

## TRIBUNAL RULES OF PROCEDURE

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IRAN-UNITED STATES CLAIMS TRIBUNAL

- **INTRODUCTION AND DEFINITIONS**

1. The Tribunal Rules which follow are organized in the following manner:
  - First, as to each Article, the text of the UNCITRAL Arbitration Rules is set forth.
  - Second, as to each Article, the text of any modifications to the UNCITRAL Rules made by the Tribunal is set forth. Such modifications have been made within the framework of the Algiers Declarations and specifically pursuant to Article III, paragraph 2 of the Claims Settlement Declaration.<sup>[1]</sup>
  - Third, various Articles include notes to indicate how the Tribunal will implement or interpret the UNCITRAL Arbitration Rules, as modified.
2. The Tribunal Rules incorporate the UNCITRAL Rules and Administrative Directives 1, 2, 3 and 4 previously issued by the Tribunal, with certain modifications to each.
3. The following definitions apply for the purpose of the Tribunal Rules:
  - a. "Algiers Declarations" means the two Declarations of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981.
  - b. "Arbitral tribunal" means either the Full Tribunal or a Chamber, depending on whichever is seised of a particular case or issue.
  - c. "Arbitrating party" means, in a particular case, the party or parties initiating recourse to arbitration (the claimant), or the other party or parties (the respondent). The term "arbitrating party" also means one of the two Governments when, in a particular case, it is a claimant or respondent, or when it refers a dispute or question to the Tribunal pursuant to the Algiers Declarations.
  - d. "Chamber" means a panel of three members composed by the President of the Tribunal from among the nine members of the Full

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1 Article III Paragraph 2 of the Claims Settlement Declaration :

2. *Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the Parties or by the Tribunal to ensure that this Agreement can be carried out. The UNCITRAL rules for appointing members of three-member tribunals shall apply mutatis mutandis to the appointment of the Tribunal.*

Tribunal, pursuant to his powers under Article III, paragraph 1 of the Claims Settlement Declaration. [2]

- e. "Claims Settlement Declaration" means the "Declaration of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States and the Government of the Islamic Republic of Iran", dated 19 January 1981.
- f. "Full Tribunal" means the nine members Tribunal.
- g. "Member" as used in the Tribunal Rules shall have the same meaning as "arbitrator" where used in the UNCITRAL Rules.
- h. "National", "Iran", and the "United States" shall have the same meanings as defined in Article VII of the Claims Settlement Declaration. [3]
- i. "President" means the President of the Tribunal.
- j. "Presiding arbitrator" or "presiding member" means the President of the Tribunal or the Chairman of a Chamber, as the case may be.
- k. "Registrar" means the Registrar of the Tribunal and includes any deputy of, or other person authorized by, the Registrar, the President, or the Full Tribunal to perform a function for which the Registrar is responsible.

## 2 Article III Paragraph 1 of the Claims Settlement Declaration:

*1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this Agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the Tribunal. Claims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.*

## 3 Article VII Paragraph 1 of the Claims Settlement Declaration:

*For the purpose of this Agreement:*

*1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.*

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- l. "Secretary-General" means the Secretary-General of the Tribunal and includes any deputy of, or other person authorized by, the Secretary-General, the President, or the Full Tribunal to perform a function for which the Secretary-General is responsible.
  - m. "Tribunal" means the Iran-United States Claims Tribunal established within the framework of and pursuant to the Algiers Declarations.
  - n. "Tribunal Rules" means these Rules, as they may from time to time be modified or supplemented by the Full Tribunal or the two Governments.
  - o. "The two Governments" means the Government of the Islamic Republic of Iran and the Government of the United States of America.
  - p. "UNCITRAL Arbitration Rules" and "UNCITRAL Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law which are the subject of Resolution 31/98 adopted by the General Assembly of the United Nations on 15 December 1976.

- **SECTION I: INTRODUCTORY RULES**

**ARTICLE 1: SCOPE OF APPLICATION**

1. Within the framework of the Algiers Declarations, the initiation and conduct of proceedings before the arbitral tribunal shall be subject to the following Tribunal Rules which may be modified by the Full Tribunal or the two Governments.

2. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

3. The Claims Settlement Declaration constitutes an agreement in writing by Iran and the United States, on their own behalf and on behalf of their nationals submitting to arbitration within the framework of the Algiers Declarations and in accordance with the Tribunal Rules.

**ARTICLE 2: NOTICE, CALCULATION OF PERIODS OF TIME**

1. All documents must be filed with the Tribunal. Filing of a document with the Tribunal shall be deemed to have been made when it is physically received by the Registrar.

2. All documents filed in a particular case shall be served upon all arbitrating parties in that case through the Agents. The Registrar shall promptly deliver copies to the offices of each of the two Agents in The Hague, except for a filing Agent. Each Agent shall be responsible for transmitting one copy to each concerned arbitrating party in his country or to the representative designated by each such arbitrating party to receive documents on its behalf.

3. The filing of documents with the Tribunal shall constitute service on all of the other arbitrating parties in the case and shall be deemed to have been received by said arbitrating parties when it is received by the Agent of their Government.

4. Notwithstanding the provisions of paragraphs 1-3 of Article 2, when the arbitral tribunal has so permitted in a particular case, service of written evidence may be effected by actual delivery to the representative of an arbitrating party during a hearing or a pre-hearing conference in that case. The Secretary-General shall make a record of such service which shall be signed by him. A copy of each document so served, together with such record of service, shall be delivered by the Secretary-General to the Registrar after the hearing or pre-hearing conference at which service was so made.

5. The Registrar may refuse to accept any document which is not received within the required time period or which does not comply with the Algiers Declarations or with the Tribunal Rules. <sup>[4]</sup> Any such refusal by the Registrar is, upon objection by an arbitrating party concerned within thirty days of notification of refusal, subject to review by the arbitral tribunal.

#### Notes to Article 2

1. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when the document is received. If the last day of such period is an official holiday or a non-business day at the seat of the arbitral tribunal, the period is extended until the first business day which follows. Official holidays and non business days occurring during the running of the period of time are included in calculating the period. The Secretary-General will issue a list of such days.

2. Twenty copies of all documents shall be filed with the Registrar, unless a smaller number is determined by the arbitral tribunal. In the event that there are more than two arbitrating parties in a case, a sufficient number of additional copies shall be filed to permit service on all arbitrating parties in the case. Also, the arbitral tribunal, or the Registrar, may at any time require a party which files a document to submit additional copies.

3. Exhibits and written evidence, other than those annexed to the Statement of Claim or Statement of Defence, shall be submitted in such manner and number of copies as the arbitral tribunal may determine in each case based

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<sup>4</sup> Article III, paragraph 4 of the Claims Settlement Declaration:

*4. No claim may be filed with the Tribunal more than one year after the entry into force of this Agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.*

on the nature and volume of the particular exhibit or written evidence and any other relevant circumstances.

4. Upon the filing of a document, the Registrar shall note on all copies the date received. The Registrar shall issue a receipt to the arbitrating party which filed the document. In all instances in which the Registrar is required to deliver copies to the Agents, he will secure a written receipt of such delivery, which will be kept in the case file and be available for inspection or copying by any arbitrating party in that case.

5. All documents filed with the Registrar are to be submitted on paper 8½ inches x 11 inches or on A-4 size paper (21 cm x 29.5 cm), or on paper no larger than A-4. If a document, exhibit or other written evidence cannot conveniently be reproduced on paper no larger than A-4, it is to be folded to A-4 size, unless the Registrar permits otherwise in special circumstances.

6. Upon filing a Statement of Claim, the Registrar shall assign an identifying number to the claim, and the case shall be assigned to the Full Tribunal or by lot to a Chamber.

Thereafter, all documents filed in the case, including the award, shall have a caption stating:

- i. The names of the parties,
- ii. The case number assigned by the Registrar, and
- iii. The number of the Chamber seized of the case; otherwise the caption shall state "Full Tribunal."

7. At least two copies in English and two copies in Farsi of all documents mentioned in Article 17, Note 3 and filed with the Tribunal shall be manually signed by the arbitrating party submitting them or by its representative. Exhibits and annexes to documents need not be signed. If a document is presented without such signatures, it shall be accepted for filing, but the filing party shall be notified and required promptly to submit two manually signed copies in each language.

