IRAN-UNITED STATES CLAIMS TRIBUNAL

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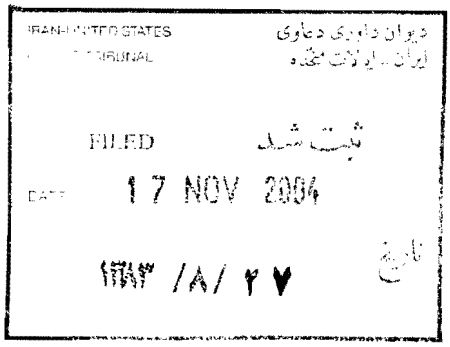


CASE NO. 485
CHAMBER ONE
DECISION NO. DEC 133-485-1

FREDERICA LINCOLN RIAHI,

Claimant,

And

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

DECISION

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## I. THE FACTS

### 1. The Claimant's First Application

1. On 27 February 2003, Chamber One rendered Final Award No. 600-485-1 in the Case between Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran..[1] On 28 March 2003, the Registry Officers of the Tribunal received a letter from the Claimant's Counsel, dated 27 March 2003, who purported to file an "Application to the Full Tribunal for Relief from the Denial of Due Process, Fairness, and Respect for Law by the Award in Case No. 485." On 7 April 2003, the Application in both English and Persian texts, was accepted for filing by the Tribunal's Registry and circulated. In the Application, the Claimant sought "an Order from the Full Tribunal to reopen Award No. 600-485-1 and to transfer the Case either to the Full Tribunal or jointly Chambers 2 and 3, for a full reconsideration of the merits of the entire Case, and issuance of a supplemental or amended Award."

2. The First Application was based on the Concurring and Dissenting Opinion of Judge Charles N. Brower,[2] who participated in the Hearing of the Case, the deliberations, and the drafting of the Award as a Member of Chamber One and of whose Opinion citations were used in support of the Application.

3. The Full Tribunal, consisting of all Members of the Tribunal, considered the Application, and on 6 June 2003 the President of the Tribunal issued a letter addressed to the Counsel of the Claimant, informing him of the Full Tribunal's conclusion which resulted in the denial of the Application.

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[1] Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Final Award No. 600-485-1 (27 February 2003), reprinted in - Iran-U.S. C.T.R. -.

[2] Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Concurring and Dissenting Opinion of Judge Charles N. Brower, dated 27 February 2003, reprinted in - Iran-U.S. C.T.R. -.

4. In paragraph 2, the President wrote: "Although Case No. 485 was not and is not before it, the Full Tribunal has duly considered the Application and reached the following conclusions."

5. Paragraphs 3 and 4 read as follows:

> 3. The Tribunal derives its jurisdiction from the Algiers Declarations. Article III, paragraph 1, of the Claims Settlement Declaration provides that "[c]laims may be decided by the Full Tribunal or by a panel of three members of the Tribunal as the President shall determine." Pursuant to this provision and Presidential Orders Nos. 1 and 8 (of 19 October 1981 and 24 March 1982, respectively), Case No. 485 was assigned to Chamber One, and the Chamber rendered its Award on 27 February 2003. Pursuant to Article IV, paragraph 1, of the Claims Settlement Declaration and Article 32, paragraph 2, of the Tribunal Rules, the Award is final and binding. Neither the Claims Settlement Declaration nor the Tribunal Rules provide for a procedure for challenging before the Full Tribunal a final and binding award by a Chamber. See Henry Morris and The Government of the Islamic Republic of Iran, et al., Decision No. DEC 26-200-1 (16 Sep. 1983), reprinted in 3 Iran-U.S. C.T.R. 364; Islamic Republic of Iran and United States of America, Decision No. DEC 45-A20-FT, para. 9 (10 Jul. 1986), reprinted in 11 Iran-U.S. C.T.R. 271; Islamic Republic of Iran and United States of America, Decision No. DEC 65-19-FT, para. 13 (30 Sep. 1987), reprinted in 16 Iran-U.S. C.T.R. 285.
>
> 4. The Full Tribunal therefore has no jurisdiction over the Application. Any jurisdiction that remains after a final and binding award has been rendered by a Chamber, whether pursuant to Articles 35-37 of the Tribunal Rules or pursuant to any possible inherent authority of the Tribunal, remains in the Chamber that rendered the final Award. A Chamber cannot relinquish jurisdiction over a case once it has rendered a final and binding award in that case. See Presidential Orders Nos. 1 and 8.

## 2. The Claimant's Second Application

6. On 3 July 2003, the Registry received another incomplete application from the Claimant. This Application was filed later, on 7 July 2003 in both Persian and English texts. The Application was addressed to Chamber One and it was entitled "Claimant's Request that the Chairman Recuse Himself and that Chamber 1 Grant the Relief Sought in Her Application of 27 March 2003."

7. The Claimant's Second Application incorporates by reference her First Application and it is based virtually on the same grounds. As with the First Application, and apart from certain arguments and heavy reliance on Judge Brower's Concurring and Dissenting Opinion, the Claimant produces no evidence in support of either of the requests, i.e., the grounds for the Chairman's recusal and reconsideration of the merits of the Case. However, the Claimant specifically asserts that

> the Award fails, to Claimant's detriment, (a) to treat the parties equally; (b) to apportion the burden of proof in accordance with the norms of due process; (c) to deal impartially with Iran's witness tampering, reliance on coerced testimony, and willful disregard for Tribunal Orders to produce key evidence; and (d) to decide disputed issues based on established principles of law.

8. The Claimant alleges further that she "has been deprived of her right to a ruling that is fair, based on respect for law, and not tainted by partiality." As examples for such misconducts by the Tribunal, the Claimant states:

> The Award condones witness tampering by Respondent, even as it refuses to impose any sanctions for Respondent's willful violations of orders issued by Chamber 1 to produce highly probative evidence bearing on Claimant's ownership of expropriated property.
>
> The Award denies procedural fairness by shifting to Claimant the burden of disproving new affirmative defenses asserted by Respondent for the first time at the hearing, rather than placing the burden on Respondent to prove those defenses.
>
> The Award treats Claimant unequally and unfairly by refusing to consider Claimant's post-hearing submission, which provided the Chamber with a focused analysis of record evidence refuting the unsubstantiated contentions made by Respondent for the first time at the hearing.

These issues will be dealt with in Section II (2) treating the reconsideration request.

