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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL
«نسخه برابر اصل»

CASE NO. A28
FULL TRIBUNAL
DECISION NO. DEC 130-A28-FT

THE UNITED STATES OF AMERICA and
THE FEDERAL RESERVE BANK OF NEW YORK,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN and
BANK MARKAZI IRAN,
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده
FILED
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19 DEC 2000
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DECISION

Appearances:

For the Claimants :

Mr. Allen S. Weiner,
Agent of the United States of America,

Ms. Jessica R. Holmes,
Deputy Agent of the United States of America,

Mr. Michael J. Matheson,
Deputy Legal Adviser,
United States Department of State,

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

Mr. Thomas Baxter,
General Counsel,
Federal Reserve Bank of New York,

Ms. Kathleen M. Milton,
Attorney Adviser,

United States Department of State,
Ms. Kathleen A. Wilson,
Attorney Adviser,
United States Department of State,
Mr. Mark A. Clodfelter,
Attorney Adviser,
United States Department of State,
Ms. Michelle Meertens,
Attorney,
Federal Reserve Bank of New York,
Mr. Dirk Meerburg,
Counsel,
Mr. William T. Lake,
Witness,
Mr. James Oltman,
Witness.

For the Respondents :

Mr. M.H. Zahedin-Labbaf,
Agent of the Government of the Islamic Republic of Iran,
Dr. Ali Akbar Riyazi,
Legal Adviser to the Agent,
Mr. Ian Brownlie, Q.C.
Legal Adviser to the Agent,
Mr. Zainolabedin Marousi,
Legal Assistant to the Agent,
Mr. Jafar Tamaddoni,
Adviser to the Agent,
Mr. Behazin Bijani,
Adviser to the Agent,
Mr. Behzad Nabavi,
Witness,
Mr. Ali Manavi-Rad,
Witness.

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I. INTRODUCTION

1. On 29 September 1993, the Claimants, the United States of America and the Federal Reserve Bank of New York ("Federal Reserve Bank"), submitted a claim against the Respondents, the Islamic Republic of Iran ("Iran") and Bank Markazi Iran ("Bank Markazi"). At issue in this Case are the Respondents' obligations under the Algiers Declarations[1] and the implementing Technical Agreement[2] concerning the replenishment of the Security Account established pursuant to Paragraph 7 of the General Declaration ("Security Account") "for the sole purpose of securing the payment of, and paying, claims against Iran" in accordance with the Claims Settlement Declaration. Paragraph 7 of the General Declaration is quoted in full infra, at para. 5.

2. The Claimants allege that the Respondents have breached those obligations by failing to maintain a balance of at least U.S.$500 million in the Security Account. According to their final pleadings, the Claimants request that the Tribunal order the Respondents to replenish the Security Account to U.S.$500 million and to maintain it at that level until all awards against Iran have been satisfied. In addition, the Claimants request that, at any time that the Respondents have not replenished the Security Account to U.S.$500 million, the Tribunal allow the Claimants to satisfy any awards rendered

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[1] Declaration of the Government of the Democratic and Popular Republic of Algeria ("General Declaration") and Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"), both dated 19 January 1981.

[2] Technical Agreement with N.V. Settlement Bank of the Netherlands, 17 August 1981, reprinted in 1 Iran-U.S. C.T.R. 38 ("Technical Agreement"). See infra, para. 9.

against them in favor of Iran by paying such awards into the Security Account until the required minimum balance is reached.

3. The Respondents deny any liability for this claim. They contend that, because the current balance in the Security Account is, in their view, sufficient to satisfy any future Tribunal awards against Iran, the Respondents are not obligated to replenish the Security Account to U.S.$500 million.

4. A Hearing in this Case was held on 17-19 November 1999 in the Peace Palace, The Hague.

II. FACTUAL BACKGROUND

5. Paragraph 7 of the General Declaration ("Paragraph 7"), the provision at the heart of this claim, states:

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

which point any amount remaining in the Security Account shall be transferred to Iran.

6. On 17 August 1981, the Central Bank of Algeria as Escrow Agent, Bank Markazi, the Federal Reserve Bank as Fiscal Agent of the United States, and N.V. Settlement Bank of the Netherlands ("N.V. Settlement Bank")[3] entered into the Technical Agreement to implement, inter alia, "the relevant parts of the [Algiers] Declarations." Technical Agreement, Introductory Paragraph.

7. The details of the operation of the Security Account are contained in the Technical Agreement. Under the terms of the Technical Agreement, the Security Account consists of three separate accounts, denominated A, B, and C. Account A was to be used to receive, in accordance with Paragraph 7, Iranian funds previously held in United States banking institutions. One-half of these funds were then to be transferred into Account B until it reached U.S.$ 1 billion; the remainder was to be returned to Iran. See Article 1(b)(ii) of the Technical Agreement. See also Paragraph 7.

8. Account C holds the interest earned on the funds in Account B. The Tribunal has determined that Iran shall have access to the funds in Account C for the purpose of satisfying its obligation to replenish the Security Account. See Islamic Republic of Iran and United States of America, Decision No. DEC 12-A1-FT, at 5 (3 Aug. 1982), reprinted in 1 Iran-U.S. C.T.R. 189, 192 ("Case No. A1").

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[3] The N.V. Settlement Bank of the Netherlands is the "Central Bank" referred to in Paragraph 7.

9. The provisions of the Technical Agreement that may be relevant to the present claim are:

a. Article 1 (d), which provides:

> (i) Whenever the balance in Account B has fallen below US $500 million, the Depositary[4] shall notify the other parties to this Agreement of this fact.
>
> (ii) As soon as such notification is received by Bank Markazi, it shall promptly make new deposits sufficient to maintain a minimum balance of US $500 million in Account B.

b. Article 18 (b), which provides:

> Any dispute arising under this Agreement, which cannot be amicably resolved, may be submitted by any of the parties to the court of competent jurisdiction in Amsterdam, to a court of competent jurisdiction in any other country in which the defendant party has a permanent business establishment in its own name or to the Tribunal, except that any case in which the Depositary is a defendant shall be submitted exclusively to the court of competent jurisdiction in Amsterdam. Notwithstanding the foregoing, neither the Escrow Agent nor the Depositary shall be bound by a decision of the Tribunal which adversely affects its rights or privileges under this Agreement. In connection with the resolution of disputes arising out of this Agreement or other enforcement of this Agreement, solely in actions brought by a party hereto and solely before the courts or the Tribunal referred to above, the parties hereby waive any immunity they may have or have the power to assert in any proceeding, and the parties agree to accept the jurisdiction of the Netherlands court or, except for the Depositary, the jurisdiction of the Tribunal.

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[4] The N.V. Settlement Bank of the Netherlands. See Article 1(a)(i) of the Technical Agreement.

10. Upon signature of the Algiers Declarations on 19 January 1981, the United States transferred to escrow accounts agreed to by Iran approximately U.S.$8 billion of Iran's assets held by the Federal Reserve Bank and by overseas branches of United States banks. In addition, the United States lifted the judicial attachments on Iranian assets that were still held in United States branches of United States banks; thereafter, immediately upon the conclusion of the Technical Agreement on 17 August 1981, the United States transferred those assets, totaling U.S.$2.038 billion, to the N.V. Settlement Bank, the depositary of the Security Account. The N.V. Settlement Bank transferred U.S.$1 billion out of that amount to the Security Account and then transferred the remainder to Iran.

11. Throughout the history of the Tribunal, the Security Account balance has frequently fallen below U.S.$500 million following the payment of awards. The Respondents had replenished the Security Account for many years. On 5 November 1992, following the payment of certain sizable awards, the Security Account balance fell to U.S.$253,628,936.74. The balance in the Security Account has been below U.S.$500 million since that date.

12. On 5 November 1992, the N.V. Settlement Bank informed by telex the other parties to the Technical Agreement, including Bank Markazi, that the balance in the Security Account had fallen below U.S.$500 million. On 19 January 1993, the Agent of the United States sent the Agent of Iran a letter, urging that Iran and Bank Markazi take "immediate steps . . . to rectify the situation and achieve compliance with the relevant obligations."