**ARTICLE 3: NOTICE OF ARBITRATION**

No Notice of Arbitration pursuant to Article 3 of the UNCITRAL Rules is to be given.

**ARTICLE 4: REPRESENTATION AND ASSISTANCE**

The Parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

**Notes to Article 4**

1. As used in Article 4 of the UNCITRAL Rules, the term “parties” means the arbitrating parties.
2. For the purpose of a particular case, the two Governments may each appoint representatives in addition to their Agents and each of the other arbitrating parties may appoint representatives. An appointed representative shall be deemed to be authorized to act before the arbitral tribunal on behalf of the appointing party for all purposes of the case and the acts of the representative shall be binding upon the appointing party. A representative is not required to be licensed to practice law. Parties who appoint a representative shall file with the Registrar notice of appointment in such form as the Registrar may require.
3. Arbitrating parties may also be assisted in proceedings before the arbitral tribunal by one or more persons of their choice. Persons chosen to assist who are not also appointed as representatives are not deemed to be authorized to act before the arbitral tribunal on behalf of the appointing party, to bind the appointing party or to receive notices, communications or documents on behalf of the appointing party. Any such assistant is not required to be licensed to practice law.

- **SECTION II: COMPOSITION OF THE**

**ARTICLE 5: ARBITRAL TRIBUNAL - NUMBER OF MEMBERS**

The composition of Chambers, the assignment of cases to various Chambers, the transfer of cases among Chambers and the relinquishment by Chambers of certain cases to the Full Tribunal will be provided for in orders issued by the President pursuant to his powers under Article III, paragraph 1 of the Claims Settlement Declaration.<sup>[5]</sup>

**ARTICLES 6 – 8: APPOINTMENT OF MEMBERS**

Article 6

1. If a sole arbitrator is to be appointed, either party may propose to the other:

- a) The names of one or more persons, one of whom would serve as the sole arbitrator; and
- b) If no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.

2. If within thirty days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the

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5 Article III, paragraph 1 of the Claims Settlement Declaration :

*1. An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.*

choice of a sole arbitrator, the sole arbitrator shall be appointed by the appointing authority agreed upon by the parties. If no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator within sixty days of the receipt of a party's request therefor, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority.

3. The appointing authority shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible. In making the appointment the appointing authority shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list procedure is not appropriate for the case:

- a) At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;
- b) Within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;
- c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
- d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

4. In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

#### Article 7

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator.

The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

2. If within thirty days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed:

- a) The first party may request the appointing authority previously designated by the parties to appoint the second arbitrator; or
- b) If no such authority has been previously designated by the parties, or if the appointing authority previously designated refuses to act or fails to appoint the arbitrator within thirty days after receipt of a party's request therefore, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator.

3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by an appointing authority in the same way as a sole arbitrator would be appointed under article 6.

#### Article 8

1. When an appointing authority is requested to appoint an arbitrator pursuant to article 6 or article 7, the party which makes the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority may require from either party such information as it deems necessary to fulfill its function.

2. Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

**Note to Articles 6 — 8**

As used in Articles 6, 7 and 8 of the UNCITRAL Rules the terms “party” and “parties” refer to the one or both of the two Governments, as the case may be.

**ARTICLES 9 – 12: CHALLENGE OF MEMBERS****Article 9**

A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

When any member of the arbitral tribunal obtains knowledge that any particular case before the arbitral tribunal involves circumstances likely to give rise to justifiable doubts as to his impartiality or independence with respect to that case, he shall disclose such circumstances to the President and, if the President so determines, to the arbitrating parties in the case and, if appropriate, shall disqualify himself as to that case.

**Article 10**

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence.
2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

**Article 11**

1. A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in articles 9 and 10 became known to that party.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 6 or 7 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

#### Article 12

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made:

- a) When the initial appointment was made by an appointing authority, by that authority;
- b) When the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;
- c) In all other cases, by the appointing authority to be designated in accordance with the procedure for designating an appointing authority as provided for in article 6.

2. If the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in articles 6 to 9 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

#### Notes to Articles 9-12

1. As used in Articles 9, 10, 11 and 12 of the UNCITRAL Rules, with respect to the initial appointment of a member the terms “party” and “parties” mean one or both of the two Governments, as the case may be. After the initial appointment, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be. Arbitrating parties may challenge a member only on the basis of the existence of circumstances which give rise to justifiable

doubts as to the member's impartiality or independence with respect to the particular case involved, and not upon any general grounds which also relate to other cases. Challenges on such general grounds may only be made by one of the two Governments.