9. To sum up the Claimant's motion, she requests, in view of the above, that

> the Chairman address and issue a decision concerning the request for recusal as a preliminary matter, before any other action is taken concerning the Application. Claimant further requests, once a decision on recusal is announced to the parties, that the Chamber issue an order to govern the further actions it will take, and the further submissions the parties will be permitted to make with respect to this request. As explained in the Application itself, Claimant also specifically requests an opportunity to present additional grounds for the relief being sought and to present additional argument on the matters raised therein.

10. In support of her recusal request, the Claimant relies on Article 9 of the Tribunal Rules and on the matters of ethic, because, in the Claimant's view, "the Chairman, no doubt, would feel compelled to attempt to justify those gaps in the Award," and "his recusal is necessary to ensure a fair and objective determination as to whether such gaps, along with other serious irregularities allegedly affecting the Award, constitute improprieties warranting the relief sought by the Application."

11. The Claimant adds also that "the Chairman has a personal stake in the outcome of this review and in defending the Award, all the more so because of the challenge that was lodged against him by the United States, alleging lack of impartiality and bias while the Award in this Case was under deliberation. This personal stake creates a clear conflict of interest that disqualifies the Chairman from participating in any further proceedings on the Application that is now before Chamber One."

12. In the penultimate paragraph the Claimant writes:

> Finally, although we are aware of no direct evidence that the Chairman harbors animosity toward Claimant or her legal representations for raising with the Full Tribunal concerns about the propriety of the Chairman's conduct of this Case, the prospect that such feelings might come into play at this stage provides yet another ground for recusal. The mere possibility that such animus may exist, standing alone, is sufficient reason for the Chairman to step aside and not participate in any further proceedings in this Case.

13. On 11 July 2003, the Agent of the Islamic Republic of Iran filed an objection to the Claimant's Second Application, for which filing no authorization was sought or obtained. In his submission, the Agent presented his arguments as to why, in his view,

the Claimant's Application should be denied. On 16 January 2004, when the first draft of the Decision in connection with the Claimant's Second Application was being finalized after deliberations,[3] the Registry Officers of the Tribunal circulated an incomplete submission by the Claimant's counsel. The submission was filed on 19 January 2004, at or slightly after the first draft had been issued and distributed among the Members of the Chamber for comment. While repeating his previous arguments and requests, the Counsel for the Claimant purported, in this filing, to respond to the submission of the Agent of the Islamic Republic of Iran filed on 11 July 2003. However, nothing in either of these unauthorized filings changes the substance of the Claimant's arguments or affects the Tribunal's finding in this Decision.

## 3. The Claimant's Challenge

14. On the eve of finalization of the present Decision, on 26 January 2004, the Counsel for the Claimant filed a notice of Challenge against the Chairman of Chamber One, Judge Broms. On 27 February 2004, the Honourable Judge W.E. Haak was appointed as the Appointing Authority pursuant to Article 7 (2) (b) of the Tribunal Rules and the notice of challenge was referred to him for decision.[4]

15. After consideration of the notice for challenge and further submissions by the Claimant's Counsel, the Agent of the Islamic Republic of Iran, and Judge Broms, the Appointing Authority denied the Challenge by finding it to be inadmissible. The Appointing Authority finding , inter alia, that:

> Judge Broms' failure to disqualify himself from participating in the review of the application, and his refusal even to respond to the recusal request do not constitute

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[3] Actually, the counsel for the Claimant alleges in his letter that during a conversation with the legal assistant to the Chairman it was indicated to him that "there have been deliberations both on the recusal request and on the application for the relief, and that Claimant would be notified of a decision in due course."

[4] For a detailed narration of the Challenge Process, see, the Appointing Authority's Decision of 30 September 2004, reprinted in – Iran-U.S. C.T.R.-.

> new or independent circumstances giving rise to justifiable doubts as to his impartiality and independence. The Tribunal Rules place him under no obligation to disqualify himself or to respond to the request.[5]

ruled the challenge to be untimely and rejected it.

## II. THE TRIBUNAL'S FINDINGS

### 1. Finding as to the Recusal Request

16. In addition to the Appointing Authority's findings and his conclusions referred to in paragraph 15 above, the Claimant's Application[6] ignores the explicit language of Article IV, paragraph 3, of the Claims Settlement Declaration, the Tribunal Rules, and the consistent jurisprudence of the Tribunal. While the Rules of the Tribunal were discussed by the Full Tribunal when the First Application was studied (supra, paragraphs 4 and 5), the Chairman's newly alleged personal stake in the outcome of a Case, his alleged lack of impartiality because of a previous unsuccessful challenge against him, and his alleged possible animosity were not considered to be grounds on which his recusal could be requested or upheld.

17. The Claimant's allegation that the Chairman should recuse himself because of a challenge first lodged on 4 January 2001 and continued on 10 March 2001 by the United States against the Chairman on the basis of his Concurring and Dissenting Opinion in Case No. A28 is untenable. To begin with, a general challenge against an Arbitrator in another Case has never been taken, either under the law or the practice of the Tribunal, to amount to a good reason for his recusal from a pending Case, let alone one that has been

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[5] Id., paragraphs 30-31, at.-.

[6] In the Second Application the Claimant has, in light of the dismissal of the First Application, changed her course of action. (Supra, paragraphs 6-13.) In contradistinction with the previous Application addressed to the Full Tribunal, the Second Apllication is addressed to Chamber One. There is, however, an additional request to the Chairman of the Chamber that he should recuse himself from the Case. This request was not present in the First Application and all three members of Chamber One participated in the handling of the that Application.

decided by a final and binding award. Many challenges have been filed, in particular, against Presidents of the Tribunal and Chairmen of the Chambers. None of these challenges ever served as a ground for the recusal of any of them from any Case whether already decided by a final award or still pending for consideration or deliberation.

18. Further, the fact is that the Appointing Authority decided the Challenge on 7 May 2001, concluding that:

> After long and careful consideration of a difficult case, I find myself unable, on the basis of the evidence put before me, to sustain the present United States Challenges of Judge Broms. The conclusion of this determination has therefore to be that both the challenges brought forward by the United States Agent are dismissed in their entirety.[7]

The Decision continued as follows:

> I therefore reject both the 4 January 2001 and 10 March 2001 applications of the Government of the United States to remove Judge Bengt Broms from his office as Judge and Chairman of Chamber One of the Iran-United States Claims Tribunal.[8]

19. Moreover, although the Claimant now expects the Chairman to recuse himself from the present Application based on the challenges by the Government of the United States that were rejected by the Appointing Authority on 7 May 2001, i.e., 26 months before the Claimant's Second Application was filed, the Claimant did not raise any objection to the Chairman's involvement in the Case whilst the challenge was under consideration or thereafter until well after the issuance of the Final Award, when she apparently found herself unhappy with certain conclusions of the Award.