13. On 22 February 1996, Iran and the United States agreed that part of a settlement reached between them concerning monies to be paid to Iran be deposited by the United States into

the Security Account (see Partial Award on Agreed Terms No. 568-A13/A15(I and IV:C)/A26(I, II, and III)-FT, para. 9 (22 Feb. 1996)). The balance in the Security Account nevertheless has remained under U.S.$500 million.

III. THE PARTIES' CONTENTIONS

14. The Claimants contend that the clear terms of Paragraph 7 obligate Iran to maintain a minimum balance of U.S.$500 million in the Security Account so long as claims against Iran remain pending at the Tribunal. They assert that it is only after the President of the Tribunal certifies to the Central Bank of Algeria that all Tribunal awards against Iran have been satisfied that the Respondents' obligations to replenish cease. The Claimants contend that, under the terms of Article 1(d) of the Technical Agreement, Bank Markazi is independently obligated to replenish the Security Account.

15. The Claimants contend that in the Declarations the Parties struck a careful balance of their respective rights and obligations. The United States accepted the Security Account mechanism, along with Iran's replenishment obligation, in place of all the restraints on Iranian property that were in effect on 19 January 1981, but only upon the terms of the agreement concluded at that time. Thus, the Claimants conclude, in order to maintain that balance, Iran must be required promptly to replenish the Security Account.

16. Accordingly, the Claimants request that the Tribunal hold that the Respondents have been in breach of their replenishment obligations since 5 November 1992 and, as their principal relief, request that the Tribunal order the Respondents to replenish the Security Account to U.S.$500

million and to maintain it at that level until all awards against Iran have been satisfied.

17. The Respondents contend that they have no obligation to replenish the Security Account because the balance therein is sufficient to satisfy any potential Tribunal awards against Iran. In support of their contention, the Respondents provide an estimation of the value of the two private claims against Iran that they state were still pending before the Tribunal at the date of the Hearing, plus interest; the Respondents argue that there is no realistic way that the payment of these claims would require more funds than are currently available in the Security Account, since, the Respondents allege, the total relief sought in these claims does not exceed U.S.$62 million (excluding interest). In this connection, and in response to the Claimants' reference at the Hearing to the United States counterclaim against Iran in Case No. B1,[5] the Respondents contend that counterclaims are not "claims" within the meaning of the third sentence of Paragraph 7; thus, the United States counterclaim in Case No. B1 should not be considered in determining both the sufficiency of the current balance in the Security Account and the timing of the President of the Tribunal's certification to the Central Bank of Algeria that "all arbitral awards against Iran have been satisfied in accordance with the Claims Settlement Agreement." Paragraph 7, last sentence. The Respondents also argue that the Claimants bear the burden of proving, prima facie, that the current balance in the Security Account would be insufficient to pay future awards.

18. The Claimants argue that the face value of currently pending claims is irrelevant to the Respondents' obligations to

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[5] Islamic Republic of Iran and United States of America, Case No. B1 (Counterclaim).

replenish the Security Account to U.S.$500 million and that therefore the Respondents must do so immediately, having been in violation of their obligations since November 1992. Furthermore, the Claimants contend that any analysis of the pending claims is inappropriate and unnecessary because, even if the amount remaining in the Security Account might ultimately be sufficient to pay future awards, the replenishment requirements were designed to avoid the unfair and burdensome prejudgment of claims. The Claimants contend that, in any event, the actual amount of pending claims, including the United States' counterclaim against Iran in Case No. B1,[6] exceeds U.S.$500 million.

19. The Respondents point to the language of Paragraph 7 that the "sole purpose" of the funds in the Security Account is "securing the payment of, and paying, claims against Iran in accordance with the Claims Settlement Agreement." Paragraph 7, third sentence. The Respondents argue that the inclusion in Paragraph 7 of language as to the "sole purpose" of the Security Account means that Iran's obligation to replenish the Security Account must be interpreted in light of that purpose. The Respondents point out that the general rules of treaty interpretation as set forth in Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969 ("Vienna Convention")[7] provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Because, according to the Respondents, the object and purpose of the Security Account obligation is to pay awards against Iran; because all such awards, whether rendered before or after November 1992, have been fully and

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[6] See supra, note 5.

[7] 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969).

immediately paid out of the Security Account; and because the funds that are currently available in the Security Account are sufficient to achieve that purpose, the Respondents maintain that Iran has met its obligations under Paragraph 7.

20. The Claimants respond that Iran's Paragraph 7 obligation consists not only of paying awards against Iran, but also of providing security for United States claimants, including the United States, and ensuring continued cooperation by Iran in the adjudication of claims against Iran before the Tribunal until the last award is paid. In any event, the Claimants argue that the stated purpose of Paragraph 7 provides no basis for understanding the terms of that provision in any sense but their ordinary meaning. Even the object and purpose of a treaty, the Claimants contend, cannot be invoked to change the ordinary meaning of a treaty provision.

21. The Respondents argue that, because the last clause of Paragraph 7 states that "any amount remaining" in the Security Account after the Tribunal President's certification shall be transferred to Iran (see supra, para. 5), the Algiers Declarations authorize Iran to maintain some lesser amount than U.S.$500 million in the Security Account so long as the payment of potential Tribunal awards is secured. If the Parties had intended that the Security Account be maintained at U.S.$500 million, the Respondents contend, they would have used the words "at which point the U.S.$500 million shall be transferred to Iran." The Respondents argue that, if the Parties had contemplated a minimum balance of U.S.$500 million in the Security Account, they could also have used the phrase "the amount remaining."

22. In response, the Claimants argue that Paragraph 7 refers to "any amount remaining" rather than to "U.S.$500

million" for at least two reasons. First, Iran may maintain a balance greater than U.S.$500 million in the Security Account. Second, the payment of the final award would, if the balance is precisely U.S.$500 million, cause the balance of the Security Account to drop below U.S.$500 million to some figure that the drafters of the Declarations could not possibly foresee.

23. The Respondents argue that the Claimants' insistence on the replenishment of the Security Account beyond actual need conflicts directly with the principles of effectiveness and good faith. The funds currently available in the Security Account are sufficient to pay any potential award against Iran, the Respondents reiterate; and, in any event, they state, the pledge made by the Agent of Iran at the Hearing that Iran would replenish the Security Account as required to pay any awards rendered against it (see infra, para. 89) is satisfactory security for the remaining claimants should the balance in the Security Account prove to be insufficient.

24. The Claimants reply that the Respondents cannot in good faith fail to replenish the Security Account. It is the Algiers Declarations themselves, the Claimants assert, that define the necessity of Iran's performance; the Respondents' definition of necessity contradicts the plain language of the Declarations and contravenes the intentions of the Parties. Furthermore, the Claimants argue, the Security Account obligation was one of the many undertakings by both Parties to the Algiers Declarations, and to allow one Party to refuse to perform one of those undertakings would undermine the careful balance struck by the Parties in those Declarations (see supra, para. 15).

25. The Claimants also contend that Iran should be estopped from denying its Paragraph 7 replenishment obligation

because, before and after the Algiers Declarations were concluded, Iran interpreted Paragraph 7 in the same way as the Claimants do in this Case. First, the Claimants point out that, in a written communication that Iran sent to the United States on 21 December 1980, Iran referred to the establishment of a "guarantee" for the purpose of repaying Iran's debts to United States claimants that would "never drop below $500 million."[8]

26. Further, the Claimants contend, in Case No. A1, Iran acknowledged its obligation to replenish the Security Account for an unlimited period of time and promised to do so in good faith. According to the Claimants, in that Case Iran repeatedly assured the Tribunal during the course of the proceedings that it was unnecessary to credit interest earned on the Security Account to the Security Account in light of Iran's promise to replenish. In the Claimants' view, the notion that Iran would fulfill its replenishment obligation was a fundamental premise of the Tribunal's decision in Case No. A1. Thus estoppel, which is grounded in good faith, must operate here to bar Iran's position.