2. In applying paragraph 1 of Article 11 of the UNCITRAL Rules, the period for making a challenge to a member of a Chamber to which a case has been assigned shall be fifteen days after the challenging party is given notice of the Chamber to which the case has been assigned, or after the circumstances mentioned in Articles 9 and 10 of UNCITRAL Rules became known to that party. In the event the case is relinquished by the Chamber to the Full Tribunal, the period for challenging a member who is not a member of the relinquishing Chamber shall be fifteen days after the challenging party is given notice of the relinquishment, or after the circumstances mentioned in Articles 9 and 10 of the UNCITRAL Rules became known to that party.

3. In the event a member withdraws with respect to a particular case or if the challenge is sustained, he shall continue to exercise his functions as a member for all other cases and purposes except in respect of that particular case.

4. In the event that a member of a Chamber is challenged with respect to a particular case and withdraws, or if the challenge is sustained, the President will order the transfer of the case to another Chamber.

5. In the event the Full Tribunal is seised of a particular case and a member is challenged with respect to that case and withdraws, or if the challenge is sustained, a substitute member shall be appointed to the Full Tribunal for the purposes of that case in accordance with the procedure set forth in Article III of the Claims Settlement Declaration as was used in appointing the member being substituted. An appointing authority, if needed, shall be designated as provided in Article 12 of the UNCITRAL Rules.

6. Disclosure statements filed as to each member shall be made available by the Registrar to each arbitrating party in each case.

**ARTICLE 13: REPLACEMENT OF A MEMBER**

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.

2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

In applying the provisions of this paragraph, if the President, after consultation with the other members of the Full Tribunal, determines that the failure of a member to act or his impossibility to perform his functions is due to a temporary illness or other circumstances expected to be of relatively short duration, the member shall not be replaced but a substitute member shall be appointed for the temporary period in accordance with the same procedures as are described in Note 5 to Articles 9-12.

3. In the event of the temporary absence of the President, the senior other member of the Tribunal not appointed by either of the two Governments shall act as President of the Tribunal and as Chairman at the meetings of the Full Tribunal. Seniority shall be based on the date of appointment, or for members appointed on the same date shall be based on age.

4. A substitute member appointed for a temporary period shall continue to serve with respect to any case in which he has participated in the hearing, notwithstanding the member for whom he is a substitute is again available and may work on other Tribunal cases and matters.

5. After the effective date of a member's resignation he shall continue to serve as a member of the Tribunal with respect to all cases in which he had participated in a hearing on the merits, and for that purpose shall be considered a member of the Tribunal instead of the person who replaces him.

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**Note to Article 13**

Iran may, in advance, appoint up to three persons, to be available to act as a substitute member for a temporary period for a specified member, or members, of the Tribunal appointed by Iran; and the United States may, in advance, appoint up to three persons, to be available to act as a substitute member for a temporary period for a specified member, or members, of the Tribunal appointed by the United States. The members of the Tribunal appointed by Iran and the United States may select, in advance, by mutual agreement, a person to act as substitute for a temporary period for any of the remaining one third of the members of the Tribunal.

**ARTICLE 14: REPETITION OF HEARINGS IN THE EVENT OF  
REPLACEMENT OR SUBSTITUTION OF A MEMBER**

If a member of the Full Tribunal or of a Chamber is replaced or if a substitute is appointed for him, the arbitral tribunal shall determine whether all, any part or none of any previous hearings shall be repeated.

- **SECTION III: ARBITRAL PROCEEDINGS**

**ARTICLE 15: GENERAL PROVISIONS**

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

**Notes to Article 15**

1. As used in Article 15 of the UNCITRAL Rules, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be.

2. In applying paragraph 2 of Article 15, the arbitral tribunal shall determine without hearing any written requests or objections of the concerned arbitrating parties with respect to procedural matters unless it grants or invites oral argument in special circumstances.

3. In complying with paragraph 3 of Article 15, an arbitrating party shall follow the procedures set forth in Article 2 of the Tribunal Rules.

