CASES NOS. A15 (IV) AND A24
FULL TRIBUNAL
AWARD NO. 602-A15(IV)/A24-FT

THE ISLAMIC REPUBLIC OF IRAN,
Claimant,
and
THE UNITED STATES OF AMERICA,
Respondent.

AWARD

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I. INTRODUCTION

1. At issue in these consolidated Cases is the United States' obligation under the Algiers Declarations[1] to terminate litigation initiated by United States nationals against the Islamic Republic of Iran ("Iran") in United States courts. These Cases center on General Principle B of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981 ("General Declaration") and Article VII, paragraph 2, of the 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 of 19 January 1981 ("Claims Settlement Declaration").

2. General Principle B of the General Declaration ("General Principle B") obliges the United States, through the procedures provided in the Claims Settlement Declaration,

> to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.[2]

3. Article VII, paragraph 2, of the Claims Settlement Declaration provides, in relevant part, that "[c]laims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court."[3]

4. The factual background of these Cases has been described in *Islamic Republic of Iran* and *United States of America*, Award No. 590-A15 (IV)/A24-FT (28 Dec. 1998) ("Partial Award No. 590"), which the Tribunal rendered in the first phase of these proceedings.[4]

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[1] Declaration of the Government of the Democratic and Popular Republic of Algeria (General Declaration), 19 Jan. 1981, 1 IRAN-U.S. C.T.R. 3, 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), 19 Jan. 1981, 1 IRAN-U.S. C.T.R. 9 (collectively, "the Algiers Declarations").

[2] General Declaration, General Principle B, 1 IRAN-U.S. C.T.R. at 3.

[3] Claims Settlement Declaration, art. VII (2), 1 IRAN-U.S. C.T.R. at 11.

[4] *Islamic Republic of Iran* and *United States of America*, Award No. 590-A15 (IV)/A24-FT, paras. 21-48 (28 Dec. 1998), *reprinted in* 34 IRAN-U.S. C.T.R. 105, 113-23.

II. FIRST PHASE OF THE PROCEEDINGS

5. On 25 October 1982, Iran presented its Statement of Claim in Case No. A15 (IV), and on 5 August 1988, it presented its Statement of Claim in Case No. A24.[5]

6. In Case No. A15 (IV), Iran contended that Executive Order No. 12294, issued by the President of the United States on 24 February 1981 ("Executive Order 12294"), and certain of the Treasury Regulations that the United States issued after 19 January 1981 to implement the United States obligation to terminate litigation, violated the United States' obligations under the Algiers Declarations. Iran asserted eight Claims, designated A through H, alleging eight breaches by the United States of those obligations.[6]

7. Executive Order 12294 provides, in pertinent part:

> Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of [the Claims Settlement Declaration] and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.
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> […]
>
> Section 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.
>
> Section 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award, including any interest awarded by the Tribunal.

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[5] On 18 November 1991, the Tribunal consolidated Cases Nos. A15 (IV) and A24 for joint proceedings and decision.

[6] Claim C was terminated by Award on Agreed Terms *Islamic Republic of Iran* and *United States of America*, Award No. 568-A13/A15 (I and IV:C)/A26 (I, II and III)-FT (22 Feb. 1996), *reprinted in* 32 IRAN-U.S. C.T.R. 207.

[. . .]

> Section 6. Nothing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending or hereafter commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

8. In Case No. A24, Iran asserted that the United States allowed a case that had been decided by the Tribunal, *Foremost Tehran* ("*Foremost*"),[7] to be revived and to proceed in a United States court as *Foremost-McKesson, Inc. v. Islamic Republic of Iran*,[8] thereby breaching its obligation under the Algiers Declarations to prohibit relitigation of claims already decided by the Tribunal.

9. On 28 December 1998, the Tribunal issued Partial Award No. 590,[9] in which it dismissed Claim B,[10] Claim E,[11] Claim F,[12] and a portion of Claim G[13] in Case No. A15 (IV), and it decided issues concerning United States liability with respect to Claims A, D, G, and H in Case No. A15 (IV) and with respect to Iran's claim in Case No. A24.

A. Case No. A15 (IV)

1. Claim A

10. In Claim A, Iran contended that the United States had breached General Principle B by failing to terminate with prejudice all litigation in United States courts involving claims of United States nationals against Iran that arose before 19 January 1981. Iran asserted that, rather than terminating those legal proceedings, the United States, through Executive Order 12294, had limited itself to suspending some of them. In addition, Iran maintained that the United States had breached General Principle B by permitting cases dismissed by the Tribunal for want of jurisdiction to be revived in United States courts and by allowing United

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[7] *Foremost Tehran et al.* and *Islamic Republic of Iran et al.*, Award No. 220-37/231-1 (11 Apr. 1986), *reprinted in* 10 IRAN-U.S. C.T.R. 228.

[8] *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, Civ. No. 82-0220-TAF (D.D.C.).

[9] *See supra* para. 4.

[10] Partial Award No. 590, para. 214 A (c), 34 IRAN-U.S. C.T.R. at 167.

[11] *Id.* para. 214 A (e), 34 IRAN-U.S. C.T.R. at 167.

[12] *Id.* para. 214 A (f), 34 IRAN-U.S. C.T.R. at 167.

[13] *Id.* para. 214 A (g), 34 IRAN-U.S. C.T.R. at 167-68.

States nationals to assert counterclaims or set-offs in cases brought by Iran in United States courts.

11. The Tribunal notes that General Principle B, Article VII, paragraph 2, of the Claims Settlement Declaration, and Partial Award No. 590 may be characterized as a cascade developing the nature and content of the United States' obligation from the general to the more detailed to the operational.

12. General Principle B provides:

> It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. *Through the procedures provided in the Declaration relating to the Claims Settlement Agreement*, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.[14]

13. Article VII, paragraph 2, of the Claims Settlement Declaration specifies that "[c]laims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court."[15]

14. In Partial Award No. 590, the Tribunal made the following determinations in Claim A:

> a. On Claim A:
>
> (1) General Principle B obliges the United States to terminate only claims by United States nationals against Iran in United States courts that fall within the Tribunal's jurisdiction. This termination obligation accrues once the Tribunal has decided a claim on the merits.
>
> (2) The Algiers Declarations oblige the United States to terminate all legal proceedings initiated by United States nationals against Iran

[14] General Declaration, General Principle B, 1 IRAN-U.S. C.T.R. at 3 (emphasis added).

[15] Claims Settlement Declaration, art. VII (2), 1 IRAN-U.S. C.T.R. at 11.

in United States courts involving claims that arguably fall within the Tribunal's jurisdiction. The United States obligation to terminate legal proceedings arose on 19 July 1981, six months after the signing of the Algiers Declarations; that obligation ceases with regard to legal proceedings involving claims that have been dismissed by the Tribunal for lack of jurisdiction. Claims that the Tribunal has decided are within its jurisdiction can never be revived in domestic courts.

(3) The suspension mechanism provided for in Executive Order 12294 satisfies the United States termination obligations under the Algiers Declarations only if, in effect, the mechanism resulted in a termination of litigation as required by those Declarations. The Tribunal will examine the facts bearing on this issue in the second phase of these proceedings. If, as a result of such examination, the Tribunal concludes that Iran was reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts subsequent to 19 July 1981 in any litigation in respect of claims described in Article II, paragraph 1, of the Claims Settlement Declaration or in respect of claims filed with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction, then the Tribunal will find that the United States has not complied with its obligations under General Principle B of the General Declaration and Article I and Article VII, paragraph 2, of the Claims Settlement Declaration. In that event, the United States will be required to compensate Iran for any expenses that Iran was caused to incur as a result of making appearances or filing documents in United States courts after 19 July 1981 in any litigation in respect of claims described hereabove.

(4) The Tribunal expects Iran to show in the second phase of these proceedings what expenses it incurred with respect to each specific case and what was the particular justification for the specific sums it spent. Iran will be expected to produce factual evidence of the losses it suffered as a result of its making appearances or filing documents in United States courts subsequent to 19 July 1981 in the prudent defense of its interests with respect to the claims described in subparagraph (3) hereabove. The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of the monitoring of the suspended claims and invites both parties to address the question of whether Iran should be compensated for those losses.

(5) The Tribunal will not award any damages related to, or arising from, Iran's participation in United States court litigation during the six-month period following the signing of the Algiers Declarations. Nor will it award any damages related to, or arising from, Iran's participation in cases regarding the validity and

constitutionality of the Algiers Declarations under United States law.

b. On Claim A:

(1) By allowing, in Section 6 of Executive Order 12294, the assertion of counterclaims and claims for set-off by United States nationals against Iran in United States court proceedings, even if those counterclaims and claims are included within the Tribunal's jurisdiction, the United States failed to comply with its obligations under General Principle B and Article I of the Claims Settlement Declaration.

(2) In the second phase of these proceedings, the Tribunal shall determine the nature and the amount of the damages incurred by Iran, if any, in defending against counterclaims and claims for set-off asserted in United States court proceedings in violation of the Algiers Declarations.[16]

15. Concerning the scope of the obligation that Article VII, paragraph 2, of the Claims Settlement Declaration[17] imposes on the United States, the Tribunal in Partial Award No. 590 held:

> Article VII, paragraph 2, by requiring that all filed claims be considered excluded from the jurisdiction of courts after they are referred to the Tribunal, implicitly recognizes that such claims may also be pending in other courts while it explicitly obligates the parties to deem them not subject to the jurisdiction of such other courts by ensuring that the claims not proceed unless and until the Tribunal determines that they are outside its jurisdiction. Consequently, until the Tribunal determines its jurisdiction with respect to a filed claim, Article VII, paragraph 2, of the Claims Settlement Declaration places on the United States an obligation to halt proceedings in its courts with respect to that claim.[18]

2. Claim D

16. In Claim D, Iran contended that the United States had breached General Principle B by permitting its nationals to file suits against Iran in United States courts after the date of the Algiers Declarations. The suits at issue were brought pursuant to Section 1 of Executive Order 12294, which permitted lawsuits to be filed for the purpose of tolling the statutes of

[16] Partial Award No. 590, para. 214 A (a)-(b), 34 IRAN-U.S. C.T.R. at 165-67.

[17] *Quoted supra*, at para. 3.

[18] Partial Award No. 590, para. 83, 34 IRAN-U.S. C.T.R. at 132-33.

limitation applicable in the United States while the Tribunal determines whether it has jurisdiction over the underlying claims.

17. In Partial Award No. 590, the Tribunal determined as follows in Claim D:

> (1) By allowing, in Section 1 of Executive Order 12294, the filing of suits after the date of the Algiers Declarations, even for the limited purpose of tolling the applicable statutes of limitation, the United States did not act consistently with its obligations under General Principle B.
>
> (2) The Tribunal shall determine in the second phase of these proceedings the nature and the extent of the damages, if any, incurred by Iran as a result of the United States authorizing the filing of tolling suits. Iran will be expected to produce factual evidence of the losses it suffered as a result of its making appearances or filing documents in United States courts subsequent to 19 January 1981 in the prudent defense of its interests with respect to tolling suits filed after 19 January 1981 asserting claims described in Article II, paragraph 1, of the Claims Settlement Declaration or asserting claims filed with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction. The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of monitoring the tolling suits and invites both parties to address the question of whether Iran should be compensated for those losses.[19]

3. Claim G

18. In Claim G, Iran contended that the United States had breached General Principle B by failing to establish a mechanism ensuring prompt nullification of attachments obtained by United States nationals against Iran in United States courts.

19. In Partial Award No. 590, the Tribunal held as follows in Claim G:

> (1) Iran's claim that the United States has failed to take a sufficiently active role in nullifying attachments obtained by United States nationals on Iranian assets in the United States after 14 November 1979 is dismissed.
>
> (2) If any post-14 November 1979 attachments were still in effect and actually restrained Iranian assets in the United States after 19 July 1981, thereby limiting the free disposition of those assets by Iran, then this would constitute a violation of the United States

[19] *Id.* para. 214 A (d), 34 IRAN-U.S. C.T.R. at 167.

> obligation to nullify post-14 November 1979 attachments in a timely fashion. The Tribunal shall determine in the second phase of these proceedings whether any such attachments were still in effect at that date and, if so, the nature and the amount of damages, if any, Iran suffered as a result of those attachments.[20]

4. Claim H

20. In Claim H, Iran asserted that the United States had violated the Algiers Declarations by failing to nullify judgments obtained by United States nationals against Iran in United States courts before the date of the Algiers Declarations.

21. In Partial Award No. 590, the Tribunal held as follows in Claim H:

> (1) The United States is obliged to nullify only those United States court judgments obtained by United States nationals against Iran that are based on claims that are within the Tribunal's jurisdiction. This obligation accrued on 19 July 1981.
>
> (2) If Iran reasonably incurred legal expenses in relation to any such judgments that remained in existence after 19 July 1981, then the United States breached its obligations under the Algiers Declarations concerning nullification of judgments against Iran. The Tribunal shall determine in the second phase of these proceedings whether any such judgments were still in effect at that date and, if so, the nature and the amount of damages, if any, Iran suffered as a result of those judgments.[21]

B. Case No. A24

22. In its claim in Case No. A24, Iran contended that the United States had breached its obligations under the Algiers Declarations by allowing claimants Foremost-McKesson and Overseas Private Investment Company ("OPIC") to file a complaint in the United States District Court for the District of Columbia in 1982 ("Foremost/OPIC lawsuit") identical to the statement of claim submitted before this Tribunal in *Foremost* and by allowing the same lawsuit to be revived in 1988 and to proceed before the District Court.[22]

23. In Partial Award No. 590, the Tribunal held as follows in Case No. A24:

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[20] *Id.* para. 214 A (g), 34 IRAN-U.S. C.T.R. at 167-68.

[21] *Id.* para. 214 A (h), 34 IRAN-U.S. C.T.R. at 168.

[22] *See supra* para. 8.

(1) By not acting to have the Foremost/OPIC lawsuit in the District Court for the District of Columbia dismissed from the District Court's docket within a reasonable time after 11 April 1986, the date the Tribunal issued its award in *Foremost*, the United States violated its obligation under the Algiers Declarations to terminate litigation in United States courts related to claims resolved by the Tribunal on the merits.

(2) As a result of the United States omission, Iran is entitled to damages to the extent it was reasonably compelled in the prudent defense of its interests to make appearances or file documents with respect to the Foremost/OPIC lawsuit from 11 April 1986 until 1 April 1988, to the extent those expenses are not already sought by Iran in Case No. A15 (IV). The Tribunal shall determine in the second phase of these proceedings the nature and the amount of Iran's damages, if any.

(3) Iran's Claim in this Case, to the extent it relates to the Foremost/OPIC lawsuit as pursued from 1 April 1988 onward, is dismissed.[23]

III. SECOND PHASE OF THE PROCEEDINGS

A. Procedure

24. By Order of 23 April 1999, the Tribunal established the schedule for further pleadings and evidence in these Cases.

25. On 15 March 2001, Iran submitted its Brief and Evidence Concerning All Remaining Issues.

26. On 14 April 2003, the United States submitted its Brief and Evidence on All Remaining Issues.

27. On 19 July 2004, Iran submitted its Brief and Factual Support for Compensable Losses.

28. On 3 January 2007, the United States submitted the English version of its Rebuttal to Iran's Brief and Factual Support for Compensable Losses. The United States submitted the Persian translation of its Rebuttal on 2 April and 2 July 2007.

[23] Partial Award No. 590, para. 214 (B), 34 IRAN-U.S. C.T.R. at 168.

29. The Hearing in the second phase of the proceedings in these Cases took place on 24-27 September 2012 at Parkweg 13, The Hague. Iran presented Mr. Thomas G. Shack, Jr., as a witness.

30. Post-hearing submissions were filed on 30 October 2012.

B. Merits

31. The Tribunal now turns to the merits of these Cases. The Tribunal deals first with issues of scope: the scope of the United States' obligations under the Algiers Declarations that are relevant to Iran's claim;[24] and the scope of those obligations based on the Tribunal's holdings in Partial Award No. 590.[25] The Tribunal's determinations on scope set the boundaries for the Tribunal's subsequent tasks with respect to breach and compensation. The Tribunal next deals with the question of whether the United States has breached its obligations under General Principle B of the Algiers Declarations, addressing in turn the standards set forth in Partial Award No. 590 for Claims A, D, G, and H and Case No. A24. Finally, the Tribunal deals with the question of compensation, addressing evidentiary matters, the different categories of compensation claimed, and exclusions from compensation alleged by the United States. In carrying out these tasks, the Tribunal will address, as appropriate, issues raised in the separate opinions appended to this Award.[26]

1. The Scope of the United States' Obligation under Article VII, paragraph 2, of the Claims Settlement Declaration

32. Article VII, paragraph 2, of the Claims Settlement Declaration ("Article VII, paragraph 2") provides that "[c]laims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court."[27] As noted, in Partial Award

[24] *See infra* paras. 32-35.

[25] *See infra* paras. 36-57.

[26] Joint Separate Opinion of Judges Hossein Abedian, Hamid Reza Nikbakht Fini, and Jamal Seifi; Concurring and Dissenting Opinion of Judge Charles N. Brower; Separate Opinion of Judge Gabrielle Kirk McDonald, Concurring in Part, Dissenting in Part; and Separate Opinion of Judge O. Thomas Johnson, Concurring in Part, Dissenting in Part. The Tribunal has considered the content of Judge Johnson's Separate Opinion as known to it as of 24 June 2014.

[27] *See supra* para. 3.

No. 590, the Tribunal made the following determination with respect to the scope of Article VII, paragraph 2:

> Article VII, paragraph 2, by requiring that all filed claims be considered excluded from the jurisdiction of courts after they are referred to the Tribunal, implicitly recognizes that such claims may also be pending in other courts while it explicitly obligates the parties to deem them not subject to the jurisdiction of such other courts by ensuring that the claims not proceed unless and until the Tribunal determines that they are outside its jurisdiction. Consequently, until the Tribunal determines its jurisdiction with respect to a filed claim, Article VII, paragraph 2, of the Claims Settlement Declaration places on the United States an obligation to halt proceedings in its courts with respect to that claim.[28]

a) The Parties' Contentions

33. Iran contends that Article VII, paragraph 2, imposes on the United States an obligation to terminate all litigation in United States courts involving claims that were also filed with the Tribunal. According to Iran, this termination obligation arises as soon as the relevant claim is filed with the Tribunal and ceases once the Tribunal dismisses it for lack of jurisdiction.

34. The United States asserts that Article VII, paragraph 2, requires it only to *suspend* legal proceedings involving claims filed with the Tribunal until the Tribunal dismisses those claims for want of jurisdiction. With respect to the scope of this provision, the United States asserts that it obligated the United States merely to suspend those few cases that fell outside the Tribunal's jurisdiction but that were nonetheless filed with the Tribunal and subsequently rejected on jurisdictional grounds.

b) The Tribunal's Decision

35. In line with its conclusion in Partial Award No. 590,[29] the Tribunal holds that Article VII, paragraph 2, obligates the United States to halt legal proceedings in its courts with respect to *all* claims filed with the Tribunal from the date they are so filed, irrespective of whether they fall, or arguably fall,[30] within the Tribunal's jurisdiction. The objective of

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[28] Partial Award No. 590, para. 83, 34 IRAN-U.S. C.T.R. at 132-33 (*see supra* para. 15).

[29] *See supra* para. 32.

[30] *See infra* paras. 36-47.

Article VII, paragraph 2, is to avoid parallel litigation before domestic courts and the Tribunal.[31]

2. Meaning of "Arguably [Falling] within the Tribunal's Jurisdiction"

36. In Partial Award No. 590, in the context of Claim A, the Tribunal held that the Algiers Declarations oblige the United States "to terminate all legal proceedings initiated by United States nationals against Iran in United States courts involving claims that arguably fall within the Tribunal's jurisdiction."[32] In Partial Award No. 590, the Tribunal did not clarify the meaning of the phrase "claims that arguably fall within the Tribunal's jurisdiction," and the Parties have differing views on the matter. It is the Tribunal's task – indeed its duty – to add flesh and specificity to the findings in Partial Award No. 590 where, like here, those findings require clarification. It is in the nature of a partial award that it does not cover the ground of all issues presented to the Tribunal at the time because the arbitrators know that there will be a further award, and they defer consideration and discussion of details to that later point in time. Certainly, it would be counter-intuitive to define language such as "in principle," "generally," "arguably," and the like, in a partial award because it is the very purpose of such wording to be broad and to allow for further reflection before it is actually applied.

a) The Parties' Contentions

37. Iran contends that the following types of claims arguably fall within the Tribunal's jurisdiction: (i) all claims that have been filed with the Tribunal, regardless of whether the Tribunal ultimately dismisses them for want of jurisdiction; (ii) all claims with respect to which the United States took the position, in a statement of interest or otherwise, that they were subject to the Tribunal's jurisdiction; and (iii) any claims that were arguably subject to the Tribunal's jurisdiction, regardless of whether they were filed with the Tribunal. Iran further argues, in essence, that, if there was any doubt at the times here relevant whether a claim was within the Tribunal's jurisdiction, then the United States should have considered it arguably falling within the Tribunal's jurisdiction and therefore terminated the related legal proceedings in its courts.

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[31] *See* Partial Award No. 590, para. 88, 34 IRAN-U.S. C.T.R. at 134-35.

[32] *Id.* para. 214 A (a) (2), 34 IRAN-U.S. C.T.R. at 165-66.

38. The United States disputes that filing a claim with the Tribunal automatically brings the related claim in United States court arguably within the Tribunal's jurisdiction. It asserts, rather, that what brings a claim arguably within that jurisdiction is what the Tribunal itself thinks of the strength of the jurisdictional claim.

39. According to the United States, Partial Award No. 590 used the word "arguably" to refer to "those few cases that fell outside the Tribunal's jurisdiction but that were nonetheless filed with the Tribunal and rejected on jurisdictional grounds." Therefore, the United States concludes, the term "arguably" is limited to the United States' obligation under Article VII, paragraph 2, to halt legal proceedings in cases that were filed with the Tribunal until such time as the Tribunal dismissed them for lack of jurisdiction.

b) The Tribunal's Decision

40. As an initial matter, the filing of a claim with the Tribunal triggers the United States' obligation under Article VII, paragraph 2, to halt parallel proceedings in its courts.[33] Accordingly, it is of no consequence in such cases whether the related United States court claim arguably or actually falls within the Tribunal's jurisdiction.

41. In a holding repeated no less than five times throughout Partial Award No. 590,[34] paragraph 214 A (a) (2) of the Partial Award (*dispositif*) states, in the context of Claim A, that the Algiers Declarations oblige the United States "to terminate all legal proceedings . . . against Iran in United States courts involving claims that *arguably* fall within the Tribunal's jurisdiction."[35] This evidently crucial holding guides the understanding of, and complements, the Tribunal's further holding in paragraph 214 A (a) (3) of Partial Award No. 590.[36] The Tribunal cannot, and does not, ignore either of these two holdings; rather, it reads them

[33] *See supra* para. 35.

[34] *See* Partial Award No. 590, paras. 89, 94, 107, 117, and 214 A (a) (2), 34 IRAN-U.S. C.T.R. at 135, 136, 139, 141, 165-66.

[35] *Id.* para. 214 A (a) (2), 34 IRAN-U.S. C.T.R. at 165-66 (emphasis added).

[36] In paragraph 214 A (a) (3) of Partial Award No. 590, the Tribunal has held that it will find that the United States has not complied with its obligations under the Algiers Declarations if "Iran was reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts subsequent to 19 July 1981 in any litigation in respect of claims described in Article II, paragraph 1, of the Claims Settlement Declaration or in respect of claims filed with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction . . . ." *Id.* para. 214 A (a) (3), 34 IRAN-U.S. C.T.R. at 166.

together.[37] The "arguably" language found in Paragraph 214 A (a) (2) of Partial Award No. 590 (*dispositif*), which a Member of the Tribunal, in his Separate Opinion, feels compelled to dismiss as "unnecessary and unfortunate," represents a binding interpretation of the Algiers Declarations by the Tribunal in Partial Award No. 590 and is *res judicata*.

42. The term "arguably" is an essential element of the Tribunal's decision of Claim A and reflects the fact that (i) only the Tribunal has the power to determine whether it has jurisdiction over a claim; and (ii) the United States, when implementing its obligation to terminate litigation, could not know in advance the claims over which the Tribunal ultimately would take jurisdiction. In its effort to comply with its treaty obligations, the United States understandably construed the language of General Principle B with the utmost prudence – and the Tribunal's ruling in Partial Award No. 590 confirmed that the United States was correct in so construing the content of its obligations. Thus, to read the word "arguably" out of Partial Award No. 590 would be illogical because the United States could not determine whether a claim actually fell within the Tribunal's jurisdiction.[38] The United States itself recognized this situation by articulating a similar "arguably" standard in the statements of interest it filed in February 1981 in the cases against Iran in United States courts of which it was then aware: it requested that the courts stay litigation of all claims that were "arguably" within the Tribunal's jurisdiction.[39] The courts acceded to this request by the United States in numerous instances, which demonstrates that the "arguably" standard was capable of practical application – and that it does not represent "an *ex post* rationale created by the Majority to justify adoption of one of two plausible constructions of Partial Award No. 590," as one Member states in his Separate Opinion.[40]

43. In light of the foregoing, the Tribunal concludes that, under Partial Award No. 590, if Iran was reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts subsequent to 19 January 1981 in any litigation involving claims arguably falling within the Tribunal's jurisdiction or involving claims filed

[37] Accordingly, the fact that paragraph 214 A (a) (3) of Partial Award No. 590 does not mention the phrase "claims that arguably fall within the Tribunal's jurisdiction" does not mean that the United States' termination obligation was limited to litigation involving claims over which the Tribunal *in fact* had jurisdiction, as argued by a Member of the Tribunal in his Separate Opinion. It would have been impossible for the United States to determine which claims were actually within that jurisdiction.

[38] *See supra* note 37.

[39] *See* Partial Award No. 590, para. 30, 34 IRAN-U.S. C.T.R. at 117-18.

[40] The Tribunal welcomes the description, in the Separate Opinion, of the "arguably" standard as a "plausible" construction of Partial Award No. 590.

with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction, the United States will not have complied with its obligations under the Algiers Declarations.