27. The Respondents argue that three considerations require that Paragraph 7 be interpreted restrictively. First, Iran's Paragraph 7 Security Account obligation is of an exceptional character, as no such guarantee has ever been required of any state in international litigation. Second, no reciprocal obligation has been imposed on the United States to secure payment of awards rendered against it. Thus, any

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[8] The relevant part of Iran's 21 December 1980 written communication reads:

> For the purpose of repaying [Iran's bona fide debts to American persons or institutions], the Government of the Islamic Republic of Iran will deposit with the Algerian Government an initial cash guarantee equal to one billion dollars, or any other guarantee acceptable to the Central Bank of Algeria. In repaying such debts, this guarantee will be adjusted in such a way that it will never drop below $500 million.

interpretation unnecessarily increasing this imbalance should be avoided. Third, state practice with regard to similar obligations has allowed for the gradual reduction in the posted security as the underlying obligation is performed.

28. The Respondents argue that the principle of restrictive interpretation requires that, when there is more than one possible interpretation of a treaty provision, the interpretation involving the minimum of obligations for the parties should be adopted. In the present circumstances, therefore, given that the current balance in the Security Account is sufficient to pay potential Tribunal awards, Paragraph 7 should not be interpreted as requiring Iran to replenish the Security Account to U.S.$500 million.

29. In response, the Claimants point out that the Tribunal has previously noted that the rule of restrictive interpretation has been criticized as leading to restrictions on the obligations of one sovereign state to the detriment of any benefits in a treaty provided to another sovereign state. They further contend that the text of Paragraph 7 is clear and that there are no alternative interpretations from which to choose. Thus, whatever its current status under international law, the principle of restrictive interpretation cannot be used to overturn the explicit language of the General Declaration.

30. The Respondents argue that the principle of effectiveness prevents the interpretation of a treaty's terms in any manner that would violate the fundamental intentions of the parties. To require replenishment of the Security Account to U.S.$500 million when the amount of the remaining claims is much less than that amount would be to impose a penalty on Iran even though the efficacy of the payment procedure can be maintained without such replenishment.

31. The Respondents also contend that their interpretation of Paragraph 7 is supported by Article 32(b) of the Vienna Convention, which provision, according to the Respondents, allows one to derogate from the textual interpretation approach provided for in Article 31 of the Vienna Convention when such an interpretation leads to a manifestly absurd or unreasonable result. The Respondents argue that Article 32(b) of the Vienna Convention applies in this Case because a strictly textual interpretation of Paragraph 7 would lead to the absurd and unreasonable result of Iran maintaining U.S.$500 million in the Security Account when the face value of the outstanding claims might total only a small percentage of that amount.

32. The Claimants reply that the requirement that Iran maintain a balance of U.S.$500 million in the Security Account is neither unreasonable nor absurd. The Claimants point out that Iran was fully aware, when it agreed to Paragraph 7, that the number of cases before the Tribunal and, with them, the total face value of the claims therein would decrease gradually over the life of the Tribunal. The Claimants argue that Iran's knowing commitment to replenish the Security Account to U.S.$500 million, no matter how many claims are pending before the Tribunal or what their amounts are, precludes any argument that the principles of good faith, effectiveness or reasonableness dictate that Iran not be held to its Paragraph 7 replenishment obligation.

33. The Respondents argue that changed circumstances since the date of the Algiers Declarations, including the decline in oil prices and the protracted Iran-Iraq war, have diminished their ability to replenish the Security Account. The Respondents point out that Article V of the Claims Settlement Declaration provides that "[t]he Tribunal shall

decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances." The Respondents argue that, by its terms, this provision applies to all cases, including the present one, and that the Tribunal must therefore consider changed circumstances in interpreting Iran's obligations and its compliance with those obligations. The Respondents also argue that the changed circumstances to be considered are not limited to those that led to the conclusion of the Algiers Declarations.

34. The Respondents contend that the United States has violated several treaty and international law obligations vis-à-vis Iran through, inter alia, aiding Iraq in its war against Iran; attacking Iranian oil platforms in 1987 and 1988; failing to lift trade sanctions; failing to enforce Tribunal awards issued in favor of Iran against United States nationals; failing to return the United States assets of the former Shah and of his close relatives; and intervening in Iran's internal affairs. This wrongful conduct by the United States, the Respondents assert, contributed to Iran's impaired financial ability to replenish the Security Account. Thus, the Respondents conclude, Iran is permitted to choose how to fulfil its Paragraph 7 obligations, provided that the object and purpose of the Security Account - paying awards against Iran - is safeguarded.

35. The Respondents argue that whenever the literal application of a treaty becomes impossible due to changed circumstances or due to the conduct of one of the parties, the international law doctrine of "approximate performance" allows a party to consider alternative ways of performance that

approximate most closely the treaty's primary object. Accordingly, the Respondents argue that the substantial changes of circumstances since the signing of the Algiers Declarations (see supra, para. 33), the drastic reduction in the pending cases before the Tribunal, and the wrongful conduct of the United States (see supra, para. 34) entitle Iran to engage in an approximate performance of its Paragraph 7 obligations that is compatible with the object and purpose of those obligations. The Respondents contend that Iran's payments to date into the Security Account represent approximate performance of its Paragraph 7 obligations; because the funds currently available in the Security Account are sufficient to satisfy potential awards against Iran, the object and purpose of the Security Account is safeguarded.

36. The Claimants deny the allegations of wrongful conduct brought by the Respondents and reject the Respondents' argument concerning changed circumstances, noting that the circumstances mentioned by the Respondents were all foreseeable at the time of the negotiation of the Algiers Declarations. Furthermore, the Claimants point out that the alleged wrongful actions of the United States have been or are the subject of claims by Iran before the Tribunal or other international fora, and that they are not relevant to the present Case. Lastly, the Claimants argue that "approximate performance" is not an accepted principle of international law and, in any event, has no application in this Case.

37. Relying on their version of the negotiating history of the Algiers Declarations, the Respondents deny that Iran's promise to establish and replenish the Security Account was a bargained-for element of the Declarations; rather, it was a voluntary gesture by the Iranian Government "to show how committed the new Islamic regime was to the principle of

fulfillment of obligations." According to the Respondents, Iran's obligation to establish the Security Account was not proposed by the United States, but rather was voluntarily undertaken. This assertion is supported by the testimony at the Hearing of Mr. Behzad Nabavi, the then-Minister of State for Executive Affairs of Iran and Iran's chief negotiator for the Algiers Declarations. The Respondents argue that, because Iran's Paragraph 7 obligation was voluntarily undertaken by Iran and not bargained for by the United States, it should not be interpreted in the unfair and absurd fashion proposed by the United States.

38. The Claimants contend that there is no need to rely on the negotiating history of the Algiers Declarations because the text of Paragraph 7 is clear and unambiguous when interpreted in accordance with Article 31 of the Vienna Convention. The Claimants disagree with the Respondents' contention that Iran's Paragraph 7 obligation was a unilateral offer by Iran rather than part of the bargain struck in the Algiers Declarations. They contend, instead, that in the negotiations that led to those Declarations, the United States sought security from Iran for the payment of claims of United States claimants against Iran. This assertion is supported by the testimony at the Hearing of Mr. William T. Lake, the Deputy Legal Adviser of the United States Department of State at the times here relevant and one of the principal draftsmen of the Algiers Declarations. In any event, the Claimants argue, the negotiating history of the Algiers Declarations is irrelevant because the text of Paragraph 7, as written, contains a clear obligation for Iran to maintain the Security Account at U.S.$500 million. The Claimants point out that the negotiations leading to the Algiers Declarations were complex and involved a careful balancing of both Parties' interests (see supra, para. 15). This equilibrium would be destroyed, argue the Claimants, if

Iran were permitted unilaterally to reinterpret one of its obligations.

