepted the 1942 Draft Agreement.

45. Assuming for the sake of argument that the 1942 Draft Agreement were legally binding against it, the United States also asserts that Iran cannot recover because the damage alleged is not the type of damage provided for in Article 13 of the 1942 Draft Agreement, see supra, para. 19.

46. As for the 1944 Proposed Agreement, the United States admits that it contemplated entering a four party financial agreement but submits that it never accepted any such agreement. Furthermore, the United States asserts that the 1944 Proposed Agreement was never discussed between the United States and Iran.

47. The United States admits that there was a limited financial relationship between the United States PGC and the Railway involving the sale of stores, the lease of equipment to the railway and the purchase of certain limited services (primarily maintenance and assembly). According to the United States, no general financial responsibility arose out of these specific transactions.

48. The United States asserts that after July 1944, no further negotiations between it and Great Britain took place in regard to the financial responsibility for the Railway and that both countries agreed that financial responsibility toward the Railway remained with Britain.

49. The United States submits that Great Britain informed Iran that although it was the expectation of British military officials that the PGC would assume financial responsibilities after entering the War, no such agreement was reached between the United States and Great Britain.

50. This Case, according to the United States, should be viewed in light of the overall financial contributions of the Allies to the aid-to-Russia program in Iran. The United States asserts that it paid for a) ninety percent of the supplies transported through Iran to the Soviet Union; b) the shipment costs of the supplies from the United States to Iran; and c) the expenses of

the operational personnel that managed the Railway. In addition, it claims that it "bore a disproportionate share of the expenses of furnishing locomotives and other rolling stock to the Railway and of the trucks needed to transport goods by road."

D. Agency

51. The United States asserts that it acted as the agent of Britain. It maintains that the United States forces were not a separate command but were to operate the railways as part of Britain's Persia and Iraq Command.

52. In reply, the Railway contends that the United States never acted towards it as an agent for Great Britain. In this context, the Railway maintains that it accepted the entry of the United States forces into Iran not as an agent but as substitute for Great Britain; that no legal relationship existed between the United States and Great Britain; and that no agency agreement was brought to the notice of Iran. The Railway asserts that the United States, while operating the southern section of the railway, acted as an independent party in the same way as Britain and the Soviet Union and, as such, assumed independent financial obligations towards Iran. Drawing attention to a British request asking the United States to pay part of the financial obligations of the Allies due to the Railway, the Railway argues that such a request would not have been necessary if the United States were an agent of Great Britain.

E. Final Settlement

53. The United States submits that a final settlement of all claims arising out of the Allied presence in Iran for the entire period of the War was reached between Great Britain and Iran in 1948. The United States asserts that Great Britain made clear that it was accountable for the period between 1 September 1941 and 30 June 1945 and that the settlement would cover British and

American consignments moved in ports within Iran or transported in transit through the country. It is the United States' assertion that negotiations between Iran and Great Britain after the Second World War demonstrate that British authorities represented themselves to be accountable for both British and American shipments via the Railway and that Great Britain's assumption of responsibility was recognized by Iran.

54. At the Hearing, Professor Lillich, for the United States, argued that the Anglo-Iranian settlement of 1948 should estop Iran from bringing the present Claim. He further contended that if this Claim were successful, Iran would be unjustly enriched.

55. The Railway asserts that the 1948 Anglo-Iranian settlement is limited to the period during which the southern Iranian railways were used by the British forces. The Railway cites paragraph 3 of the settlement which states that

[t]he Imperial Iranian Government hereby agree[s] that the present agreement constitutes a full and complete discharge of all financial claims from HMG arising out of the use by British military forces of the railways and ports of Iran, when the [Treaty of Alliance] was in force . . . .

56. The Railway argues that the amounts paid by Great Britain "covered exclusively the expenses and depreciation of the use by the British forces of Iranian railroads and ports" and it was not specified that such amounts were related to the damage which resulted from the United States' use of the railway. Therefore, the Railway asserts that the present Claim does not have any connection with the 1948 Anglo-Iranian settlement.