44. Partial Award No. 590 has held that, by adopting the suspension mechanism provided for in Executive Order 12294, the United States adhered to its obligations under the Algiers Declarations only if, in effect, the mechanism resulted in a termination of litigation as required by those Declarations.[41] Accordingly, under Partial Award No. 590, suspension of claims pursuant to Executive Order 12294 was in compliance with the United States' obligations under the Algiers Declarations so long as Iran was not reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts subsequent to 19 January 1981 in any litigation involving claims arguably falling within the Tribunal's jurisdiction or involving claims filed with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction.[42]

45. In deciding whether a claim arguably fell within the Tribunal's jurisdiction, the Tribunal will not rely on hindsight and will therefore not be guided by Tribunal jurisprudence that crystallized after the United States' obligation to terminate litigation arose. With this parameter in mind, the Tribunal holds that, if, at the time that termination obligation arose,[43] there was any possibility that a claim could have fallen within the Tribunal's jurisdiction, as defined in Article II, paragraph 1, of the Claims Settlement Declaration, the United States should have terminated (suspended[44]) the related legal proceedings in United States court. The position the United States took contemporaneously (for example, in a statement of interest) may be a relevant, but not conclusive, factor in assessing whether a claim arguably fell within the Tribunal's jurisdiction. The Tribunal recognizes that the "any possibility"-test seems to be rather broad. The Tribunal, however, considers it to be a functionally pertinent test, consistent with the intentions of the Parties to the Algiers Declarations, as reflected in

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[41] *See* Partial Award No. 590, para. 214 A (a) (3), 34 IRAN-U.S. C.T.R. at 166.

[42] *See supra* para. 43.

[43] In Claim A, the Tribunal held that the United States' obligation to terminate litigation of United States nationals against Iran in United States courts arose on 19 July 1981, six months after the signing of the Algiers Declarations (*see* Partial Award No. 590, paras. 110 and 214 A (a) (5), 34 IRAN-U.S. C.T.R. at 140, 166).

In Claim D, the relevant date for determining whether a claim arguably fell within the Tribunal's jurisdiction is the date on which the claim was filed in United States court (*see id.* para. 214 A (d) (1), 34 IRAN-U.S. C.T.R. at 167 (holding that the United States breached General Principle B by allowing the filing of suits after the date of the Algiers Declarations)).

[44] *See supra* para. 44.

the statements of interest of the United States Government, that United States courts exercise utmost prudence in deciding whether jurisdiction was theirs or the Tribunal's.

46. The Tribunal will limit the determination of whether a claim arguably fell within the Tribunal's jurisdiction to claims that were not filed with the Tribunal. This is because, as the Tribunal has found, Article VII, paragraph 2, determines the United States' obligations with respect to litigation involving claims that had been filed with the Tribunal.[45]

47. Based on Iran's evidence, the Tribunal has identified Tribunal counterparts for all but 24 of the United States court cases with respect to which Iran claims litigation expenses.[46] While some of these cases contain claims that fall squarely within, or clearly outside, the description of Article II, paragraph 1, of the Claims Settlement Declaration, others present more complex facts and have been extensively discussed by the Parties in their briefs and at the Hearing. Based on the considerations set forth *supra*, at paras. 40-46, and the evidence presented, the Tribunal concludes that, of those 24 cases, 11 only contained claims that "arguably" fell within its jurisdiction for the purpose of triggering the United States' termination of litigation obligation under General Principle B.[47] The Tribunal discusses below, by way of example, some of the more factually complex cases.

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[45] *See supra* para. 35.

[46] *Brown & Williamson Tobacco Co. v. Iranian Tobacco Co. et al.*, 81-0283 (S.D.N.Y.); *Int'l Harvester v. Iran et al*., 80-1714 (D.N.J.); *Itek Corp. v. Iran et al.*, 79-1492 (N.D. Tex.); *Itek Corp. v. Iran et al.*, 79-2382-MA (D. Mass.); *Itek Corp. v. Iran*, 79-6468 (S.D.N.Y.); *Pullman Swindell et al. v. National Iranian Steel Co.*, 81-0081 (S.D.N.Y.); *R.L. Pritchard & Co. v. Oregon Rainbow et al.*, 81-0886 (S.D.N.Y.); *U.S. Filter Corp. v. Iran et al.*, 79-3449, (D.D.C.); *William A. Gallegos v. Iran et al.*, 81-5482 (C.D. Cal.); *Alan B. Golacinski et al. v. Iran et al.*, 81-5109 (C.D. Cal.); *Charles Jones Jr. v. Iran et al.*, 81-5274 (C.D. Cal.); *Steven M. Lauterbach et al. v. Iran et al.*, 81-0350 (D.D.C.); *John D. McKeel Jr. et al. v. Iran et al.*, 81-0931 (C.D. Cal.); *Gregory Allen Persinger et al. v. Iran*, 81-0230 (D.D.C.); *Susan Roeder v. Iran et al.*, 81-5410 (C.D. Cal.); *Elizabeth Kelly Scott v. Iran et al.*, 81-5108 (C.D. Cal.); *Westly Williams et al. v. Iran et al.*,79-3295 (D.D.C.); *Margot Berkovitz v. Iran*, 80-0097 (N.D. Cal.); *Wendel T. Reed v. Iran et al.*, 79-006 (D. Tex.); *Seyed M. Raji et al. v. Bank Sepah Iran et al.*, 20658/80 (Sup. Ct. N.Y.); *David R. Webb Co. v. Bank Sepah Iran*, 81-6433 (S.D.N.Y.); *Amir Carpet Corp. v. Iran Air et al.*, 81-2080 (Sup. Ct. N.Y.); *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran*, 79-21884 (Sup. Ct. N.Y.); *McDonnell Douglas Corp. v. Iran et al.*, 82-2096 (E.D. Miss.).

[47] *Brown & Williamson Tobacco Co. v. Iranian Tobacco Co. et al.*, 81-0283 (S.D.N.Y.); *Int'l Harvester v. Iran et al*., 80-1714 (D.N.J.); *Itek Corp. v. Iran et al.*, 79-1492 (N.D. Tex.); *Itek Corp. v. Iran et al.*, 79-2382-MA (D. Mass.); *Itek Corp. v. Iran*, 79-6468 (S.D.N.Y.); *Pullman Swindell et al. v. National Iranian Steel Co.*, 81-0081 (S.D.N.Y.); *R.L. Pritchard & Co. v. Oregon Rainbow et al.*, 81-0886 (S.D.N.Y.); *U.S. Filter Corp. v. Iran et al.*, 79-3449, (D.D.C.); *Seyed M. Raji et al. v. Bank Sepah Iran et al.*, 20658/80 (Sup. Ct. N.Y.); *Amir Carpet Corp. v. Iran Air et al.*, 81-2081 (Sup. Ct. N.Y.); *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran*, 79-21884 (Sup. Ct. N.Y.) (the Tribunal has concluded *infra*, in para. 139, that the claim underlying this lawsuit, to the extent it involved the Pahlavi/Alavi Foundation as a defendant, actually fell within the Tribunal's jurisdiction).

(1) Amir Carpet Corporation v. Iran Air et al.

48. In *Amir Carpet Corporation v. Iran Air et al.*,[48] Air France – a French company – was a co-defendant together with Iran Air. The United States submitted, *inter alia*, that, because Air France could not be a defendant before the Tribunal and the case could not be severed, this claim did not arguably fall within the Tribunal's jurisdiction. The Claims Settlement Declaration does not provide any guidance with respect to the questions at issue but does not exclude either that this type of scenario could give rise to a claim that falls within the Tribunal's jurisdiction. Therefore, only the Tribunal could decide whether the existence of a co-defendant outside the Tribunal's jurisdiction deprived the Tribunal of jurisdiction over the whole claim or whether the claim could be severed. Accordingly, the Tribunal holds that Amir Carpet Corporation's claim against Iran Air arguably fell within the Tribunal's jurisdiction.

(2) Seyed M. Raji et al v. Bank Sepah Iran et al.

49. In *Seyed M. Raji et al v. Bank Sepah Iran et al.*,[49] the plaintiffs, Mr. Seyed Raji and his wife, Mrs. Marilyn Raji, sued, among others, Bank Sepah Iran in the Supreme Court of the State of New York ("Raji lawsuit") on 23 October 1980. The suit was based on (i) an alleged breach by Bank Sepah of its employment contract with Mr. Raji; (ii) a claim by Mrs. Raji as a third-party beneficiary to her husband's pension benefits contract ("Mrs. Raji's claim for pension benefits"); and (iii) certain tort claims. Iran asserts that the United States was obligated to terminate Mrs. Raji's claim for pension benefits. The United States, in a statement of interest dated 19 May 1983, also expressed the view that Mrs. Raji's claim for pension benefits was subject to the termination obligation. The Supreme Court of the State of New York ("Supreme Court"), in a decision issued on 12 July 1983, agreed with the position expressed by the United States; it dismissed Mrs. Raji's claim for pension benefits but allowed Mr. Raji to institute it in his own right. On 19 September 1983, the plaintiffs amended their complaint to reflect the Supreme Court's decision, with Mr. Raji bringing his wife's claim for pension benefits in his own right.

50. The Tribunal holds that Mrs. Raji's claim for pension benefits arguably fell within the Tribunal's jurisdiction. Thus, the United States was obliged under General Principle B to

[48] *Amir Carpet Corp. v. Iran Air et al.*, 81-2080 (Sup. Ct. N.Y.).

[49] *Seyed M. Raji et al. v. Bank Sepah Iran et al.*, 20658/80 (Sup. Ct. N.Y.).

terminate (suspend[50]) the legal proceedings involving that claim by 19 July 1981; by failing to do so, the United States did not act consistently with its obligations under the Algiers Declarations. The Tribunal is not swayed by the United States' assertion that it was permissible and proper under United States law for Mrs. Raji's claim for pension benefits to be asserted by Mr. Raji,[51] and that therefore the claim was properly the claim of an Iranian national and not subject to General Principle B.

51. One of the Separate Opinions raises questions that touch upon the analysis of causation of Iran's loss by the breach of the United States' obligation to terminate Mrs. Raji's litigation promptly. It contends that the Majority failed to address the proposition that, if the United States had terminated Mrs. Raji's litigation, she *could* have transferred her claim to her husband and the litigation would have continued. Moreover, it contends that the Majority committed an analytical mistake by viewing "the Rajis' subsequent proceeding on the basis of an amendment of claim" as identical with the relevant "alternative and hypothetical scenario"; in this connection, the Separate Opinion contends that the "necessary counterfactual inquiry" would be: what would the Rajis have done *in 1981* if the United States had *then* prevented Mrs. Raji's lawsuit from going forward as originally filed? According to the Separate Opinion, she would have transferred her claim to her husband who would have amended his complaint, as in fact happened in 1983, when she in fact no longer was permitted to bring her claim in a United States court.

52. Neither hypothetical scenario poses problems regarding the necessary initial analysis that the United States' breach caused "factually" the harm (*i.e.*, the expenses for legal fees and costs) and that that loss was also a "proximate" consequence of the United States' breach. Moreover, a "counterfactual inquiry"[52] or the analysis of "hypothetical alternative causation" – to some extent an equivalent concept, as known in civil-law systems and used in comparative law[53] – would need to distinguish between alternative conduct by the respondent, on the one hand, and a by third party, on the other. Only if one were to reach the

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[50] *See supra* para. 44.

[51] The United States contends that, under United States law, which governs Mr. Raji's employment contract with Bank Sepah Iran, the promisee to a contract has the same right to bring a claim for breach of a promise to a third-party beneficiary as does the third-party beneficiary herself.

[52] *See* RESTATEMENT (THIRD) OF TORTS, Ch. 5, §26 (2010).

[53] For the most thorough comparative treatment, see A.M. Honoré, *Causation and Remoteness of Damage*, *in* 11 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW, TORTS, ch. 7, ¶ 126 *et seq.* (André Tunc ed., Tübingen/The Hague/Boston/London, 1969).

conclusion that both tortious (or obligation-breaching) and non-tortious (or obligation-compliant) conduct of the same person would have led to the same result, one might question that the tortious (or obligation-breaching) conduct was *condicio sine qua non* of the loss the claimant seeks to recover. Conversely, if a third party's conduct (here the Rajis' subsequent proceeding on the basis of an amendment of claim) in an alternative and hypothetical scenario had caused Iran to incur the same expenses, this would be a different scenario, distinguishable in point of time, mode, detail of occurrence, and, importantly, the acting person.[54] As the reporter of the Restatement puts it in relation to an illustration where hunter A negligently fires a rifle causing a hiker's death, and hunter B whose shot would have caused the hiker's death, except that the death had already occurred: "An act or omission cannot be factual cause of an outcome that has already occurred."[55] English[56] and German courts (the latter in an uninterrupted series of judgments over almost a century) have held that subsequent and hypothetical "reserve causes" must remain unconsidered. The standard case is that of a defendant who has damaged negligently the claimant's car and, in the night following the damage, the garage in which the claimant habitually keeps his car burns to the ground, and the car would certainly have been destroyed. The defendant would not escape liability.[57] Applied to the Restatement's illustration, as modified: hunter A would not escape liability even if the forest that the hiker was going to cross on his onward journey was destroyed by a bush fire. The Tribunal might add the example where, on his way to the airport to board a flight, A is killed in an accident caused by driver B, who failed to comply with traffic regulations. The aircraft crashed shortly after takeoff, with no passengers surviving. B cannot escape liability resulting from his conduct, which caused A's death, by claiming that A would have died in the airplane crash anyway. Or, again and to add an example based on a contractual undertaking, assume that, on 25 December 2013, A-Group Holding Inc. (from country A) promises to B Inc. (from country B) that it will ensure that all of its own and its subsidiaries' defamatory advertising will be discontinued immediately. On 5 January 2014, X-TV broadcasts a commercial of A100 Ltd., a subsidiary of A-Group Holding Inc., of the same defamatory content. As a result, C, B Inc.'s only customer in

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[54] *See* Honoré, *supra* note 53, at ¶ 126.

[55] *See* RESTATEMENT (THIRD) OF TORTS, *supra* note 52, Ch. 5, §26 cmt. k.

[56] Baker v. Willoughby [1970] AC 467.

[57] For this and the cases decided by the German Supreme Court, see WOLFGANG FIKENTSCHER & ANDREAS HEINEMANN, SCHULDRECHT Nos. 697-701 (10th ed., 2010). *Accord*, for Swiss law, BGE 135 III 397, 401-5; 1 ANDREAS VON TUHR & HANS PETER, ALLGEMEINER TEIL DES SCHWEIZERISCHEN OBLIGATIONENRECHTS 92 (1979); for a broad historic approach and comparative perspective, see Honoré, *supra* note 53, at ¶ 135.

country A, terminates its business relationship with B Inc. B Inc. retains lawyers and, on 10 January 2014, obtains an injunction in the courts of country A against A100 Ltd. On 20 January, D LLC has its commercial of the same nature and content as A100 Ltd.'s broadcast on X-TV. It is certain that C, under the impression of D's commercial, would have terminated its business relationship with B Inc. and that B Inc. would have incurred the same legal expenses it incurred in pursuing its rights against A100 Ltd. A-Group Holding Inc., however, cannot escape liability for breach of its undertaking and B Inc.'s loss incurred from 5 to 10 January. D's commercial, the reserve cause, remains unconsidered. As has been correctly observed, in these and similar cases the but-for test is inapplicable.[58]

53. One of the Separate Opinions emphasizes four points in its attempt to show that the Tribunal errs. First, it maintains that in the actual scenario and in the alternative ("counterfactual," "hypothetical") scenario there was only one "actor," the Rajis. That is wrong. The United States was the actor in the actual scenario and the Rajis were the actors in the alternative, subsequent scenario. The United States committed a breach of its treaty obligation when it permitted Mrs. Raji's lawsuit to continue beyond July 1981. The Rajis acted as they did causing Iran's loss, but they were under no obligation *vis-à-vis* Iran. Second, the Separate Opinion states that the United States' breach is one of omission, not commission. That is correct, but a *non sequitur* for purposes of our analysis. Third, the Separate Opinion underscores that the standard examples of "reserve causes" discussed by the Restatement and writers around the world (and cited by the Tribunal)[59] are illustrations of why scenarios producing "duplicative" and others producing "additive" costs have to be distinguished. There may be merit in distinguishing them in cases where the first wrongdoer causes, say, loss positions nos. 1 to 5 and the second wrongdoer aggravates the injured party's situation by *adding* loss positions nos. 6 to 10. Some courts and writers address them by identifying the entity of each wrongdoer's contribution to the total loss and by assigning the respective quota proportionally to the successive wrongdoers. However, there are also other solutions suggested for dealing with cases of "cumulative" causation. Yet the Tribunal is confident that no court or tribunal would fail to hold a first (actual) wrongdoer liable for the loss he (actually) caused on the strength of a presumption that another wrongdoer *might* have (hypothetically) caused the same loss at the same time just because he did cause loss

[58] *See* Honoré, *supra* note 53, at ¶ 131; SIMON DEAKIN, ANGUS JOHNSTON & BASIL MARKESINIS, MARKESINIS AND DEAKIN'S TORT LAW 235 (7th ed., 2013).

[59] *See supra* para. 52.

years later. Fourth, the Separate Opinion, in developing the illustration of a house – *e.g.*, a court house – with two doors (the "1981 door" and the "1983 door"), suggests that the United States was only obliged to keep one of those doors locked, whereas it was under no obligation to lock the second door. The Tribunal fails to see how that can be maintained on the basis of a straightforward interpretation of General Principle B.

54. The Tribunal must deal with the facts that it has been presented with. Mrs. Raji's claim for pension benefits was initiated by her, a United States national, and was outstanding on the date of the Algiers Declarations, and legal proceedings involving that claim were still pending in United States court on 19 July 1981. Such legal proceedings were subject to the United States' obligation to terminate litigation. If those proceedings had been terminated (suspended[60]) by that date, the Supreme Court, in 1983, could not have dismissed Mrs. Raji's claim for pension benefits and allowed Mr. Raji to pursue such claim in his own right.[61]

(3) McDonnell Douglas Corp. v. Iran et al.

55. McDonnell Douglas Corporation ("McDonnell Douglas") sued Iran on 17 December 1982 in the United States District Court for the Eastern District of Missouri ("McDonnell Douglas lawsuit").[62] The complaint was filed in response to a lawsuit against McDonnell Douglas filed by Iran in March 1982 in an Iranian court. Both lawsuits were based on a 1975 contract between McDonnell Douglas and the Imperial Iranian Air Force ("1975 contract"). The 1975 contract contained a forum selection clause in favor of Iranian courts. In its complaint before the District Court, McDonnell Douglas sought a declaratory judgment, among other things, to the effect that (i) it had fully performed its obligations under the 1975 contract; and (ii) the contract was subject to United States law and not Iranian law, and any judgment by the Iranian courts would be null and void.

56. Technically, McDonnell Douglas could have asserted a claim against Iran before the Tribunal by 19 January 1982,[63] seeking a declaratory judgment to the effect that it had

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[60] *See supra* para. 44.

[61] The Tribunal has found that Iran has incurred compensable specific litigation expenses totaling U.S.$15,509.80 in relation to that portion of the Raji lawsuit that related to Mrs. Raji's contractual claim. This sum is included in the amount awarded *infra* at para. 195.

[62] *McDonnell Douglas Corp. v. Iran et al.*, 82-2096 (E.D. Miss.).

[63] 19 January 1982 is the deadline for filing of claims contained in Article III, paragraph 4, of the Claims Settlement Declaration.

performed its obligations under the 1975 contract and that the forum selection clause was unenforceable. Because no dispute under the 1975 contract had arisen between the parties by that date, however, McDonnell Douglas had no reason, and could therefore not have been reasonably expected, to do so.[64] McDonnell Douglas filed its responsive complaint in the United States District Court only after Iran had challenged McDonnell Douglas's contractual performance in March 1982 in an Iranian court.

57. In light of these circumstances, the Tribunal is not prepared to conclude that the McDonnell Douglas lawsuit arguably fell within its jurisdiction.

3. Breach

58. In the first phase of these proceedings, the Tribunal laid out the standards for determining whether the United States had breached its obligations under General Principle B. Thus, the Tribunal's task in this second phase is largely one of interpretation and application of those standards.

59. As recited above,[65] different standards for breach were set forth in Partial Award No. 590 with respect to each of Claim A, Claim G, and Claim H, and the Tribunal therefore deals with each in turn below.[66] Claim D is also dealt with in this section for completeness, although Partial Award No. 590 has already found that, by allowing the filing of lawsuits

[64] The existence of a dispute "presupposes a certain degree of communication between the parties[; the] matter must have been taken up with the other party, which must have opposed the claimant's position if only indirectly." South West Africa (Liber. v. S. Afr.), Preliminary Objections, Judgment, 1962 I.C.J. 319, 328 (21 Dec.).

[65] *See supra* paras. 14, 19, and 21.

[66] The Tribunal has had some difficulty reconciling these standards, which appear at times to attempt to incorporate certain terms by reference. For example, for Claim H, Partial Award No. 590 stipulates that "if Iran *reasonably incurred* legal expenses in relation to judgments that remained in existence after 19 July 1981, then the United States breached its obligations under the Algiers Declarations" (Partial Award No. 590, para. 188, 34 IRAN-U.S. C.T.R. at 158-59, emphasis added). At the end of the same paragraph in which this language appears, there is a reference with the introductory signal "*see supra*," pointing to paragraph 101 of Partial Award No. 590 (*inter alia*). Paragraph 101 sets a different standard for assessing Iran's legal expenses ("reasonably compelled in the prudent defense of its interests"; Partial Award No. 590, para. 101, 34 IRAN-U.S. C.T.R. at 138). The Harvard Blue Book puts the "*see*" introductory signal in the category of "signals that indicate support" (THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 54 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010)). It is unclear to the Tribunal what the intention of the "*see supra*" reference attached to paragraph 188 is, and how the "reasonably incurred" standard in paragraph 188 was intended to interact with the "reasonably compelled in the prudent defense of its interests" standard in paragraph 101. The Tribunal has therefore considered the language in the body of paragraph 188 to be paramount (*see infra* para. 123).

after the date of the Algiers Declarations, the United States has breached General Principle B.[67]

a) Claim A

60. The alleged breach by the United States of the obligation to terminate litigation under General Principle B (the subject of Claim A) was the primary focus of the Parties at the Hearing and in the written pleadings that preceded the Hearing. This accords with the centrality of the obligation to terminate litigation under General Principle B.

61. Claim A concerns, *inter alia*, the alleged breach by the United States of General Principle B by failure to terminate (suspend[68]) litigation in United States courts involving claims of United States nationals against Iran that arose before 19 January 1981.

62. The question whether "Iran was *reasonably compelled in the prudent defense of its interests* to *make appearances or file documents* in United States courts subsequent to 19 July 1981"[69] ("Reasonably Compelled Standard") is central to Claim A and therefore has been at the forefront of the Tribunal's considerations. The Tribunal now examines the elements of this standard, followed by the Tribunal's overall conclusion.

(1) "Reasonably Compelled in the Prudent Defense of Its Interests"

(a) The Parties' Contentions

63. Iran contends that, given all of the surrounding circumstances, the uncertainty of the situation, and continued court action, it was completely reasonable for it to participate in court proceedings against it. Thus, the Reasonably Compelled Standard should not be applied too strictly. The United States responds that it had established a comprehensive and effective mechanism to effect compliance with the Algiers Declarations consisting of four elements working in combination: (1) Executive Order 12294; (2) United States Supreme Court litigation in *Dames & Moore v. Regan*[70] to confirm the domestic legality of that Order; (3) a program of domestic litigation with the United States Justice Department filing

[67] *See supra* para. 17.

[68] *See supra* para. 44.

[69] Partial Award No. 590, para. 101, 34 IRAN-U.S. C.T.R. at 138 (emphasis added).

[70] *Dames & Moore v. Regan et al.*, 453 U.S. 654, 101 S.Ct. 2972.

statements of interest in every relevant United States court case against Iran of which it was aware; and (4) termination of claims through binding arbitration before the Tribunal. Iran should have been assured by this and therefore refrained from participating in United States court proceedings. Iran ran no risk of default judgments[71] in United States courts that could have caused it enough concern so as to feel reasonably compelled to continue its participation in the suspended claims.

64. Iran argues that, in any event, the actions it took in United States courts were reasonable and prudent. The suspension mechanism established by the United States did not result in the termination by 19 July 1981 of all legal proceedings against Iran, and, thus, it was reasonable for Iran to believe that it had to participate in litigation beyond that date. Iran points to several deficiencies in the suspension mechanism that led to this belief.

65. First, Iran says that it was not clear under United States law that Executive Order 12294 could terminate United States court litigation against Iran. Indeed, Executive Order 12294 purported only to suspend litigation.

66. In reply, the United States argues that Executive Order 12294 produced a change in substantive United States law that prevented the enforcement of any adverse judgments (including default judgments) against Iran while claims were pending before the Tribunal.

67. Second, Iran asserts that the United States Supreme Court's decision in *Dames & Moore v. Regan* ("*Dames & Moore*") of 2 July 1981,[72] which upheld the constitutionality of Executive Order 12294, provided Iran some comfort but still did not *terminate* litigation as required by the Algiers Declarations. Neither the Executive Order nor *Dames & Moore* relieved Iran of its defense obligations in the United States court litigation. There was nothing automatic about the effect of *Dames & Moore* on pending litigation, and the parties in individual cases were free to argue the inapplicability and contrary interpretations of that decision. At the Hearing, moreover, Iran emphasized that *Dames & Moore* was a case brought by a private party, not the United States. Thus, it was not an action which the United States can claim as part of its efforts to comply with the Algiers Declarations.

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[71] Iran has argued that default judgments were one of the potential adverse consequences which led to its reasonable decision to participate in legal proceedings.

[72] *Dames & Moore v. Regan et al.*, 453 U.S. 654, 101 S.Ct. 2972.

68. The United States contends that the decision by the United States Supreme Court in *Dames & Moore* upholding the President's authority to issue Executive Order 12294 perfected the suspension mechanism. After *Dames & Moore*, Iran could no longer reasonably fear that a claim arguably within the Tribunal's jurisdiction could lead to any effective judgment during the suspension period.

69. Third, Iran contends that the statements of interest filed by the United States Department of Justice were ineffective in terminating litigation. United States courts were not required to follow statements of interest filed by the Executive Branch. Despite the filing of statements of interest by the Department of Justice, plaintiffs continued to submit pleadings and, in some cases, the courts themselves initiated exchanges of pleadings. Further, the statements often only requested suspension. In any event, the United States was not even aware of all United States court cases pending against Iran and at times relied on information provided by Iran's United States counsel to determine where to file statements of interest. All of these factors meant that Iran could take no comfort from the filing of statements of interest.

70. The United States says that statements of interest were filed promptly and were comprehensive. Moreover, regardless of whether they were legally binding or not, they were effective and resulted in court-ordered stays of virtually all claims against Iran arguably within the Tribunal's jurisdiction. The United States asserts that in only a handful of cases did the United States courts fail to issue a formal stay, and that there was no substantive activity in the cases in any event. All suspended claims that were within the Tribunal's jurisdiction were ultimately terminated following a determination by the Tribunal on the merits.