39. As noted, the Claimants request, as an additional relief, that, at any time that the Respondents have not replenished the Security Account to U.S.$500 million, the Tribunal allow the Claimants to satisfy any awards rendered against them in favor of Iran by paying such awards into the Security Account until the required minimum balance is reached. The Claimants contend that the Tribunal has both the jurisdiction to consider and the authority to grant this additional relief. They argue that the Tribunal has assumed special authority over the implementation and operation of the financial accounts created by the Algiers Declarations, including the Security Account.[9] In this connection, the Claimants argue that in both Case No. A1 and Case No. A15(I:G), the Tribunal issued orders to ensure that those accounts are operated as intended by the Algiers Declarations.[10] Those

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[9] The other accounts that the Claimants refer to are Dollar Account No. 1 and Dollar Account No. 2, both established by the Algiers Declarations to pay off Iran's syndicated loans and credits. See Islamic Republic of Iran and United States of America, Interlocutory Award No. ITL 63-A15(I:G)-FT, para. 44 (20 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 40, 55.

[10] In its Decision in Case No. A1, the Tribunal held that, in the absence of express provisions in the Algiers Declarations concerning the disposition of interest accruing on the funds in the Security Account, the need to maintain the equilibrium between the Parties required that interest should neither be added directly to the Security Account (as argued by the United States) nor be directly returned to Iran (as argued by Iran), but should "as it has been, be credited as it accrues to a separate interest-bearing account in the N.V. Settlement Bank unless and until the two Governments agree to a different result" or until needed by Iran to replenish the Security Account. See Islamic Republic of Iran and United States of America, Decision No. DEC 12-A1-FT, at 4-5 (3 Aug. 1982), reprinted in 1 Iran-U.S. C.T.R. 189, 190-92.

In Case No. A15(I:G), the Tribunal decided a dispute concerning the disposition of excess funds held by the Federal Reserve Bank in Dollar Account No. 1 (see supra, note 9). The Algiers Declarations contained no specific provision relating to such disposition. The Tribunal determined that, based on the United States' commitment, in General Principle A of the General Declaration, to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979," the United States was obligated to return to Iran all funds in Dollar Account No. 1 that were not needed to pay the remaining claims against the Account. It further ordered the Parties to enter into negotiation in order to determine the

cases, the Claimants contend, serve as precedent for the additional relief they seek in this Case.

40. In support of their request for additional relief, the Claimants also rely on Article 18(b) of the Technical Agreement (see supra, para. 9), which states that any dispute arising thereunder may be submitted to the Tribunal[11] and that the parties waive any immunity "[i]n connection with disputes arising out of this Agreement or other enforcement of this Agreement." (Emphasis added.) The Claimants argue that the words "other enforcement of this Agreement" make clear that the Tribunal may provide remedies that "enforce" - that is, make effective - the terms of the Technical Agreement, including its Article 1 (d) (which provision, according to the Claimants, sets forth the requirements for the performance of Iran's Paragraph 7 replenishment obligation, see supra, para. 9). The Claimants contend that, since the additional relief that they seek would help secure enforcement of Iran's obligation to replenish the Security Account, it is within the Tribunal's authority under Article 18 (b) of the Technical Agreement.

41. The Claimants argue that the requested additional relief is necessary to prevent Iran from collecting and retaining a financial benefit from awards in its favor while withholding the same financial benefits that it is obligated to provide to the United States and its nationals through the Security Account. In this sense, the Claimants contend, the requested additional relief is akin to a set-off.

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amount of those funds. See Award No. ITL 63-A15(I:G)-FT, supra, note 9, paras. 52-55, 70, 12 Iran-U.S. C.T.R. at 58-59, 63. The Parties not having reached an agreement on all essential points, the Tribunal, in a subsequent award, ordered the United States to cause the Federal Reserve Bank to transfer to Bank Markazi the bulk of the funds remaining in Dollar Account No. 1. See Islamic Republic of Iran and United States of America, Award No. 306-A15(I:G)-FT (4 May 1987), reprinted in 14 Iran-U.S. C.T.R. 311.

42. According to the Claimants, the requested additional relief would not impose any obligation on Iran beyond that which Iran has already undertaken in Paragraph 7. The Claimants argue that Iran would not be penalized because Iran is the owner of the Security Account - in other words, payment into the Security Account constitutes payment to Iran. Likewise, argue the Claimants, the Claimants would receive no financial benefit from the additional relief other than the potential termination - or at least mitigation - of Iran's wrongful breach of the Algiers Declarations.

43. The Respondents argue that the additional relief that the Claimants seek concerns "pure enforcement" of Tribunal awards, a matter beyond the jurisdiction of the Tribunal. The Respondents contend that Article IV, paragraph 3, of the Claims Settlement Declaration, which entrusts national courts with the enforcement of Tribunal awards, implicitly precludes the Tribunal from intervening in such matters.[12] Consequently, the Respondents urge, the requested additional relief is beyond the jurisdiction of the Tribunal to order.

44. According to the Respondents, whether the Tribunal has the authority to supervise the operation of the Security Account is beside the point; what matters is whether the Tribunal has the authority to allow the Claimants "to enforce a possible award in the present Case on Iran's behalf to set off the United States' debts under the future awards" - in other words, whether the Tribunal, by granting the requested additional relief, may "intervene in enforcement matters."

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[11] Except in cases where the Depositary, the N.V. Settlement Bank, is named as a defendant.

[12] Article IV, paragraph 3, of the Claims Settlement Declaration provides:

> Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

45. The Respondents also contest the Claimants' argument based on Article 18 (b) of the Technical Agreement. They contend, first, that the "dispute" referred to in the first sentence of that provision covers solely disputes concerning the "procedures" set forth in the Technical Agreement. Thus, Article 18 (b) cannot provide the Tribunal with specific authority to grant the requested additional relief. Second, the Respondents contend that the clause "the resolution of disputes arising out of this Agreement or other enforcement of this Agreement" in the third sentence of Article 18 (b), rather than empowering the Tribunal to intervene in enforcement matters, merely "convey[s] the Parties' waiver of immunity."

46. During their rebuttal presentation at the Hearing, the Respondents argued that the Claimants' claim in this Case, with respect to both the principal and additional reliefs, is not a justiciable dispute, even if the Tribunal has jurisdiction to decide it. They argued that, to be justiciable, claims before the Tribunal had to meet the following conditions: (1) be related to a quantifiable form of loss; (2) be related to a cause of action recognized by general principles of law or international law; (3) be related to an alleged delict or unjust enrichment; (4) not require the Tribunal to enter into matters of enforcement; (5) not be analogous to issues of interpretation of a written constitution within a state; (6) assert prejudice to a legal interest; (7) not be moot; and (8) request the Tribunal to provide more than a declaration or an advisory opinion.

47. At the Hearing, the Agent of the United States objected to the Respondents' presenting arguments concerning the question of justiciability, stating that they represented new arguments not within the scope of the rebuttal. The Agent stated that, in any event, those arguments were "far removed

from the true character" of the Claimants' claim and "inconsistent with the Tribunal's jurisprudence." The Claimants reserved the right to submit a post-Hearing memorial on the matter. The Claimants subsequently elected not to submit such a memorial.

IV. JURISDICTION

48. The Parties disagree about the interpretation of Paragraph 7 of the General Declaration and about the obligations it imposes on Iran. The claim by the United States therefore squarely falls within the Tribunal's jurisdiction pursuant to Paragraph 17 of the General Declaration. The United States clearly has standing to bring this claim, irrespective of whether it has suffered any damages as a result of Iran's alleged non-compliance. As a Party to the Algiers Declarations, the United States has standing to bring a claim against Iran for non-compliance with any provisions of those Declarations.