20. Furthermore, in her First Application, the Claimant raised no objection to the Chairman's participation as a Member of the Full Tribunal, which she asked to rule, and which did rule, on the Application. The Chairman of Chamber One was not asked to

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[7] Decision by the Appointing Authority, dated 7 May 2001, at 11, reprinted in – Iran-U.S. C.T.R. -, at-.

[8] Id.

recuse himself from the Full Tribunal because of alleged animosity arising from the Claimant's First Application against the Chamber's Final Award, or any other ground.

21. In paragraphs 12 and 13, the Claimant continues to discuss the International Bar Association's Ethics for International Arbitrators. The Claimant acknowledges that "bias on the part of an arbitrator – the Chairman, in this Case – is generally not established by direct evidence." However, she argues that "further proceedings are necessary to establish the basis for this complaint." This leads the Claimant to suggest that "there can be no doubt that actual bias would exist - as well as the appearance at the end of bias, if the Chairman were to participate in such proceedings." The reference at the end of paragraph 13 to a recusal by Judge Moons (the then Appointing Authority) from consideration of a challenge to Judge Kashani, is a completely different case without relevance to the present Case. [9]

22. After an allegation, unsubstantiated and not supported by any proof, in paragraph 14 of the Second Application about the belief that there are gaps or improprieties in the Award, paragraph 15 of the same begins with the admission that "although we were aware of no direct evidence that the Chairman harbors animosity toward Claimant or her legal representatives for raising with the Full Tribunal concerns about the propriety of the Chairman's conduct of this Case, the prospect that such feelings might come into play at this stage provides yet another ground for recusal." If upheld, such anticipatory and unsubstantiated doubts – subjective at best – as well as unwarranted post-judgement accusations against an arbitrator, can only open the door to frivolous appeals and other

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[9] There, a fresh challenge against Judge Kashani was presented to the Appointing Authority for decision, and no earlier decision with respect to Judge Kashani had been rendered by Judge Moons. In view of the fact that Judge Kashani had, on a number of occasions, particularly in relation with Judge Mangård's challenge, questioned the impartiality of the Appointing Authority in, as claimed, "strident and insulting terms (including the accusation that [he had] 'assured the interests of the United States of America to the greatest possible degree')" (Stewart A. Baker and Mark D. Davis, The UNCITRAL Arbitration Rules in Practice: The Experience of the Iran-United States Claims Tribunal, at 32), Judge Moons refrained from sitting on the challenge from the inception. The situation, therefore, has no bearing on the one present here wherein a revision application is addressed to the Chamber that had rendered the original final and binding award in the Case.

allegations aimed at avoiding and undermining the final and binding nature of the awards and decisions rendered.

23. Neither this Claimant in her First Application, nor any other applicant in the many other appeal, revision, or correction requests filed with the Tribunal, has considered such applications to instigate the Chairman's, or a member of the majority's, animosity and to be a cause for the recusal of the Chairman or the member involved. Nor, for that matter, has any award or decision of the Tribunal considered such to be the case. There is no reason why this time, a request to the same Chamber whose Chairman was a member of the Full Tribunal that has already decided the Claimant's First Application should cause any animosity. Allowing such allegations to succeed on these grounds would open the door to an abuse of right by turning a request, allowed by the Tribunal under the limited and restricted circumstances of Articles 35-37 of the Tribunal Rules, into a full reconsideration of a decided Case, to the prejudice of, and with injustice toward, the other party to a final and binding award.

24. The recusal request is linked to a request that after the recusal Chamber One should be reconstituted and the procedure should be reopened to give the Parties a full opportunity to submit new evidence and to bring new witnesses in a new hearing. The Claimant requests "that the Chairman of Chamber One recuse himself from further proceedings in this Case, that Chamber One proceed to consider the merits of the Application, and that the relief requested in the Application be granted." This would be tantamount to the opening up of the Award of Chamber One, which is a final and binding judgement. The Full Tribunal has already dismissed this request.

25. According to the Application, the first stage involves the request that the Chairman of Chamber One recuse himself from further proceedings in Case No. 485. As such a request for recusal concerns solely the Chairman, the issue has to be decided solely by him. If the Chairman were to recuse himself, only two Members would remain in Chamber One, though, according to the Tribunal Rules, a Chamber is composed of a panel of three Members. Thus, the remaining Members could not compose a Chamber

and reach any decision until the Chairman would have been replaced by a third Member who in this particular case would replace the ordinary Chairman. But, in that case, the Chamber would no longer be the same Chamber (here Chamber One) that issued the final and binding Award in Case No. 485. There would be a new panel deciding the second part of the Claimant's request, i.e., the reconsideration request. [10]

26. Turning to the practice of the Tribunal, as a rule, applications against final awards, on any grounds, have been addressed to the same Chamber that decided the original award. The involvement of the Chairman or any Member forming the majority in the Award has never been regarded as a good reason for the recusal of either the Chairman or the Member in question and total reconsideration of the Case by another panel. This would turn a request for recusal to a demand for a total reconsideration of a decided Case by dissolving the original Chamber and giving jurisdiction over an appeal or revision request to a different Chamber. Both alternatives were denied by the Full Tribunal when the First Application was denied.

27. It should be further noted that in the present Case Chamber One, chaired by its present Chairman, has so far rendered three awards. The first of these was an interlocutory award filed on 10 June 1992.[11] The second related to the content of the Claimant's safe deposit with Bank Mellat in Tehran and her jewelry Claim which was settled by an award on agreed terms.[12] The Chairman and Judge Noori participated in the drafting of those awards. The third award was the Final Award, filed on 27 February

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[10] As defined by Article III (1) of the Claims Settlement Declaration and Presidential Order No. 1, a Chamber means a panel of three members, chaired by its Chairman. (See, also, Henry Morris and The Government of the Islamic Republic of Iran, et al., Decision No. DEC 26-200-1 (16 September 1983), reprinted in 3 Iran-U.S. C.T.R. 364, at 364-365; The Islamic Republic of Iran; The United States of America, Decision No. DEC 65-A19-FT, para. 13 (30 September 1987), reprinted in 16 Iran-U.S. C.T.R. 285, at 290; and the practice in Ram International Industries, infra, notes 32 and 33.

[11] Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 80-485-1 (10 June 1992), reprinted in 28 Iran-U.S. C.T.R. 176.

[12] Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Partial Award on Agreed Terms No. 596-485-1 (24 February 2000), reprinted in _Iran-U.S. C.T.R._.