71. In these circumstances, the United States asserts, any activity that Iran instructed its counsel to undertake in the suspended litigation after 19 July 1981 was voluntary and unnecessary; thus, it was neither reasonably compelled nor in the prudent defense of Iran's interests.

72. The United States further contends that, in any event, even if the suspension mechanism did fail in any instance, procedural mechanisms under the United States Federal Rules of Civil Procedure and the United States Foreign Sovereign Immunities Act would have alerted Iran and protected it from the risk of default judgments.

73. Iran contends that it would not have been prudent for it to rely on the United States to protect its interests. In the unprecedented situation it found itself at the time, facing hundreds of cases in courts all over the United States, Iran justifiably relied on the advice of its United States counsel. Iran argues that it is not for the Tribunal to second-guess today the decisions taken then by Iran, or to utilize the benefit of hindsight. Iran's actions must be viewed in light of the situation prevailing at the time of the litigation.

(b) The Tribunal's Decision

74. The Tribunal notes at the outset that it is clear that the United States took extensive measures in attempting to comply with the obligation to terminate legal proceedings under General Principle B. However, the Tribunal finds that, while these measures may have been comprehensive and diligent, their net effect was such that Iran was still left with the (against the facts presented to the Tribunal, justifiable) perception that it needed to participate in United States court proceedings against it. This was a reasonable perception in light of the situation prevailing at the time and the deficiencies in the suspension mechanism the United States employed.

75. Submissions were made by the United States highlighting that no default judgments were entered against Iran. Thus, if this "worst case" scenario did not eventuate, the suspension mechanism was effective and should have assured Iran. The Tribunal does not find this argument persuasive. To look at whether or not default judgments were entered against Iran in this context is inappropriate as it would rely upon hindsight. Rather, it is the situation, and the reasonable perception Iran had of that situation, at the time of the alleged breach that is relevant.

76. The question of whether Iran was "reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts subsequent to 19 July 1981" should not be determined only by reference to the individual legal proceedings that are at issue in these Cases. Partial Award No. 590 does not require this. By its very nature, this Reasonably Compelled Standard calls for a broader view. The surrounding circumstances have a key role to play in such determination.

77. Accordingly, the Tribunal finds the following surrounding circumstances to be relevant:

(a) the breakdown in diplomatic ties between Iran and the United States and the fact that relations between the two countries generally were strained;

(b) the presence of a degree of anti-Iranian and anti-American sentiment;

(c) the fact that Executive Order 12294, which implemented the suspension mechanism, departed from the language of the Algiers Declarations;

(d) the United States' choice of the suspension mechanism, which may not have been easily comprehensible or assessable with any certainty;

(e) Iran's lack of familiarity with United States constitutional and legal systems and litigation in United States courts;

(f) insufficiency of United States diplomatic communications that failed to provide Iran with positive assurances that it would not have to participate in United States court litigation to defend its interests;

(g) the fact that the United States Department of Justice at times relied on information provided by Iran's United States attorneys in order to identify lawsuits pending; and

(h) the fact that Executive Order 12294 permitted the filing of new suits.

78. Most importantly, however, the Tribunal cannot conclude as a general matter that it would be unreasonable for any defendant in a case suspended pursuant to an order such as Executive Order 12294 to feel compelled to respond to submissions by plaintiffs, to respond to requests for information from courts, and, in some circumstances, to initiate action in the suspended case.

79. The Tribunal therefore is satisfied that in many instances Iran was reasonably compelled in the prudent defense of its interests to make appearances and file documents in United States courts after 19 July 1981.

(2) "Make Appearances" and "File Documents" in "Any Litigation"

(a) The Parties' Contentions

80. Iran contends that the phrase "making appearances or filing documents in United States courts . . . in any litigation" should not be interpreted narrowly. Rather, that phrase must be interpreted to mean, simply, "litigation." Litigation, by definition, is much wider in scope than making appearances or filing documents. It is not sufficient, Iran argues, to only look to docket sheets for cases to determine the universe of "appearances and filings." Some of the litigation activities undertaken by Iran's United States attorneys were reflected on the court docket sheets – for instance, the filing of case status reports; participation in status conferences; or attorney substitutions. However, the bulk of the work performed by Iran's United States attorneys, while directly related to court filings and appearances, was not so reflected – for example, legal research; preparation for written filings or court appearances; or communicating with Iran, co-counsel, and opposing counsel. The litigation expenses that Iran incurred in connection with these activities, too, are appearances and filings within the meaning of Partial Award No. 590.

81. The United States contends that Partial Award No. 590 confined the breach-triggering actions to a lesser range of activities than "litigation." According to the United States, "appearances" and "filings" in United States courts involve a limited range of formal representation by counsel either in court or through written submissions. Consequently, these activities by definition exclude any unofficial or out-of-court litigation expenses, such as those related to purely administrative matters – for example, internal file management by paralegals; internal correspondence among Iran's counsel and with Iran's Bureau of International Legal Services; memoranda to the file by Iran's counsel; and informal communications with opposing counsel. What is not recorded on the docket sheet is neither an "appearance" nor a "filing." The United States contends, further, that only those procedural steps that advance a claim toward a resolution on the merits constitute "litigation" for the purposes of the United States' termination obligation.

(b) The Tribunal's Decision

82. As an initial matter, the Tribunal holds that the term "litigation," as used in Partial Award No. 590, must be understood in accordance with its ordinary meaning as "lawsuit" or

"legal action," including all proceedings therein.[73] The Tribunal therefore does not accept the United States' restriction of the definition of "litigation" to procedural steps that advance the claim toward a resolution on the merits. There is no basis in the Algiers Declarations or in Partial Award No. 590 for attributing such a special meaning to the term "litigation."

83. With respect to the phrases "making appearances" and "filing documents," the Tribunal holds that, according to their ordinary meaning, those phrases involve physically appearing before a court and filing documents with a court. Thus, they involve in-court actions,[74] such as: participating in hearings and status conferences; filing of written pleadings (*e.g.*, answers to complaints, motions, oppositions and responses to motions filed by the opposing party, appeals, responses to appeals filed by the opposing party); submitting status reports; joint filings or stipulations (*e.g.*, joint status reports, joint stipulations concerning extension of time or concerning dismissal of the case); and consent motions.

84. In accordance with paragraph 101 of Partial Award No. 590, therefore, non-compliance by the United States with its termination of litigation obligation under General Principle B and Article VII, paragraph 2, will be established in cases where Iran was reasonably compelled in the prudent defense of its interests to perform such or similar actions after 19 July 1981 in any litigation involving claims arguably falling within the Tribunal's jurisdiction or claims that had been filed with the Tribunal.[75]

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[73] Black's Law Dictionary defines "litigation" as: (1) "[t]he process of carrying on a lawsuit" and (2) "[a] lawsuit itself." BLACK'S LAW DICTIONARY (9th ed. 2009). *See also* BLACK'S LAW DICTIONARY (6th ed. 1990) ("A lawsuit. Legal action, including all proceedings therein.").

[74] Black's Law Dictionary defines "appearance" as: "A coming into court as a party or interested person, or as a lawyer on behalf of a party or interested person; esp., a defendant's act of taking part in a lawsuit, whether by formally participating in it or by an answer, demurrer, or motion, or by taking postjudgment steps in the lawsuit in either the trial court or an appellate court." BLACK'S LAW DICTIONARY (9th ed. 2009). Black's Law Dictionary defines "filing" as a "particular document (such as a pleading) in the file of a court clerk or record custodian." *Id.*

[75] *See supra* para. 43. In cases where appearances and filings occurred, as well as in those where losses have been suffered as a result of appearances and filings, the United States will be liable to compensate Iran for expenses it incurred in performing those actions (*see infra* para. 190 *et seq.*). "As a result of" should be given a sufficiently broad reading to align with principles of international law (*see infra* para. 191). Work done in preparation for a filing not ultimately made in the circumstances, for example, may still be "as a result of" for our purposes (*see, e.g.*, *Westinghouse Electric Corp. v. Iran et al.,* 83-3837 (D. Md.)). The following activities also exemplify actions that are "a result of" appearances or filings: reviewing a motion filed by the opposing party in preparation of a response; reviewing a court decision in preparation of an appeal; communications with the client, co-counsel, judges, or opposing counsel in preparation of a court appearance or filing; internal conferences in preparation of a court appearance or filing; settlement negotiations if the settlement is sufficiently related to ongoing litigation; and legal research in preparation of a court appearance or filing. Conversely, an activity such as new counsel's review of a case is not an action that is "as a result of" an appearance or filing, so, related expenses and disbursements are not compensable.

(3) Tribunal's Overall Conclusion

85. The Tribunal finds that the United States has breached its obligation to terminate legal proceedings under General Principle B in respect of the United States court legal proceedings set forth in Annex A. These are the legal proceedings where the Tribunal, having considered the evidence, is satisfied that Iran made appearances or filed documents after 19 July 1981 in accordance with the meaning discussed herein and was reasonably compelled to do so. The further question whether those appearances or filings give rise to compensable losses is dealt with below.[76]

86. For illustrative purposes, the Tribunal discusses one United States court legal proceeding individually, that is, *Hoffman Export Corp. v. Iran*, 80-0524 (C.D. Cal.), 81-5432 (9th Cir.) ("Hoffman lawsuit").

87. Hoffman Export Corporation ("Hoffman") filed a complaint against Iran in the United States District Court for the Central District of California ("District Court") on 13 February 1980. The complaint was based on the alleged breach of a May 1975 agreement between Hoffman and the Iranian Ministry of Defense for the purchase of certain radio communications equipment ("radio contract"). The District Court vacated the existing writs of attachment and dismissed the case without prejudice on 30 April 1981 but stayed the order until 9 July 1981. On 15 July 1981, Hoffman appealed from the District Court's order, and some court activity ensued. The appeal was dismissed on 28 August 1981, following the parties' joint stipulation to dismiss.

88. On 18 November 1981, Gould Marketing, Inc. ("Gould"), Hoffman's successor, presented a claim to the Tribunal based on the radio contract. On 27 July 1983, the Tribunal issued an interlocutory award, assuming jurisdiction over certain claims, holding that the radio contract had terminated in mid-1979 by reason of frustration and determining that certain claims under the radio contract for payments due after 19 January 1981 were not within its jurisdiction.[77]

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[76] *See infra* paras. 190-195.

[77] *Gould Marketing, Inc.* and *Ministry of National Defense of Iran*, Interlocutory Award No. ITL 24-49-2 (27 July 1983), *reprinted in* 3 IRAN-U.S. C.T.R. 147. The Tribunal rendered its final award in the case on 29 June 1984. *See Gould Marketing, Inc.* and *Ministry of National Defense of Iran*, Award No. 136-49/50-2 (29 June 1984), *reprinted in* 6 IRAN-U.S. C.T.R. 272.

89. On 27 November 1990, Hoffman/Gould filed a motion with the District Court to reopen the original action No. 80-0524 and to be permitted to amend the original complaint, filed on 13 February 1980, "to reflect the relevant proceedings involving the parties that have occurred since the original complaint was filed, and to reflect the continued breaches of the radio contract by Iran that have occurred since the original complaint was filed." In its motion, Hoffman/Gould asserted claims for payment under the radio contract that had arisen after 19 January 1981. As a result of Hofmann/Gould's motion, some court activity ensued. On 5 March 1991, Hoffman/Gould withdrew its motion.

90. The Tribunal accepts that the District Court acted in conformity with the United States' international obligations by dismissing the Hoffman lawsuit *without* prejudice in 1981, pending the decision by the Tribunal. However, the United States breached its international obligations by not causing the Hoffman lawsuit to be dismissed *with* prejudice after the Tribunal's decision of 27 July 1983. In accordance with its conclusion in Partial Award No. 590, the Tribunal holds that, by failing to terminate the Hoffman lawsuit within a reasonable time after 27 July 1983, the date of the Tribunal's interlocutory award in *Gould Marketing* assuming jurisdiction over certain claims by Gould Marketing,[78] the United States violated its obligation to terminate litigation in United States courts related to claims resolved by the Tribunal on the merits.[79] The claim underlying the original Hoffman lawsuit in the District Court, which was filed on 13 February 1980 (and which, as Hoffman itself confirmed in its motion to amend the original complaint, did not "reflect the continued breaches of the radio contract by Iran that have occurred since the original complaint was filed"[80]), did not, and could not, cover matters that arose after 19 January 1981, as those matters had not materialized yet;[81] thus, the claim pending before the District Court at that time was entirely within the Tribunal's jurisdiction and should have been terminated in its entirety.

91. Had the District Court, in 1983, dismissed the 1980 Hoffman lawsuit with prejudice, Hoffman/Gould would not have been able to revive the lawsuit in November 1990.

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[78] *See supra* para. 88.

[79] *See* Partial Award No. 590, para. 214 B (1), 34 IRAN-U.S. C.T.R. at 168 ("By not acting to have the Foremost/OPIC lawsuit in the District Court for the District of Columbia dismissed from the District Court's docket within a reasonable time after 11 April 1986, the date the Tribunal issued its award in *Foremost*, the United States violated its obligation under the Algiers Declarations to terminate litigation in United States courts related to claims resolved by the Tribunal on the merits.").

[80] *See supra* para. 89.

[81] The addition, in 1990, of claims concerning post-19 January 1981 payments, *supra* para. 89, confirms that those claims were not before the District Court in 1983.

Arguably, Hoffman/Gould could have filed a new claim in the District Court for the post-1981 payments under the radio contract, which would have been outside the Tribunal's jurisdiction.[82] Nevertheless, in making its determination, the Tribunal must consider actual events, not irrelevant hypothetical scenarios.

92. One of the Separate Opinions criticizes the Majority's approach, pointing, *inter alia*, to the Majority's alleged "misunderstanding of causation issues." As the discussion of the Raji case shows,[83] the Majority appreciates both the purpose and limits of counterfactual inquiry in United States tort law and its functional equivalents, such as the "alternative" or "hypothetical" causation analysis, in other legal systems. However, the Majority's opinion and the Separate Opinion diverge insofar as they disagree about which actual turn of events is to be compared with which hypothetical turn of events. As has been emphasized, the question must not be framed too broadly because the point of the counterfactual inquiry is, not to discover the next most likely scenario to the actual past, but to "determine the causal effect of the tortious aspect of the defendant's conduct."[84] There would not appear to be any doubt that, had the United States acted to have the Hoffman lawsuit dismissed with prejudice after 27 July 1983, Hoffman/Gould, in 1990, could not have amended the original complaint, thereby reviving the Hoffman lawsuit and causing Iran to incur legal expenses to defend itself in that lawsuit.

93. The issue at stake is whether the United States was in breach of its international obligations and not whether Hoffman/Gould amended an existing claim or could have started a new claim. If Hoffman/Gould had brought a new lawsuit, that action would – as in the Raji case[85] – fall into the category of the examples mentioned above (garage burning down, airplane crash, bush fire destroying the forest the hiker's itinerary crossed, breached promise to stop advertising) in that the same result followed from a non-tortious act or obligation-compliant conduct. As has been acknowledged by authoritative commentators, one may categorize these examples as illustrations of disapplying the *sine qua non* formula. Yet, the reasons underlying the distinction between "factual" and "legal" cause, "proximate" and

[82] The Tribunal notes, as an aside, that, in any such proceeding, the District Court would have been bound by the Tribunal's decision that the radio contract had been frustrated.

[83] *Supra* paras. 49-54.

[84] Robert N. Strassfeld, *If...: Counterfactuals in the Law*, 60 Geo. Wash. L. Rev. 339, 398 (1992). *See also* Richard W. Wright, *Causation in Tort Law*, 73 Cal. L. Rev. 1735, 1759 (1985).

[85] *Supra* paras. 49-54.

"remote" damages, and the development of the theory of "adequacy" show that courts and legal theory universally strive to avoid mechanical application of the relevant tests in favor of normative approaches.[86] That is why focusing on the defendant and its obligation-compliant, as opposed to its non-compliant, conduct is crucial. Hoffman/Gould (as was Mrs. Raji in the Raji case) is a third party. What is at stake here, however, is the omission of the United States in relation to Hofmann/Gould's (or, in the Raji case, Mrs. Raji's) procedural maneuvers. To refer to the example from the Separate Opinion: relevant is, not whether the court house had two doors, but whether the United States breached its international obligations by allowing Hofmann/Gould to use the "amended complaint"-door. Further, that Hoffman/Gould *could* have filed a new claim does not mean that it certainly *would* have done so. The latter scenario is conjecture, no matter how strongly one believes that it likely would have materialized. Had the United States caused the Hoffman lawsuit to be dismissed with prejudice, Hoffman/Gould could just as well have decided not to pursue the matter further.

94. Accordingly, in light of all the above, the Tribunal holds that, to the extent Iran made appearances or filed documents in the Hoffman lawsuit after 19 July 1981 in the prudent defense of its interests, the United States is obliged to compensate Iran for the resulting litigation expenses.[87]

b) Claim D

95. In Partial Award No. 590, the Tribunal has concluded that the United States has breached General Principle B by permitting its nationals to file suits against Iran in United States courts after 19 January 1981, even for the limited purpose of tolling the applicable statutes of limitation.[88]

(1) The Parties' Contentions

96. According to Iran, 42 United States court proceedings fall within Claim D.[89]

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[86] *See* Honoré, *supra* note 53, at ¶¶ 7 *et seq*., 31 *et seq*., 67 *et seq*., 80 *et seq*.

[87] The Tribunal has found that Iran has incurred compensable specific litigation expenses totaling U.S.$10,420.39 in relation to the Hoffman lawsuit. This sum is included in the amount awarded *infra* at para. 195.

[88] *See* Partial Award No. 590, paras. 132 and 214 A (d) (1), 34 IRAN-U.S. C.T.R. at 146, 167 (*see supra* para. 17).

[89] Of these 42 cases, 12 cases are distinguishable as cases where Iran claims specific litigation expenses (as opposed to claiming only general litigation expenses).

97. The United States argues that Iran has not proven that all of the United States court proceedings identified as falling within Claim D are tolling suits (a necessary pre-requisite, according to the United States). Further, the United States contends, Executive Order 12294 guaranteed that these proceedings would have no legal effect, so Iran should have been assured that its participation was not required. Thus, the United States argues, the actions that Iran took in those proceedings were unnecessary and, as such, not in the prudent defense of its interests.

(2) The Tribunal's Decision

98. Partial Award No. 590 has concluded that, by allowing the filing of suits against Iran in United States courts *after 19 January 1981* that involved claims arguably falling within the Tribunal's jurisdiction or claims that had been filed with the Tribunal, even for the limited purpose of tolling the applicable statutes of limitation, the United States has breached General Principle B. After examining all the evidence, the Tribunal concludes that 31 such lawsuits were filed after that date.[90] Those lawsuits are listed in Annex B. The Tribunal's task is now to determine, in accordance with the criteria set forth in Partial Award No. 590,[91] what compensation, if any, is due to Iran by the United States. The results of this task are set forth below.[92]

99. For illustrative purposes, the Tribunal discusses one United States court legal proceeding individually, that is, *Kianoosh Jafari et al. v. Islamic Republic of Iran*, 81-4043 (N.D. Ill.).

100. The Tribunal notes at the outset that Iran presented its claim in these Cases related to *Kianoosh Jafari et al. v. Islamic Republic of Iran* (81-4043 (N.D. Ill.) ("Jafari lawsuit") explicitly as a D-type claim.

101. On 20 July 1981, Kianoosh Jafari, an Iranian national at birth, and three of his Iranian relatives who were not United States nationals sued Iran in the United States District Court for the Northern District of Illinois ("District Court"). In the complaint, Mr. Jafari stated that he had been naturalized as a United States citizen on 17 March 1981. On 20 July and 11

[90] Of the 42 cases identified by Iran, 11 did not arguably fall within the Tribunal's jurisdiction and therefore were not subject to the General Principle B termination obligation.

[91] Partial Award No. 590. paras. 133 and 214 A (d) (2), 34 IRAN-U.S. C.T.R. at 146, 167.

[92] *See infra* para. 196.

August 1981, plaintiffs also obtained writs of attachment against real property and other assets owned by Iran. On 30 October 1981, Iran filed a motion to dismiss the case, which the District Court did on 23 April 1982.[93] On 24 June 1982, the District Court dismissed plaintiffs' request to amend the District Court's order dismissing the case.

102. Pursuant to Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal has jurisdiction over "claims of nationals" of one Government against the other.[94] Article VII, paragraph 2, of the Claims Settlement Declaration, in turn, defines "[c]laims of nationals" of Iran or the United States, as the case may be, as "claims owned continuously, from the date on which the claim arose to [19 January 1981], by nationals of that state." As noted, Kianoosh Jafari admittedly was not a national of the United States on 19 January 1981. Accordingly, the claim underlying the Jafari lawsuit was manifestly outside the Tribunal's jurisdiction. Consequently, the United States had no obligation under General Principle B to terminate (suspend[95]) the United States court litigation involving that claim. This holding, however, is not the end of the matter.

103. On 19 January 1982, Kianoosh Jafari submitted to the Tribunal the claim underlying the Jafari lawsuit, as also noted by the United States in its written pleadings. Pursuant to Article VII, paragraph 2, of the Claims Settlement Declaration, the United States was obligated to halt all legal proceedings in the Jafari lawsuit as of that date.[96] As noted, however, the District Court dismissed the Jafari lawsuit some three months later, on 23 April 1982; subsequently, on 24 June 1982, the District Court dismissed plaintiffs' request that it amend its order dismissing the case.[97] A Member of the Tribunal in his Separate Opinion has raised the question whether, by terminating the Jafari lawsuit within three months from the date the underlying claim was submitted to the Tribunal, the United States has complied with any obligation it may have had under Article VII paragraph 2, of the Claims Settlement Declaration. This, however, is not an argument that the United States has made, nor is it self-

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[93] On 19 May 1982, the District Court also quashed the writs of attachment.

[94] Article II, paragraph 1, of the Claims Settlement Declaration states, in relevant part: "[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 . . . ." Claims Settlement Declaration, art. II (1), 1 IRAN-U.S. C.T.R. at 9.

[95] *See supra* para. 44.

[96] *See supra* para. 35.

[97] On 29 February 1988, the Tribunal dismissed the claim underlying the Jafari lawsuit for want of jurisdiction. *See Kianoosh Jafari* and *Islamic Republic of Iran*, Award No. 349-420-3 (29 Feb. 1988), *reprinted in* 18 IRAN-U.S. C.T.R. 90.

evident that, had it been made, the Tribunal could have been persuaded that, in addition to the grace periods granted by our predecessors,[98] additional margins of flexibility in time ought to be added on a case-by-case basis.

104. Accordingly, the Tribunal holds that the United States is obligated to compensate Iran for the legal expenses Iran incurred in relation to the Jafari lawsuit between 19 January 1982, the date Mr. Jafari's claim was filed with the Tribunal, and 24 June 1982, the date the District Court dismissed plaintiffs' request to amend the District Court's order dismissing the case.[99]

105. With respect to the issues raised by a Member of the Tribunal in his Separate Opinion, the Majority believes that, as an initial matter, the litigation "strategies," *i.e.*, the actions taken, and the arguments submitted, by Mr. Jafari, on the one hand, and Iran, on the other, must be kept distinct. Mr. Jafari's filing, on 20 July 1981, of a lawsuit against Iran in the District Court was reasonable for a private United States citizen not familiar with the two Governments' arrangements in the Algiers Declarations, which had entered into force on 19 January 1981, six months earlier. Iran's filing, on 30 October 1981, of a motion to dismiss the case was also reasonable, nine months after the Algiers Declarations had entered into force, in response to a lawsuit brought in a United States court against it by a United States national. In its jurisdictional defense before the District Court, Iran took the position that Mr. Jafari should have presented his claim to the Tribunal; this position was legitimate albeit legally not correct in that it was based on an erroneous interpretation of Article VII, paragraphs 1 and 2, of the Claims Settlement Declaration. Mr. Jafari's ability to choose his litigation strategy was not impinged upon by Iran's jurisdictional argument: he could have elected either to stick to his initial strategy of seeking a judgment from the District Court, without bringing his claim to the Tribunal (with the attendant risk of being left without a competent forum if his claim before the District Court was dismissed for lack of jurisdiction); or to assert his claim also before the Tribunal (with the attendant risk that the District Court would act in accordance with Article VII, paragraph 2, of the Claims Settlement Declaration and the Tribunal would dismiss his claim for lack of jurisdiction).[100] Mr. Jafari chose the

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[98] *See* Partial Award No. 590, paras. 103, 176, 188, 214 A (a) (5), 214 (g) (2), 214 (h) (2), 34 IRAN-U.S. C.T.R. at 138, 156, 158-59, 166, 168.

[99] *See supra* para. 35. The Tribunal has found that Iran has incurred compensable specific litigation expenses totaling U.S.$13,267.25 in relation to the Jafari lawsuit. This sum is included in the amount awarded *infra* at para. 196.

[100] Article VII, paragraph 2, of the Claims Settlement Declaration provides, in the second sentence, that "[c]laims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be

second course of action and the risks it brought with it. In these circumstances, the argument made in the Separate Opinion that Iran, by its actions, imposed a "previously nonexistent obligation on the United States" is unpersuasive.

106. The result is objectively unfortunate yet not unusual in international civil procedure. Within the framework of a domestic system of civil procedure, there are two ways of dealing with cases such as this one. Where a litigant brings a suit in two courts of the same country and the first court decides, on the basis of the party's submissions, that it itself does not have jurisdiction but that another court does, the second court is either bound by considerations of *res judicata* or the system provides for rules that bind the second court to which the case is referred. Internationally, no such rules exist. Both the court of country A and the court of country B must make their decision, applying their governing procedural law to the facts before them and taking into consideration the arguments made by the parties. In the case of Mr. Jafari, the Algiers Declarations constituted the relevant procedural law that was applied, first, by the District Court and, subsequently, by the Tribunal. There remains the question as to whether litigants are barred from "blowing hot and cold." In many legal systems, there are principles concerning "judicial estoppel" or functional equivalents. The Tribunal had to decide whether, for purposes of dealing with the situation in the case at hand, there exists a principle prohibiting inconsistent behavior (the reverse of acting in good faith), a principle known from contract law and (very few) other areas of private law. The very fact that the law of civil procedure is generally characterized as public law and, therefore, not allowing for party autonomy, procedurally expressed by the freedom to dispose of one court's jurisdiction (derogation) in favor of another court (prorogation) – and the obvious statement that this applies *a minore ad maius* to the relationship between domestic courts and this Tribunal – shows that the parties had no influence, and could not have had any, on the application of the law by the District Court and the Tribunal. Their words and deeds were irrelevant. Turning to public international law and absent a treaty, the Tribunal would have needed to find authority for the doctrine of judicial estoppel (or similar) to have been developed in customary law. The Tribunal has found none.