4. The arbitral tribunal may make an order directing the arbitrating parties to appear for a pre-hearing conference. The pre-hearing conference will normally be held only after the Statement of Defence in the case has been received. The order will state the matters to be considered at the pre-hearing conference.

5. The arbitral tribunal may, having satisfied itself that the statement of one of the two Governments — or, under special circumstances, any other person -who is not an arbitrating party in a particular case is likely to assist the tribunal in carrying out its task, permit such Government or person to assist the tribunal by presenting oral or written statements.

#### **ARTICLE 16: PLACE OF ARBITRATION**

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award shall be made at the place of arbitration.

#### **Note to Article 16**

As used in Article 16, paragraphs 1 and 2 of the UNCITRAL Rules, the term “parties” means the two Governments. As used in Article 16, paragraph 3 of the UNCITRAL Rules, the term “parties” means the arbitrating parties.

#### **ARTICLE 17: LANGUAGE**

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

### Notes to Article 17

1. As used in Article 17 of the UNCITRAL Rules, the term “parties” means the two Governments.

2. In accordance with an agreement of the Agents, English and Farsi shall be the official languages to be used in the arbitration proceedings, and these languages shall be used for all oral hearings, decisions and awards.

3. In accordance with the provisions of Article 17 of the UNCITRAL Rules, the following documents filed with the Tribunal shall be submitted in both English and Farsi, unless otherwise agreed by the arbitrating parties:

- a) The Statement of Claim and its annexes.
- b) The Statement of Defence, and any counter-claim, including any annexes.
- c) The reply (including any annexes) to any counter-claim.
- d) Any further written statement (e.g. reply, rejoinder, brief), including any annexes, which the arbitral tribunal may require or permit an arbitrating party to present.
- e) Any written request to the arbitral tribunal to take action or any objection thereto.
- f) Any Challenge to a member.

4. The arbitral tribunal shall determine in each particular case what other documents, documentary exhibits and written evidence, or what parts thereof, shall be submitted in both English and Farsi.

5. Any disputes or difficulties regarding translations shall be resolved by the arbitral tribunal.

## ARTICLE 18: STATEMENT OF CLAIM

Article 18 of the UNCITRAL Rules is modified to read as follows:

1. A party initiating recourse to arbitration before the Tribunal (the “claimant”) shall do so by filing a Statement of Claim. Each Statement of Claim shall contain the following particulars:

- a) A demand that the dispute be referred to arbitration by the Tribunal;
- b) The names, nationalities and last known addresses of the parties;
- c) A reference to the debt, contract (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights out of or in relation to which the dispute arises and as to which the Tribunal has jurisdiction pursuant to Article II, paragraphs 1 and 2 of the Claims Settlement Declaration;  
[6]
- d) The general nature of the claim and an indication of the amount involved, if any;
- e) A statement of the facts supporting the claim;
- f) The points at issue;
- g) The relief or remedy sought;
- h) If the claimant has appointed a lawyer or other person for purposes of representation or assistance in connection with the claim, the name

6 Article II of the Claims Settlement Declaration:

*1. An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national’s claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.*

*2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.*

- and address of such person and an indication whether the appointment is for purposes of representation or assistance;
- i) The name and address of the person to whom communications should be sent on behalf of the claimant (only one such person shall be entitled to be sent communications).
2. It is advisable that claimants (i) annex to their Statements of Claim such documents as will serve clearly to establish the basis of the claim, and/or (ii) add a reference and summary of relevant portions of such documents, and/or (iii) include in the Statement of Claim quotations of relevant portions of such documents.
3. No priority for the scheduling of hearings or the making of awards shall be based on the date of filing the Statement of Claim.

#### **Notes to Article 18**

1. No claims with respect to which the Tribunal has jurisdiction within the framework of the Algiers Declarations and pursuant to paragraphs 1 and 2 of Article II of the Claims Settlement Declaration may be filed before October 20, 1981.
2. All Statements of Claim with respect to matters as to which the Tribunal has jurisdiction pursuant to paragraphs 1 and 2 of Article II of the Claims Settlement Declaration [ 7 ] which are filed between October 20, 1981 and November 19, 1981 will be deemed to have been filed simultaneously as of October 20, 1981. All such claims filed between November 20, 1981 and December 19, 1981 will be deemed to have been filed simultaneously as of November 20, 1981. All such claims filed between December 20, 1981 and January 19, 1982 will be deemed to have been filed simultaneously as of December 20, 1981.