49. The Respondents argue that the Tribunal does not have jurisdiction over the Technical Agreement, which, they contend, is binding only on the four signatory banks (see supra, para. 6). Furthermore, the Respondents argue that the Federal Reserve Bank has no standing to assert this claim and that Bank Markazi is not a proper respondent in this Case. The Claimants argue that the Tribunal has jurisdiction over the Federal Reserve Bank's claim under Article 18 (b) of the Technical Agreement. They contend that the grant of jurisdiction to the Tribunal over Bank Markazi and the Federal Reserve Bank in that provision was undertaken with the full knowledge and consent of the governments of Iran and of the United States. In reply, the Respondents contend that, even if the Tribunal does have jurisdiction over the Federal

Reserve Bank and Bank Markazi with regard to disputes under the Technical Agreement, it does not have jurisdiction in this Case because the Federal Reserve Bank has not sought negotiations to attempt to resolve the dispute amicably, negotiations which, the Respondents argue, are required under the terms of Article 18 (b) of the Technical Agreement.

50. In view of its findings, infra, in paras. 54 and 88, with respect to Iran's obligation under Paragraph 7, the Tribunal finds it unnecessary to decide the question whether it has jurisdiction over the Federal Reserve Bank's claim against Bank Markazi.

51. The Respondents further argue that the Tribunal has no jurisdiction to grant additional relief sought by the Claimants - that is, that, at any time that the Respondents have not replenished the Security Account to U.S.$500 million, the Tribunal allow the Claimants to satisfy any awards rendered against them in favor of Iran by paying such awards into the Security Account until the required minimum balance is reached (see supra, para. 43). The Tribunal finds that this issue is not one of jurisdiction, but rather is one of the power of the Tribunal to grant that relief.

52. With regard to the Respondents' argument that the claim in this Case does not represent a justiciable dispute (see supra, para. 46), it should be noted that to find that a dispute is within the Tribunal's jurisdiction but non-justiciable would be to undermine the Parties' intentions in establishing the Tribunal to resolve disputes between them. Moreover, disputes between the parties to a treaty as to the interpretation and performance of treaty obligations must presumptively be justiciable within the dispute settlement mechanism established by the treaty. Accordingly, the

Tribunal rejects the Respondents' argument that the present claim is not justiciable.

V. MERITS

53. The task of the Tribunal is to ascertain the content and scope of the obligations undertaken by Iran in Paragraph 7 and to determine whether Iran has complied with those obligations. The Tribunal has consistently held that the Algiers Declarations are to be interpreted in accordance with the Vienna Convention on the Law of Treaties.[13] See Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT, at 14-15 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 259; Islamic Republic of Iran and United States of America, Award No. ITL 63-A15(I:G)-FT, para. 17 (20 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 40, 46; Islamic Republic of Iran and United States of America, Decision No. DEC 62-A21-FT, para. 8 (4 May 1987), reprinted in 14 Iran-U.S. C.T.R. 324, 328; Islamic Republic of Iran and United States of America, Award No. 382-B1-FT, para. 47 (31 Aug. 1988), reprinted in 19 Iran-U.S. C.T.R. 273, 287; Islamic Republic of Iran and United States of America, Partial Award No. 590-A15(IV)/A24-FT, para. 73 (28 Dec. 1998); Islamic Republic of Iran and United States of America, Partial Award No. 597-A11-FT, para. 181 (7 Apr. 2000). See also Case No. A1, supra, at 3, 1 Iran-U.S. C.T.R. at 190 (in interpreting Paragraph 7, "the Tribunal look[ed] first to the text" of that provision). Under the general rule of interpretation, as set forth in Article 31 of the Vienna Convention, "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

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[13] See supra, note 7.

54. Applying the rule of Article 31 of the Vienna Convention, the Tribunal finds that the text of Paragraph 7 is clear and unambiguous and leaves no room for alternative interpretations. The textual interpretation leaves no doubt whatsoever: Iran is obligated to "make new deposits [into the Security Account] sufficient to maintain a minimum balance of U.S.$500 million in the Account . . . [w]henever the Central Bank [of Algeria] shall . . . notify Iran that the balance in the Security Account has fallen below U.S.$500 million" and to maintain the Account at that level "until the President of the [Tribunal] has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied." Paragraph 7, fourth and fifth sentences.

55. The Tribunal has already interpreted the particular language of Paragraph 7 in its Interlocutory Award in Case No. A15(I:G):

> After the payment of all arbitral awards against Iran, a third and final step in the restoration of the financial position of Iran will take place, with any amount remaining in the Security Account to be transferred to Iran. Meanwhile, Iran will have to make new deposits should the balance in the Security Account fall under $500 million, in order to maintain such a minimum balance. Such a provision implies that, in any event, a substantial amount will remain in the Security Account at the end of the activity of the Tribunal (and subsequently will be transferred to Iran).

Interlocutory Award No. ITL 63-A15(I:G)-FT, supra, note 9, para. 27, 12 Iran-U.S. C.T.R. at 50. (Emphasis added.)

56. Iran argues that the object and purpose of its Paragraph 7 Security Account obligation - in Iran's view, to pay awards against it - must be taken into account in interpreting that provision. Because, according to Iran, the funds that are

currently available in the Security Account are sufficient to achieve that purpose, Iran has met its obligations under Paragraph 7; consequently, it is not obligated to replenish the Security Account. See supra, para. 19.

57. The third sentence of Paragraph 7 states that "[a]ll funds in the Security Account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the Claims Settlement Agreement." That purpose is specific and, in this sense, not identical with the purpose of the Algiers Declarations as a whole, which purpose is much broader.

58. Even when one is dealing with the object and purpose of a treaty, which is the most important part of the treaty's context,[14] the object and purpose does not constitute an element independent of that context. The object and purpose is not to be considered in isolation from the terms of the treaty; it is intrinsic to its text. It follows that, under Article 31 of the Vienna Convention, a treaty's object and purpose is to be used only to clarify the text, not to provide independent sources of meaning that contradict the clear text. In other words, the object and purpose of a treaty is to be referred to in determining the meaning of the terms of the treaty and "not as an independent basis for interpretation." D.J. Harris, Cases and Materials on International Law 814 (1998). In Case No. A17, the Tribunal held that "the 'object and purpose' do not form any independent basis for interpretation, but rather are factors to be taken into account in the determination of the 'meaning to be given to the terms of the treaty.' The terms themselves should be given primary weight in the analysis of the text." United

[14] The context comprises principally the text of the treaty.

States of America and Islamic Republic of Iran, Decision No. DEC 37-A17-FT, para. 9 (18 Jun. 1985), reprinted in 8 Iran-U.S. C.T.R. 189, 200-201. In Case No. A1, the Tribunal applied the Vienna Convention to issues related to the Security Account, and only looked to the object and purpose of the agreements when it found that neither the text nor the Parties' intentions were clear on the point in dispute. In that Case, the Tribunal found that there was no need to interpret the Security Account obligation in a restrictive manner. See Case No. A1, at 2-5, 1 Iran-U.S. C.T.R. at 190-92.

59. It should be noted, moreover, that the stated "sole purpose" of Paragraph 7 consists, not only of paying claims against Iran, but also of "securing the payment of" such claims. Thus, the "sole purpose" of Paragraph 7 also aims at creating a particular mechanism for securing the satisfaction of claims against Iran. The satisfaction of such claims is guaranteed by maintaining a minimum balance of U.S.$500 million in the Security Account. The very use of the term "Security" Account reflects and confirms the Parties' intent of creating a guarantee. If there is no replenishment, the "sole purpose" of Paragraph 7 is not fulfilled. The Security Account must be replenished to the required level until the President of the Tribunal has certified to the Central Bank of Algeria that the last award against Iran has been paid. Such is the nature of the guarantee contained in Paragraph 7.

60. The Parties disagree about the sufficiency of the remaining balance in the Security Account, and whether or not that balance is relevant to a decision in the Case. The United States claims that, because the text of Paragraph 7 is clear, the current balance is irrelevant, except as to the limited question of whether or not it is below the required

minimum amount of U.S.$500 million. Iran claims that the current balance is relevant and that it is sufficient to cover pending claims. In view of the Tribunal's decision with respect to Paragraph 7 (see supra, para. 54), the sufficiency of the remaining balance in the Security Account is an issue the Tribunal need not decide.