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considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court." *See supra* para. 32.

c) Claim G

107. Claim G concerns the alleged breach of General Principle B by the failure of the United States to nullify attachments obtained by United States nationals against Iran in United States courts.[101]

(1) The Parties' Positions

108. The legal proceedings that are the subject of Iran's Claim G are also included by Iran in Claim A, and Iran has made limited arguments in relation to Claim G specifically. Iran provided Case IDs,[102] which include evidence of alleged attachments. A very limited number of Case IDs include submissions on the persistence of the relevant attachment. Iran did not discuss, for example, the criteria Partial Award No. 590 has imposed for determining whether attachments "were still in effect" and "actually restrained Iranian assets."[103]

109. The United States emphasizes that Iran has not proven that its assets were "actually restrained" by attachments that were in effect after 19 July 1981 and, in some cases, has failed to even show that it owned the assets in question.

110. Further, the United States argued at the Hearing that the requirement that Iran be reasonably compelled to make appearances or file documents in United States courts (Reasonably Compelled Standard[104]) applies equally to Claim G. Thus, for a breach of General Principle B by the United States to be proven, Iran must not only prove that its assets were restrained but also that the actions it took in response met that standard.

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[101] *See supra* paras. 18-19. There are seven discernible Claim G cases: *Gulf Ports Crating Co. v. Ministry of Roads and Transportation*, 80-375 (S.D. Tex.), 81-2298 (5th Cir.); *Atlantic Richfield Co. et al. v. Lavan Petroleum Co.*, 79-6714 (S.D.N.Y.); *Philadelphia National Bank, et al. v. E-Systems*, 79-105 (N.D. Tex.); *American Motors Corp. & Jeep Corp. v. Iran,* 80-2140 (D.N.J.); *McCollough & Co. v. Iran*, 80-0021 (W.D. Wash.); *National Air Motive Corp. v. Iran*, 80-0711 (D.D.C); and *National Air Motive Corp. v. Iran*, 79-3920 (N.D. Cal.).

[102] Case IDs are individual statements prepared by Iran for the purposes of the present arbitration to support its claims for litigation expenses. The Case IDs typically list, *inter alia*, relevant case-specific invoices and payment documents and include previously submitted, as well as other, documents – among others, docket sheets for the relevant United States court cases, invoices issued by United States law firms representing Iran, and documents evidencing payment of invoices.

[103] Partial Award No. 590. para. 214 A (g) (2), 34 IRAN-U.S. C.T.R. at 168.

[104] *See id.* para. 101, 34 IRAN-U.S. C.T.R. at 138. *See supra* para. 62.

(2) The Tribunal's Decision

111. The Tribunal notes at the outset that it is difficult to deal with Claim G independently of Claim A. All of the United States court proceedings that Iran has included in Claim G Iran has also included in Claim A,[105] and, as mentioned, Iran has advanced limited specific arguments that are particular to Claim G. Nevertheless, the Tribunal must address the specific standard for breach which Partial Award No. 590 has laid down for Claim G, and whether this standard has been met.

112. The Tribunal holds that, for the purposes of determining whether there has been a breach by the United States with respect to Claim G, all that Iran needs to prove is that "post-14 November 1979 attachments were still in effect and actually restrained Iranian assets in the United States after 19 July 1981," as stated in the *dispositif* of Partial Award No. 590.[106] Partial Award No. 590 did not require that Iran be reasonably compelled to make appearances or file documents in United States courts (Reasonably Compelled Standard[107]) with respect to Claim G.

113. Consequently, after examining all the evidence, the Tribunal finds that six post-14 November 1979 attachments remained in effect and actually restrained Iranian assets in the United States after 19 July 1981, in breach of the United States' obligations under General Principle B.[108] For illustrative purposes, the Tribunal deals with two examples below.

(a) *Gulf Ports Crating Co. v. Ministry of Roads and Transportation*

114. On 22 February 1980, Gulf Ports Crating Company ("Gulf Ports") sued the Iranian Ministry of Roads and Transportation in the United States District Court for the Southern District of Texas.[109] Gulf Ports also filed a claim with the Tribunal on 15 January 1982.[110] A

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[105] For example, Case IDs submitted by Iran were labeled as "Claims A & G (IDs)."

[106] Partial Award No. 590, para. 214 A (g) (2), 34 IRAN-U.S. C.T.R. at 168.

[107] *See supra* para. 62.

[108] Those attachments were at issue in the following cases: *Gulf Ports Crating Co. v. Ministry of Roads and Transportation*, 80-375 (S.D. Tex.), 81-2298 (5th Cir.); *Atlantic Richfield Co. et al. v. Lavan Petroleum Co.*, 79-6714 (S.D.N.Y.); *Philadelphia National Bank et al. v. E-Systems*, 79-105 (N.D. Tex.); *American Motors Corp. & Jeep Corp. v. Iran,* 80-2140 (D.N.J.); *McCollough & Co. v. Iran*, 80-0021 (W.D. Wash.); *National Air Motive Corp. v. Iran*, 80-0711 (D.D.C).

[109] *Gulf Ports Crating Co. v. Ministry of Roads and Transportation* 80-375 (S.D. Tex.), 81-2298 (5th Cir.).

writ of pre-judgment attachment was issued against Iranian property in Texas by the United States court on 29 February 1980. On 7 July 1981, a stay of the case was confirmed and the pre-judgment writ of attachment was quashed by the United States District Court for the Southern District of Texas, and the United States relies upon this. However, Gulf Ports appealed the stay and quashing of the attachment. The evidentiary record shows that it was not until 29 March 1982 that the United States Court of Appeals for the Fifth Circuit affirmed the order of the lower court of 7 July 1981 that quashed the attachment.

115. Thus, the Tribunal holds that the attachment in this case remained in effect and actually restrained Iranian assets in the United States between 19 July 1981 and 29 March 1982, in breach of the United States' obligations under General Principle B.

(b) *Atlantic Richfield Co. et al v. Lavan Petroleum Co.*

116. On 11 December 1979, Atlantic Richfield Company ("Atlantic Richfield") sued Lavan Petroleum Company ("Lavan") in the United States District Court for the Southern District of New York.[111] Atlantic Richfield also filed its claim with the Tribunal on 18 January 1982.[112] An order of attachment was entered by the District Court against Lavan on 12 December 1979. The United States court proceeding was transferred to a suspense docket on 15 June 1981 but the record contains no evidence that this entailed the lifting of the attachment. The United States court proceeding was closed for statistical purposes on 29 December 1982.

117. Iran argues that the relevant attachment persisted until the Tribunal claim was settled in 1992. The Tribunal does not find that there is sufficient evidence to support this conclusion. However, the evidence does support a finding that the attachment was in place at least until 29 December 1982. Therefore, the attachment in this proceeding was in effect and actually restrained Iranian assets in the United States, in breach of the United States' obligations under General Principle B nonetheless.

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[110] *See Gulf Ports Crating Co.* and *Ministry of Roads and Transportation of the Islamic Republic of Iran*, Award No. 28-307-3 (9 Mar. 1983), *reprinted in* 2 IRAN-U.S. C.T.R. 126.

[111] *Atlantic Richfield Co. et al. v. Lavan Petroleum Co.*, 79-6714 (S.D.N.Y.). Lavan was alleged to be majority-owned by Iran.

[112] *See Atlantic Richfield Co.* and *Islamic Republic of Iran et al.*, Interim Award No. ITM 50-396-1 (8 May 1985), *reprinted in* 8 IRAN-U.S. C.T.R. 179; *Atlantic Richfield Co.* and *Islamic Republic of Iran et al.*, Award No. 538-396-1 (19 Oct. 1992), *reprinted in* 28 IRAN-U.S. C.T.R. 401.

d) Claim H

118. In Claim H, Iran asserts that the United States has breached General Principle B by failing to nullify judgments obtained by United States nationals against Iran that are based on claims that are within the Tribunal's jurisdiction.[113]

(1) The Parties' Contentions

119. At the Hearing, the United States pointed to the statement in Partial Award No. 590 that "[t]he resolution of Claim H, then, is similar to that of Claim A, because the judgments at issue in Claim H have no status independent of the claims at issue in Claim A."[114] Relying on this statement in the Partial Award, the United States argued that the requirement that Iran be reasonably compelled to make appearances or file documents in United States courts (Reasonably Compelled Standard[115]) applies equally to Claim H.

120. Similar to Claim G, rather than making general arguments about Claim H, Iran submitted factual evidence. There are four cases at issue under Claim H.[116]

(2) The Tribunal's Decision

121. In Claim H, Partial Award No. 590 has held that the United States is obligated to nullify "only those United States court judgments obtained by United States nationals against Iran that are based on claims that are within the Tribunal's jurisdiction."[117] Partial Award No. 590 noted that the resolution of Claim H is similar to that of Claim A "because the judgments at issue in Claim H have no status independent of the claims at issue in Claim A";[118] it then went on to hold that, "[p]ursuant to the Tribunal's conclusions in Claim A,[119]

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[113] *See supra* paras. 20-21.

[114] Partial Award No. 590 para. 187, 34 IRAN-U.S. C.T.R. at 158.

[115] *See supra* para. 62.

[116] Of these four cases, two cases are distinguishable as cases where Iran claims specific litigation expenses (as opposed to claiming only general litigation expenses).

[117] Partial Award No. 590, para. 214 A (h) (1), 34 IRAN-U.S. C.T.R. at 168.

[118] *Id.* para. 187, 34 IRAN-U.S. C.T.R. at 158.

[119] In Claim A, with respect to the United States' obligation to terminate *claims*, Partial Award No. 590 has held:

> General Principle B obliges the United States to terminate only claims by United States nationals against Iran in United States courts that fall within the Tribunal's jurisdiction. This termination obligation accrues once the Tribunal has decided a claim on the merits.

Id. para. 214 A (a) (1), 34 IRAN-U.S. C.T.R. at 165.

therefore, the United States is obliged to nullify only those judgments that are based on claims that the Tribunal decides on the merits."[120] Partial Award No. 590, further, has held that the United States' obligation to nullify judgments accrued on 19 July 1981.[121]

122. The Tribunal in Partial Award No. 590 deemed that failure to nullify a relevant judgment by that date alone did not constitute a breach by the United States of its obligations under General Principle B. The Tribunal apparently deemed it appropriate to additionally impose an element of damages as a further requirement of breach when it enquired whether Iran "reasonably incurred legal expenses in relation to any such judgments."[122] At this stage, the Tribunal is bound by this holding.

123. Thus, Partial Award No. 590 specifically requires that, for a breach to be established in Claim H, Iran must "reasonably incur[] legal expenses" in relation to relevant judgments ("Reasonably Incurred Standard"). The United States has argued that, rather than the Reasonably Incurred Standard, the Reasonably Compelled Standard should apply in determining whether a United States breach has occurred. The Tribunal will not depart from the language of Partial Award No. 590, which applies the Reasonably Incurred Standard.[123]

124. This, however, is not the end of the matter. In the Tribunal's view, it would be unreasonable to require that the United States nullify judgments based on claims with respect to which it was unknown whether the Tribunal would ultimately exercise jurisdiction. On the other hand, the Tribunal recognizes that court judgments based on claims within the Tribunal's jurisdiction, if those judgments could still be executed after 19 July 1981, would have represented an ongoing threat to Iran's position that was inconsistent with the purpose of the United States' obligations under the Algiers Declarations concerning nullification of judgments – that is, to shield Iran from the execution of United States court judgments based on claims over which the Tribunal had exclusive jurisdiction. As Partial Award No. 590 has noted, the United States chose to implement its obligations under, *inter alia*, Article VII,

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[120] *Id.* para. 187, 34 IRAN-U.S. C.T.R. at 158.

[121] *See id.* para. 214 A (h) (1), 34 IRAN-U.S. C.T.R. at 168.

[122] *Id.* para. 214 A (h) (2), 34 IRAN-U.S. C.T.R. at 168.

[123] As noted (*see supra* note 66), the Tribunal deems the language in paragraph 188 of Partial Award No. 590 regarding Claim H specifically to be determinative, as opposed to the language in paragraph 101 of Partial Award No. 590, which is referred to somewhat ambiguously in paragraph 188.

paragraph 2, of the Claims Settlement Declaration,[124] "through Executive Order 12294 – that is, by suspending the judgments and declaring them to be without legal effect during the period of suspension."[125] The Tribunal agrees that this was an appropriate mechanism in the circumstances. Accordingly, the Tribunal holds that it was consistent with the Algiers Declarations for the United States to suspend judgments against Iran until such time as the Tribunal either dismissed the underlying claim for lack of jurisdiction or decided it on the merits;[126] if, however, Iran "reasonably incurred legal expenses"[127] in relation to any such suspended judgments after 19 July 1981, then the United States would have breached its obligations under the Algiers Declarations (Reasonably Incurred Standard).

125. The Tribunal has examined the four cases that Iran has identified as falling under Claim H[128] and the Parties' arguments with respect thereto (to the extent that they are distinct from arguments advanced under Claim A). The Tribunal finds that two of the four cases falling under Claim H entailed judgments that remained in existence after 19 July 1981 and in relation to which Iran "reasonably incurred legal expenses" and deals with these two cases in turn below.[129]

(a) *Dames & Moore v. Atomic Energy Organization of Iran et al.*

126. On 19 December 1979, Dames & Moore sued the Atomic Energy Organization of Iran ("AEOI"), Iran, and certain Iranian entities in the United States District Court for the Central District of California.[130] Dames & Moore's claim against the AEOI ("Dames &

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[124] In Partial Award No. 590, the Tribunal has held that, "until the Tribunal determines its jurisdiction with respect to a filed claim, Article VII, paragraph 2, of the Claims Settlement Declaration places on the United States an obligation to halt proceedings in its courts with respect to that claim." Partial Award No. 590, para. 83, 34 IRAN-U.S. C.T.R. at 132-33 (*see supra* paras. 15 and 32).

[125] Partial Award No. 590, para. 187, 34 IRAN-U.S. C.T.R. at 158.

[126] The Tribunal's decision of a claim on the merits triggered the United States' obligation to nullify the related judgment against Iran. *See supra* para. 121.

[127] *See* Partial Award No. 590, para. 214 A (h) (2), 34 IRAN-U.S. C.T.R. at 168.

[128] *Dames & Moore v. Atomic Energy Organization of Iran et al.*, 79-4918 (C.D. Cal.); *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran*, 79-21884 (Sup. Ct. N.Y.); *American Int'l Group et al. v. Iran*, 79-6696 (S.D.N.Y.); *Commonwealth of Puerto Rico et al. v. Star Lines of Iran et al.*, 77-1093 (D.P.R.).

[129] The Tribunal notes that these two cases were those where specific litigation expenses were claimed, as opposed to those where general litigation expenses were claimed (*see supra* note 116). The Tribunal has been unable to usefully apply the Reasonably Incurred Standard to the two cases where general litigation expenses were claimed, as no detail of the work carried out was specified.

[130] *Dames & Moore v. Atomic Energy Organization of Iran et al.*, 79-4918 (C.D. Cal.).

Moore lawsuit") was based on a 1977 contract with the AEOI.[131] On 11 June 1981, the United States Supreme Court granted certiorari for Dames & Moore to challenge the constitutionality and validity of the United States President's actions in implementing the Algiers Declarations. This resulted in the *Dames & Moore v. Regan* proceedings, in which the United States Supreme Court, on 2 July 1981, rendered an opinion sustaining the United States President's actions.[132]

127. Dames & Moore submitted to the Tribunal the claim against the AEOI underlying the Dames & Moore lawsuit.

(i) The Parties' Contentions

128. Iran asserts that the District Court issued summary judgment against it in the Dames & Moore lawsuit on 18 February 1981 in the amount of U.S.$3,788,930 and that that judgment remained in existence in breach of General Principle B. The United States argues that the legal expenses that Iran claims in respect of this case were not "reasonably incurred in relation to" the 18 February 1981 judgment by the District Court but rather in relation to the proceedings before the United States Supreme Court (and therefore were not compensable under Partial Award No. 590[133]) or other matters such as the arbitration of the parallel Tribunal case involving the underlying claim.[134] Iran rejoins that the docket sheet clearly shows that there was court activity in the Dames & Moore lawsuit before the District Court rather than before the Supreme Court of the United States.

129. The United States asserts that there is only one instance of Iran's participation that could "plausibly be related" to the 18 February 1981 judgment of the District Court, but that that action was unnecessary. Further, the expenses claimed were not "reasonably incurred" because that judgment was effectively suspended by an order of the District Court on 28 May 1981.

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[131] *See also infra* note 173.

[132] *See Dames & Moore v. Regan et al.* 453 U.S. 654 (1981).

[133] Under Partial Award No. 590, the Tribunal will not award Iran any damages related to, or arising from, Iran's participation in cases concerning the validity and constitutionality of the Algiers Declarations under United States law. *See* Partial Award No. 590, para. 103, 34 IRAN-U.S. C.T.R. at 138.

[134] *See Dames & Moore* and *Islamic Republic of Iran et al.*, Award No. 97-54-3 (20 Dec. 1983), *reprinted in* 4 IRAN-U.S. C.T.R. 212.

(ii) The Tribunal's Decision

130. The Tribunal finds that, based on the evidence presented, particularly the United States court docket sheet, the execution of the judgment of 18 February 1981 issued in the Dames & Moore lawsuit was *stayed* by a court order dated 28 May 1981. One cannot find, in this situation, that the judgment was not "in existence," which is the test under Partial Award No. 590.

131. However, for a breach to be established in connection with Claim H, Iran was also required to show that it "reasonably incurred legal expenses" in relation to that judgment. For the same reasons applied in determining whether Iran was reasonably compelled to make appearances or file documents in United States courts[135] (Reasonably Compelled Standard[136]), the Tribunal holds that Iran's expenses related to the judgment of 18 February 1981 in the Dames & Moore lawsuit were reasonably incurred.

(b) *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran*

132. The facts of *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran*[137] ("Marriott lawsuit") are rather complex. In November 1979, Marriott Corporation ("Marriott") filed a suit in the Supreme Court of the State of New York ("Supreme Court") against the law firm Rogers & Wells for the firm's failure to release to Marriott U.S.$50,000 that the firm held in escrow pursuant to a 27 December 1977 escrow agreement among Marriott, the Pahlavi Foundation of Iran (which was succeeded by the Alavi Foundation of Iran) (collectively, the "Foundation"), and Rogers & Wells ("Escrow Agreement"). In the Escrow Agreement, Marriott and the Foundation had authorized Rogers & Wells "to collect on behalf of Marriott," in accordance with a 13 December 1977 agreement between Marriott and the Foundation ("13 December 1977 Agreement"), "the amount of $50,000 which the Foundation [was] obligated to pay thereunder." Rogers & Wells would release the $50,000 to Marriott, upon notice from Marriott and the Foundation,

[135] *See supra* paras. 74-79.

[136] *See supra* para. 62.

[137] *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran*, 79-21884 (Sup. Ct. N.Y.).

if Marriott performed certain obligations pursuant to the 13 December 1977 Agreement.[138] In the Marriott lawsuit, Marriott asserted that it had satisfied all the terms of 13 December 1977 Agreement and was entitled to receive the funds.

133. On 21 November 1979, defendant Rogers & Wells requested permission from the Supreme Court to bring the Foundation into the case as a defendant. Because Rogers & Wells believed that the Foundation was an instrumentality of Iran and that, therefore, pursuant to Executive Order 12170 of 14 November 1979,[139] Rogers & Wells was precluded from releasing the U.S.$50,000 in escrow to either Marriott or the Foundation, Rogers & Wells requested that the court allow it to pay that sum "into court." Marriott, for its part, on 4 December 1979 moved for summary judgment against Rogers & Wells. On 13 February 1980, the Supreme Court (i) held that issues of fact existed as to whether the conditions for the release of the escrow funds to Marriott pursuant to the Escrow Agreement had been complied with; (ii) denied, as a result, Marriott's motion for summary judgment; and (iii) granted the request by Rogers & Wells to serve a complaint on the Foundation and to deposit the U.S.$50,000 into a blocked account. The funds were subsequently paid into an escrow account with an American bank. Marriott unsuccessfully moved the Supreme Court for reconsideration of its decision. From the record it is not clear whether the Foundation was properly served.

134. Marriott subsequently appealed from the Supreme Court's 13 February 1980 decision. On 13 March 1981, the United States filed a statement of interest requesting that the appellate

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[138] On 13 December 1977, Marriott and the Pahlavi Foundation of Iran entered into an agreement pursuant to which Marriott undertook to provide certain services in connection with the construction of a hotel in Iran. The Foundation, for its part, undertook to pay Marriott U.S.$1,200,000 for work done, of which U.S.$1,150,000 was to be paid to Marriott upon execution of the 13 December 1977 Agreement, and U.S.$50,000 was to be placed in escrow, to be paid to Marriott upon the satisfactory performance of its obligations under Paragraph 6 of the 13 December 1977 Agreement. Paragraph 6 of that Agreement, in turn, provided:

> Marriott will correct or cause to be corrected, at no additional cost to [the Foundation], any errors or omissions in the plans and specifications prepared pursuant to the Design Agreement which have been delivered to [the Foundation], or any omitted items required under . . . the Design Agreement . . . if written notice of such errors and omissions is given by [the Foundation] to Marriott within one hundred and fifty (150) days from the date of this agreement.

Pursuant to the 27 December 1977 Escrow Agreement, Rogers & Wells was to release the U.S.$50,000 in escrow to Marriott, upon notice from Marriott and the Foundation, if Marriott had performed its obligations pursuant to Paragraph 6 of the 13 December 1977 Agreement.

[139] Executive Order No.12170, issued by the President of the United States on 14 November 1979, blocked "all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States."

court stay the state court litigation. On 28 April 1981, the appellate court reversed the Supreme Court's 13 February 1980 decision. In so doing, it held that Marriott was entitled to delivery of the U.S.$50,000 in escrow, and it rejected the United States' request that all state court proceedings be stayed. As a result, on 5 May 1981, the Supreme Court ordered that Rogers & Wells release the U.S.$50,000 in escrow and pay it to Marriott ("5 May 1981 Order"), which Rogers & Wells did on 5 June 1981. The Foundation subsequently moved the Supreme Court to vacate its 5 May 1981 Order and, on 8 July 1981, the United States filed a second statement of interest in support of the Foundation's motion. The Supreme Court dismissed the Foundation's motion to vacate on 17 December 1981. The Foundation appealed. The Court of Appeals of the State of New York, the State's highest court, dismissed the Foundation's appeal in December 1983.

135. Marriott did not submit to the Tribunal a claim against the Foundation based on the 13 December 1977 Agreement.

(i) The Parties' Contentions

136. Iran argues that the 5 May 1981 Order breached General Principle B. The United States argues that neither this order, nor the proceedings generally, were "against Iran," as required by General Principle B, because Iran was joined to these proceedings by way of interpleading, and the judgment in question was in fact against Rogers & Wells. Thus, the United States says, there was no obligation to nullify the 5 May 1981 Order under General Principle B. The United States further argues that it is not clear that either the Pahlavi Foundation of Iran or the Alavi Foundation of Iran were in fact Iranian entities, which is further reason to question whether the judgment was "against Iran."

(ii) The Tribunal's Decision

137. The 5 May 1981 Order of the Supreme Court was against Rogers & Wells rather than Iran. The Supreme Court, however, had granted Rogers & Wells permission to serve an interpleader summons and complaint on the Foundation, which thus became a party to the case. The Foundation became a party because the applicable procedural law made it a party, and it was affected by the outcome of the proceeding as though it had been a defendant from the outset (which, indeed, is functionally the objective of interpleader and similar procedural institutions designed to rationalize a judicial system's resources). The Foundation subsequently moved the Supreme Court to vacate the 5 May 1981 Order, and, after the

Supreme Court dismissed its motion, the Foundation appealed to the Court of Appeals of the State of New York. The United States itself, in a statement of interest filed in support of the Foundation's appeal, stated, *inter alia*, that Iran had an interest in the U.S.$50,000 and requested that the court vacate that order and direct Marriott to restore that escrow amount to Rogers & Wells.

138. The issue before the Tribunal is whether the 5 May 1981 Order, which remained in existence after 19 July 1981, represents a judgment that the United States had an obligation to nullify – or, at least, suspend – pursuant to General Principle B. As noted,[140] General Principle B requires that the United States nullify "only those United States court judgments obtained by United States nationals against Iran that are based on claims that are within the Tribunal's jurisdiction."[141] The question thus becomes whether the claim underlying the Marriott lawsuit, to the extent that it involved the Foundation as a defendant, was within the Tribunal's jurisdiction. Because Marriott did not submit that claim to the Tribunal, the Tribunal did not have occasion to determine whether it was within its jurisdiction. The Tribunal will therefore make that determination in the context of the present proceeding.

139. After reviewing the evidence, the Tribunal concludes that the claim underlying the Marriott lawsuit, to the extent it involved the Foundation as a defendant, was a claim described in Article II, paragraph 1, of the Claims Settlement Declaration[142] because it was a "claim[] of [a] national[] of the United States against Iran"[143] that was "outstanding" on 19

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[140] *See supra* para. 121.

[141] Partial Award No. 590, para. 214 A (h) (1), 34 IRAN-U.S. C.T.R. at 168.

[142] Article II, paragraph 1, of the Claims Settlement Declaration provides in relevant part:

> [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 . . . if such claims . . . are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts . . . expropriations or other measures affecting property rights . . . .

Claims Settlement Declaration, art. II (1), 1 IRAN-U.S. C.T.R. at 9.

[143] The Pahlavi Foundation of Iran ("Pahlavi Foundation"), from its inception, was controlled by the former Shah of Iran with the assistance of members of his Government. *See Hyatt Int'l Corp. et al.* and *Islamic Republic of Iran et al.*, Interlocutory Award No. ITL 54-134-1 (17 Sept. 1985), *reprinted in* 9 IRAN-U.S. C.T.R. 72, 95. Pursuant to a Decree by Imam Khomeini of 28 February 1979, "all movable and immovable properties of the Pahlavi Dynasty, its branches, agents and affiliates" were confiscated by the new Iranian Government. The Pahlavi Foundation and its properties fell within the ambit of that Decree; it was at this time that the name of the Pahlavi Foundation was changed to Alavi Foundation of Iran ("Alavi Foundation"). *See id.* 9 Iran-U.S. C.T.R. at 95. The Tribunal has held that the Alavi Foundation has been an entity controlled by the Government of Iran at least since the Decree of the Imam of 28 February 1979. *See id.* 9 Iran-U.S. C.T.R. at 96. In light of the above, at all relevant times, both the Pahlavi Foundation and the Alavi Foundation fell within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration.

January 1981 and that arose "out of . . . contracts," namely, the 13 December 1977 agreement between Marriott and the Foundation.[144] Accordingly, the 5 May 1981 Order was based on a claim that was within the Tribunal's jurisdiction. Consequently, the United States was obliged under General Principle B to nullify – or, at least, suspend – that Order by 19 July 1981.