#### **ARTICLE 19: STATEMENT OF DEFENCE**

1. Within a period of time to be determined by the arbitral tribunal with respect to each case, which should not exceed 135 days, the respondent shall file its Statement of Defence. However, the arbitral tribunal may extend the time limits if it concludes that such an extension is justified.

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*7 Id, note 6*

2. The Statement of Defence shall reply to the particulars (e), (f) and (g) and include the information required in (h) and (i) of the Statement of Claim (see Article 18, paragraph 1 of the Tribunal Rules). It is advisable that Respondents (i) annex to their Statement of Defence such documents as will clearly serve to establish the basis of the defence, and/or (ii) add a reference and summary of relevant portions of such documents, and/or (iii) include in the Statement of Defence quotations of relevant portions of such documents.

3. In the Statement of Defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim or rely on a claim for the purpose of a set-off, if such counter-claim or set-off is allowed under the Claims Settlement Declaration.

4. The provisions of Article 18, paragraph 1 shall apply to a counter-claim or claim relied on for purpose of a set-off.

#### **Notes to Article 19**

1. In determining and extending periods of time pursuant to this Article, the arbitral tribunal will take into account

- i. The complexity of the case,
- ii. Any special circumstances, including demonstrated hardship to a claimant or respondent, and
- iii. Such other circumstances as it considers appropriate.

In the event that the arbitral tribunal determines that a requirement to file a large number of Statements of Defence in any particular period would impose an unfair burden on a respondent to a claim or counter-claim, it will in some cases extend the time periods based on the abovementioned factors or by lot.

2. In the event of a counter-claim or claim relied on for the purpose of a set-off, the claimant against whom it is made will be given the right of reply, and the provisions of paragraph 2 of Article 19 of the Tribunal Rules shall apply.

#### **ARTICLE 20: AMENDMENTS TO THE CLAIM OR DEFENCE**

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making

it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the jurisdiction of the arbitral tribunal.

#### **Note to Article 20**

As used in Article 20 of the UNCITRAL Rules, the term “party” means the arbitrating party.

#### **ARTICLE 21: PLEAS AS TO THE JURISDICTION OF THE TRIBUNAL**

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counterclaim.
4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

#### **ARTICLE 22: FURTHER WRITTEN STATEMENTS**

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

### Note to Article 22

As used in Article 22 of the UNCITRAL Rules, the term “parties” means the arbitrating parties.

### ARTICLE 23: PERIODS OF TIME

The periods of time fixed by the arbitral tribunal for the communication of written statements (excluding the Statement of Defence) should not exceed 90 days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

### ARTICLE 24: EVIDENCE AND HEARINGS

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.
2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

### Note to Article 24

As used in Article 24 of the UNCITRAL Rules, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be.

### ARTICLE 25: EVIDENCE AND HEARINGS

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. If witnesses are to be heard, at least thirty days before the hearing each party shall communicate to the arbitral tribunal and to the other party the

names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.

3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.

4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

#### Notes to Article 25

1. As used in Article 25 of the UNCITRAL Rules, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be, except that, as used in paragraph 4 of Article 25, the term “parties” means the two Governments and the arbitrating parties.

2. The information concerning witnesses which an arbitrating party must communicate pursuant to paragraph 2 of Article 25 of the UNCITRAL Rules is not required with respect to any witnesses which an arbitrating party may later decide to present to rebut evidence presented by the other arbitrating party. However, such information concerning any rebuttal witness shall be communicated to the arbitral tribunal and the other arbitrating parties as far in advance of hearing the witness as is reasonably possible.

3. With respect to paragraph 3 of Article 25 of the UNCITRAL Rules, the Secretary-General shall make arrangements for a tape-recording or stenographic record of hearings or parts of hearings if the arbitral tribunal so determines. If the arbitral tribunal determines that a transcript shall be made of any such tape-recording or stenographic record, the arbitrating

parties in that case, or their authorized representatives, shall be permitted to read the transcript.