61. Although Paragraph 7 clearly requires U.S.$500 million, not merely a "sufficient" amount, Iran's argument that adequate funds are available in the Security Account to cover all remaining claims could not, in any event, feasibly be verified. That argument, in effect, invited the Tribunal to determine both the amount presently in the Security Account and the maximum amount that could conceivably be awarded for the remaining claims against Iran. But, while the former could easily be ascertained, the latter could not properly be determined except through decision of all remaining claims against Iran, following completion of proceedings in those remaining cases.

62. In this connection, the Tribunal notes the disagreement of the Parties with respect to the relevance of the counterclaim asserted by the United States in Case No. B1.[15] Iran asserts that the counterclaim is not within the Tribunal's jurisdiction; is without merit; and, in any event, could not result in an award against Iran, because, even if it were within the Tribunal's jurisdiction and had merit, it would merely reduce the amount awarded Iran pursuant to its claim in Case No. B1. The United States denies those assertions. These issues, of course, must be addressed in proceedings in that Case, not in the present one.

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[15] See supra, note 5.

Consequently, the present Decision in no way prejudges any decision on those issues.

63. Iran further asserts in the present proceedings that the existence of the counterclaim in Case No. B1 is irrelevant to the sufficiency of the Security Account, because a counterclaim is not a claim, and the funds in that Account are stated by Paragraph 7 "to be used for the sole purpose of securing the payment of, and paying, claims against Iran." The United States disagrees with this assertion. This issue, being a matter of interpretation of Paragraph 7, is appropriate for decision in the present proceedings. The Tribunal cannot agree with Iran's interpretation. Paragraph 7 requires the Security Account to be maintained until "all arbitral awards against Iran have been satisfied." Any counterclaim against Iran, including the counterclaim in Case No. B1, might result in an "arbitral award[] against Iran" (Paragraph 7) unless and until it is withdrawn, settled by the parties, rejected by the Tribunal on either jurisdictional or substantive grounds, or held by the Tribunal to be a claim that is limited to an offset against any amount to be awarded to Iran.

64. Iran argues that the use of the words "any amount remaining" in the last clause of the fifth sentence of Paragraph 7 "envisages a case when before the certification [by the President that all awards against Iran have been paid] the Security Account might go legitimately below $500 million and there would be no need for replenishment." The Tribunal finds this argument unpersuasive. A simple reading of the fifth sentence of Paragraph 7 can only lead to one conclusion: "any amount remaining" refers to the amount left in the Security Account after the President's certification that "all arbitral awards against Iran have been satisfied." The

remaining amount could be (1) more or (2) less than U.S.$500 million; or (3) it could even be zero. The phrase "any amount remaining" ably covers all three scenarios.

65. The obligation to transfer the amount remaining in the Security Account after the President's certification reflects the fact that all funds in the Security Account belong to Iran. It has no bearing on the duty of Iran to maintain that Account with a minimum balance of U.S.$500 million until the President makes that certification.[16]

66. Iran argues that Paragraph 7 should be interpreted restrictively (see supra, para. 27). The Tribunal has interpreted Paragraph 7 in accordance with the rules laid down in Articles 31 and 32 of the Vienna Convention. As the wording of Paragraph 7 concerning Iran's replenishment obligation is clear, there is no room for limiting the import and meaning of that Paragraph by having recourse to the principle of restrictive interpretation. This conclusion is also supported by the authorities that Iran itself relied on in its pleadings. Iran's "restrictive" interpretation of Paragraph 7 eliminates the mechanism provided for in Paragraph 7; Iran's argument is essentially that its obligation no longer exists. Thus, its interpretation does not respect the principle of pacta sunt servanda.

67. To the extent, if any, that the rule of restrictive interpretation has any role to play in the interpretation of

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[16] The Respondents seem to admit this duality by emphasizing that "the President's certification is intended to serve a totally different purpose according to the very terms of [P]aragraph 7" - i.e., "totally different" from the replenishment obligation. Nonetheless, the Respondents maintain their position that, if the balance of the Security Account is sufficient to pay the remaining awards, no replenishment is required.

treaties today,[17] the Tribunal finds that it is certainly not applicable in cases where, as here, a treaty provision is clear and unambiguous. In the Wimbledon Case, the Permanent Court of International Justice stated that any restrictive interpretation of a provision in the Treaty of Versailles should "stop at the point where the so-called restrictive interpretation would be contrary to the plain terms of the article and would destroy what has been clearly granted."[18] Jennings and Watts write that the principle in dubio mitius applies "[i]f the meaning of a term is ambiguous."[19] That is not the case here.

68. In support of the application of the rule of restrictive interpretation, Iran argues, inter alia, that "the obligation contained in Paragraph 7 is of a manifestly exceptional character." In interpreting Paragraph 7 in Case No. A1, the Tribunal stated:

> The relevant governing principles established by the Parties are a recognition of Iran's rights in its assets, along with agreement to resolve disputes by binding arbitration, and the creation of a Security Account consisting of Iranian funds in order to satisfy awards against Iran. In this context, in the Declarations, the interests of Iran, the "owner" of the funds, were set against those of the United States and its national claimants, who had the benefit of the freeze orders and, in some cases, of judicial attachments of Iranian assets. The balance

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[17] Lord McNair writes that "this rule is of doubtful value," McNair, The Law of Treaties 766 (1961), and that "[i]t is difficult to defend the rule on a basis of logic," id. at 765. In Interpretation in International Law in: 7 Encyclopaedia of Public International Law 323 (1984), Bernhardt writes that "the often-invoked rule that treaties should be interpreted restrictively and in favour of State sovereignty can no longer be considered valid."

[18] P.C.I.J. (ser. A) No. 1, at 24-25.

[19] I Oppenheim's International Law 1278 (R. Jennings and A. Watts eds., ninth ed. (paper) 1996).

> was a careful one, and was premised on maintaining equilibrium between the Parties.[20]

Thus, given that Iran's Paragraph 7 obligation was part of the "careful" balance struck by the Parties in the Algiers Declarations, it can hardly be said that that obligation is exceptional compared to other obligations the Parties undertook in the Declarations. For example, the United States obligation in General Principle B of the General Declaration to terminate all litigation against Iran in United States courts and to lift all judicial attachments on Iranian property in the United States is no less "exceptional" than Iran's Paragraph 7 replenishment obligation. Paragraph 7 is part of the system that the Parties established for the resolution of their disputes. To say, therefore, that the obligation contained in Paragraph 7 "is of a manifestly exceptional character" is not convincing. That obligation remains part of the system and cannot unilaterally be removed or changed. Accordingly, the Tribunal cannot accept Iran's "exceptional-obligation" argument.

69. Iran argues that interpreting its Paragraph 7 obligation strictly in accordance with its terms would lead to a result which is manifestly absurd or unreasonable and hence would require resort to supplementary means of interpretation in accordance with Article 32 of the Vienna Convention. This Article allows recourse to supplementary means of interpretation such as the travaux préparatoires and the circumstances of the treaty's conclusion to confirm the clear meaning of the text that results from the application of Article 31's general rule of interpretation. These subsidiary means are to be used to determine the meaning only when a

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[20] Case No. A1, supra, note 10, at 4, 1 Iran-U.S. C.T.R. at 191. (Emphasis added.)

reading under Article 31 "(a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable." Vienna Convention, Art. 32. The Tribunal has already found that interpreting Paragraph 7 in accordance with Article 31 of the Vienna Convention leads to the conclusion that Iran is obligated to replenish the Security Account until such time as the President makes the certification that all claims against Iran have been resolved.

70. In their pleadings, the Parties have dealt at length with the negotiating history of Paragraph 7. Because the meaning of Paragraph 7 is clear, there is no need for the Tribunal to resort to that history in the present Decision. Nevertheless, the Tribunal finds that nothing in the negotiating history of Paragraph 7 contradicts or weakens the interpretation adopted by the Tribunal. In 1980 and 1981, the Parties were engaged in complex negotiations involving the return of billions of dollars to Iran and the termination of billions of dollars in outstanding claims against Iran in United States courts. The structure of the agreements meant that it was quite likely that at some time in the claims resolution process, the balance in the Security Account would be more than sufficient to secure remaining claims. Even if the Parties had not specifically contemplated the present situation arising, i.e., the point when a lesser amount of funds might arguably be sufficient to pay remaining claims, such a situation was clearly foreseeable.