140. With respect to whether Iran has proven that its legal expenses in relation to the 5 May 1981 Order were "reasonably incurred," the Tribunal's conclusion reached for *Dames & Moore v. Atomic Energy Organization of Iran* above is equally applicable here.[145] Thus, the Tribunal finds that the United States has breached its obligations under the General Declarations concerning the nullification of the 5 May 1981 Order.[146]

e) Case No. A24

141. No submissions on Case No. A24 were made by Iran in its written pleadings in this phase of these Cases or at the Hearing. The United States asserts that Iran has abandoned the claim under Case No. A24.

142. It appears that Iran has claimed the costs relating to the Foremost/OPIC litigation (which underlies Case No. A24) as losses falling under Claim D. The Tribunal has therefore dealt with them accordingly.

4. Compensable Expenses

a) Expenses Claimed by Iran

143. Iran seeks a total of U.S.$1,731,210.24 in these Cases. This amount includes (1) U.S.$620,352.91, which represents the total expenses that Iran allegedly incurred in litigating specific United States court cases ("specific litigation expenses"); and (2) U.S.$1,110,857.33 in "general litigation expenses," which Iran defines as litigation expenses it paid to its United States attorneys that cannot be allocated to specific cases. In the "general litigation expenses," Iran includes (i) "costs of U.S. court participation"; (ii) the expenses Iran

[144] *See supra* note 138.

[145] *See supra* para. 131.

[146] The Tribunal has found that Iran has incurred compensable specific litigation expenses totaling U.S.$6,912.94 in relation to the Marriott lawsuit; this sum is included in the amount awarded *infra* at para. 204. The Tribunal has further found that Iran has incurred expenses resulting from "further monitoring activities" (*see infra* para. 240) totaling U.S.$1,087.87; this sum is included in the amount awarded *infra* at para. 241.

allegedly incurred in monitoring relevant claims pending against it in United States courts ("monitoring expenses"); and (iii) U.S.$250,000 allegedly representing "in-house attorney charges and administrative costs" incurred by Iran's Bureau of International Legal Services ("B.I.L.S.") in supervising the work of Iran's United States attorneys.

b) Evidence: General Matters

144. The Tribunal briefly addresses here some general matters pertaining to evidence. The Tribunal notes that the Parties appear to agree on several evidentiary matters. Both Iran and the United States accept, for example, that Partial Award No. 590 has particularized the standard of proof through its various statements as to the type of evidence that it expects Iran to provide.[147] Both Parties also appear to accept that the more general evidentiary standards of "preponderance of the evidence"[148] and "more likely than not" apply. The Tribunal therefore deals here only with remaining points of difference.

(1) Burden and Standard of Proof

(a) The Parties' Contentions

145. Iran submits that the Tribunal should apply an international law standard of proof, and that historically, the Tribunal has been flexible in its approach to standard and burden of proof.[149] This flexibility, Iran says, may include a shift in the burden of proof to the respondent, if the claimant has proven its damages to a *prima facie* standard.

146. The United States emphasizes that it is Iran that must carry the burden of proof. The United States disputes the assertion that a *prima facie*, or any other relaxed evidentiary standard, might be applicable in these Cases. The Tribunal has only applied the *prima facie* standard in cases where there was "extreme difficulty" for a claimant in producing evidence, which difficulty is not present in these Cases.[150] The Tribunal awards relied upon by Iran do

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[147] *See, e.g.*, Partial Award No. 590, para. 102, 34 IRAN-U.S. C.T.R. at 138.

[148] The Tribunal notes that the United States did also assert that, in some instances, in assessing damages, the Tribunal has applied a higher standard than the "preponderance of the evidence" standard.

[149] Iran points to, *inter alia*, *Uiterwyck Corp. et al.* and *Islamic Republic of Iran et al.*, Award No. 375-381-1 (6 July 1988), *reprinted in* 19 IRAN-U.S. C.T.R. 107.

[150] In this regard, the United States points to, *inter alia*, *Rockwell International Systems, Inc.* and *Islamic Republic of Iran*, Award No. 438-430-1 (5 Sept. 1989), *reprinted in* 23 IRAN-U.S. C.T.R. 150.

not support the application of a *prima facie* standard. According to the United States, the proper standard of proof for damages is an international law one.

(b) The Tribunal's Decision

147. Partial Award No. 590 is very clear that the burden of proof rests with Iran in this phase of the proceedings. The Tribunal sees no justification for a shift in the burden of proof.[151]

148. The particularization of the standard of proof in Partial Award No. 590[152] largely obviates the need to consider more general evidentiary standards, although, as noted, the Parties appear to accept to an extent a "preponderance of the evidence" standard.[153]

(2) Shack & Kimball Evidence

(a) The Parties' Contentions

149. A large portion of Iran's claim in these Cases is for litigation expenses related to services provided by the law firm Shack & Kimball,[154] which acted as Iran's general counsel in the United States from February 1979 through early 1983, and rests upon evidence originating from Shack & Kimball or its principal, Mr. Thomas Shack. Key pieces of evidence in this regard are:

(a) a settlement agreement of 15 May 1992 entered into by Mr. Thomas Shack and Shack & Kimball, on the one hand, and Iran, the Ministry of Economic Affairs and Finance of the Islamic Republic of Iran and the Organization for

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[151] None of the circumstances are present here that have subsisted in earlier Tribunal cases where a shift in the burden of proof has occurred (*see, e.g.*, *Rockwell International Systems, Inc.* and *Islamic Republic of Iran*, Award No. 438-430-1, para. 109 (5 Sept. 1989), *reprinted in* 23 IRAN-U.S. C.T.R. 150, 178; *R.J. Reynolds Tobacco Co.* and *Islamic Republic of Iran et al.*, Award No. 145-35-3 (6 Aug. 1984), *reprinted in* 7 IRAN-U.S. C.T.R. 181, 190-91).

[152] *See, e.g.*, Partial Award No. 590, para. 102, 34 IRAN-U.S. C.T.R. at 138.

[153] The Tribunal notes in this connection that Principle 21.2 of the American Law Institute (ALI)/International Institute for the Unification of Private Law (UNIDROIT) Principles of Transnational Civil Procedure provides that "[f]acts are considered proven when the court is reasonably convinced of their truth." ALI/UNIDROIT Principles of International Civil Procedure, Principle 21.2, adopted by the ALI and UNIDROIT, May 2004/Apr. 2004, *reprinted in* ALI/UNIDROIT Principles of International Civil Procedure (with Commentary) 16, 42 (Cambridge University Press 2006). This standard of "reasonably convinced" is "in substance that applied in most legal systems[;] [t]he standard in the United States and some other countries is 'preponderance of the evidence' but functionally that is essentially the same." *Id.* comment P-21B.

[154] That portion amounts to U.S.$935,776.80 out of Iran's total claim in these Cases of U.S.$1,731,210.24 (with interest).

Investment and Economic and Technical Assistance of Iran (a branch of the aforementioned Ministry), on the other ("Settlement Agreement"), pertaining to litigation which Iran had instituted against Shack & Kimball "for breach of contract and fiduciary duties and an accounting and return of certain legal fees paid in connection with the conduct of certain litigations." It appears that owing to non-payment of fees, Mr. Shack had retained part of a damages award in litigation where Shack & Kimball was representing Iran, and litigation against Mr. Shack followed. An Annex to the Settlement Agreement, designated "Exhibit C," includes (i) a list of "fees and expenses that were due from [Iran] for legal services provided [by Shack & Kimball and Mr. Shack] to the Government and its agencies during the period from June 1982 to March 1983" and that were withheld from the amount recovered in the above-mentioned litigation, and (ii) individual statements that Shack & Kimball and Mr. Shack agreed to provide pursuant to Section 3 of the Settlement Agreement;

(b) a letter from Mr. Shack of 18 August 2000 listing Shack & Kimball billings from July 1981 to May 1982, accompanied by a statement that these amounts (which total U.S.$1,039,945.43) had been paid in full;

(c) a letter from Mr. Shack of 20 February 2001, stating that, "of the total amount of $1,039,945.40, 70%, i.e. $727,961.80, was related to matters involved in the 'suspended litigation'";

(d) a letter from Mr. Shack of 10 December 2003 listing Shack & Kimball billings from July 1981 to May 1982 and asserted receipts of the amounts billed in the amount of U.S.$1,039,945.43; and

(e) an affidavit of 2 April 2004 ("2004 Shack Affidavit"), wherein Mr. Shack states, *inter alia*

> It is my opinion that Iran's total charges for the period of July 1981 to May 1982 and as reduced by 30% would continue as a valid estimate at $727,962 for the cases subject to claims A, D, G, and H. In this calculation I have excluded the legal fees and costs relating to cases subject of the claims dismissed by the Tribunal in Partial Award or settled by the parties.

(collectively, "Shack & Kimball Evidence").

150. The United States argues that this evidence is unreliable for several reasons, *inter alia*, because:

(a) it is unsupported by primary documentation such as billing invoices or accounting records.[155] The 2004 Shack affidavit indicates that he has relied upon "accounting records" but he has not produced these documents. Contemporaneous court dockets provided by Iran are no replacement for contemporaneous billing documents; and

(b) Mr. Shack's credibility is in question because of the dispute and litigation between Iran and Mr. Shack which preceded the Settlement Agreement.[156]

151. Iran argues that the Shack & Kimball Evidence is buttressed by the contemporaneous court dockets that it has supplied, which clearly show that Mr. Shack and his law firm were carrying out a substantial amount of work. Mr. Shack's credibility, Iran says, cannot be impugned, and any uncertainties that arise from his testimony or evidence are due to the effluence of time.

152. At the Hearing, counsel for Iran stated that Shack & Kimball invoices and billing records in Iran's possession had been "inadvertently destroyed" after having been sent from the Pakistani embassy in Washington to the Ministry of Foreign Affairs in Tehran where they were supposed to have been stored in a warehouse.

(b) The Tribunal's Decision

153. The Tribunal finds the absence of primary documentation, such as accounting and billing records, to support the Shack & Kimball Evidence (in particular the Settlement Agreement) problematic.

154. It is undisputed that, at a certain point, the Shack & Kimball invoices and billing documents were in the possession of, or at least available to, Iran. However, at the Hearing,

[155] This argument applies to the Settlement Agreement (which contains a clause requiring Mr. Shack to provide "every remaining accounting document in its possession") as well as the other Shack & Kimball Evidence.

[156] *See supra* para. 149.

Mr. Shack stated that he never turned all of the "billing statements" over to Iran because "[w]e were never requested to do [so]."

155. Mr. Shack states in the 2004 Shack Affidavit that he has relied upon accounting records in calculating legal expenses. Neither Mr. Shack nor Iran submitted these accounting records to the Tribunal.

156. Iran presented its Statement of Claim in Case No. A15 (IV) on 25 October 1982. Thus, at least as early as 1982, Iran was aware that it required evidence to substantiate its claim in these Cases. Iran therefore should have secured the relevant invoices and billing records and made them available so that the Respondent and the Tribunal might have been in a better position to verify the accuracy of Mr. Shack's statements. While the Tribunal may take into account difficulties in the production of evidence, in this instance, the destruction (or loss) of the invoices and billing records lies with Iran. In addition, Mr. Shack, Iran's witness, possesses (or recently possessed) relevant accounting and billing records. Iran has not explained why it never asked him to turn them over to it so they could be submitted to the Tribunal. In this connection, it should be noted that Section 3 of the 1992 Settlement Agreement provides that, "[u]pon dismissal of the litigation, [Shack and Kimball] and [Thomas Shack] will provide every remaining accounting document in its possession which underlies the individual statements [of Shack & Kimball charges owed for legal services rendered], including computer print outs, spread sheet compilation, and summary analysis." The Tribunal will take into account all these circumstances, where appropriate, in determining any compensation to be awarded Iran for services rendered by Shack & Kimball.

c) Exclusions from Compensable Expenses Asserted by the United States

157. The United States contends that Partial Award No. 590 excludes multiple United States court proceedings from the scope of the United States' termination of litigation obligation under the Algiers Declarations – namely: (1) claims that did not "arguably fall within the Tribunal's jurisdiction";[157] (2) claims related to the enforceability of Iranian forum selection clauses; (3) claims that had already been settled by the United States and Iran as part of other disputes; and (4) United States court litigation during the six-month period following the signing of the Algiers Declarations or regarding the validity or constitutionality

[157] Partial Award No. 590, paras. 89 and 214 A (a) (2), 34 IRAN-U.S. C.T.R. at 135, 165-66.

of the Algiers Declarations under United States law. According to the United States, Partial Award No. 590 thus precludes Iran from recovering litigation expenses it incurred in such proceedings. The Tribunal addresses these four asserted exclusions from compensable expenses in turn.

(1) Claims that did not "arguably fall within the Tribunal's jurisdiction"

158. Iran seeks compensation for litigation expenses it incurred in relation to 179 claims pending in United States courts. Out of those claims, 155 were also filed with the Tribunal. Accordingly, as the Tribunal has held, pursuant to Article VII, paragraph 2, the United States was obligated to halt proceedings in its courts with respect to those 155 claims until such time as the Tribunal determined that a particular claim was outside its jurisdiction.[158]

159. Out of the 24 claims pending in United States courts that had not been filed with the Tribunal, the Tribunal has held that 13 claims did not arguably fall within the Tribunal's jurisdiction.[159] Consequently, the United States had no obligation under the Algiers Declarations to terminate (suspend[160]) litigation involving those 13 claims.

(2) Claims related to the enforceability of forum selection clauses (Claim B in Case No. A15 (IV))

160. Article II, paragraph 1, of the Claims Settlement Declaration ("Article II, paragraph 1") excludes from the Tribunal's jurisdiction "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."[161]

161. In part B of its Statement of Claim in Case No. A15 (IV) ("Claim B"), Iran asserted that the United States had breached the Algiers Declarations by suspending, rather than

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[158] *See supra* para. 35.

[159] These claims are: *William A. Gallegos v. Iran et al.*, 81-5482 (C.D. Cal.); *Alan B. Golacinski et al. v. Iran et al.*, 81-5109 (C.D. Cal.); *Charles Jones Jr. v. Iran et al.*, 81-5274 (C.D. Cal.); *Steven M. Lauterbach et al. v. Iran et al.*, 81-0350 (D.D.C.); *John D. McKeel Jr. et al. v. Iran et al.*, 81-0931 (C.D. Cal.); *Gregory Allen Persinger et al. v. Iran*, 81-0230 (D.D.C.); *Susan Roeder v. Iran et al.*, 81-5410 (C.D. Cal.); *Elizabeth Kelly Scott v. Iran et al.*, 81-5108 (C.D. Cal.); *Westly Williams et al. v. Iran et al.*,79-3295 (D.D.C.); *Margot Berkovitz v. Iran*, 80-0097 (N.D. Cal.) *Wendel T. Reed v. Iran et al.*, 79-006 (D. Tex.); *David R. Webb Co. v. Bank Sepah Iran*, 81-6433 (S.D.N.Y.); *McDonnell Douglas Corp. v. Iran et al.*, 82-2096 (E.D. Miss.). *See supra* para. 47.

[160] *See supra* para. 44.

[161] Claims Settlement Declaration, art. II (1), 1 IRAN-U.S. C.T.R. at 9.

terminating, litigation involving claims arising from contracts with forum selection clauses in favor of Iranian courts. In Partial Award No. 590, the Tribunal dismissed Iran's Claim B, stating:

> The Tribunal has no jurisdiction to determine the enforceability of forum selection clauses; that question is for national courts, not the Tribunal, to decide. Consequently the Tribunal is unable to hold that the failure of the United States to terminate litigation with respect to claims that the Tribunal dismissed because of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration violated any obligation imposed on the United States by the Algiers Declarations.[162]

Thus, the Tribunal's holding in Claim B made clear that the Algiers Declarations did not preclude a United States court from determining the enforceability of an Iranian forum selection clause once the Tribunal had dismissed the related claim due to the forum clause exclusion contained in Article II, paragraph 1.[163]

162. That holding, however, does not mean that the United States was relieved of its obligation to halt litigation wherever the underlying claim involved a contract containing an

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[162] Partial Award No. 590, para. 125, 34 IRAN-U.S. C.T.R. at 144. The Tribunal described the question at issue in Claim B as follows:

> The remaining issue is whether the United States has breached the Algiers Declarations by allowing cases that the Tribunal had found to be excluded from its jurisdiction by the type of Iranian forum selection clause referred to in the exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration to be revived in United States courts subsequent to the dismissal of the claim by the Tribunal for lack of jurisdiction.

Id. para. 117, 34 IRAN-U.S. C.T.R. at 142.

[163] It was not always clear whether a choice-of-forum contract clause that opted for Iranian courts fell within the forum clause exclusion contained in Article II, paragraph 1 ("Article II forum clause exclusion"), thereby depriving the Tribunal of jurisdiction over the claims arising out of those contracts. Thus, it was not unreasonable for United States claimants to assert contractual claims against Iran despite the inclusion of such clauses in the relevant contracts. Indeed, in 1982, the Full Tribunal confirmed in nine interlocutory awards that not all types of Iranian forum selection clauses fell within the Article II forum clause exclusion. *See Gibbs and Hill, Inc.* and *Iran Power Generation and Transmission Co. (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; *Halliburton Co. et al.* and *Doreen/IMCO et al.*, Interlocutory Award No. ITL 2-51-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 242; *Howard, Needles, Tammen and Bergendoff (HNTB)* and *Islamic Republic of Iran et al.*, Interlocutory Award No. ITL 3-68-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 248; *George W. Drucker, Jr.* and *Foreign Transaction Co. et al.*, Interlocutory Award No. ITL 4-121-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 252; *T.S.C.B., Inc.* and *Islamic Republic of Iran*, Interlocutory Award No. ITL 5-140-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 261; *Ford Aerospace and Communications Corp. et al.* and *Air Force of the Islamic Republic of Iran et al.*, Interlocutory Award No. ITL 6-159-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 268; *Zokor Int'l, Inc.* and *Islamic Republic of Iran et al.*, Interlocutory Award No. ITL 7-254-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 271; *Stone and Webster Overseas Group, Inc.* and *National Petrochemical Co. et al.*, Interlocutory Award No. ITL 8-293-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 274; *Dresser Industries, Inc.* and *Islamic Republic of Iran et al.*, Interlocutory Award No. ITL 9-466-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 280.

Iranian forum selection clause. Rather, the United States was required to treat such litigation the same way as any litigation involving a claim that had been filed with the Tribunal: the United States was obligated by Article VII, paragraph 2, to halt proceedings in its courts in respect of such claim until such time as the Tribunal determined that it fell outside its jurisdiction.[164]

163. The United States asserts that there were six legal proceedings in United States courts that it was not required to terminate because they fell within the scope of Claim B. The Tribunal examines those proceedings below.

(a) *McDonnell Douglas Corp. v. Iran et al.*

164. McDonnell Douglas Corporation sued Iran on 17 December 1982 in the United States District Court for the Eastern District of Missouri ("McDonnell Douglas lawsuit").[165] The claim underlying the McDonnell Douglas lawsuit was never filed with the Tribunal, so it does not fall within the scope of Claim B.

(b) *Westinghouse Electric Corp. v. Iran et al.*

165. In January 1982, Westinghouse Electric Corporation ("Westinghouse") presented a claim to the Tribunal against Iran and the Iranian Air Force based on four contracts with the Iranian Air Force ("claims contracts").[166] In November 1983, Westinghouse sued Iran and the Iranian Air Force in the United States District Court for the District of Maryland, seeking a declaratory judgment that it had fully performed under three contracts with the Iranian Air Force other than the claims contracts ("Westinghouse lawsuit").[167] Plaintiff brought the Westinghouse lawsuit in response to a lawsuit that Iran had asserted against it in an Iranian court based on those three contracts.[168] In the proceeding before the Tribunal, the Iranian Air Force asserted counterclaims against Westinghouse based, *inter alia*, on those three

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[164] *See supra* para. 32.

[165] *McDonnell Douglas Corp. v. Iran et al.*, 82-2096 (E.D.M.).

[166] *See Westinghouse Electric Corp.* and *Islamic Republic of Iran Air Force*, Award No. 579-389-2 (26 Mar. 1997), *reprinted in* 33 IRAN-U.S. C.T.R. 60.

[167] *Westinghouse Electric Corp. v. Iran et al.,* 83-3837 (D. Md.).

[168] Both national court proceedings were stayed pursuant to orders of the Tribunal. *See Westinghouse Electric Corp.* and *Islamic Republic of Iran et al.*, Interlocutory Award No. ITL 67-389-2, para. 4 (12 Feb. 1987), *reprinted in* 14 IRAN-U.S. C.T.R. 104, 107.

contracts.[169] Subsequently, Westinghouse asserted three counterclaims against the Iranian Air Force based on the same three contracts in reply to the Air Force's counterclaims ("Westinghouse's counter-counterclaims"). In its final award, the Tribunal dismissed on the merits both Iran's counterclaims and Westinghouse's counter-counterclaims.[170]

166. Thus, the claim underlying the Westinghouse lawsuit in the District Court was adjudicated on the merits by the Tribunal – in other words, the Tribunal held that the claim fell within its jurisdiction. Consequently, Partial Award No. 590 does not *per se* preclude Iran from recovering litigation expenses it incurred in relation to the Westinghouse lawsuit.

(c) *E-Systems, Inc. v. Iran et al.*

167. E-Systems, Inc. ("E-Systems") sued Iran and Bank Melli Iran in the United States District Court for the Northern District of Texas on 5 December 1979 ("E-Systems lawsuit").[171] On 12 January 1982, the District Court suspended further prosecution of the lawsuit because it was not persuaded that it had jurisdiction.

168. On 18 January 1982, E-Systems submitted to the Tribunal the claim underlying the E-Systems lawsuit, which claim the Tribunal terminated on 19 December 1983 by award on agreed terms following a settlement by the parties.[172] Consequently, that claim does not fall within the scope of Claim B. Accordingly, Partial Award No. 590 does not *per se* preclude Iran from recovering litigation expenses it incurred in relation to the E-Systems lawsuit.

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[169] In an early jurisdictional decision, the Tribunal determined that it had jurisdiction over Iran's counterclaims on those three contracts because they arose out of the same transaction as the claims. *See Westinghouse Electric Corp.*, Interlocutory Award, para. 11,14 IRAN-U.S. C.T.R. 109-10.

[170] *Westinghouse Electric Corp.* and *Islamic Republic of Iran Air Force*, Award No. 579-389-2, para. 369 (26 Mar. 1997), *reprinted in* 33 IRAN-U.S. C.T.R. 60, 172.

[171] *E-Systems, Inc. v. Iran et al.*, 3-79-1487 (N.D. Tex.).

[172] *E-Systems, Inc.* and *Islamic Republic of Iran et al.*, Award No. 94-388-1 (19 Dec. 1983), *reprinted in* 4 IRAN-U.S. C.T.R. 197.

(d) *Dames & Moore v. Atomic Energy Organization of Iran et al.* ("Dames & Moore lawsuit")

T.C.S.B., Inc. v. Iran et al. ("T.C.S.B. lawsuit")

Technology Enterprises, Inc. v. Iran ("Technology Enterprises lawsuit")

169. Because the claims underlying these three lawsuits were all filed with the Tribunal, the basis for the Tribunal's conclusion is the same with respect to all three; accordingly, the Tribunal deals with them together in this section.

170. The Tribunal holds that the United States was obligated by Article VII, paragraph 2, to halt proceedings in its courts in respect of the Dames & Moore lawsuit,[173] the T.C.S.B. lawsuit,[174] and the Technology Enterprises lawsuit[175] until such time as the Tribunal

[173] On 19 December 1979, Dames & Moore sued the Atomic Energy Organization of Iran ("AEOI"), Iran, and certain Iranian entities in the United States District Court for the Central District of California (*Dames & Moore v. Atomic Energy Organization of Iran et al.*, 79-4918 (C.D. Cal.)). On 17 November 1981, Dames & Moore submitted to the Tribunal the claim against the AEOI underlying the Dames & Moore lawsuit (*see Dames & Moore* and *Islamic Republic of Iran et al.*, Award No. 97-54-3 (20 Dec. 1983), *reprinted in* 4 IRAN-U.S. C.T.R. 212). On 20 December 1983, the Tribunal dismissed Dames & Moore's claim against the AEOI for lack of jurisdiction because the contract at the basis of the claim contained a forum selection clause providing for the sole jurisdiction of the competent Iranian courts (*see Dames & Moore*, Award No. 97-54-3, 4 IRAN-U.S. C.T.R. at 219-20). Thus, the United States' obligation under Article VII, paragraph 2, to halt proceedings with respect to the Dames & Moore lawsuit arose, at the latest, on 17 November 1981, when Dames & Moore submitted to the Tribunal the related claim against Iran, and ceased on 20 December 1983, when the Tribunal dismissed that claim for lack of jurisdiction.

[174] On 14 January 1980, T.C.S.B., Inc. ("T.C.S.B.") asserted multiple claims against Iran and certain Iranian entities in the United States District Court for the Northern District of California (*T.C.S.B., Inc. v. Iran et al.*, 80-0101 (N.D. Cal.)). T.C.S.B.'s claims included a contractual claim related to the implementation of a research center project ("BHRC contract claim"). On 19 November 1981, T.C.S.B. submitted to the Tribunal the BHRC contract claim together with other claims underlying the T.C.S.B. lawsuit. On 5 November 1982, the Tribunal dismissed the BHRC contract claim for lack of jurisdiction because the relevant contract contained a forum selection clause providing for the sole jurisdiction of the competent Iranian courts (*see T.C.S.B., Inc.* and *Islamic Republic of Iran*, Interlocutory Award No. ITL 5-140-FT (5 Nov. 1982), *reprinted in* 1 IRAN-U.S. C.T.R. 261, 263-67). Thus, the United States' obligation under Article VII, paragraph 2, to halt proceedings with respect to the BHRC contract claim in the T.C.S.B. lawsuit arose, at the latest, on 19 November 1981, when T.C.S.B. submitted to the Tribunal the related claim against Iran, and ceased on 5 November 1982, when the Tribunal dismissed that claim for want of jurisdiction.