2001, when Judge Brower had joined Chamber One. Nothing has been alleged nor has the Chairman ever been aware of, or felt, that a situation might exist giving rise to any justified doubt as to his impartiality or independence. Except for that which has already been dealt with, nothing has been put forward in connection with the present Application either, to suggest that any such circumstances have ever existed.

28. Finally, in this context it is necessary to underline that on 18 September 2003 Judge Assadollah Noori filed a 212-page Concurring and Dissenting Opinion.[13] His opinion gives an in-depth review of the background of the Final Award, showing how far apart the views of the two Party-appointed Members in fact were, as well as how difficult it was for the Chairman to bring the Case to a conclusion after a series of exchanges of extensive written comments by all three Members in addition to several oral sessions that eventually led to the Final Award. The Chairman had to join one or another Member to form a majority. It is necessary for anyone reading the Case to understand that, although Judge Brower prefers to regard himself as the one who was often in a minority, there were a number of important issues on which he formed the majority with the Chairman. This is evidenced not only by the Opinion of Judge Noori, but also by the fact that Judge Brower's opinion is also entitled "Concurring and Dissenting Opinion" as is the Opinion of Judge Noori. In a Chamber consisting of three Members, all share the responsibility for the Award.

29. It should also be noted that, to the extent related to this part of the Claimant's Application, there is no genuine request for interpretation, correction, or revision of the Final Award based on the Algiers Declarations or the Tribunal Rules, nor is there any basis for the suggestion based on any possible inherent power that the Chairman should recuse himself from the Application, or that the Application cannot be treated justly, equitably, without bias, and independently by the present composition of the Chamber, including its Chairman. As noted above, the Claimant's request boils down to an appeal

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[13] Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Concurring and Dissenting Opinion of Judge Assadollah Noori, dated 18 September 2003, reprinted in - Iran-U.S. C.T.R. -.

and a request for the reconsideration by another Chamber of the Final Award rendered in this Case.

30. Moreover, Claimant's reliance on Article 9 of the Tribunal Rule for recusal is misplaced because, as is also held by the Appointing Authority:

> That article, however, deals with the situation in which an arbitrator, rather than a party, obtains knowledge of circumstances likely to give rise to justifiable doubts as to his impartiality or independence in a particular case. It focuses primarily on the disclosure of these circumstances, initially to the Tribunal's President. While the arbitrator is directed, if appropriate, to disqualify himself as to that case, this appears to be discretionary. There is no time limit provided for such recusal, and no procedure prescribed whereby a party to the arbitration may seek recusal or object to an arbitrator's failure to resign. As set forth in the Tribunal Rules, challenge [is] the proper procedure for dealing with a party's justifiable doubts concerning an arbitrator.[14]

In the present situation, Judge Broms has been and continues to be aware of no circumstance giving rise to justified doubts as to his impartiality or independence. A dissenting Member's, here Judge Brower's, unfounded characterization of facts and conclusions of law will remain a minority's view, carefully considered and not endorsed by the majority, and cannot serve as a ground for recusal request.

31. In view of all the above, and after having carefully considered the request of the Claimant that the Chairman recuse himself, he has reached the conclusion that there is no reason for him to do so and that this alternative does not exist in light of the Tribunal's Rules and practice. The Chamber accepts this decision.

2. Finding as to the Reconsideration Request

32. Bearing in mind the Tribunal's aforementioned conclusions regarding certain issues which form an essential part of the Tribunal's finding as to the Claimant's Reconsideration Request, it is necessary to begin with a reference to Articles 35, 36 and

[14] Decision by the Appointing Authority, supra, note 7, para. 29, at -.

37 of the Tribunal Rules. These Articles permit a party to request within 30 days from the receipt of an award, an interpretation of the award, correction of any computational, clerical, or typographical, or similar errors. In addition to this, the Tribunal may also be requested "to make an additional award as to claims presented in the arbitral proceedings but omitted from the award."[15] Clearly, there is nothing in the Claimant's applications which would fall within the ambit of Articles 35-37 of the Tribunal Rules. The Claimant herself does not even suggest this. She is instead urging the Chamber to reconsider its Final Award and to arrange a new legal procedure including the possibility of presenting additional documents and statements by witnesses and eventually a new hearing, too. In other words, the Claimant is making an appeal for a total review of the Award.[16]

33. The legal difference between an appeal for a total review of a Final Award and a revision based on Articles 35-37 of the Tribunal Rules is remarkable. While the latter type of request is admissible by definition if it is so based, these Rules do not contain any provision for the admissibility of an appeal for a total or even partial review of a final award. The practice of the Tribunal as shown, for example, in the Decision in American

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[15] See, also, Sedco, Inc. and National Iranian Oil Company, et al., Decision No. DEC 64-129-3, paragraphs 6-9 (22 December 1987), reprinted in 16 Iran-U.S. C.T.R. 282, at 283-284; and Henry Morris, supra note 10, at 364-365.

[16] In American Bell International Inc. and The Islamic Republic of Iran, et al., Decision No. DEC 58-48-3, paras. 3-5 (19 March 1987), reprinted in 14 Iran-U.S. C.T.R. 173, at 174, the Tribunal ruled that the Respondents "have submitted an elaborate reargumentation based on the evidentiary record aiming at the reconsideration and revision of some of the findings.... According to Article IV, paragraph 1, of the Claims Settlement Declaration, awards of the Tribunal are 'final and binding.' Moreover, Article 32, paragraph 2, of the Tribunal Rules provides that an award 'shall be final and binding on the parties.' The Request contravenes these mandatory provisions since it is neither a request for interpretation nor a request for correction of computational errors within the meaning of Articles 35 and 36 of the Tribunal Rules, but rather a request for revision in the Tribunal's Award. As such, the request is inadmissible." See, also, Jonathan Ainsworth and The Islamic Republic of Iran, et al., Decision No. DEC 94-454-3, para. 3 (4 October 1990), reprinted in 25 Iran-U.S. C.T.R. 188, at 189 (wherein the Tribunal stated "[t]he Claimant's Appeal constitutes an attempt to reargue certain aspects of the Case on which the Claimant disagrees with the Tribunal's conclusions in the Award. There is no basis in the Tribunal Rules or elsewhere for review of an award on such grounds."); Paul Donin de Rosier et al. and The Islamic Republic of Iran, et al., Decision No. DEC 57-498-1, para. 4 (10 February 1987), reprinted in 14 Iran-U.S. C.T.R. 100, at 101); Henry Morris, supra note 10; and Sedco, Inc., infra., note 49.