71. If the two Parties had intended to establish a progressively decreasing guarantee for securing and paying awards against Iran, they could have done so expressly. But they did not. Instead, the Parties chose the minimum balance Security Account mechanism. A prominent feature of this mechanism is Iran's pledge to replenish the Security Account

to U.S.$500 million until such time as the President of the Tribunal makes the certification that all awards against Iran have been satisfied. Iran's replenishment obligation is one of the "interdependent commitments"[21] freely entered into by the two governments on 19 January 1981. "In interpreting the Algiers Declarations, the Tribunal cannot ignore the express terms agreed upon by the Parties, nor can it replace those terms with others that would unavoidably change the original meaning." Islamic Republic of Iran and United States of America, Partial Award No. 590-A15(IV) & A24-FT, para. 91 (28 Dec. 1998).

72. In light of the foregoing, it cannot be said that a textual interpretation of Paragraph 7 leads to an absurd or unreasonable result.

73. With regard to Iran's argument that changed circumstances that have occurred since 1981, including the decline in oil prices, the protracted Iran-Iraq war, and the reduced number of pending claims, should be considered in interpreting Iran's obligations (see supra, para. 33), Iran has stated clearly that it is not arguing that changed circumstances justify termination of, or withdrawal from, a treaty under Article 62 of the Vienna Convention. Rather, Iran is invoking the doctrine of changed circumstances to allow it to vary the performance of provisions that remain valid. In support, Iran invokes Article V of the Claims Settlement Declaration, which provides that "[t]he Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade,

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[21] Preamble to the General Declaration, last sentence.

contract provisions and changed circumstances." It should be noted that, in determining the application of the doctrine of changed circumstances under Article V, the cases referred to by the Parties, including Questech, Inc. and Ministry of National Defense of the Islamic Republic of Iran, Award No. 191-59-1 (25 Sep. 1985), reprinted in 9 Iran-U.S. C.T.R. 107, and Gibbs and Hill, Inc., et al. and Iran Power Generation and Transmission Company (TAVANIR) of the Ministry of Energy of the Government of Iran, et al., Interlocutory Award No. ITL 1-6-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 236, involved contractual disputes and hence are irrelevant for determining the application of the doctrine in the context of treaty interpretation. The Tribunal finds that, in the context of treaty interpretation, the doctrine of changed circumstances is to be applied in accordance with international law, as codified in Article 62 of the Vienna Convention.

74. Even if it were reasonable to conclude that changed circumstances could support interpretation of a treaty in a manner that derogates from the clear meaning of the text as determined in accordance with Article 31 of the Vienna Convention, none of the changed circumstances invoked by Iran was of a nature as to require such an interpretation of Iran's obligations. Furthermore, the changed circumstances invoked by Iran were foreseeable at the time of the Algiers Declarations. For example, the Iran-Iraq war was under way at the time the Declarations were concluded; the fluctuations in oil prices and other economic conditions were clearly foreseeable; and it was foreseeable that there would be a gradual reduction in the number and face value of pending claims as claims were paid. For all the above reasons, the Tribunal rejects Iran's argument based on changed circumstances.

75. Iran also argues that the substantial changes of circumstances since the signing of the Algiers Declarations (see supra, para. 33), the reduction in the pending cases before the Tribunal, and the allegedly wrongful conduct of the United States (see supra, para. 34) entitle Iran to engage in an "approximate performance" of its Paragraph 7 obligations that is compatible with the object and purpose of those obligations (see supra, para. 35).

76. Iran refers to the Separate Opinion of Judge Sir Hersch Lauterpacht in the case of Admissibility of Hearings of Petitioners by the Committee on South West Africa ("Petitioners Case") in which the International Court of Justice ("I.C.J.") delivered an Advisory Opinion.[22] Judge Lauterpacht stated the following:

> It is a sound principle of law that whenever a legal instrument of continuing validity cannot be applied literally owing to the conduct of one of the parties, it must, without allowing that party to take advantage of its own conduct, be applied in a way approximating most closely to its primary object. To do that is to interpret and to give effect to the instrument - not to change it.[23]

77. As an initial matter, it should be noted that the I.C.J., in its Advisory Opinion in the Petitioners Case, did not refer to any "principle of approximate application." Thus, as a matter of international law, the case does not confirm the existence of the principle, as it is only found in a Separate Opinion.

78. The context in which Judge Lauterpacht invoked that principle was quite different from that of the present Case.

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[22] 1956 I.C.J. 23 (1 Jun.).

[23] Id. at 46.

The Petitioners Case concerned the maintenance of the integrity of a status or régime in rem created by a treaty, i.e., the Mandated Territory of South West Africa under the Covenant of the League of Nations. (That Territory was a former German colony that ultimately became Namibia.) The United Nations was faced with non-compliance by the Union of South Africa with its obligations under the Covenant and the Mandate. In these circumstances, it was necessary to ensure whatever performance of the supervisory powers over the Mandatory that was achievable. In the present Case, Iran invokes the principle or doctrine as a defense for its own alleged violations of Paragraph 7. Thus, the party invoking the doctrine here does so, not to ensure performance of its obligations for the purpose of saving a treaty régime, but to excuse its own non-performance. The circumstances of the present Case do not fit into the structure and conceptual framework of the Petitioners Case.

79. The instant Case deals with an integral part of a system which Iran and the United States devised for the resolution of their disputes. The various elements of that system constitute a unity, and none of them can unilaterally be removed by one party without the consent of the other.

80. In this connection, and to give a full picture of Judge Lauterpacht's view, it is useful to consider another quotation from his Separate Opinion, preceding his discussion of the theory of approximate application. Referring to the status of South West Africa, Judge Lauterpacht said:

> [T]hat status must be given effect except in so far as its application is rendered impossible, in terms of its general purpose, having regard to the attitude adopted by the Union [of South Africa]. To that extent there are permissible such modifications in its application as are necessary to maintain -

> but no more - the effectiveness of that status as contemplated in the Court's Opinion of 1950.[24]

Iran's situation in the present Case is quite different from that discussed by Judge Lauterpacht. The application of Paragraph 7 has not been "rendered impossible." Iran does not deny that it is possible to replenish the Security Account. On the contrary, Iran declares its readiness to replenish if need be (see infra, para. 89). But for reasons it has explained, Iran has not replenished the Account at the present time. Thus, even if the Petitioners Case provided an authoritative source for the application of the doctrine of approximate performance, that doctrine as announced in Judge Lauterpacht's opinion would have no application to the present Case.

81. In addition to the Petitioners Case, Iran relies on another I.C.J. case in which the principle of approximate application has been invoked - the Case Concerning the Gabcíkovo-Nagymaros Project (Hungary/Slovakia) ("Gabcíkovo-Nagymaros Case").[25]

82. In the proceedings in that case, Slovakia referred to Judge Lauterpacht's Separate Opinion discussed above[26]; in fact, Slovakia went beyond that Opinion's ramifications by defending the proposition that "the doctrine of approximate application [was] not limited to treaties establishing a regime in rem." In Slovakia's view, the doctrine is of general relevance to the law of treaties, for the injured party must have the ability "to put the treaty into best

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[24] Id. at 46.

[25] 1997 I.C.J. 7 (25 Sep.)

[26] Gabcíkovo Case, Memorial submitted by the Slovak Republic, Vol. I, para. 7.21.

effect."[27] Thus, Slovakia invoked the doctrine of approximate application in a situation where a party injured by a breach of treaty is entitled to seek to give best effect to its terms. That doctrine, according to Slovakia, necessarily entails certain departures by the injured party from the original terms.