[175] Technology Enterprises, Inc. ("Technology Enterprises") sued Iran and certain Iranian entities in the United States District Court for the Northern District of California on 24 November 1980 (*Technology Enterprises, Inc. v. Iran*, 80-4275 (N.D. Cal.)). On 9 July 1981, the District Court stayed the action and vacated existing attachments. On 15 January 1982, Technology Enterprises submitted to the Tribunal the claim underlying the Technology Enterprises lawsuit. On 31 January 1984, the Tribunal dismissed Technology Enterprises' claim for lack of jurisdiction because the contract at the basis of the claim contained a forum selection clause providing for the sole jurisdiction of the competent Iranian courts (*see Technology Enterprises, Inc.* and *Foreign Transaction Co.*, Award No. 109-328-2 (31 Jan. 1984), 5 IRAN-U.S. C.T.R. 118). Thus, the United States' obligation to halt proceedings with respect to the Technology Enterprises lawsuit arose, at the latest, on 15

determined that the claims underlying those lawsuits fell outside its jurisdiction. Consequently, Partial Award No. 590 does not *per se* preclude Iran from recovering litigation expenses it incurred in relation to these three lawsuits.

(3) Claims settled by the United States and Iran as part of Claim C

171. In part C of its Statement of Claim in Case No. A15 (IV) ("Claim C"), Iran contended that the United States had breached its obligations under General Principle B and Article VII, paragraph 2, "by failing to terminate and prohibit all judicial proceedings based on claims of U.S. nationals concerning payments under letters of credit, letters of guarantee, performance bonds, or other similar instruments." More specifically, in Claim C Iran sought the nullification of injunctions obtained by United States nationals in United States courts that enjoined United States banks from honoring calls made by Iran on certain standby letters of credit, performance bonds, and similar instruments at issue in contracts between United States plaintiffs and Iran.

172. On 22 February 1996, the Tribunal issued a Partial Award on Agreed Terms, which terminated, *inter alia*, Claim C.[176] The Partial Award on Agreed Terms was rendered, *inter alia*, pursuant to an agreement dated 9 February 1996 between the Islamic Republic of Iran and the United States of America titled "Settlement Agreement on Certain Claims before the Iran-U.S. Claims Tribunal" ("Tribunal Settlement Agreement"). In the Tribunal Settlement Agreement, the Parties agreed as follows:

> 1. In full and final settlement of all disputes, differences, claims, counterclaims and matters directly or indirectly raised by or capable of arising out of, or related to . . . Case A/15 (IV:C) . . . .
>
> [. . .]
>
> 4. Upon the Tribunal's issuance of an Award on Agreed Terms, Iran shall not, directly or indirectly, at any time thereafter, take or pursue any legal action or initiate or pursue arbitral or court proceedings or otherwise make any claim or counterclaim whatsoever against the United States and its affiliates, subsidiaries, agents, agencies, instrumentalities, predecessors, successors and assigns, the Federal Reserve Bank of New York, the Governor and Company of the Bank

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January 1982, when Technology Enterprises submitted to the Tribunal the related contractual claim, and ceased on 31 January 1984, when the Tribunal dismissed that claim for want of jurisdiction.

[176] *See Islamic Republic of Iran* and *United States of America*, Award No. 568-A13/A15 (I and IV:C)/A26 (I, II, and III)-FT (22 Feb. 1996), *reprinted in* 32 IRAN-U.S. C.T.R. 207.

> of England, Banque Central[e] d'Alg[é]rie, the released banks or the released account parties with respect to, arising out of, in connection with or relating to the Tribunal Cases [including Claim C in Case No. A15 (IV)], Dollar Account No. 2, and the Technical Arrangement.
>
> 5. Upon the Tribunal's issuance of an Award on Agreed Terms, Iran and the United States shall waive any and all claims for costs, including attorneys' fees, arising out of or related in any way to the arbitration, prosecution or defense of any claim or counterclaim before any forum, including the Tribunal, with respect to, arising out of, in connection with or relating to the Tribunal Cases [including Claim C in Case No. A15 (IV)], Dollar Account No. 2, and the Technical Arrangement.[177]

(a) The Parties' Contentions

173. The United States contends that all matters related to Claim C were resolved in the Tribunal Settlement Agreement. According to the United States, 13 of the cases for which Iran claims litigation expenses in the present proceedings are covered by that settlement;[178] because Iran waived therein any and all claims for costs, including attorneys' fees, for all such cases, the litigation expenses Iran seeks in relation to them must be dismissed.

174. Iran disputes that the Tribunal Settlement Agreement bars recovery of its litigation expenses in relation to the 13 cases at issue. This is because in those cases it is only seeking recovery of expenses for actions of its lawyers other than litigating merely letter of credit and bank guarantee issues. According to Iran, the Tribunal Settlement Agreement does not affect its right to recover its expenses for litigating the contracts underlying the related letters of credit and bank guarantees.

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[177] *Islamic Republic of Iran*, Award No. 568-A13/A15 (I and IV:C)/A26 (I, II, and III)-FT, "Settlement Agreement on Certain Claims before the Iran-U.S. Claims Tribunal," paras. 1, 4-5, 9 Feb. 1996, 32 IRAN-U.S. C.T.R. 217 & 219.

[178] These cases are: *Aeronutronic Overseas Services, Inc. et al. v. Islamic Republic of Iran et al.*, 80-2098 (N.D. Cal.); *Aeronutronic Overseas Services, Inc. et al. v. Telecommunication Co. of Iran*, C-82-6910 (N.D. Cal.); *Allen v. Iran*, 79-5263 ((N.D. Ill.); *E-Systems, Inc. v. Iran et al.*, 3-79-1487 (N.D. Tex.); *Granger Associates v. Iran*, 80-0169 (N.D. Cal.); *Harris Corp. v. Iran*, 80-0023 (M.D. Fla.); *Itek Corp. v. Iran et al.*, 79-2383-MA (D. Mass.); *Pan American World Airways Inc. v. Bank Melli Iran*, 79-1190 (S.D.N.Y.); *Sylvania Technical Systems Inc. v. Iran*, 80-2192 (N.D. Cal.); *TAI, Inc. v. Iran*, 3-79-1500-D (N.D.Tex.); *T.C.S.B., Inc. v. Iran et al.*, 80-0101 (N.D. Cal.); *John Carl Warnecke & Associates v. Bank of America N.T. & SA, Foreign Trade Bank of Iran*, 80-2035 (Sup. Ct. Cal.); *Watkins Johnson Co. v. Iran*, 79-3963 (N.D. Cal.).

(b) The Tribunal's Decision

175. The language of the 9 February 1996 Tribunal Settlement Agreement is sweeping and unambiguous. Therein, Iran agreed, among other things, that, upon the Tribunal's issuance of the Award on Agreed Terms, (i) it "[would] not . . . at any time thereafter . . . pursue arbitral . . . proceedings or otherwise make any claim . . . whatsoever against the United States . . . with respect to, arising out of, in connection with or relating to [Claim C in Case No. A15 (IV)]"; and (ii) it "[would] waive any and all claims for costs, including attorneys' fees, arising out of or related in any way to the arbitration, prosecution or defense of any claim or counterclaim before any forum, including the Tribunal, with respect to, arising out of, in connection with or relating to [Claim C in Case No. A15 (IV)]."

176. The Tribunal holds that this exclusionary language is sufficiently broad to encompass, not only Iran's claims for attorney expenses incurred in litigating purely letter-of-credit and bank-guarantee disputes, but also those for attorney expenses incurred in litigating disputes about the contracts underlying such instruments. Thus, claims for both types of expenses fall within the scope of claims "arising out of or related in any way" to the arbitration of Claim C, within the meaning of the Tribunal Settlement Agreement, and Iran has expressly waived such claims. Accordingly, Iran's claims with respect to the 13 cases listed above must be dismissed.

(4) Expenses incurred in United States court litigation during the six-month period following the signing of the Algiers Declarations

177. In Partial Award No. 590, the Tribunal stated that it would not award "any damages related to, or arising from, Iran's participation in United States court litigation during the six-month period following the signing of the Algiers Declarations."[179] According to the United States, Iran asserts a number of claims that fall within this category of excluded damages.

178. The scope of the exclusion by Partial Award No. 590 of any recovery of Iran's damages related to its participation in United States court litigation prior to 19 July 1981 is unambiguous. The Tribunal will determine in the context of each particular case whether such exclusion applies.

[179] Partial Award No. 590, paras. 103 and 214 A (a) (5), 34 IRAN-U.S. C.T.R. at 138, 166-67.

(5) Expenses incurred in United States court litigation regarding the validity or constitutionality of the Algiers Declarations under United States law

179. In Partial Award No. 590, the Tribunal further stated that it would not award "any damages related to, or arising from, Iran's participation in cases regarding the validity and constitutionality of the Algiers Declarations under United States law."[180]

(a) The Parties' Contentions

180. According to the United States, Iran asserts a number of claims that fall within this category of excluded damages. Iran responds that the fact that a case may involve some consideration of the validity of the Algiers Declarations does not preclude recovery of legal expenses incurred in other aspects of the case.

(b) The Tribunal's Decision

181. The phrase "validity and constitutionality of the Algiers Declarations under United States law"[181] according to its plain terms does not cover anything other than those two issues; it does not cover the *applicability* of the Algiers Declarations to a particular case. Consequently, the Tribunal is not *per se* precluded from awarding Iran litigation expenses related to its participation in United States court litigation that involved the question whether the Algiers Declarations applied to a given case. The Tribunal agrees that the fact that a case may involve some analysis of the validity and constitutionality of the Algiers Declarations does not *per se* preclude the Tribunal from awarding litigation expenses that Iran sustained in other aspects of the case. In examining Iran's claims, the Tribunal will be guided by the above considerations.

d) Claims described in Paragraph 11 of the General Declaration

182. In Paragraph 11 of the General Declaration ("Paragraph 11"), the United States undertook to "bar and preclude the prosecution against Iran" of

> any pending or future claim of the United States or a United States national arising out of events occurring before the date of this Declaration related to

[180] *Id.*

[181] *Id.*

> (A) the seizure of the 52 United States nationals on November 4, 1979, (B) their subsequent detention, (C) injury to the United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.[182]

183. Article II, paragraph 1, expressly excludes from the Tribunal's jurisdiction "claims described in Paragraph 11."[183]

(1) Not "arguably fall[ing] within the Tribunal's jurisdiction"

184. In the present proceedings, Iran seeks litigation expenses related to (i) 10 United States court claims for damages asserted by United States nationals who had been seized on 4 November 1979 and subsequently detained in Iran[184] and (ii) two United States court claims for injury to United States nationals during the course of the Iranian Revolution.[185] Such claims manifestly arise out of, respectively, (i) "the seizure of the 52 United States nationals on November 4, 1979" and "their subsequent detention" and (ii) "injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran," within the meaning of Paragraph 11. Therefore, they fall squarely within the jurisdictional exclusion contained in Article II, paragraph 1.

185. Accordingly, the Tribunal holds that the United States had no obligation under General Principle B to terminate (suspend[186]) the United States court litigation involving those 12 claims. With respect to 11 of those claims, neither did the United States have an obligation to halt proceedings pursuant to Article VII, paragraph 2, because they had not been filed with the Tribunal.[187]

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[182] General Declaration, para. 11, 1 IRAN-U.S. C.T.R at 138 at 6-7.

[183] Claims Settlement Declaration, art. II (1), 1 IRAN-U.S. C.T.R. at 9.

[184] *Gallegos v. Iran*, 81-5482 (C.D. Cal.); *Golacinski v. Iran*, 81-5109 (C.D. Cal.); *Jones v. Iran*, 81-5274 C.D. Cal.); *Lauterbach v. Iran*, 81-0350 (D.D.C.); *Ledgerwood v. Iran*, 81-0554 (D.D.C.); *McKeel v. Iran et al.*, 81-0931 (C.D. Cal.); *Persinger v. Iran*, 81-0230 (D.D.C.); *Roeder v. Iran*, 81-5410 (C.D. Cal.); *Scott v. Iran*, 81-5108 (C.D. Cal.); *Williams v. Iran*, 79-3295 D.D.C.).

[185] *Margot Berkovitz v. Iran*, 80-0097 (N.D. Cal.); *Wendel T. Reed v. Iran et al.*, 79-006 (D. Tex.).

[186] *See supra* para. 44.

[187] On 10 January 1982, Raymond Ledgerwood presented a Statement of Claim to the Tribunal, which was refused by the Tribunal Registry on 9 February 1982 because it did not comply with Article II, paragraph 1. Such a case was not within the United States' termination obligation under General Principle B.

(2) Claim based on Paragraph 11

186. At the Hearing, Iran argued that, where the United States failed to terminate a claim falling within the scope Paragraph 11, "Iran is entitled to the damages that flow from that breach." Thus, it appears that Iran here is making a claim for damages based on an alleged violation of Paragraph 11 by the United States.

187. In its Statement of Claim in Case No. A15, filed on 25 October 1982, Iran asserted no claim based on a violation by the United States of Paragraph 11. Indeed, throughout this arbitration, Iran has consistently pleaded its claims for expenses incurred in litigating claims described in Paragraph 11 as D- or A-type claims alleging breaches by the United States of its obligations under General Principle B. Sporadic and bald references by Iran to Paragraph 11 in its written pleadings cannot change this basic fact. As a result, the United States has analyzed (and responded to) those claims through the prism of General Principle B.

188. Importantly, further, because no claim for a breach of Paragraph 11 was before the Tribunal, Partial Award No. 590, which framed the issues to be addressed by the Parties in the second phase of these proceedings, contains no holdings with respect to the issues underlying any such claim.

189. In light of the foregoing, the Tribunal is not prepared to entertain any claim for damages based on Paragraph 11 in these proceedings.

e) Specific Litigation Expenses

190. Where the Tribunal finds that the United States has not complied with its obligations under General Principle B and under Article VII, paragraph 2, the United States will be required to compensate Iran for any losses Iran incurred as a result of such breach.

191. In Partial Award No. 590, the Tribunal has specified how Iran must prove its losses.[188] The Tribunal will implement those requirements also having regard to the principles of international law governing the legal consequences of an internationally wrongful act by a State, which principles the Tribunal is authorized by Article V of the

[188] Concerning Claim A, see Partial Award No. 590, paras. 102 and 214 A (a) (4), 34 IRAN-U.S. C.T.R. at 138, 166 (*supra* para. 14); concerning Claim D, *see* Partial Award No. 590, paras. 133 and 214 A (d) (2), 34 IRAN-U.S. C.T.R. at 146-47, 167 (*supra* para. 17). *See also* Partial Award No. 590, paras. 177 and 214 A (g) (2) (Claim G) & 188 and 214 A (h) (2) (Claim H), 34 IRAN-U.S. C.T.R. at 156, 158-59, 168 (*supra* paras. 19 and 21).

Claims Settlement Declaration to apply.[189] International law requires the internationally responsible State "to make full reparation for the injury caused by the internationally wrongful act";[190] such injury is understood to include "any damage caused by that act"[191] that is not "'too remote' or 'consequential' to be the subject of reparation."[192]

192. To prove its specific litigation expenses, Iran submitted a series of documents, including:

(a) invoices and other documents issued by the United States law firms that Iran retained to represent it in the relevant United States court cases;

(b) documents evidencing payment, such as checks, letters transmitting checks, communications acknowledging receipt of payment, payment instructions to banks, and bank statements;

(c) individual statements prepared by Iran for the purposes of the present arbitration in relation to each of the specific United States court cases at issue (Case IDs);[193]

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[189] Article V of the Claims Settlement Declaration requires that the Tribunal "decide all cases on the basis of respect for law," applying, among other things, "principles of . . . international law as the Tribunal determines to be applicable." Claims Settlement Declaration, art. V, 1 IRAN-U.S. C.T.R. at 11.

[190] The general obligation of the internationally responsible State to make full reparation is enshrined in Article 31 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, which provides:

> *Reparation*
>
> 1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
>
> 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

Int'l Law Comm'n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Rep. of the Int'l Law Comm'n, 53rd sess, 23 Apr.-1 June, 2 July-10 Aug. 2001, art. 31, U.N. Doc. A/56/10; GAOR, 56th Sess., Supp. No 10 (2001). The obligation placed on the responsible State by Article 31 is "to make 'full reparation' in the *Factory at Chorzów* sense[; in] other words, the responsible State must endeavour to 'wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed . . . .'" *Id.* art. 31, cmt. 3, *quoting* Factory at Chorzów (Ger. v. Pol.), Judgment (Merits), 1928 P.C.I.J. (ser. A) No. 17, at 47 (13 Sept.).

[191] Rep. of the Int'l Law Comm'n, 53rd sess, 23 Apr.-1 June, 2 July-10 Aug. 2001, art. 31, cmt. 5, U.N. Doc. A/56/10; GAOR, 56th Sess., Supp. No 10 (2001).

[192] *Id.* art. 31, cmt. 10.

[193] *See supra* note 102.

(d) portions of the 1992 settlement agreement between Iran and Shack & Kimball[194] to prove litigation expenses in the amount of U.S.$128,071 for services allegedly provided by the law firm of Shack & Kimball in seven specific United States court cases between June 1982 and March 1983.

193. After having examined all the evidence, the Tribunal makes the following determinations concerning the compensability of the specific litigation expenses claimed by Iran.

(1) Claim A

194. The Tribunal has held that Iran was reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts after 19 July 1981 in 84 cases involving claims arguably falling within the Tribunal's jurisdiction or involving claims that had been filed with the Tribunal.[195]

195. The Tribunal holds that Iran has satisfied the requirements for proving its losses set forth in paragraph 102 of Partial Award No. 590 with respect to 44 such cases[196] and proven that it has incurred specific litigation expenses in respect thereto totaling U.S.$70,144.39. Accordingly, the Tribunal awards this amount to Iran.

(2) Claim D

196. The Tribunal holds that Iran has proven that it has incurred specific litigation expenses totaling U.S.$56,070.32 as a result of making appearances or filing documents in United States courts subsequent to 19 January 1981 in the prudent defense of its interests in nine lawsuits filed after 19 January 1981 involving claims arguably falling within the Tribunal's jurisdiction or involving claims that had been filed with the Tribunal.[197] Accordingly, the Tribunal awards this amount to Iran.

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[194] *See supra* paras. 149-156.

[195] *See supra* para. 85 and Annex A.

[196] *See* Annex C.

[197] Those lawsuits are as follows: *Aeronutronic Overseas Services, Inc. et al. v. Telecommunication Co. of Iran*, C-82-6910 (N.D. Cal.); *American Hospital Supply Co. v. Iran et al.*, 81-1489 (N.D. Ill.); *Gillette Co. et al. v. Iran*, 81-3196 (D.D.C.); *Kianoosh Jafari et al. v. Islamic Republic of Iran*, 81-4043 ((N.D. Ill.); *Otis Elevator Co. v. Islamic Republic of Iran et al.*, 82-3523 (D.D.C.); *Phillips Petroleum Co. v. Iran*, 82-2226 (D.D.C.); *Raygo Wagner, Inc. v. Iran Express Terminal Corp. et al.*, 81-7241 (Hillsborough Count Cir. Ct. Fla.); *James*

197. For illustrative purposes, the Tribunal discusses one United States court legal proceeding individually, that is, *James Saghi et al. v. Islamic Republic of Iran et al.*, 83-2165 (D.D.C.).

198. James Saghi and his two sons, Michael and Allan Saghi, filed a complaint against Iran and certain Iranian entities in the United States District Court for the District of Columbia ("District Court") on 28 July 1983, alleging that Iran had expropriated their ownership interests in two Iranian corporations ("Saghi lawsuit"). James and Michael Saghi were nationals of the United States, and Allan Saghi was an Iranian-United States dual national. On 15 January 1982, they had submitted their claim to the Tribunal.[198]

199. In the Saghi lawsuit before the District Court, on 19 December 1983, Iran filed a motion to dismiss the complaint, arguing, among other things, that the District Court could not hear the case because an identical claim by the plaintiffs was pending before the Tribunal. Thereafter, on 16 February 1984, the United States filed a statement of interest with the District Court, requesting that the Saghi lawsuit be stayed pending the Tribunal's jurisdictional determination with respect to the Saghis' companion Tribunal claim. On 12 March 1984, Iran filed a second motion to dismiss with the District Court, asserting that the Court lacked jurisdiction pursuant to the United States Foreign Sovereign Immunities Act. An exchange of pleadings between the parties ensued, with the plaintiffs opposing Iran's motion to dismiss and with Iran replying to the plaintiffs' opposition. On 13 August 1984, the District Court denied Iran's motion to dismiss and stayed the Saghi lawsuit pending the Tribunal's determination as to whether it had jurisdiction over the plaintiffs' companion Tribunal claim.

200. The United States argues that the court actions Iran took in response to the Saghis' tolling suit were not "in the prudent defense of its interests." Among other things, the United States contends that Iran should have known that it was not required to take any action in the defense of its interests in the Saghi lawsuit, considering its experience in earlier tolling cases. According to the United States, Iran should have known that 11 of the 13 tolling suits filed prior to the Saghi lawsuit had been stayed or closed almost immediately after they were filed,

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Saghi et al. v. Islamic Republic of Iran et al., 83-2165 ((D.D.C.); *Westinghouse Electric Corp. v. Iran et al.,* 83-3837 (D. Md.).

[198] The Tribunal decided the claim on the merits on 22 January 1993. *See James M. Saghi et al.* and *Islamic Republic of Iran*, Award No. 544-298-2 (22 Jan. 1993), *reprinted in* 29 IRAN-U.S. C.T.R. 20.

with little or no participation of Iran (in four cases, Iran took no action whatsoever). Yet, the United States asserts, in the Saghi lawsuit, Iran's counsel responded aggressively, filing, not one, but two motions to dismiss.

201. In the Tribunal's view, that Iran's actions in the Saghi lawsuit were more assertive than in other tolling suits does not *per se* indicate that Iran was not acting in the prudent defense of its interests. Iran engaged different lawyers on different cases, and it is not surprising that they did not act in a strictly uniform way. Rather, the circumstances surrounding Iran's actions are important. Viewed in light of the fact that the suspension mechanism established by Executive Order 12294 did not purport to do exactly what the Algiers Declarations required – "terminate" legal proceedings and "prohibit all further litigation" – Iran's actions in seeking to have the Saghi lawsuit dismissed cannot be seen as imprudent.[199]

(3) Claim G

202. The Tribunal has held that six post-14 November 1979 attachments remained in effect and actually restrained Iranian assets in the United States after 19 July 1981.[200] Pursuant to Partial Award No. 590, the United States is liable to compensate Iran for the damages Iran suffered as a result of those attachments.[201] The expenses that Iran has incurred in litigation to lift those attachments are part of the specific litigation expenses that the Tribunal has awarded Iran in Claim A.[202]

(4) Claim H

203. Pursuant to Partial Award No. 590, the United States is liable to compensate Iran for the damages Iran suffered as a result of United States court judgments against Iran that remained in existence after 19 July 1981.[203]

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[199] The Tribunal has found that Iran has incurred compensable specific litigation expenses totaling U.S.$7,312.37 in relation to the Saghi lawsuit. This sum is included in the amount awarded *supra* at para. 196.

[200] *See supra* para. 113 and note 108.

[201] *See* Partial Award No. 590, para. 214 A (g) (2), 34 IRAN-U.S. C.T.R. at 168.

[202] *See supra* para. 195. *See also supra* paras. 108 and 111.

[203] *See* Partial Award No. 590, para. 214 A (h) (2), 34 IRAN-U.S. C.T.R. at 168.

204. The Tribunal has held that Iran reasonably incurred legal expenses in relation to two such judgments.[204] The Tribunal finds that those expenses total U.S.$7,152.34 and awards this amount to Iran.

(5) Shack & Kimball Specific Litigation Expenses

205. Iran claims U.S.$128,071 for services allegedly provided by Shack & Kimball in seven specific United States court cases between June 1982 and March 1983. In support, Iran relies on entries appearing in the 1992 settlement agreement between Iran and Shack & Kimball[205] ("Settlement Agreement") and on a series of documents included in its Case IDs for the seven court cases.

206. As noted above, the absence of primary documentation, such as accounting and billing records, including invoices, to support the Settlement Agreement (and other Shack & Kimball Evidence) – is problematic.[206] This is especially so with regard to the substantiation of specific litigation expenses, in respect of which Partial Award No. 590 has established a rigorous standard of proof, requiring Iran to show "what expenses it incurred with respect to each specific case and what was the particular justification for the specific sums it spent."[207]

207. The Tribunal is persuaded that Shack & Kimball has made appearances and filings on behalf of Iran in court proceedings that the United States should have terminated or halted pursuant to the Algiers Declarations.[208] However, in light of the strict standard of proof set by Partial Award No. 590 mentioned above, Iran's failure to produce crucial primary evidence that was available to it and to its witness, Mr. Shack,[209] excludes the possibility of the Tribunal making an approximation of any specific litigation expenses that Iran may have incurred as a result of those appearances and filings. That evidence, if proffered by Iran or Mr. Shack, would have assisted the Tribunal in determining the nature of the services

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[204] *Dames & Moore v. Atomic Energy Organization of Iran et al.*, 79-4918 (C.D. Cal.); *Marriott Corp.et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran*, 79-21884 (Sup. Ct. N.Y.). *See supra* paras. 125-140.

[205] *See supra* paras. 149-156.

[206] *See supra* paras. 153-156.

[207] Partial Award No. 590, paras. 102 & 214 A (a) (4), 34 IRAN-U.S. C.T.R. at 138, 166. *See also id.* paras. 133, 177, 188, 34 IRAN-U.S. C.T.R. at 147, 156, 159.

[208] For example, in *Behring International, Inc. v. Iran et al.*, 79-675 (D.N.J.).

[209] *See supra* paras. 153-156.

provided by Shack & Kimball, the United States court cases to which they related, and the associated amounts the firm billed to Iran.

208. In light of the foregoing, Iran's claim for Shack & Kimball specific litigation expenses is dismissed for want of proof.

f) General Litigation Expenses

209. Iran seeks U.S.$1,110,857.33 in general litigation expenses. This amount includes (i) costs of Iran's United States court participation that cannot be allocated to specific cases ("unallocated litigation costs"); (ii) the costs Iran incurred in monitoring relevant claims pending against it in United States courts ("monitoring expenses"); and (iii) other charges such as in-house attorney salaries and administrative charges incurred by Iran's B.I.L.S. in supervising the work of Iran's United States attorneys ("B.I.L.S. expenses").

210. On its claims for unallocated litigation expenses and monitoring expenses, Iran seeks a total of U.S.$860,857.33, without indicating the amount of relief it seeks under each head of recovery. On its claim for B.I.L.S. expenses, Iran seeks U.S.$250,000.

211. The Tribunal examines those three claims below.

(1) Unallocated Litigation Costs

212. As noted, Partial Award No. 590, in the context of Claim A, sets forth the requirements that Iran must satisfy to prove the losses it incurred in relevant United States court litigation. Among other things, Partial Award No. 590 requires that Iran prove what expenses it incurred with respect to each "specific case" ("case-specificity").[210] The Tribunal holds that case-specificity also applies in the context of Claim D for proving the litigation expenses that Iran allegedly incurred as a result of suits filed against it in United States courts after 19 January 1981.[211]

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[210] *See* Partial Award No. 590, paras. 102 and 214 A (a) (4), 34 IRAN-U.S. C.T.R. at 138, 166 ("The Tribunal expects Iran to show in the second phase of these proceedings what expenses it incurred with respect to each specific case and what was the particular justification for the specific sums it spent.").