#### F. Extinctive Prescription

57. The United States submits alternatively that, assuming for the sake of argument, it were liable, the Claim is barred by operation of the doctrine of extinctive prescription in public international law. The United States asserts that the claim now

presented in this Case was first notified 30 years after the United States forces had withdrawn from Iran and that prior to this notification, Iran had ample opportunity to raise the matter.

58. The United States refers to the letter dated 27 September 1946 from an American official to Iran's Minister of Foreign Affairs, requesting that "any further indebtedness . . . be brought to the attention of the Embassy without delay," see supra, para. 32, and contends that Iran failed to assert the Claim until December 1974. See supra, para. 36.

59. The 30 year lapse of time, contends the United States, puts it at a significant disadvantage. It submits that relevant documents have been destroyed long since and that the participants in the events in question have passed away.

60. The Railway denies that the Claim should be barred by the principle of extinctive prescription. It contends that its claim was first notified to the United States shortly after the end of the Second World War, see supra, para. 34; that the political situation in Iran during certain periods prevented Iran from pressing the claim; and that during the negotiations in the 1970's, the United States did not contend that the claim was barred by prescription.

#### G. Claim for Damages

61. The southern railways of Iran were newly laid prior to the Second World War. The Railway claims that after the United States took over the operation of the southern railways of Iran in 1943, the amount of goods to be transported increased from 500-1000 tons per day to approximately 11000 tons per day. The Railway refers to a letter dated 7 March 1944 by the Chargé d'Affaires, United States Embassy, Tehran to the U.S. Secretary of State, see supra, para. 40 (c), in which he states that the fiscal officer of the PGC

says that the heavy use of the railroad by the Allies is rapidly wearing it out, since the rails, roadbed, etc., were not designed for the traffic now being carried. He fears, therefore, that at the end of the war the Iranian Government may bring heavy claims for depreciation against the three powers concerned.

62. The Railway submits that as a consequence of the heavy and unreasonable use of the railways by the United States it suffered losses resulting from a) having to reconstruct the southern section of the railway due to premature wear and tear; b) damage to property, including the lower bed, technical installations, bridges and tunnels, infrastructure of the tracks, signals and communications; c) depreciation of locomotives and carriages; and d) expenses for an estimated 13,000 additional employees.

63. The Railway has submitted copies of two contracts between it and the firm of Entreprise Desquenue et Giral for the reconstruction of certain sections of the southern railway and a statement of account showing various payments made to that firm for work carried out in Iran. Also on the record in support of its position as to damage are affidavits and reports by Iranian experts and the testimony, at the Hearing, of Engineer Ameli.

64. The United States responds by asserting that even if it were bound by the 1942 Draft Agreement, that Agreement provided no basis for the recovery of damages claimed in this Case.

65. The United States submits that the Railway has proffered insufficient evidence to prove the damage it presently claims. Moreover, the United States asserts that when Great Britain returned control of the railway to Iran, in the handing over agreement Iran acknowledged that the "assets" of the railway were "in the same order and condition, fair wear and tear excepted, as when they first came under the control of the British Army."



V. REASONS FOR THE AWARD -- JURISDICTION

66. The Parties do not dispute, and the Tribunal is satisfied, that the Railway is an "agency, instrumentality, or entity controlled by" the Government of the Islamic Republic of Iran and therefore falls within the definition of "Iran" contained in Article VII, paragraph 3, of the CSD. See Iran National Gas Co. and United States of America, Award No. 330-B40-2, para. 6 (20 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 183, 184-185; and Iran National Airlines Co. and United States of America, Award No. 333-B8-2, para. 3 (30 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 187, 188.

67. The Respondent is the Government of the United States of America and clearly falls within the definition of "United States" contained in Article VII, paragraph 4, of the CSD.

68. Jurisdiction over claims between Iran and the United States is provided for in Article II, paragraph 2, of the CSD, but such claims are limited to "contractual arrangements . . . for the purchase and sale of goods and services." The Railway asserts the existence of a contractual arrangement of the type specified in that provision. It must, therefore, establish the existence of a contract to purchase or sell goods or services in order for the Tribunal to possess jurisdiction over this Claim. See Iranian Customs Administration and United States of America, Award No. 172-B3-3, at 5 (17 April 1985), reprinted in 8 Iran-U.S. C.T.R. 89, 92.