83. In the Gabcíkovo-Nagymaros Case, the I.C.J. did not make any determination concerning the existence of the principle of approximate application and refused to accept it as a justification for the Czechoslovak and, subsequently, the Slovak,[28] stance. The I.C.J. said:

> It is not necessary for the Court to determine whether there is a principle of international law or a general principle of law of "approximate application" because, even if such a principle existed, it could by definition only be employed within the limits of the treaty in question.[29] In the view of the Court, Variant C [30] does not meet that cardinal condition with regard to the 1977 Treaty.[31]

84. The Tribunal need not express its opinion on the existence and possible scope of the alleged principle or doctrine of approximate application. On the whole, there is little reference to such a principle or doctrine in state practice and legal writings. Nor is there any reference to that principle in the Vienna Convention on the Law of

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[27] Id. para. 7.22.

[28] When Slovakia succeeded Czechoslovakia after the latter's dissolution.

[29] Treaty on the Construction and Operation of the Gabcíkovo-Nagymaros Barrage System signed in Budapest on 16 September 1977.

[30] This was the name of a "provisional" and "substitute" project which Czechoslovakia decided to put into operation in view of Hungary's withdrawal from the original bilateral project. After the dissolution of Czechoslovakia, Slovakia continued the operation of Variant C. The quoted words are taken from Czechoslovakia's note verbale of 30 October 1989 to Hungary.

Treaties. There is no mention of it in Article 60 of that Convention, which provision deals with the entitlement of a State party to terminate or suspend performance of a treaty on account of a breach of that treaty by another State party. The legal relationship between the two Parties in the present Case differs from those in the two I.C.J. cases on which Iran relies. There is nothing in those two cases that would justify a State unilaterally determining how to implement a treaty provision in the absence of impossibility, a situation not found in the present Case.

85. Even if one were to assume the existence of a principle of approximate application, Iran has not shown how that principle could be relevant to its refusal to replenish the Security Account. Iran did replenish the Account for many years, but its refusal to do so since November 1992 has been absolute.

86. Consequently, the Tribunal concludes that the principle or doctrine of approximate performance would have no application in the present Case even if it were a general principle of law or a principle of international law, nor could it operate within the scope of interpretation.

87. It is uncontested that on 5 November 1992, the balance in the Security Account fell below the required level of U.S.$500 million. Since that time it has not been replenished so that it would reach that level. It is also uncontested that the President has not yet made the necessary certification, and could not do so as certain claims against Iran remain outstanding. The replenishment provision of Paragraph 7 remains operative as part of the Algiers Declarations.

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[31] 1997 I.C.J. at 53 (para. 76).

88. For all the above reasons, the Tribunal finds that Iran's failure to replenish the Security Account promptly after it fell below the U.S.$500 million level on 5 November 1992 constituted non-compliance with Iran's obligation under Paragraph 7 and has remained such to the present. Paragraph 7 was a bargained-for provision, the consequences of which were foreseeable, and Iran clearly understood them, as demonstrated by its pleadings in Case No. A1. The Tribunal assumes that this holding represents, by itself, a partial satisfaction to the United States.

89. In the course of the present proceedings, Iran has stated clearly the reasons why it considers further replenishment of the Security Account to be unduly onerous and unnecessary as a practical matter to secure and pay the remaining awards against it; and it has pledged that, if any additional funds should be needed for payment of awards against it, it will provide such funds. The pledge was made by the Agent of Iran before the Tribunal during the Hearing in this Case in the following terms:

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

90. While the fact of Iran's non-compliance with its Paragraph 7 obligation remains, the Tribunal appreciates this pledge and understands the reasons why Iran presently considers replenishment of the Security Account unnecessary as

a practical matter to secure and pay the awards in the claims remaining against it.

91. With respect to the remedies in the present Case, the Tribunal notes that the United States has requested two. First, that the Tribunal order Iran to replenish the Security Account to U.S.$500 million and, second, whenever in the future and to the extent that the balance in that Account is below U.S.$500 million, to allow the United States to pay any awards against it and in favor of Iran into that Account. Iran has suggested that the Tribunal lacks the competence to grant either form of relief or even to issue an enforceable award and has suggested that the Tribunal accept as sufficient the pledge made by Iran's Agent at the Hearing, ask the two Parties to negotiate a solution, or ask them to authorize the Tribunal to decide the issue ex aequo et bono.

92. None of Iran's suggested remedies is a remedy for non-compliance. The United States did not clarify what was meant by an "order," but the Tribunal assumes that it meant, not a procedural order, but rather that the Tribunal's decision in the present Case should include a request or order to Iran to comply with its obligation under Paragraph 7 as determined by the Tribunal.

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

94. With respect to the additional relief requested by the United States, the Tribunal cannot anticipate continued non-compliance by Iran. Consequently, that request for additional relief is denied; this being the case, the Tribunal need not decide whether it has the power to grant that additional relief.

VI. DECISION

95. In view of the foregoing,

THE TRIBUNAL DECIDES AS FOLLOWS:

A. Paragraph 7 of the General Declaration requires that Iran replenish the Security Account promptly whenever it falls below the level of U.S.$500 million until such time as the President of the Tribunal has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied.

B. Iran has been in non-compliance with this obligation since late 1992. The Tribunal expects that Iran will comply with this obligation. Consequently, the requests by the United States for an order to Iran for replenishment and for additional relief are denied.

Dated, The Hague
19 December 2000

Krzysztof Skubiszewski
President

In the Name of God

Bengt Broms
Concurring and
Dissenting Opinion

Gaetano Arangio-Ruiz

Assadollah Noori
Signature on next page

In the Name of God

George H. Aldrich
Concurring Opinion

Koorosh H. Ameli
Concurring in part;
Dissenting in part
(Separate Opinion)

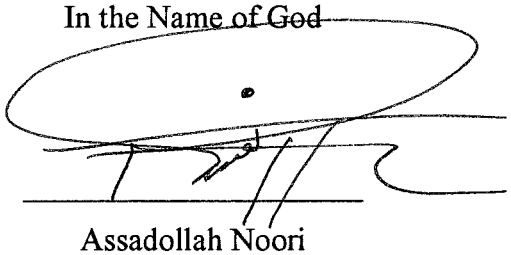
In the Name of God

Charles T. Duncan
Concurring Opinion

Mohsen Aghahosseini
Concurring Opinion

Richard M. Mosk
Concurring Opinion

In the Name of God



Assadollah Noori

I concur in the Decision because the Tribunal has denied the additional relief and has seen no reason -nor, indeed, could it have- to order the replenishment of the Security Account to the presently unnecessary and irrational level of US. $500 million. However, I strongly dissent from a number of reasonings and findings of the majority, particularly where it holds that Iran has been in non-compliance with its obligation under Para. 7 of the General Declaration, and I consider that to be a result of some members of the majority's unwarranted and non-juridical approach to the facts of the Case and their condoning of the United States' numerous and continuous injustices and unlawful actions vis-à-vis Iran, particularly repeated violations of the obligation to return Iranian assets and properties. Now is the time to pay tribute to Iran and its twenty years of promise-keeping and not to consider Iran in non-compliance by means of rigid and formalistic interpretations. The Security Account was explicitly and exclusively established for the payment of awards rendered in Claims against Iran, and not, as the majority holds by its flagrant rewriting and manifestly partisan interpretation of the Declaration, for the payment of an award which might be rendered in a counterclaim against Iran. Iran has always fulfilled its obligation regarding the said Account, which it undertook for "the sole purpose of securing the payment of, and paying, claims against Iran." [Emphasis added]. All awards thus far rendered in claims against Iran have been paid promptly out of the Security Account, and the balance is now much larger than even the face value of the relief sought plus associated interest in the sole remaining claim against Iran, i.e., Case No. 485. The United States Counterclaim in Case B1, which has been dormant during the past 19 years -even were it by some miracle to suddenly become entertainable before this Tribunal and assume the minimum requirements of a serious proceeding- has no relevance to the Security Account, and it is to be hoped that as soon as Case 485 is terminated the Tribunal, in accordance with both law and equity, will bring about the immediate transfer to Iran of the balance in the Security Account and reject the unlawful and irksome efforts and measures of the United States Government against its adversary, the Islamic Republic of Iran.