[211] *See also id.* para. 214 A (d) (2), 34 IRAN-U.S. C.T.R. at 167 ("Iran will be expected to produce factual evidence of the losses it suffered as a result of its making appearances or filing documents in United States courts subsequent to 19 January 1981 in the prudent defense of its interests *with respect to tolling suits* . . . .") (emphasis added).

213. Necessarily, then, Iran's claim for unallocated litigation costs, which, as Iran concedes, is for attorney expenses that "cannot be allocated to specific cases," does not meet the requirements that Iran must satisfy to prove its losses under Partial Award No. 590. Partial Award No. 590 provides that only litigation expenses that fulfill those requirements are compensable; further, Partial Award No. 590 leaves open the possibility that monitoring expenses are compensable.[212] What it does not do, however, is provide for the compensability of litigation expenses that fall in neither of those two categories, such as the unallocated litigation costs.

(2) Monitoring Expenses

214. With respect to "monitoring," the Tribunal's task, as mandated by Partial Award No. 590, was to consider "factual evidence of the losses [Iran] suffered as a result of the monitoring of the suspended claims" and to hear arguments which addressed "the question of whether Iran should be compensated for those losses."[213] This formulation frames the issue for this Tribunal as, not whether the monitoring of relevant litigation by Iran was a result of a breach of the Algiers Declarations by the United States, but rather whether it was compensable as a matter of principle and supported by the evidence submitted.

(a) Compensability in Principle

(i) The Parties Contentions

215. Iran submits that monitoring should be understood in part by reference to its dictionary meaning. Monitoring thus encompasses "watch[ing], observ[ing] or check[ing]." Iran further asserts that monitoring entails "measures solely taken towards watching if there arises any need to participate in the litigation in the suspended, rather than terminated, lawsuits in the United States."

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[212] *See* Partial Award No. 590, paras. 102 and 214 A (a) (4), 34 IRAN-U.S. C.T.R. at 138, 166 (Claim A) ("The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of the monitoring of the suspended claims and invites both parties to address the question of whether Iran should be compensated for those losses."); paras. 133 and 214 A (d) (2), 34 IRAN-U.S. C.T.R. at 147, 167 (Claim D) ("The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of monitoring the tolling suits and invites both parties to address the question of whether Iran should be compensated for those losses.").

[213] This standard was explicitly stated with respect to monitoring in connection with Claim A and Claim D (*see* Partial Award No. 590, paras. 102 and 133, 34 IRAN-U.S. C.T.R. at 138, 146-47) but not with respect to Claim G and Claim H.

216. Iran's submissions on the meaning and content of monitoring are supplemented by evidence from Mr. Thomas Shack, the principal of the firm Shack & Kimball. Acting as Iran's general counsel in the United States,[214] Shack & Kimball allegedly performed most of Iran's monitoring activity.[215] Mr. Shack says that monitoring was aimed at ensuring consistency and uniformity in Iran's approach to litigation and could be characterized as a management function. Mr. Shack explained that there were daily meetings of all of the staff in his law firm to discuss the status of individual cases, and that his firm acted as a "central repository for documents and docket control" and as a point of coordination for communications among counsel hired to represent Iran.

217. The United States contends that Iran has failed to prove that monitoring was necessary. Further, the activity alleged to be monitoring was in fact primarily internal auditing in connection with Iran's decision to change counsel and monitoring of local counsel. In some instances, the United States says, the alleged "monitoring" work related to proceedings that are not within the scope of these Cases. At the Hearing, the United States submitted that monitoring "might consist of checking dockets." The United States concedes that monitoring may include an "oversight process designed to maintain an awareness of the developments, demands and conditions or status of pending litigation whether active, stayed, or suspended" but maintains that even this was not necessary in the circumstances.

218. Iran says that all of its monitoring activity was justified and necessary in order to protect its interests. A reduction in the number of cases against Iran did not necessarily mean that less monitoring was required, Iran submits.

219. The United States disputes that both the type and intensity of monitoring were justified, arguing that United States civil procedure rules offered Iran protection through notice requirements. Iran would receive notice of procedural or other steps in litigation against it, and this meant that continual docket checking was not required. Iran has submitted no evidence, the United States says, that its monitoring notified Iran of anything it would not have otherwise been notified of pursuant to United States civil procedure. The United States further asserts that any monitoring activity that was required could have been carried out by clerical staff, rather than attorneys. Instead, Iran established an unnecessary system which

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[214] *See supra* para. 149.

[215] Mr. Shack has submitted written statements and gave oral evidence at the Hearing.

entailed "triple monitoring," whereby lawyers of Iran's B.I.L.S. monitored Shack & Kimball, who monitored local counsel, who monitored cases.

(ii) The Tribunal's Decision

220. The Tribunal finds that the circumstances relevant to determining whether Iran was "reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts"[216] are also relevant to the question whether Iran was justified in monitoring the suspended litigation against it in United States courts. Even absent the tensions between the United States and Iran, in the presence of an international treaty requiring termination of litigation, any defendant in Iran's situation at the time could have been expected to inquire, to some extent, whether such termination had in fact occurred. The Tribunal therefore holds that, for the same reasons Iran was reasonably compelled in the prudent defense of its interests to make appearances and filings,[217] it was also justified in carrying out reasonable monitoring activities.

221. The United States has argued that Iran had a duty to mitigate its losses. The Tribunal agrees. Under international law, a failure by an injured State to take reasonable steps to limit its losses may result in a reduction of recovery to the extent of the damage that could have been avoided.[218] In the Tribunal's view, Iran's monitoring of the suspended litigation was in principle a logical measure aimed at limiting or preventing possible losses caused by

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[216] *See supra* paras. 74-79.

[217] *See supra* para. 77.

[218] *See* Gabčikovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7, 55, ¶ 80 (25 Sept.) ("[A]n injured State which has failed to take the necessary measures to limit the damage sustained would not be entitled to claim compensation for that damage which could have been avoided."); Int'l Law Comm'n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Rep. of the Int'l Law Comm'n, 53rd sess., 23 Apr.-1 June, 2 July-10 Aug. 2001, art. 31, cmt. 11, U.N. Doc. A/56/10; GAOR, 56th Sess., Supp. No 10 (2001) ("Even the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the injury. Although often expressed in terms of a 'duty to mitigate,' this is not a legal obligation which itself gives rise to responsibility. It is rather that a failure to mitigate by the injured party may preclude recovery to that extent."); U.N. Compensation Comm'n, Governing Council decision 15, *Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause*, 8th sess., 14-18 Dec. 1992, U.N. Doc. S/AC.26/1992/15 (1992), ¶ 9 (IV) ("The total amount of compensable losses will be reduced to the extent that those losses could reasonably have been avoided."); U.N. Compensation Comm'n, Governing Council, *Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (the "WBC Claim")*, 15 Nov. 1996, U.N. Doc. S/AC.26/1996/5/Annex (18 Dec. 1996), ¶ 54 ("[U]nder the general principles of international law relating to mitigation of damages . . . the Claimant was not only permitted but indeed obligated to take reasonable steps to . . . mitigate the loss, damage or injury being caused . . . .").

litigation that had not been terminated (suspended[219]) in accordance with the Algiers Declarations.

222. Having reviewed the evidence, the Tribunal finds that the following activities may constitute reasonable monitoring activities: reviewing motions filed by opposing parties; reviewing statements of interest filed by the United States; reviewing status reports; reviewing judges' decisions and docket sheets; communicating with opposing counsel; obtaining copies of docket sheets; and monitoring-related communications.

223. In view of all the foregoing considerations, the Tribunal concludes that expenses that Iran reasonably incurred in carrying out such or similar monitoring activities are in principle compensable.

(b) Proof of monitoring expenses

224. As noted, Iran did not specify how much of the total U.S.$860,857.33 sought on its claims for monitoring expenses and unallocated litigation costs relates to monitoring expenses.[220] Nor did it specify which aspects of its evidence support its claim for monitoring expenses.

225. Instead, Iran organized its evidence of monitoring and unallocated litigation costs, and apportioned the total U.S.$860,857.33 claimed, by the law firms that allegedly provided the related services. Out of that total amount, U.S.$807,705.81 relates to legal services allegedly provided by the law firm of Shack & Kimball, and U.S.$53,151.52 relates to legal services allegedly provided by seven other United States law firms.[221]

226. Further, the Tribunal notes that, in the U.S.$620,352.91 Iran claims in specific litigation expenses,[222] Iran has included costs it allegedly incurred as a result of law firm activities that represent typical monitoring activities as described by the Tribunal above.[223]

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[219] *See supra* para. 44.

[220] *See supra* para. 210.

[221] These law firms are: Kaplan, Russin & Vecchi; Crosby Heafey, Roach & May; Gadsby & Hannah; Nisen, Elliot & Meier; Bickel & Case; Rice, O'Dell & Goldman; and Shea & Gardner.

[222] *See supra* para. 143.

[223] *See supra* para. 222.

(i) Shack & Kimball

227. As an initial matter, unlike with respect to the substantiation of Iran's specific litigation expenses,[224] Partial Award No. 590 has established no rigorous standard of proof with respect to the substantiation of Iran's monitoring expenses.[225]

228. Iran has submitted contemporaneous evidence showing that, during the period here relevant, Shack & Kimball provided to Iran, among others, services relating to: (i) United States court litigation that was the subject of the United States' termination obligation, including monitoring of suspended claims; (ii) United States court litigation that was not the subject of the United States' termination obligation; (iii) litigation before the Tribunal; and (iv) the return to Iran of Iranian assets located in the United States.[226] Further, it is undisputed that Iran made payments to Shack & Kimball for services rendered.

229. Iran, however, has not submitted any contemporaneous or other adequate evidence that would allow the Tribunal to determine the precise extent of Shack & Kimball's monitoring activities or, even less, how much Iran paid Shack & Kimball specifically for monitoring activities rather than other activities performed by the firm. Indeed, Iran has not even indicated the amount it seeks for monitoring activities performed by Shack & Kimball.[227]

230. It is well-established in international law that difficulties in calculating damages should not deprive a claimant whose interests have been injured from obtaining

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[224] *See supra* paras. 206-207.

[225] Partial Award No. 590, paras. 102 & 214 A (a) (4), 34 IRAN-U.S. C.T.R. at 138, 166 ("The Tribunal . . . expects Iran to produce factual evidence of the losses it suffered as a result of the monitoring of the suspended claims . . . .").

[226] For example, in a telex Mr. Shack sent to Iran on 4 November 1981, itemizing "the amounts due to Shack and Kimball for legal services rendered to the Islamic Republic of Iran as general counsel in matters of litigation, return of assets, and general representat[i]on," he advised Iran that, during the period July-November 1981, Shack & Kimball billed Iran a total of U.S.$427,397.47 for services rendered as general counsel. The Tribunal notes that the notion of "monitoring of the suspended claims" (*see, e.g.*, Partial Award No. 590, paras. 102 and 214 A (a) (4), 34 IRAN-U.S. C.T.R. at 138, 166) – or, simply, "monitoring" – as used and understood in this arbitration, is not one that has been employed contemporaneously by the Parties; thus, the term "monitoring" as used and understood in this Award obviously does not appear in the contemporaneous evidence considered by the Tribunal, including Mr. Shack's 4 November 1981 telex to Iran (which a Separate Opinion considers insufficient evidence because "[n]othing in the telex refers to monitoring services"). The words "general representation," as employed in Mr. Shack's 4 November 1981 telex to Iran, are taken by the Tribunal to encompass relevant monitoring activities carried out by Shack & Kimball.

[227] *See supra* paras. 224-225.

compensation.[228] This principle has been endorsed in recent decisions of international arbitral tribunals. Thus, for example, in *Vivendi v. Argentina*, the tribunal said: "it is well settled that the fact that damages cannot be fixed with certainty is no reason not to award damages when a loss has been incurred."[229] In *Tecmed v. Mexico*, the tribunal stated that "any difficulty in determining the compensation does not prevent the assessment of such compensation where the existence of damage is certain."[230] Further, investment jurisprudence has recognized the authority of international arbitral tribunals to determine equitably (*i.e.*, in equity *intra legem*) the amount of damages – and, in the process, to resort to approximations – where circumstances do not permit a precise calculation.[231]

231. Likewise, it is also well-established in the jurisprudence of this Tribunal that, when circumstances make it difficult or impossible to precisely quantify compensation, the Tribunal may "exercise its discretion to 'determine equitably' the amount involved."[232] In so doing, the Tribunal has "a wide margin of appreciation to make reasonable

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[228] *See, e.g.*, SERGEY RIPINSKY & KEVIN WILLIAMS, DAMAGES IN INTERNATIONAL LAW 121 (2008).

[229] *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, Award (ICSID Case No. ARB/97/3), para. 8.3.16 (20 Aug. 2007). *See also Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, Award (ICSID Case No. ARB/84/3), para. 215 (20 May 1992).

[230] *Técnicas Medioambientales TECMED S.A. v. United Mexican States*, Award (ICSID Case No. ARB (AF)/00/2), para. 190 (29 May 2003).

[231] *See, e.g., Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, Award (ICSID Case No. ARB/97/3), para. 8.3.16 (20 Aug. 2007) (holding that, where damages cannot be fixed with certainty, "approximations are inevitable"); *Petrobart Ltd. v. Kyrgyz Republic*, Award (SCC Arb. No. 126/2003), at 83-84 (29 Mar. 2005) (given that the information on record was "too uncertain to allow the Arbitral Tribunal to make precise mathematical calculations of the damage," the tribunal made "a more general assessment" of the damage "based on probabilities and reasonable appreciations"); *Técnicas Medioambientales TECMED S.A. v. United Mexican States*, Award (ICSID Case No. ARB (AF)/00/2), para. 190 (29 May 2003) (holding that the tribunal "may consider general equitable principles when setting the compensation owed to the Claimant"). *See also* RIPINSKY & WILLIAMS, *supra* note 228, at 121-22 ("In circumstances in which the precise calculation is difficult or impossible, for example due to inconclusive evidence, tribunals may exercise discretion and resort to 'approximations.' Approximations are based on arbitrators' collective sense of what is reasonable and equitable in the circumstances of the case." (Footnotes omitted.)).

Concerning equity *intra legem* – or equity within the law – Professor Schreuer writes:

> Not every invocation of equitable considerations amounts to a decision *ex aequo et bono*. A tribunal may exercise some discretion in applying rules of law on the basis of justice and fairness. In other words, a decision *ex aequo et bono* must be distinguished from equity within the law.

CHRISTOPH SCHREUER, LORETTA MALINTOPPI, AUGUST REINISCH & ANTHONY SINCLAIR, THE ICSID CONVENTION – A COMMENTARY 636 (2009) (footnote omitted). *See also id.* at 636-37 (quoting *Amco Asia Corp. and others v. Republic of Indonesia*, Decision on Annulment (ICSID Case No. ARB/81/1), paras. 26 & 28 (16 May 1986); *Técnicas Medioambientales TECMED S.A. v. United Mexican States*, Award (ICSID Case No. ARB (AF)/00/2), para. 190 (29 May 2003); *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, Decision on Annulment (ICSID Case No. ARB /01/7), para. 48 (21 Mar. 2007).

[232] *Starrett Housing Corp. et al.* and *Islamic Republic of Iran et al.*, Award No. 314-24-1, para. 339 (14 Aug. 1987), *reprinted in* 16 IRAN-U.S. C.T.R. 112, 221.

approximations."[233] In addition to *Starrett Housing Corp. v. Iran*, the relevant Tribunal jurisprudence includes *Eastman Kodak Co. v. Iran*; *Seismograph Service Corp. v. National Iranian Oil Co.*; *William J. Levitt v. Iran*; *Thomas Earl Payne v. Iran*; *American International Group, Inc. v. Iran*; and *Economy Forms Corp. v. Iran*.[234] In none of these cases did the Tribunal decide, or was deemed to have decided, *ex aequo et bono – i.e.*, in equity *contra legem*.[235] The circumstances of the present Cases show similarities to those extant in *William J. Levitt v. Iran*,[236] in which the Tribunal approximated the amount it awarded on a claim for legal fees incurred in preparation for a certain housing project in Iran. In that case, the evidence did not permit the Tribunal to attribute the entire amount claimed to the housing project. While the claimant had produced evidence of payment of the total amount of legal fees claimed, it failed "to produce evidence detailing the legal services for which these sums were paid or even specifying the matters in connection with which they were expended"; specifically, it failed "to produce the relevant invoices or to explain why they could not have been produced."[237] In those circumstances, the Tribunal attributed approximately one-third of the legal fees to the housing project and awarded the related amount to the claimant.[238]

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[233] *Starrett Housing Corp.*, Award No. 314-24-1, para. 339, 16 IRAN-U.S. C.T.R. at 222.

[234] *Eastman Kodak Co.* and *Islamic Republic of Iran*; Award No. 514-227-3, para. 54 (1 July 1991), *reprinted in* 27 IRAN- U.S.C.T.R. 3, 21 (determining that the damage suffered by the claimant could only be quantified by way of a "reasonable and equitable adjustment" to the total value of certain promissory notes to reflect particular uncertainties); *Seismograph Service Corp. et al.* and *National Iranian Oil Co. et al.*, Award No. 420-443-3, para. 306 (31 Mar. 1989), *reprinted in* 22 IRAN- U.S.C.T.R. 3, 80 (holding that the Tribunal must award compensation "which is reasonable and equitable taking into account all the circumstances"); *William J. Levitt* and *Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 48 (22 Apr. 1987), *reprinted in* 14 IRAN-U.S. C.T.R. 191, 206 (given the claimant's failure to provide documentary evidence establishing the actual expenditure of the sums claimed and their connection to the construction project at issue, which evidence the Tribunal assumed was available to the claimant, the Tribunal "'determine[d] equitably the damages to be awarded'"); *Thomas Earl Payne* and *Islamic Republic of Iran*, Award No. 245-335-2, para. 37 (8 Aug. 1986), *reprinted in* 12 IRAN-U.S. C.T.R. 3, 15-16 (the Tribunal made an approximation of the value of the claimant's interest in two expropriated companies, taking into account all the circumstances); *American International Group, Inc. et al.* and *Islamic Republic of Iran et al.*, Award No. 93-2-3 (19 Dec. 1983), *reprinted in* 4 IRAN-U.S. C.T.R. 96, 109 (Tribunal made "an approximation" of the value of the nationalized company "taking into account all relevant circumstances"); *Economy Forms Corp.* and *Islamic Republic of Iran et al*., Award No. 55-165-1 (14 June 1983), *reprinted in* 3 IRAN-U.S. C.T.R. 42, 52 (given that the claimant had produced only general testimony on relevant factors pertaining to the value of the goods at issue that was "unsatisfactory for precise computation of damages," the Tribunal determined equitably the damages to be awarded).

[235] *See* SCHREUER ET AL., *supra* note 231 ("Not every invocation of equitable considerations amounts to a decision *ex aequo et bono*.").

[236] *William J. Levitt* and *Islamic Republic of Iran et al.*, Award No. 297-209-1 (22 Apr. 1987), *reprinted in* 14 IRAN-U.S. C.T.R. 191.

[237] *Id.* para. 46, 14 IRAN-U.S. C.T.R. at 205.

[238] *See id.* para. 48, 14 IRAN-U.S. C.T.R. at 206.

232. As noted, in the present Cases, while Iran has proven the *fact* that Shack & Kimball provided monitoring services to it, it has not proven the precise *extent* and *value* of those services. The lack of conclusive evidence on these points therefore makes it impossible for the Tribunal to determine the precise extent of the losses that Iran has suffered. Consistent with the principles set forth above,[239] however, given that Iran has proven the fact of its losses, its failure to prove their exact extent should not preclude it from recovering damages altogether. To exclude any recovery in these circumstances would be grossly unfair. The Tribunal has resorted to approximation to award compensation where the claimant had proven the fact that it had incurred losses but failed to produce, and to explain why it did not produce, evidence that would have allowed the Tribunal to determine the precise extent of those losses.

233. Consequently, the Tribunal will determine equitably the extent of the losses Iran has suffered as a result of the monitoring of suspended claims by Shack & Kimball. In so doing, the Tribunal will make its best approximation of those losses, taking into account all relevant evidence as well as all the circumstances, including Iran's conduct in this arbitration.

234. With respect to the latter, the Tribunal has already noted that Shack & Kimball invoices and billing documents were available to Iran and could have been produced by it; further, Mr. Shack, Iran's witness, admittedly possesses (or recently possessed) relevant accounting and billing records, which he could have produced in support of his affidavits.[240] This evidence, if proffered by Iran or Mr. Shack, would have assisted the Tribunal in determining the extent of the monitoring services provided by Shack & Kimball and the related amounts the firm billed to Iran; moreover, it would likely have lessened (or perhaps even obviated) the need for the Tribunal to resort to approximations. Furthermore, production by Mr. Shack of the primary documentation in his possession might have enhanced the weight of his affidavit and Hearing testimony. In these circumstances, given Iran's and its witness' failure to produce primary documentation available to them, the Tribunal is justified in exercising conservative judgment in making an approximation of Iran's losses.

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[239] *See supra* paras. 230-231.

[240] *See supra* paras. 153-156.

235. Shack & Kimball acted as Iran's general counsel in the United States from February 1979 through early 1983. The Tribunal is persuaded that, in this capacity, the firm, while providing Iran with assorted legal services,[241] spent a significant amount of time on the monitoring of suspended claims before as well as after 19 July 1981. Moreover, contemporaneous evidence shows that, between July and November 1981, Shack & Kimball billed Iran a total of U.S.$427,397.47 for services rendered as general counsel.[242] Shack & Kimball continued to provide legal services to Iran after that date. It is further undisputed that Iran paid Shack & Kimball invoices for services rendered.

236. After taking into account all relevant considerations, the Tribunal deems it fair and reasonable in the circumstances to award Iran U.S.$70,000 in compensation for monitoring services performed by Shack & Kimball.[243] In determining this amount, the Tribunal, exercising conservative judgment, has, *inter alia*, considered that the amount Iran claimed in general litigation expenses covered, not only monitoring expenses, but also unallocated litigation expenses.

237. It has been asserted in a Separate Opinion that, by awarding here "less than 10% of the claim," the Tribunal has not taken a sufficiently "realistic and meaningful approach to approximation of damages." As noted above, however, Iran did not specify the amount it seeks in monitoring expenses; it simply put forward an aggregate representing the total relief sought on its claims for monitoring expenses *and* unallocated litigation expenses together – that is, U.S.$860,857.33 – without specifying the amount of relief it seeks under each head of recovery.[244] Since Iran has not quantified its claim for monitoring expenses, the above-quoted assertion in the Separate Opinion is insufficient.

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[241] *See supra* para. 228.

[242] *See supra* note 226.

[243] The Separate Opinion of a Tribunal Member erroneously portrays the award of U.S.$70,000 in compensation for monitoring services performed by Shack & Kimball as a "giveaway," a "gift," and "an unauthorized decision *ex aequo et bono*" (it so portrays also the award of U.S.$50,000 on Iran's claim for "other losses" in connection with *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran et al.*, *infra* para. 281). The Tribunal has no intention to grant Parties any gifts *ex aequo et bono* in the present Award or elsewhere. Unlike an award *ex aequo et bono*, which is based on extra-legal considerations that a tribunal considers equitable, the Tribunal's present award of U.S.$70,000 for Shack & Kimball monitoring expenses is based on legal considerations, which are set forth explicitly and in detail *supra* in paras. 230-231. On the question of equity within the law, see SCHREUER ET AL., supra note 231, at 636-37. *See also Amco Asia Corp. and others v. Republic of Indonesia*, Decision on Annulment (ICSID Case No. ARB/81/1), paras. 26 & 28 (16 May 1986); *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, Decision on Annulment (ICSID Case No. ARB /01/7), para. 48 (21 Mar. 2007).

[244] *See supra* paras. 210, 224-225.

(ii) Seven Other United States Law Firms

238. To prove the monitoring and unallocated litigation costs it allegedly incurred in relation to legal services purportedly provided by seven other law firms, Iran relies on a series of invoices, documents evidencing payment, and Case IDs. Thus, unlike with respect to the Shack & Kimball expenses, Iran here proffered contemporaneous billing and accounting documents. The law firm invoices on record present different degrees of specificity. They generally indicate the issuing law firm, the date of issuance, the invoice number, and the amount charged by the law firm. While many invoices provide a detailed description of the services rendered, some provide either no specification whatsoever or only a brief summary of the services rendered. The entries on these invoices that describe monitoring activities are typically included in a "general litigation expenses" category, and are thus not case-specific.[245] This is not problematic for compensating monitoring expenses because, by their nature, monitoring expenses are not necessarily case-specific. Monitoring can be an overarching process. However, because of the language of Partial Award No. 590,[246] the Tribunal must be reasonably certain that the monitoring these entries represent was connected to United States court litigation that was suspended as part of the United States' efforts to comply with General Principle B.[247] Because the invoices that describe monitoring are not connected to cases, the Tribunal cannot exclude the risk that some of the monitoring activity related to cases that were not within the United States' General Principle B obligations and were therefore not suspended.[248] The Tribunal finds that it must adjust the amount of monitoring expenses that would otherwise be compensable so as to reflect this risk.

239. After reviewing all the evidence, in particular the law firm invoices and evidence of payment, the Tribunal concludes that Iran has proven that it has incurred monitoring expenses totaling U.S.$11,465.82. However, as mentioned, the Tribunal believes this figure must be adjusted. Iran submitted Case IDs for 179 cases,[249] which its claim in these Cases relates to.

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[245] Occasionally, these entries do mention a specific piece of United States court litigation. In these instances, the Tribunal has ascertained whether the litigation is encompassed by the United States breach of General Principle B. If the case is not, then that entry has not been deemed compensable.

[246] *See* Partial Award No. 590, para. 102, 34 IRAN-U.S. C.T.R. at 138: "The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of the monitoring of the *suspended* claims" (emphasis added).

[247] *See id.*

[248] A claim falling within the description at Paragraph 11 of the General Declaration, for example.

[249] *See supra* para. 158 and note 102.

Of these 179 cases, this Tribunal has determined that several were not within the scope of General Principle B. Specifically, only 115 of the 179 cases were deemed to be subject of the United States' breach of General Principle B.[250] The Tribunal therefore finds it appropriate to reduce the figure of U.S.$11,465.82 proportionate to the number of cases which it deemed not to be subject of the United States' breach of General Principle B.[251] For the Tribunal, this approximation adequately addresses the risk described above.[252] Accordingly, the Tribunal awards the amount of U.S.$7,338.12 to Iran.