4. Any arbitrating party in the case may make a stenographic record of the hearings, or parts of the hearings, and, in that event, shall make a transcript thereof available to the arbitral tribunal without charge. Arbitrating parties are not permitted to make tape-recordings of hearings or other proceedings.

5. Notwithstanding the provisions of paragraph 4 of Article 25, the arbitral tribunal may at its discretion permit representatives of arbitrating parties in other cases which present similar issues of fact or law to the present to observe all or part of the hearing in a particular case, subject to the prior approval of the arbitrating parties in the particular case. The Agents of the two Governments are permitted to be present at pre-hearing conferences and hearings.

6. In applying paragraph 4 of Article 25 of the UNCITRAL Rules, the following provisions shall determine the manner in which witnesses are examined:

- a) Before giving any evidence each witness shall make the following declaration: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth."
- b) Witnesses may be examined by the presiding member and the other members of the arbitral tribunal. Also, when permitted by the arbitral tribunal, the representatives of the arbitrating parties in the case may ask questions, subject to the control of the presiding member.

7. The Secretary-General shall draft minutes of each hearing. After each member of the arbitral tribunal present at the hearing has been given the opportunity to comment on the draft minutes, the minutes, with any corrections approved by a majority of members who were present, shall be signed by the presiding member and the Secretary-General. The arbitrating parties in the case, or their representatives, shall be permitted to read such minutes.

**ARTICLE 26: INTERIM MEASURES OF PROTECTION**

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

**Note to Article 26**

As used in Article 26 of the UNCITRAL Rules, the term “party” means the arbitrating party.

**ARTICLE 27: EXPERTS**

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

The expert shall invite a representative of each arbitrating party to attend any site inspection, and, when the arbitral tribunal so determines, a representative of each arbitrating party shall be invited to attend other inspections made by the expert.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to

express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 25 shall be applicable to such proceedings.

#### Notes to Article 27

1. As used in Article 27 of the UNCITRAL Rules, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be.
2. Every expert, before beginning the performance of his duties, shall make the following declaration:

“I solemnly declare upon my honour and conscience that I will perform my duties in accordance with my sincere belief and will keep confidential all matters relating to the performance of my task.”

#### ARTICLE 28: DEFAULT

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause

for such failure, the arbitral tribunal may make the award on the evidence before it.

#### **Note to Article 28**

As used in Article 28 of the UNCITRAL Rules, the term “parties” means the arbitrating parties.

#### **ARTICLE 29: CLOSURE OF HEARINGS**

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

#### **Note to Article 29**

As used in Article 29 of the UNCITRAL Rules, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be.

#### **ARTICLE 30: WAIVER OF RULES**

A party who knows that any provision 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.

#### **Note to Article 30**

As used in Article 30 of the UNCITRAL Rules, the term “party” means the arbitrating party.

#### **ARTICLE 31: DECISIONS**

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

#### **Notes to Article 31**

1. Any award or other decision of the arbitral tribunal pursuant to paragraph 1 of Article 31 shall be made by a majority of its members.

2. The arbitral tribunal shall deliberate in private. Its deliberations shall be and remain secret. Only the members of the arbitral tribunal shall take part in the deliberations. The Secretary-General may be present. No other person may be admitted except by special decision of the arbitral tribunal. Any question which is to be voted upon shall be formulated in precise terms in English and Farsi and the text shall, if a member so requests, be distributed before the vote is taken. The minutes of the private sittings of the arbitral tribunal shall be secret.

#### **ARTICLE 32: FORM AND EFFECT OF AWARD**

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.

2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given. Any arbitrator may request that his dissenting vote or his dissenting vote and the reasons therefore be recorded.

4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. When there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

5. All awards and other decisions shall be made available to the public, except that upon the request of one or more arbitrating parties, the arbitral tribunal may determine that it will not make the entire award or other decision public, but will make public only portions thereof from which the

identity of the parties, other identifying facts and trade or military secrets have been deleted.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law.

#### **Note to Article 32**

As used in Article 32 of the UNCITRAL Rules, the term “parties” means the arbitrating parties.

#### **ARTICLE 33: APPLICABLE LAW**

1. The arbitral 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 arbitral tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

2. The arbitral tribunal shall decide *ex aequo et bono* only if the arbitrating parties have expressly and in writing authorized it to do so.