Bell International Inc., and The Government of the Islamic Republic of Iran et al., is consistent.

34. The Tribunal notes that the Claimant's First Application was not addressed to Chamber One but to the Full Tribunal, which decided that the Case is not within its jurisdiction. The Second Application directed to the Chamber was received and filed on 3 and 7 July 2003, respectively. However, in view of the above and other conclusions reached in this part of the Decision, and since no request based on any Article of the Tribunal Rules is pending before it, the Chamber finds it unnecessary to discuss any further the issue of whether the Claimant's Application was received timely and is properly before it.

35. Turning now to the question of the Tribunal's inherent power, it should be noted that on the basis of the practice of the Tribunal, Judge George Aldrich has reached the following conclusion:

> In practice, the Tribunal held firm to the text and clear purpose of the Rules and limited any relief to the types specified in those articles, but the parties frequently used one or more of those articles in a futile effort to appeal holdings in the Awards. [17]

36. After having studied the requests filed in more than forty Cases, Judge Aldrich finds that only in four were the requests granted. Two of these concerned correction of

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[17] George H. Aldrich, The Jurisprudence of the Iran-United States Claims Tribunal (Clarendon Press Oxford, 1996), at 452.

computational errors,[18] one corrected a clerical error in the figures;[19] and the fourth corrected a mathematical error.[20] In his study Judge Aldrich also notes:

> In most cases, requests for corrections were found to be requests to reverse on the merits Decisions made by the Tribunal in Award, which requests the Tribunal consistently rejected as not authorized by Articles 35-37 of the Tribunal Rules and as contrary to Article IV, paragraph 1, of the Claims Settlement Declaration which made all Decisions and Awards of the Tribunal 'final and binding'."[21]

37. Judge Brower has also studied post-award procedures under the Tribunal Rules. He begins by saying that "[t]he only post-award procedures expressly available pursuant to the Tribunal Rules are provided in Articles 35, 36 and 37."[22] His views follow those of Judge Aldrich. Judge Brower notes that "[t]he Tribunal's practice reflects the fact that these rules are corrective in nature, however, and not revisional."[23] As an example, he refers to Harris International Telecommunications, Inc.,[24] wherein the Tribunal found that the Claimant was seeking "a revision of the Tribunal's reasoned findings, not a mere correction of an arithmetic error," which, in Judge Brower's opinion, it "correctly recognized as not permissible under Article 36."[25] Relying on the precedent established by other awards, the Tribunal, in the same Case, stated that there is no basis in the

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[18] Uiterwijk Corporation, et al., and The Government of the Islamic Republic of Iran, et al., Decision and Correction to Partial Award No. 375-381-1 (22 November 1988), reprinted in 19 Iran-U.S. C.T.R. 171; and Houston Contracting Co. and National Iranian Oil Co., et al., Correction to Award No. 378-173-3 (31 October 1988) reprinted in 20 Iran-U.S. C.T.R. 171.

[19] Avco Corporation and Iran Aircraft Industries, et al., Decision and Correction to Partial Award No. 377-261-3 (13 January 1989), reprinted in 19 Iran-U.S. C.T.R. 253.

[20] Harold Birnbaum and The Islamic Republic of Iran, Correction to Award No. 549-967-2 (19 July 1993), reprinted in 29 Iran-U.S. C.T.R. 260, at 293.

[21] Aldrich, supra, note 17, at 453. For information on several other Decisions and Awards of the Tribunal following similar lines, see, id. at 454-455.

[22] Charles N. Brower and Jason D. Brueschke, The Iran-United States Claims Tribunal (Martinus Nijhoff Publishers, 1998), at 242.

[23] Id., at 243.

[24] Harris International Telecommunication, Inc. and The Islamic Republic of Iran, et al., Decision No. DEC 73-409-1, paragraph 2 (26 January 1988), reprinted in 18 Iran-U.S. C.T.R. 76.

[25] Brower and Brueschke, supra note 22, at 244.

Tribunal Rules or elsewhere for allowing a party either to reargue aspects of a Case or to dispute the conclusions of the Tribunal. Judge Brower ends his comments on Articles 35-37 with the following conclusion:

> No other express basis exists for any alteration of an award once it has been rendered. Not surprisingly, all attempts to achieve post-award relief on any basis other than those specified in Articles 35 through 37 have met with failure, and the Tribunal routinely rejects requests for reconsideration of awards or attempts to reargue the case that are beyond the scope of these Rules. This result applies in the context of non-final awards as well as final awards.[26]

38. The issue of a possible inherent authority of the Tribunal is mentioned in the letter by President Skubiszewski to the Claimant's Attorneys.[27] The inherent authority or powers of the Tribunal is an issue which has in several instances been discussed in connection with Cases which have been decided by a final and binding award when a party has applied for a reconsideration of the Case. So far, neither the Full Tribunal nor any of the Chambers of the Tribunal have been prepared or even willing to formulate any definition of what is meant by the term "inherent power". This is due to the generally accepted interpretation that is based on the Algiers Declarations (Article IV, paragraphs 1 and 3, in particular, which gives a final and binding nature to the Tribunal's awards and decisions) and on the clear terms adopted by the Tribunal Rules in Article 32 (2). While the first sentence of the paragraph provides that written awards "shall be final and binding on the Parties," its second sentence is also of great legal importance, noting that the parties have undertaken to carry out the award without delay. In the present Case, the Claimant has received the sum of U.S.$4,549,309.99 awarded by the Final Award.

39. The jurisprudence of the Tribunal is very clear in those cases in which possible inherent authority has come up as a result of a reconsideration request. To begin with, the notion of inherent power has been turned down with a mere reference to the Algiers

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[26] Id.

[27] Supra, paragraph 5.

Declarations and the Tribunal Rules. Chamber One adopted this stand in two of the first Cases decided in 1983 and 1984.[28]

40. In 1985, Chamber Three of the Tribunal rendered a Decision in Dames and Moore.[29] In this Case the Government of Iran maintained that an earlier Award had been based upon forged invoices and perjured testimony and that, therefore, the Award should be reopened and set aside. The Tribunal, however, decided that there was no merit in the allegations by Iran. Before reaching this Decision the Tribunal noted that citations of scholarly writings and practice had given "wholly inconsistent results" and that it was unnecessary to decide whether the Tribunal possessed inherent authority to reopen the Case.[30] Similarly, in Gloria Jean Cherafat, et al., the Tribunal pointed out that "the Tribunal practice fails to provide conclusive guidance" on the issue, and relying on Dames and Moore, found it unnecessary to examine the issue.[31]

41. In Ram International Industries, Inc. et al., the Tribunal was faced with the issue of whether an earlier award could be reopened upon a request by the Government of Iran based on an allegation that the earlier decision was based on forged documents and perjured testimony. Chamber One stated that "it might possibly be concluded that a Tribunal, like the present one ... have the authority to revise decisions induced by fraud."[32] Having said this, the Tribunal stopped short of expounding upon the issue, continuing:

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[28] See Henry Morris, supra note 10; and Mark Dallal and The Islamic Republic of Iran, et al., Decision No. DEC 30-149-1 (12 January 1984), reprinted in 5 Iran-U.S. C.T.R. 74.