69. The Tribunal thus proceeds to determine whether such a contract has been established by the Railway. The Tribunal will first consider the question whether the United States entered into any contractual obligations of an express nature which would impose upon it financial duties that are presently claimed by the Railway.

70. The United States was not a party to the Treaty of Alliance. The Tribunal is of the opinion that the aim of the Agreement was

to regulate those relations between Great Britain and the Soviet Union on the one hand and Iran on the other which resulted from the situation that developed in the Middle East and, more particularly, from the British and Soviet invasion and occupation of Iran, see supra, paras. 8 - 10. The United States had no part in what the British Prime Minister described as "embarking on a Persian war," see supra, para. 8. Confronted with armed action on its territory, Iran turned for help to the United States, see supra, para. 9. But the United States was then a neutral State. The Treaty of Alliance was not open to accession by another State. No proposal was made that the United States join it.

71. In the diplomatic exchanges prior to the transfer of operational responsibility from Great Britain to the United States, the United States desired "to obtain the consent, in principle, of the Imperial Iranian Government," see supra, para. 24. That wish is something other than a proposal to conclude an agreement creating and regulating a relationship between the United States and Iran. Nor did the Government of Iran, in its reply to the United States' note, make any such proposal. Iran took an attitude which again corroborates the limited, operational task of the United States with regard to the railways. Iran did not hesitate "to allow the American officials to help to operate" the railways in accordance with the Treaty of Alliance. But the main point of the Iranian reply was its view that "it would be suitable to receive from the British and Soviet Governments an official statement of their consent [to the United States' involvement] addressed to the Imperial Government," see supra, para. 25. Thus, Iran regarded this involvement as a matter between itself and the British and Soviet Governments. The implication of that position is that Iran, in addition, regarded the matter as one between those two Powers and the United States, and not as one between the latter country and itself. It follows from Mr. Dreyfus's telegram of 4 May 1943 that the British Government thought that "no formal notification" of the United States' takeover of the railway operation "was necessary under [the Treaty of Alliance]," see supra, para. 26.

Indeed, no such notification has been brought to the attention of the Tribunal. The Tribunal concludes that it was not Iran's consent that created the legal basis for transfer of the operation of the railways. Rather, the basis was the agreement between the British and the United States.

72. The Tribunal finds that no written agreement concerning financial responsibility for the southern railways of Iran was signed by Iran and the United States. It may be added that the United States did not participate in the negotiations leading to the drawing up of the 1942 Draft Agreement. While the United States initially participated in the talks on a quadripartite financial accord (the 1944 Proposed Agreement), it subsequently withdrew from these talks. Neither of the two agreements was concluded.

73. It may be added that the Tribunal does not know of any unilateral act whereby the United States declared its will to pay for the operation of the railways. Such an act, had it existed, would have been converted into a contractual arrangement if Iran accepted it. But nothing of this kind happened. The telegram of the U.S. Chargé d'Affaires in Tehran, see supra, para. 40(c), is not, for the reasons explained below, see infra, para. 76, a unilateral act leading to any agreement between the United States and Iran.

74. In the absence of an express written agreement, the Tribunal proceeds to examine whether the United States assumed financial responsibility for the railways in another form, i.e., through an oral agreement or by way of conduct.

75. International law does not prescribe the written form as a requirement of validity of international agreements. Consequently, an oral statement by one Government which has been addressed to and accepted by another Government or its agency can, depending on the circumstances, constitute a contractual

undertaking by the former.<sup>16</sup> However, in the issue under consideration, an oral legal obligation could have been no more than the beginning of a process leading to a written agreement. Such an initial or basic oral undertaking, even if incurred, would remain ineffective without a subsequent written arrangement. For the character and details of the purported financial responsibility of the United States for the operation of the railways were such that here no agreement could have been made by word of mouth alone.