#### **Note to Article 33**

Paragraph 1 of the modified text of Article 33 corresponds to Article V of the Claims Settlement Declaration.<sup>[8]</sup>

#### **ARTICLE 34: SETTLEMENT OR OTHER GROUNDS FOR TERMINATION**

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination

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*8 Article V of the Claims Settlement Declaration :*

*The 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.*

of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 32, paragraph 2 and 4 to 7, shall apply.

#### **Note to Article 34**

As used in Article 34 of the UNCITRAL Rules, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be.

### **ARTICLE 35: INTERPRETATION OF THE AWARD**

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

#### **Note to Article 35**

As used in Article 35 of the UNCITRAL Rules, the term “party” means the arbitrating party.

**ARTICLE 36: CORRECTION OF THE AWARD**

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

**Note to Article 36**

As used in Article 36 of the UNCITRAL Rules, the term “party” means the arbitrating party.

**ARTICLE 37: ADDITIONAL AWARD**

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

**Note to Article 37**

As used in Article 37 of the UNCITRAL Rules, the term “party” means the arbitrating party.

**ARTICLE 38: COSTS**

1. The arbitral tribunal shall fix the costs of arbitration in its award. The term “costs” includes only:

- a) The costs of expert advice and of other special assistance required for a particular case by the arbitral tribunal;
- b) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- c) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.

2. The Full Tribunal shall fix the fees and expenses of the Tribunal which, in accordance with Article VI, paragraph 3 of the Claims Settlement Declaration, shall be borne equally by the two Governments. [9]

#### Note to Article 38

As used in Article 38 of the UNCITRAL Rules, the term “party” means the arbitrating party.

#### ARTICLE 39: COSTS

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and if that authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.
3. If such appointing authority has not issued a schedule of fees for arbitration in international cases, any party may at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal in fixing its fees shall take

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9 Article VI, paragraph 3 of the Claims Settlement Declaration:

3. *The expenses of the Tribunal shall be borne equally by the two governments.*

such information into account to the extent that it considers appropriate in the circumstances of that case.

4. In cases referred to in paragraphs 2 and 3, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

#### **Note to Article 39**

As used in Article 39 of the UNCITRAL Rules, the terms “party” and “parties” mean one or both of the two Governments, as the case may be.

#### **ARTICLE 40: COSTS**

1. Except as provided in paragraph 2, the costs of arbitration referred to in paragraphs 1(a) and 1(b) of Article 38 shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph 1(c) the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings, it shall fix the costs of arbitration referred to in article 38 in the text of that order.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37.

#### **Note to Article 40**

As used in Article 40 of the UNCITRAL Rules, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be.

**ARTICLE 41: DEPOSIT OF COSTS**

1. During the course of its proceedings the Full Tribunal may from time to time determine the costs referred to in paragraph 2 of Article 38 and may request each of the two Governments to deposit equal amounts as advances for such costs.
2. The arbitral tribunal may request each arbitrating party to deposit an amount determined by it as advances for the costs referred to in paragraph 1(a) of Article 38.
3. If the required deposits are not paid in full within the time fixed by the arbitral tribunal, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings or may take such action to permit continuation of the proceedings as is appropriate under the circumstances of the case.
4. The Secretary-General shall transmit monthly, quarterly and annual financial statements to the Full Tribunal and to the Agents. The accounts of the Tribunal shall be audited annually by an independent qualified accountant approved by the Full Tribunal. The Secretary-General shall transmit copies of the audit report to the Full Tribunal and to the Agents. At the request of either Agent, the annual audit shall be reviewed by an Audit Committee composed of three professionally qualified persons, one appointed by each Agent and one by the President. The Audit Committee shall submit its report to the Full Tribunal, to the Agents, and to the Secretary-General.
5. After the termination of the work of the Tribunal, it shall, after a final audit render an accounting to the two Governments of the deposits received and return any unexpended balance to the two Governments.

**Note to Article 41**

1. As used in paragraph 3, insofar as it refers to deposits made pursuant to paragraph 1 of Article 41 of the UNCITRAL Rules, the term "parties" means the two Governments; insofar as it refers to deposits made pursuant to paragraph 2 that term means the arbitrating parties.