[29] Dames and Moore and The Islamic Republic of Iran, et al., Decision No. DEC 36-54-3 (23 April 1985), reprinted in 8 Iran-U.S. C.T.R. 107.

[30] Id., at 117.

[31] Gloria Jean Cherafat, et al. and The Islamic Republic of Iran, Decision No. DEC 106-277-2 (25 June 1992), reprinted in 28 Iran-U.S. C.T.R. 216, at 221 et seq.

[32] Ram International Industries, Inc., et al. and The Air Force of the Islamic Republic of Iran, Decision No. DEC 118-148-1, para. 20 (28 December 1993), reprinted in 29 Iran-U.S. C.T.R. 383, at 390.

> [I]n view of what follows, this question does not need to be fully pursued and decided ... [because] an application for revision of an award "may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor"... in the sense that when placed alongside the other facts of the case, earlier assessed, it seriously upsets the balance, and consequently the conclusions drawn by the Tribunal.[33]

The Tribunal, however, concluded that such a situation was not extant.[34]

42. While Ram International Industries, like Dames and Moore, took a reserved position as to whether the Tribunal had the inherent power to revise an award, the Decision in Harold Birnbaum, which was rendered in 1995, took a firm view regarding the issue of the implied or inherent power, stating:

> There is not much room for reading implied powers into a contemporary bilateral arrangement; for its authors are aware of past experience. It is to be expected that today, two States that intended to allow the revision of awards rendered by a tribunal established pursuant to a treaty between them would do so by an unequivocal expression of their common will. Clearly Iran and the United States did not so provide in the Algiers Declarations.... But the existence of express rules providing that the award is "final and binding," coupled with the silence of

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[33] Id., footnote in the original text omitted. In Ram International Industries, Chamber One was presided over by the former President of the Tribunal, Mr. Lagergren, who was called back to the Tribunal to sit as the Chairman of the Chamber eight years after he had retired from the Tribunal, because he had presided over the Chamber when the Final Award in Ram International was issued.

[34] Relying on the Decision in Ram International Industries, Judge Brower states in his book co-authored with Mr. Brueschke (Brower and Brueschke, supra note 22, at 259-260) that the decision in Ram International Industries "despite Judge Holtzmann's reservations, gives a strong indication that at least one Chamber of the Tribunal believes that the Tribunal does possess the necessary inherent powers to reopen and reconsider a final award, at least when 'decisive' evidence has been infected by fraud or perjury." Judge Brower and his co-author also envisaged that "[d]espite the fact that the Tribunal is nearing the end of its docket as the circumstances in Ram Industries and the so far unique case of Gordon Williams suggest, the Tribunal may well have an opportunity to address these questions in the future." Id., at 260. Compare these views with the Decision of the Tribunal in Harold Birnbaum, delivered after the Decision in Ram International Industries, to be studied infra, at paragraph 42, which decision has not been dealt with by the above authors, though their book was published in 1998, long after the Decision in Harold Birnbaum.

> the contracting Parties concerning the possibility of revision, makes it difficult to conclude that any inherent power to revise a final award exists.[35]

43. The Tribunal regards the decision in Harold Birnbaum as a recent precedent. However, on the basis of the Tribunal's jurisprudence, and in the circumstances of this Case, the Tribunal concludes that there is no need to define the inherent power of the Tribunal, if any, or to delineate under what particular circumstances such a power might be invoked. So far, this issue has been discussed especially in relation to possible cases of fraud and perjury and not as a general problem related to reconsideration. Even in that context, the Tribunal has not reached a single decision confirming the existence and need to apply its "inherent power," whatever that may be. In the present Case, there has been no mention of any aspect of fraud or perjury, and the Tribunal need not investigate any further the possibility of applying the theory of inherent power insofar as the request for reconsideration of the Award is concerned.

44. In her Application, the Claimant bases her arguments on certain alleged flaws and errors of the Tribunal in procedural matters and in weighing the evidence presented by the Parties, as well as alleged mistakes of fact and law. All these allegations are aimed at rearguing the Case and are, in general, based on Judge Brower's Concurring and Dissenting Opinion.

45. To begin with, during the whole process of the Case that resulted in the issuance of an Interlocutory Award accepting the effective and dominant nationality of the Claimant as being that of the United States,[36] and a Partial Award based on a Joint Request for an Award on Agreed Terms,[37] and the issuance of the Final Award, the Claimant never pointed to any instance that could give rise to any doubt about the

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[35] Harold Birnbaum and The Islamic Republic of Iran, Decision No. DEC 124-967-2, paragraphs 15 and 17 (14 December 1995), reprinted in 31 Iran-U.S. C.T.R. 286, at 289-290.

[36] Supra, note 11.

[37] Supra, note 12.

fairness, orderly conduct of the proceedings, or equal treatment of the Parties.[38] In fact, the Tribunal accommodated many demands of the Claimant over the Respondent's objections. For example, at the request of the Claimant, the Tribunal allowed a very exceptional filing of surrebuttals and other evidence, thereafter, and postponed a previously scheduled hearing.[39]

46. The Tribunal also finds it necessary to point out that, at the end of the nine-day long Hearing, the Claimant's Principal Attorney, Mr. Bravin, thanked the Chairman in the following terms:

> ... I do want to say that it has been a great honour and pleasure for all of us. We have done a lot of hard work, spent a lot of late nights in getting ready and you have been very patient and kind with us, and we thank you.[40]

47. On the same day, the Agent of the United States, Mr. Weiner, expressed his thanks, in part, as follows:

> Of course, I extend my gratitude and appreciation on behalf of my Government to the Chamber itself, which has presided over the Case in an extremely fair and judicious manner, and we trust that the deliberations and the swift disposition of the case will be handled with the same fashion. So thank you all very much.[41]

48. Furthermore, the Tribunal notes that on 6 June 2000, shortly after the Hearing, Judge Brower sent to the Chairman of Chamber One a letter in which he wrote as follows:

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[38] Article 30 of the Tribunal Rules provides: "A party who knows that any provisions of or requirement under these Rules has not been complied with and yet proceeds with the Arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object."