76. On the evidence before it, the Tribunal does not find any trace of an oral agreement, whether complete or partial, whereby the United States would assume any financial obligations with regard to the Railway. The telegram of the United States Chargé d'Affaires in Tehran, see supra, para. 40(c), is not such an instrument. It is no more than part of the effort to elaborate the common position of the three Powers which was to be presented to Iran. In other words, the telegram gave expression to an attitude which was never communicated to Iran as an undertaking of the United States towards that country. It could not, therefore, create any obligations on the part of the United States. Later, the United States withdrew from the quadripartite negotiations and what is contained in the telegram became of no significance for the issue discussed here.

77. The Tribunal has previously held that although contractual liability may arise out of a party's conduct, preliminary discussions or mutual willingness to collaborate are not sufficient to establish a contract. See H.A. Spalding, Inc. and Ministry of Roads and Transport of the Islamic Republic of Iran, et al., Award No. 212-437-3, at paras. 20 & 22 (24 Feb. 1986), reprinted in 10 Iran-U.S. C.T.R. 22, 27 & 29. In Sea-Land

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<sup>16</sup> See the Legal Status of Eastern Greenland case and the nature of what became known as the Ihlen declaration, (Den. v. Nor.), 1933 P.C.I.J. (ser. A/B) No. 53, particularly at pp. 71-73. The binding force of the oral form is confirmed by many authorities, see e.g., A. McNair, The Law of Treaties 7-10 (1961).

Service, Inc. and Islamic Republic of Iran, et al., Award No. 135-33-1, at 18-19 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 149, 162-3, even though discussions between the parties had reached an advanced stage and a detailed proposal had been made on the basis of a highly developed course of negotiations, the Tribunal held that the "broad, underlying understanding" between the relevant parties had not crystallized into a sufficiently precise formulation to constitute an enforceable contract. In so holding, the Tribunal observed that it might have concluded differently if acceptance of the specific terms of the proposal had been proven.

78. In this context, the United States' acceptance of a general financial responsibility to indemnify the Railway for the type of damage presently claimed has not been proven. The Railway has not established to the satisfaction of the Tribunal that the United States either accepted by conduct or intended to be bound by the 1942 Draft Agreement in its entirety. There is evidence to indicate that even Great Britain did not consider that Draft Agreement was in any way binding.

79. As for the letter from the Iranian Ministry of Foreign Affairs stating that the United States authorities officially declared that they would act upon the 1942 Draft Agreement, see supra, para. 40(d), no evidence has been produced as to who made this declaration and what were the specific contents thereof. Such a general statement by one State concerning the assumption of far-reaching obligations by another State constitutes no more than an allegation. Moreover, the statement cannot stand up against the considerable array of documentation proffered by the United States which satisfies the Tribunal that the United States consistently refused to assume financial responsibility for the railways.

80. It is clear that the United States accepted responsibility only for the operation of the railways and no more. The evidence relied on by the Railway also points to this conclusion. For

example, the diplomatic notes quoted in paragraphs 23 and 24, supra, refer to "the operation" of the relevant section of the railway; the British note of 7 December 1942 considered the United States' involvement as "part of [the] cooperation" of the two Powers, see supra, para. 23.<sup>17</sup> Thus, the United Kingdom was not simply replaced by the United States. The Iranian note of 14 December 1942, see supra, para. 25, can be understood as confirming the operational nature of the United States' involvement: "the American officials" will "help to operate the aforesaid sections of the railway"; "the Imperial Government . . . will be prepared . . . to issue to the [Iranian] offices concerned the authorization for operations by the American expert officials." It appears from the Iranian reference to "expert" United States officials that the role of the U.S. military authorities was restricted to taking over most of the organizational and practical sides of the task such as running the trains, maintaining the infrastructure, and planning the transportation. An "expert" input does not involve that kind of responsibility which the Railway attributes to the United States. The British note even envisaged some continuation of British participation in the "operation" of the railways: by way of example it mentions the "movement control and traffic allocation." Also, the letter of 21 June 1943, see supra, para. 40(a), refers to the United States taking over only the operation of the railways.