[39] See, the Final Award, paras. 25-30.

[40] Hearing Transcript of 27th May 2000, Proceedings – Day 9, at 165.

[41] Id., at 196-197. Mr. Weiner also expressed his gratitude to "the Chamber staff, who have been here working very hard on this matter; perhaps in particular to Mr. Wassgren, who so graciously dealt with sort of being hounded at the end of each break to check on the time and, at least according to my records, the difference between two parties was only 6 minutes, which I think is quite fantastic." (Mr. Wassgren was the Chairman's Legal Assistant.)

> Re: Case No. 485 Frederica Lincoln Riahi v. Government of the Islamic Republic of Iran
>
> Dear Judge Broms:
>
> First let me thank you for your good chairmanship of the recently concluded hearing in this case. The friendly atmosphere and professional conduct of the proceedings was reflected in the spontaneous desire to make a "class photograph" at the end of it. You are to be congratulated on this auspicious conclusion to a case which marked the end of an era at the Tribunal...
>
> I felicitate you once more on the successful conclusion of the hearing in this case and wish you an excellent summer in Finland having what I am sure is a well-deserved holiday.[42]

49. The Tribunal finds that the above citations are needed to give a proper picture of the Hearing in light of the surprising comments by Judge Brower in his Concurring and Dissenting Opinion, which are invoked by the Claimant in support of her Application for revision of the Award.

50. Furthermore, Judge Brower complains in his Concurring and Dissenting Opinion (and his complaint is invoked by the Claimant) about the Hearing process and claims that Mr. Mahvi and Mr. Nabavi, two witnesses of the Respondent were not reliable and were coerced to testify.[43] This criticism too is unfair. Both Mr. Mahvi and Mr. Nabavi were fully available for questions and were cross-examined by the Claimant's team at the Hearing.[44] Judge Brower also asked Mr. Mahvi twelve questions[45] and Mr. Nabavi, thirty questions.[46] Judge Brower's complaint about the unequal treatment of witnesses and the parties is, in light of the minutes from the Hearing, unfounded.

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[42] The "class photograph" was proposed by the Claimant.

[43] Concurring and Dissenting Opinion of Judge Brower, supra note 2, para. 5, at -.

[44] Henry Morris, supra note 10, at 365.

[45] Hearing Transcript of 25th May 2000, Proceedings – Day 7, at 122-125.

[46] Id., at 53-61.

51. As to one of the Claimant's specific complaints about the Tribunal's unequal and unfair treatment "by refusing to consider Claimant's post-hearing submission," the Tribunal recalls that it considered the issues related to the late filed documents, including post-hearing filings, in paragraphs 48-54 of its Final Award and rejected both the Claimant's and Respondent's post-hearing submissions. However, in addition to that, the settled practice of this Tribunal, and in particular that of this Chamber, has been to make it clear in its orders scheduling hearings that the purpose is "to close the exchange of written pleadings after the submission of Memorials in Rebuttal,[47] and not to permit, in the interest of equal treatment of the parties, justice, and orderly conduct of arbitral process, "unusual steps of post-hearing submissions," unless justified under "exceptional circumstances."[48]

52. Moreover, there is, if anything, less legal basis for a post-Award review based on these procedural decisions, which are "imbued with judicial discretion, than for a post-

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[47] See, e.g., Watkins-Johnson Company et al., Order of 3 December 1987, and other extracts in Matti Pellompää and David D. Caron, The UNCITRAL Arbitration Rules as Interpreted and Applied: Selected Problems in Light of the Practice of the Iran-United States Claims Tribunal (1994), at 44-45 and 422; Harris International Telecommunications, Inc. and The Islamic Republic of Iran, et al., Partial Award No. 323-409-1, paras. 57-67 (2 November 1987), reprinted in 17 Iran-U.S. C.T.R. 31, at 45-50; W. Jack Buckamier and The Islamic Republic of Iran, et al., Award No. 528-941-3, para. 32 (6 March 1992), reprinted in 28 Iran-U.S. C.T.R. 53, at 61; Dadras International, et al., and The Islamic Republic of Iran, et al., Award No. 567-213/215-3, para. 28 (7 November 1995), reprinted in 31 Iran-U.S. C.T.R. 127, at 135-136; and Vera-Jo Miller Aryeh, et al. and The Islamic Republic of Iran, Award No. 581-842/843/844-1, paras. 48-52 (22 May 1997), reprinted in 33 Iran-U.S. C.T.R. 272, at 287-288.

[48] Dames and Moore, supra, note 29, at 117; Computer Sciences Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 221-65-1 (16 April 1986), reprinted in 10 Iran-U.S. C.T.R. 269, at 273; Ian McHarg et al. and The Islamic Republic of Iran, Award No. 282-10853/10854/10855/10856-1 (17 December 1986), reprinted in 13, Iran-U.S. C.T.R. 286, at 302; Harris International Telecommunications, Inc., supra, note 47, para. 67; Vernie Rodney Pointon, et al., and The Government of the Islamic Republic of Iran, Award No. 516-322-1, para. 6 (23 July 1991), reprinted in 27 Iran-U.S. C.T.R. 49, at 51; Anaconda-Iran, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 539-167-3, para. 12 (29 October 1992), reprinted in 28 Iran-U.S. C.T.R. 320, at 324; Catherine Etezadi and The Government of the Islamic Republic of Iran, Award No. 554-319-1, para. 16 (23 March 1994), reprinted in 30 Iran-U.S. C.T.R. 22, at 26.

Award re-opening of the merits."[49] If not procedural matters, the remaining allegations of the Claimant, including the contention that the Tribunal failed to properly apportion the burden of proof or accord due weight to the testimonies presented at the Hearing are related to the Tribunal's discretion to evaluate written or oral evidence.[50]

53. The Final Award shows that the Tribunal has based its findings on a variety of such evidence, and the Claimant's team had the full opportunity to respond to those arguments presented at the Hearing and they did so.[51] In connection with this particular allegation, the Tribunal further notes that the Claimant refrained from rebutting certain parts of Mr. Mahvi's and particularly Mr. Nabavi's testimonies at the Hearing, notwithstanding the fact that she had introduced as a witness, and had available in The Hague, her husband, Mr. Riahi, who had the best factual knowledge of the Case in the Claimant's team.[52]

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[49] Dames and Moore, supra note 29, at 116. See also Sedco, Inc., supra note 15, at 283-284. Both these Decisions were rendered by Chamber Three with the participation of Judge Brower, who formed the majority with Judge Mangård. In Sedco, Inc., the Tribunal stated that "[t]he Requests allege several procedural and legal errors which the Respondents assert were committed by the Tribunal in the Award, and urge the Tribunal to reconsider its decisions. The Tribunal is without power to entertain the Requests, however, which amount in effect to a request for appeal or review of the Award by the Tribunal. The Tribunal has held in numerous cases that 'there is no basis in the Tribunal's Rules of Procedure or elsewhere for review of an award on such grounds.'" Interestingly, in this Case, the Respondent had also relied on a large number of mistakes and misconduct allegedly committed by the Chamber, and in particular its Chairman, accusing him, inter alia, of improperly relying on the "Mosk Rule" and contending that he "was not competent to decide the Case" and that by accepting certain submissions from the Claimant had acted "[c]ontrary to all rules of justice and equity and ... disregard[ed] the rules of arbitration." (Respondent's Submission of 13 August 1987, Document 448, in that Case.) The majority dismissed the Respondent's applications without finding any need to even address these allegations.

[50] See, Article 25 (6) of the Tribunal Rules.

[51] In Henry Morris, supra, note 10, at 365, the Tribunal noted that motions were "based upon the Respondent's bank's introduction of certain new arguments for the first time at the Hearing," and added that the "Claimant, however, had the opportunity to respond to those arguments at the Hearing."

[52] The Tribunal also notes that the Claimant does not take issue with the fact, for example, that the Tribunal accorded more weight in its Final Award to the oral testimony of her expert witness Dr. Ratner, as against that of the Respondent's expert witness, Dr. Sanati, in rejecting the Respondent's allegations regarding the insanity and incompetence of her stepsons, though Dr.

54. In Cases A/20 and A/19, The Government of the Islamic Republic of Iran had objected, respectively, to the Tribunal's alleged wrong application of i) certain texts, criteria, and factors for establishing corporate nationality of judicial persons that were claimants before the Tribunal, as laid down by orders issued in Flexi-Van Leasing, Inc.[53] and ii) the law in awarding interest. In the first Decision, the Full Tribunal first reiterated that neither the Algiers Declarations nor the Tribunal Rules provide for any kind of review of orders or awards made by the Chambers except as provided by Articles 35-37 of the Tribunal Rules and that all decisions and awards of the Tribunal are final and binding. The Full Tribunal continued to rule:

> The questions raised by Iran relate to burden of proof, to the evidence required to establish to the satisfaction of the Tribunal the existence of the facts on which its jurisdiction is based, and to weighing of such evidence by the Tribunal. These issues ... relate to the application of the Tribunal Rules governing burden of proof and evidence. Article 24, paragraph 1, of the Tribunal Rules provides that "each party shall have the burden of proving the facts relied on to support his claim or defense." Article 25, paragraph 6, states that "the arbitral tribunal shall determine the "admissibility, relevance, materiality and weight of the evidence offered." ... Neither the Tribunal nor the States Parties have considered it necessary to modify any of these provisions. To the contrary, the Rules reflect generally accepted principles of international arbitration practice and contribute to the effective resolution of cases before the Tribunal.[54]

55. Confirming the rulings of the above Award, the Decision in Case A/19 ruled that the "determination of the applicable principle of law in any given case... must rest with the Chamber concerned."[55]

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Ratner had only appeared as a witness at the Hearing and had, unlike Dr. Sanati, introduced no written opinion on the issues.

[53] Flexi-Van Leasing Inc. and The Government of the Islamic Republic of Iran (Order filed on 20 December 1982), reprinted in 1 Iran-U.S. C.T.R. 455.

[54] The Islamic Republic of Iran and United States of America, Decision No. DEC 45-A20-FT, paras. 9 and 10 (10 July 1986), reprinted in 11 Iran-U.S. C.T.R. 271, at 274.

[55] The Islamic Republic of Iran and The United States of America Decision No. DEC 65-A19/FT, para. 13, (30 September 1987) reprinted in 16 Iran-U.S. C.T.R. 290.

56. As has been mentioned earlier, the Claimant's Applications for recusal and reconsideration of the Final Award in this Case are based on the Concurring and Dissenting Opinion of Judge Brower, wherein he incorrectly criticizes the majority of the Chamber. However, it must be reiterated that such minority views cannot serve as a ground for challenge or appeal. Before concluding this Decision, the Tribunal makes a final observation. In Avco Corporation and Iran Aircraft Industries, et al., decided in 1988 by Chamber Three, Judge Brower delivered another Concurring and Dissenting Opinion. There, he qualified the Award, inter alia, as being procured by misleading the Claimant and, therefore, constituting "a denial to the Claimant of the ability to present its case to the Tribunal."[56] This Opinion was successfully invoked by the Claimant in that Case before the Courts in the United States to prevent the enforcement of the Award in favour of the Iranian Respondent.

57. In a proceeding initiated by Iran in this Tribunal involving the final and binding nature of the awards of the Tribunal and their enforceability, the Full Tribunal noted that "[a] majority of Chamber Three of the Tribunal considered this argument and, by not adopting the minority's view, rejected it." The Full Tribunal therefore found the United States Court of Appeals for Second Circuit's non-enforcement --based on the view of the dissenting Member of Chamber-- of a final and binding award of the Tribunal to be in violation of Article IV (1) of the Claims Settlement Declaration.[57]

## III CONCLUSION

58. The above study of the Tribunal Rules and practice in light of the present Case has convinced the Tribunal that one of the cornerstones of Tribunal proceedings, the final and binding nature of awards, deserves to be respected.

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[56] Avco Corporation and Iran Aircraft Industries, et al., Partial Award No. 377-261-3 (18 July 1988), reprinted in 19 Iran-U.S. C.T.R. 200. Concurring and Dissenting Opinion of Charles N. Brower, paras. 1 and 22, reprinted in 19 Iran - U.S. C.T.R. 231, at 238.

[57] See, The Islamic Republic of Iran and The United States of America, Award No. 586-A27-FT (5 June 1998), paras. 18, 68 and 69, reprinted in 34 Iran–U.S. C.T.R. 39, at 45, 58-59.

## IV. DECISION

59. The Tribunal rejects the 7 July 2003 requests of the Claimant, Frederica Lincoln Riahi, that the Chairman recuse himself and that Chamber One grant the relief sought in her Application of 27 March 2003.

Dated, The Hague
17 November 2004

Bengt Broms
Chairman
Chamber One

In the name of God

Assadollah Noori

Charles N. Brower

Dissenting Opinion