81. In connection with the 1944 Proposed Agreement, the 7 March 1944 dispatch from the U.S. Chargé d'Affaires in Tehran to the U.S. Secretary of State, see supra, para. 40(c), in no way binds the United States or creates a presumption in favor of the Railway. Such a confidential internal communication cannot be invoked as corroborative evidence of an agreement between the United States and Iran, particularly when the United States subsequently terminated its participation in the negotiations concerning the 1944 Proposed Agreement. The Tribunal also notes

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<sup>17</sup> The diplomatic notes referred to in paragraphs 23 and 24 were submitted by the Railway in its Statement of Claim.

that in the letter, the Chargé d'Affaires expressed the opinion that Great Britain bore the ultimate financial responsibility for the depreciation of the railways.

82. The Tribunal is satisfied that certain freight bills were paid by the United States to the Railway, see supra, para. 42, but they appear to be related to the everyday operation of the railways. The Tribunal is unable to infer from these payments that the United States accepted a general financial obligation towards the Railway.

83. In the view of the Tribunal, the conduct of the United States could not have been construed as an acceptance of a general financial responsibility for the type of damage presently claimed by the Railway. In arriving at its conclusion, the Tribunal also considers the following evidence of some significance:

- i) In a book published in 1947 an employee of the Railway commented that

Since the commencement of the cooperation [between the Allies and the Iranian Railways Administration], the Administration, in general, dealt with the British Department of Transportation in all matters relating to basic and important financial affairs. . . .

United States authorities, who became involved with the Railways in early 1943, considered themselves as agents of the British Forces, stated their opinion after consulting with the administrative representatives of the British Department of Transportation, and acted accordingly.

M. Malakouti, History of the Iranian State Railway 1927-1947 (1947) (Respondent's translation).

- ii) The November 1945 Note by the British Ambassador in Tehran to the Imperial Iranian Minister of Foreign Affairs, see supra, para. 15, stated that "His Majesty's Government

expected that the [PGC] would in due course take over financial as well as operational responsibility [for the railways]" but that "it was never found possible to reach such an agreement . . . " (paragraph 3 of the Note).

84. Nor did there exist any unilateral act whereby the United States would accept any financial obligations towards the Railway. Such an act, if it existed, could by subsequent conduct be turned into an international arrangement. The Tribunal has no knowledge of such an act or any related behavior of the Parties in the present Case.

85. In sum, the conduct of the United States does not imply the existence of a contractual arrangement between it and Iran.

86. The conclusion of the Tribunal is that the Railway has failed to establish the existence of a contractual arrangement between Iran and the United States of America as contemplated by Article II, paragraph 2, of the CSD.

87. It may, finally, be observed that absence of any contractual arrangement between the United States and Iran on the railway corroborates the legal nature of the United States involvement in Iran: it was nothing more (but also nothing less) than operation of the southern railways, while an overall responsibility for what resulted from the task of operation rested with Great Britain.

88. The Tribunal is satisfied that there is no other possible jurisdictional basis in the CSD for this Claim. Consequently, the Claim is dismissed for lack of jurisdiction.

## VI. COSTS

89. Each Party shall bear its own costs of arbitration.



VII. AWARD

90. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

A. The Claim of the ISLAMIC REPUBLIC OF IRAN RAILWAY is dismissed for lack of jurisdiction.

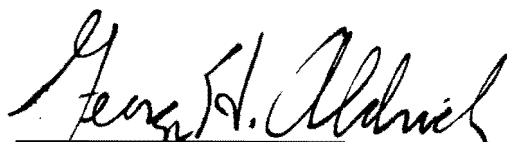
B. Each Party shall bear its own costs of arbitration.

Dated, The Hague

09 October 1996

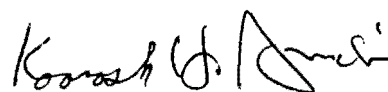


Krzysztof Skubiszewski  
Chairman  
Chamber Two



George H. Aldrich

In The Name of God



Koorosh H. Ameli  
Dissenting Opinion