(iii) Further Monitoring Activities

240. As noted, in its claim for specific litigation expenses, Iran has included costs it allegedly incurred as a result of law firm activities that represent typical monitoring activities ("further monitoring activities").[253] While Iran should have properly classified those costs as monitoring expenses rather than specific litigation expenses, it would be inequitable for the Tribunal, on that ground, outright to dismiss Iran's claim for such costs. Accordingly, the Tribunal concludes that, if proven, costs claimed by Iran in relation to further monitoring activities can be compensated as monitoring expenses.

241. After reviewing all the evidence, in particular the law firm invoices and evidence of payment that Iran produced to support its claim for specific litigation expenses, the Tribunal concludes that Iran has proven that it has incurred expenses resulting from further monitoring activities totaling U.S.$7,456.60. Accordingly, the Tribunal awards this amount to Iran.

(3) B.I.L.S. Expenses

242. Iran describes its B.I.L.S. expenses as in-house attorney salaries and administrative charges. To prove the B.I.L.S. expenses, Iran submitted two affidavits dated 1 February 2001 and 30 June 2004, respectively, by Mr. Behazin Bijani, a manager in the Financial Department of the B.I.L.S. Mr. Bijani states that B.I.L.S. lawyers were in direct contact with the United States attorneys representing Iran in the relevant United States court cases; those B.I.L.S. lawyers discharged, *inter alia*, the following tasks: supervising the performance of Iran's United States attorneys; receiving their reports and correspondence on the development

[250] *See* Annexes A and B.

[251] *I.e.*, 115/179 * 100 = 64%. The appropriate reduction is therefore 36%.

[252] *See supra* para. 238.

[253] *See supra* para. 226.

and status of the cases; conducting case studies; preparing reports to the relevant Iranian officials; dispatching instructions and necessary documents to the United States attorneys; and processing their invoices for services rendered and disbursements incurred. Among the B.I.L.S. expenses claimed by Iran, Mr. Bijani also includes costs "for the maintenance and administration of B.I.L.S.' offices in Washington and The Hague." In his 1 February 2001 affidavit, "[a]fter consideration of all the existing records and relevant information," Mr. Bijani estimates the B.I.L.S. expenses at U.S.$250,000.

243. For the following reasons, the Tribunal holds that the B.I.L.S. expenses are not compensable under Partial Award No. 590.

244. In the Tribunal's view, the activities carried out by the B.I.L.S. lawyers were of the type that is typically discharged by in-house, government counsel in instructing and supervising outside counsel in litigation involving the State. The costs resulting from such activities are part of the State's internal operating costs, as are the costs for maintaining and operating government office facilities. This type of expense is not compensable under Partial Award No. 590.

245. Further, and equally crucial, the Tribunal finds that the evidence proffered by Iran is not adequate to prove the claimed amount of U.S.$250,000. In particular, while Mr. Bijani states that he has considered "all the existing records and relevant information" in estimating that amount, neither he nor Iran has produced those records or any other supporting evidence.

246. For all the above reasons, Iran's claim for B.I.L.S. expenses is dismissed.

g) Concluding Remarks

247. In determining the amounts of compensable expenses that are due and owing by the United States to Iran[254] and, in this connection, in determining, *inter alia*, whether relevant appearances and filings were made and relevant monitoring activities were carried out, the Tribunal has carefully considered the Parties' arguments, and it has performed an in-depth evaluation of the evidence presented, including the following:

a. copies of the invoices issued by the United States law firms representing Iran;

[254] *See supra* paras. 194-204, 227-236, 238-241.

b. evidence of payment of invoices, including copies of checks, bank documents, correspondence between Iran and its United States attorneys, Iranian internal communications, and payment receipts;

c. copies of docket sheets for the relevant United States court cases; United States court decisions; filings and correspondence with United States courts; correspondence with and between attorneys; and

d. copies of United States Government statements of interest filed with United States courts.

248. Further, in making its determinations, the Tribunal has meticulously applied the criteria established in Partial Award No. 590[255] and in the present Award.[256]

249. In application of its broad discretion to determine the length and detail of its awards,[257] the Tribunal has deemed it inappropriate in the circumstances to relate, and therefore has not related, all the specifics of the Tribunal's analysis of the 179 United States court legal proceedings at issue in these Cases and the thousands of associated documents. Specifically, the Tribunal has elected not to itemize, either in the body of the present Award or in appendices thereto, the individual expenses that it has concluded are compensable or not compensable, to set out the detailed reasons for their compensability *vel non*, to provide a line-by-line analysis of the many invoices for legal services it has found should be honored or to specify which items within such invoices should be honored and why (or, if not, why not),[258] or to provide the details of its calculations. The Tribunal believes that, in the circumstances of these Cases, providing such a mass of detail would obscure the essential

[255] *See*, in particular, Partial Award No. 590, paras. 74-83, 87-103, 110-15, 130-33, 176-77, 184-88, 214 A, 34 IRAN-U.S. C.T.R. at 129-38, 140-41, 146-47, 156-59, 165-68.

[256] *See supra* para. 31 *et seq*.

[257] In this regard, see, e.g., *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, Decision on Annulment (ICSID Case No. ARB/97/3), para. 64 (3 July 2002) ("[Reasons may be stated succinctly or at length, and different legal traditions differ in their modes of expressing reasons. Tribunals must be allowed a degree of discretion as to the way in which they express their reasoning."); JASON FRY, SIMON GREENBERG, FRANCESCA MAZZA, THE SECRETARIAT'S GUIDE TO ICC ARBITRATION 321 (2012) ("Arbitrators enjoy broad discretion as to the appropriate length and level of detail of the award.").

[258] Often very small invoiced amounts were at issue and only portions of those amounts were found by the Tribunal to be compensable. For example, out of the U.S.$1.40 invoiced by the law firm Crosby, Heafey, Roach & May on 28 May 1987 in relation to *Lockheed Corp. v. Iran*, the Tribunal has concluded that U.S.$0.73 is compensable as a specific litigation expense. Or, out of the U.S.$10.50 invoiced by the same law firm on 15 July 1983 in relation to *Tchaschosh Co. v. Iran*, the Tribunal has concluded that U.S.$6.30 is compensable as a specific litigation expense.

points of the Tribunal's decision. In addition, the Tribunal does not believe that it is its duty to set out, in this Award, all the minutiae of its decision, given that the Parties themselves did not provide, in their pleadings, a comprehensive, detailed, line-by-line analysis of the invoices and payment documents on record but rather left it to the Tribunal to do so.

250. The Tribunal has elected, instead, to describe in detail the legal rationale for its conclusions on compensability and to specify the aggregates of the expenses it has deemed to be compensable and the evidence it has relied on in making its determinations. In addition, while the Tribunal believes, as a general matter, that it should avoid attaching documents to its awards, it has nevertheless attached three concise Annexes to this Award, listing: (i) the legal proceedings involving claims arguably falling within the Tribunal's jurisdiction or involving claims that had been filed with the Tribunal in which Iran was reasonably compelled in the prudent defense of its interests to make appearances or file documents after 19 July 1981;[259] (ii) the lawsuits filed against Iran in United States courts after 19 January 1981 that involved claims arguably falling within the Tribunal's jurisdiction or claims that had been filed with the Tribunal;[260] and (iii) Claim A cases with respect to which Iran has proven that it has incurred specific litigation expenses.[261]

251. One of the concurring and dissenting opinions has attached a "Schedule of Differences" in an effort to show why it has reached different results as to specific sums awarded for specific litigation expenses and expenses related to "further monitoring activities." The Tribunal does not believe, for the reasons stated and implied *supra*,[262] that this exercise could be successful in changing its findings as to the sums awarded. The Tribunal notes that, on the whole, the Separate Opinions submitted by Tribunal Members show that there is a good deal of factual convergence among all Members as to the amounts claimed and awarded for specific litigation expenses. This is also confirmed by the first three

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[259] Annex A.

[260] Annex B.

[261] Annex C.

[262] Concerning *Seyed M. Raji et al. v. Bank Sepah Iran et al.*, 20658/80 (Sup. Ct. N.Y.), see paras. 49-54; concerning *Hoffman Export Corp. v. Iran*, 80-0524 (C.D. Cal.), 81-5432 (9th Cir.), see paras. 87-94; concerning *Kianoosh Jafari et al. v. Islamic Republic of Iran*, 81-4043 (N.D. Ill.), see paras. 100-106; concerning *James Saghi et al. v. Islamic Republic of Iran et al.*, 83-2165 (D.D.C.), see paras. 198-201. *Sea also* paras. 195, 196, 240-241, 249-250. The Tribunal notes that the "Schedule of Differences" suggests that the Tribunal has awarded compensation for "[n]ew counsel's review of case and related disbursements" in relation to *Behring Int'l, Inc. v. Iran*, 79-675 (D.N.J. & 3rd Cir.). The compensation that the Tribunal has awarded does not cover expenses related to "[n]ew counsel's review of case and related disbursements."

columns of the "Schedule of Differences" ("Case Name, Number (Court)"; "Total amount claimed by Iran"; "Awarded by the Tribunal as appearances or filings"), which also show how rigorously and meticulously the Majority has examined a vast volume of documents in order to establish the amounts awarded in each case.

252. While Article 32, paragraph 3, of the Tribunal Rules provides that the Tribunal "shall state the reasons upon which the award is based," it does not prescribe the manner in which the Tribunal must state such reasons.[263] In this regard, the Tribunal echoes the view expressed by the International Court of Justice in its Advisory Opinion in *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*:

> [The statement of reasons] must indicate in a general way the reasoning upon which the judgment is based; but it need not enter meticulously into every claim and contention on either side. While a judicial organ is obliged to pass upon all the formal submissions made by a party, it is not obliged, in framing its judgment, to develop its reasoning in the form of a detailed examination of each of the various heads of claim submitted. Nor are there any obligatory forms or techniques for drawing up judgments: a tribunal may employ direct or indirect reasoning, and state specific or merely implied conclusions, provided that the reasons on which the judgment is based are apparent.[264]

253. The European Court of Human Rights, for its part, in assessing the fairness of national court proceedings in accordance with Article 6, paragraph 1, of the European Convention on Human Rights,[265] has held that "Article 6 § 1 obliges the courts to give reasons for their

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[263] DAVID D. CARON, LEE M. CAPLAN, MATTI PELLONPÄÄ, THE UNCITRAL ARBITRATION RULES – A COMMENTARY 813 (Oxford University Press, 2006) ("The [UNICTRAL Arbitration Rules] provide no direction regarding the substance and form of the arbitral tribunal's statement of reasons for the award.").

[264] Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, 1973 I.C.J. 165, 201-11, ¶ 95 (12 July). A similar approach has been adopted in investment arbitration by *ad hoc* committees deciding requests for annulment of awards issued under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (opened for signature 18 March 1965, entered into force 14 October 1966) (ICSID Convention). In *Wena Hotels*, for example, in determining whether the ICSID tribunal had failed to state the reasons on which its award was based (a ground for annulment under Article 52 (1) of the ICSID Convention), the *ad hoc* committee stated:

> Neither Article 48 (3) [of the ICSID Convention, which provides that the "award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based"] nor Article 52 (1) (e) specify the manner in which the Tribunal's reasons are to be stated. The object of both provisions is to ensure that the Parties will be able to understand the Tribunal's reasoning. This goal does not require that each reason be stated expressly. The tribunal's reasons may be implicit in the considerations and conclusions contained in the award, provided they can be reasonably inferred from the terms used in the decision.

Wena Hotels Limited v. Arab Republic of Egypt, Decision on Annulment (ICSID Case No. ARB/98/4), para. 81 (5 Feb. 2002).

[265] Article 6, paragraph 1, of the European Convention on Human Rights provides, in relevant part, that, "[i]n the determination of his civil rights and obligations . . . everyone is entitled to a fair . . . hearing . . .by [a]

judgments, but cannot be understood as requiring a detailed answer to every argument [; the] extent to which this duty to give reasons applies may vary according to the nature of the decision."[266]

254. The present Award, in a manner appropriate to the circumstances of these Cases, adequately addresses the essential issues that the Parties submitted to it, identifies the factual and legal premises upon which the Tribunal based its conclusions, and presents the rationale for the Tribunal's decision.

5. Other Losses

255. While the majority of losses that Iran claims result from the provision of legal services, there are two comparatively large amounts which do not, and which are therefore dealt with here separately. These amounts ("other losses") are connected with two legal proceedings in United States courts, said to fall within the United States' obligations under General Principle B.

a) Behring International, Inc. v. Iran et al.

256. Iran claims U.S.$146,267.86 in "other losses" in relation to *Behring International, Inc. v. Iran et al*.[267] The facts of this claim are complex and are set out here only in brief.[268]

257. This claim centers around a dispute which arose over Iran's alleged repudiation of a contract for freight forwarding between Behring International, Inc. ("Behring") and the Iranian Air Force and Government of Iran (hereafter "Iran") in early 1979.

258. As a result of this dispute, Behring instituted proceedings in the United States District Court for the District of New Jersey ("District Court"). This dispute was settled out of court in November 1979, but legal proceedings persisted nonetheless (the subsequent proceedings

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tribunal . . . ." Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art. 6 (1).

[266] Voloshyn v. Ukraine, App. No. 15853/08, Judgment, para. 29 (10 Oct. 2013). *See also* Ivan Stoyanov Vasilev v. Bulgaria, App. No. 7963/05, Judgment, para. 33 (4 June 2013); Lăcătuş and others v. Romania, App. No. 1269/04, Judgment, paras. 97-100 (13 Nov. 2012); García Ruiz v. Spain, App. No. 30544/96, Judgment, para. 26 (21 Jan. 1999); Van de Hurk v. The Netherlands, App. No. 16034/90, Judgment, para. 61 (19 Apr. 1994).

[267] *Behring International, Inc. v. Iran et al.*, 79-675 (D.N.J.).

[268] *See Behring International, Inc.* and *Islamic Republic of Iranian Air Force et al.*, Interim and Interlocutory Award No. ITM/ITL 52-382-3 (21 June 1985), *reprinted in* 8 IRAN-U.S. C.T.R. 238. A fuller description of the background to this case appears *id.* at 16-28, 8 IRAN-U.S. C.T.R. 248-57.

involved costs for storage of Iran's property in Behring's warehouse) ("Behring lawsuit"). In a decision of 5 November 1981, the District Court held that any claims by Behring for pre-19 January 1981 storage costs had to be presented to the Tribunal; by contrast, post-19 January 1981 storage costs could be litigated in United States courts, and the District Court awarded Behring compensation for such costs. These decisions were later upheld on appeal.

259. In January 1982, Behring also instituted proceedings against Iran before the Tribunal for pre-19 January 1981 storage costs. While the Tribunal proceedings were on foot, in July 1983, Behring, claiming a warehouseman's lien on Iran's goods in its possession at its warehouse, announced that it intended to sell those goods at a public auction on 15 August 1983 to cover storage costs allegedly owed by Iran. Some of the storage costs Behring sought to cover by the sale were pre-19 January 1981 costs.[269] On 4 August 1983, Iran submitted to the Tribunal a request for an interim order, asking that the Tribunal order Behring to refrain from auctioning the goods pending a final decision of Behring's claim by the Tribunal. On 10 August 1983, the Tribunal issued an interim award, ordering that Behring "take whatever measures [were] necessary to assure that the sale of assets scheduled for 15 August 1983 [was] not carried out" until the Parties had had "an opportunity to more fully present and argue their contentions."[270] Behring, ignoring the Tribunal's order in the Interim Award, informed Iran that it intended to proceed with the sale. [271]

260. Iran also unsuccessfully attempted to stop the sale in the context of the litigation instituted by Behring against it in the District Court. On 5 August 1983, Iran petitioned the District Court for a temporary restraining order and preliminary injunction against Behring's proposed sale. The District Court denied Iran's motion on 10 August 1983.

261. As a result of these unsuccessful attempts, and the impending sale, on 14 August 1983, Iran entered into a Memorandum of Agreement with Behring halting the sale upon, *inter alia*, payment of U.S.$800,000 to Behring.[272] As Behring represented in the Tribunal

[269] *See id.* 8 IRAN-U.S. C.T.R. at 255.

[270] *Behring International, Inc.* and *Islamic Republic of Iranian Air Force et al.*, Interim Award No. ITM 25-382-3 (10 Aug. 1983), *reprinted in* 3 IRAN-U.S. C.T.R. 173,174-75.

[271] *See Behring International, Inc.*, Interim and Interlocutory Award No. ITM/ITL 52-382-3, 8 IRAN-U.S. C.T.R. at 241.

[272] *See id.* 8 IRAN-U.S. C.T.R. at 241-42.

proceedings, that Memorandum of Agreement secured for Behring all of the relief it sought under its claim before the Tribunal.[273]

262. Before the Tribunal, Iran obtained an award of U.S.$146,267.86 for reimbursement of expert's fees and for its legal expenses before the Tribunal, on the basis that Behring had engaged in "inappropriate conduct" by discontinuing its involvement in proceedings before the Tribunal.[274] Iran has not been able to enforce this award and claims this amount here as "other losses."[275]

(1) The Parties' Contentions

263. Iran argues that its inability to enforce the final award of U.S.$146,267.86 is attributable to the United States' failure to terminate the court proceedings relating to Behring's claim. Iran posits that, "[h]ad the United States terminated U.S. courts' proceedings, Behring would have inevitably pursued its claim before the Tribunal where the sum awarded to Iran could have been used by way of set-off."

264. The United States argues that the Behring proceedings before the District Court do not fall within the United States' General Principle B obligation to terminate litigation because the claim in the United States courts was not within the Tribunal's jurisdiction. The United States further argues that the U.S.$146,267.86 in "other losses" are not in any way related to appearances or filings in litigation, as required by Partial Award No. 590,[276] and that the United States cannot be expected to stand in the shoes of a respondent (Behring) who did not satisfy an award.

(2) The Tribunal's Decision

265. The Tribunal finds that the United States court proceedings before the District Court, to the extent they involved pre-19 January 1981 storage costs, were subject to the United States' termination of litigation obligation under the Algiers Declarations. The subject matter

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[273] *See id.* 8 IRAN-U.S. C.T.R. at 242.

[274] *Behring International, Inc.* and *Islamic Republic of Iranian Air Force et al.*, Award No. 523-382-3 (29 Oct. 1991), *reprinted in* 27 IRAN-U.S. C.T.R. 218, 245. This award was issued by Chamber Three.

[275] Behring entered bankruptcy in May 1985 (*see Behring International, Inc.* and *Islamic Republic of Iranian Air Force et al.*, Interim and Interlocutory Award No. ITM/ITL 52-382-3, at 15 (21 June 1985), *reprinted in* 8 IRAN-U.S. C.T.R. 238, 247).

[276] *See* Partial Award No. 590, para. 102, 34 IRAN-U.S. C.T.R. at 138.

of the claim meets the relevant temporal jurisdiction requirements, and proceedings had been instituted at the Tribunal in respect of the claim. Thus, the Tribunal holds that the District Court was obliged to halt the preliminary injunction proceedings in the Behring lawsuit, and put the sale on hold, while parallel interim order proceedings were pending before the Tribunal. By failing to do so, the District Court failed to respect the primacy of the Tribunal's jurisdiction and the Tribunal's interim award of 10 August 1983.

266. The Tribunal is mindful that the "other losses" that Iran claims are not necessarily what the Tribunal envisaged as compensable losses when it issued Partial Award No. 590.[277] This alone, however, does not prevent the Tribunal from finding these losses to be compensable, so long as they are not expressly precluded by Partial Award No. 590, and they meet the requirements of international law discussed *supra*.[278]

267. However, the Tribunal finds that compensating Iran for the "other losses" (in the amount of U.S.$146,267.86) remains problematic. In awarding Iran the U.S.$146,267.86, Chamber Three stated that this amount was awarded because of Behring's "inappropriate conduct" (essentially the discontinuance of Behring's participation in the Tribunal proceedings, evidenced by repeatedly failing to file memorials and other documents as directed by Chamber Three).[279] This Tribunal has thus already provided Iran with a remedy for Behring's inappropriate conduct. The Tribunal does not find it appropriate to reinforce that remedy by awarding it as damages in this proceeding. It is not for this Tribunal to address a situation that, while unfortunate, is properly subject of an enforcement regime separate to these proceedings.

268. Furthermore, and crucially, the Tribunal disagrees with Iran's contention that, "[h]ad the United States terminated U.S. courts' proceedings, Behring would have inevitably pursued its claim before the Tribunal where the sum awarded to Iran could have been used by way of set-off." If Behring had pursued its claim before the Tribunal, Chamber Three would not have awarded the U.S.$146,267.86 to Iran in response to Behring's "inappropriate conduct," and no set-off could have occurred. In these circumstances, it cannot be concluded that Iran's inability to recover that amount is attributable to the United States' failure to halt

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[277] *See id.*

[278] *See supra* para. 191.

[279] *Behring International, Inc.* and *Islamic Republic of Iranian Air Force et al.*, Award No. 523-382-3 (29 Oct. 1991), *reprinted in* 27 IRAN-U.S. C.T.R. 218, 245.

the proceedings before the District Court and to its allowing the sale of Iran's property to proceed.

269. Accordingly, the Tribunal finds that Iran is not entitled to the "other losses" claimed in relation to the Behring proceedings.

b) Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran

270. In respect of *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran* ("Marriott lawsuit"),[280] Iran claims, in the context of Claim H, U.S.$50,000 in "other losses," representing an amount held in escrow by the law firm Rogers & Wells ("Rogers & Wells") pursuant to an agreement among it, Marriott Corporation and Marriott Hotels Services and Management Corporation (collectively, "Marriott"), and the Pahlavi Foundation of Iran. The relevant facts relating to the Marriott lawsuit have been related above.[281] As noted, by Order of 5 May 1981, the Supreme Court of the State of New York ("New York State Supreme Court") directed that Rogers & Wells release the U.S.$50,000 to Marriott.

(1) The Parties' Contentions

271. Iran asserts that the United States must be held responsible for the damage resulting from its failure to nullify the 5 May 1981 Order of the New York State Supreme Court ("5 May 1981 Order"), which damage, in Iran's view, was directly caused by the United States' violation of the provisions of the Algiers Declarations. In particular, the United States has violated its obligation under General Principle B to nullify judgments obtained by United States nationals against Iran in United States courts. Iran asserts that the U.S.$50,000 that the 5 May 1981 Order directed Rogers & Wells to release to Marriott represented a loss that "was directly caused" to Iran by that United States violation. At the Hearing, Iran argued that, if the 5 May 1981 Order had been nullified, the U.S.$50,000 would not have been paid to Marriott; rather, it would have been returned to Rogers & Wells to be eventually transferred by the United States to Iran or to the Security Account pursuant to Paragraphs 6-8 of the

[280] *Marriott Corp. et al. v. Rogers & Wells v. Pahlavi Foundation of Iran & Alavi Foundation of Iran*, 21884/79 (Sup. Ct. N.Y.).

[281] *See supra* paras. 132-135.

General Declaration. Thereafter, Marriott, if it had wished to pursue a claim for the U.S.$50,000, could have brought its claim before the Tribunal.

272. The United States argues that the claim underlying the Marriott lawsuit does not fall within the United States' General Principle B obligations because Iran was not a defendant in the proceedings. In any event, the United States argues, the U.S.$50,000 claimed by Iran in "other losses" in no way meets the compensability criteria set forth in Partial Award No. 590 because this amount is not related to appearances and filings made in the course of litigation.

(2) The Tribunal's Decision

273. In the Escrow Agreement concluded on 27 December 1977 among Rogers & Wells, Marriott, and the Pahlavi Foundation of Iran (which was succeeded by the Alavi Foundation of Iran) ("Foundation"), Marriott and the Foundation authorized Rogers & Wells "to collect on behalf of Marriott" and hold in escrow in accordance with a 13 December 1977 agreement between Marriott and the Foundation ("13 December 1977 Agreement") "the amount of $50,000 which the Foundation [was] obligated to pay thereunder." Rogers & Wells would release the $50,000 to Marriott, upon notice from Marriott and the Foundation, if Marriott performed certain obligations pursuant to the 13 December 1977 Agreement.[282]

274. The Supreme Court of the State of New York ("Supreme Court") on 13 February 1980 denied Marriott's motion for summary judgment asking that the escrow funds be released to it ("13 February 1980 ruling")[283] because it was not yet established whether the conditions in the Escrow Agreement for the release of the funds to Marriott had been complied with (a view shared, in essence, by the United States in the statement of interest it filed on 8 July 1981 in subsequent appeal proceedings[284]). On 28 April 1981, the Appellate Division of the Supreme Court of the State of New York ("Appellate Division") reversed the 13 February 1980 ruling and determined that title to the escrow funds had passed to Marriott

[282] *See supra* note 138.

[283] *See supra* para. 133.

[284] The United States contended that Iran had a significant interest in the escrow funds and therefore requested that the court vacate the 5 May 1981 Order and direct Marriott to return the funds to Roger & Wells, and that Roger & Wells be ordered to hold the U.S.$50,000 pending further direction or authorization from the Department of the Treasury. *See also supra* para. 134

pursuant to the 13 December 1977 Agreement; and that, therefore, summary judgment should have been issued in its favor by the Supreme Court.[285] In the Appellate Division's words:

> Once the[] conditions [in the agreements between Marriott and the Foundation] have been complied with by the beneficiary (Marriott), the latter then became fully entitled to delivery of the property deposited for its benefit. . . . In fact, title to the escrow funds passed to Marriott when the entire sum became payable. Although the money was in an escrow account . . . , title to the money was in Marriott subject to the above conditions which Marriott complied with.[286]

275. In implementation of the 28 April 1981 decision of the Appellate Division, the Supreme Court issued the 5 May 1981 Order, directing that Rogers & Wells release the U.S.$50,000 in escrow and pay it to Marriott. Rogers & Wells did so on 5 June 1981. The Foundation subsequently filed a motion with the Supreme Court to vacate the 5 May 1981 Order. On 8 July 1981, the United States filed a statement of interest in support of the Foundation's motion to vacate.[287] On 17 December 1981, the Supreme Court dismissed the Foundation's motion.[288] The Foundation appealed. The Court of Appeals of the State of New York ("New York Court of Appeals"), the State's highest court, dismissed the Foundation's appeal in December 1983.

276. Because the claim underlying the Marriott lawsuit, to the extent that it involved the Foundation as a defendant, fell within the Tribunal's jurisdiction,[289] General Principle B imposed on the United States an obligation concerning the nullification of both the 28 April 1981 decision of the Appellate Division and the 5 May 1981 Order of the Supreme Court; this obligation accrued on 19 July 1981.[290] However, because those two decisions had already been implemented by that date, thereby causing the release of the escrow funds to Marriott, in order to satisfy its General Principle B nullification obligation, by 19 July 1981, the United States should have reversed those two decisions and ordered that the escrow funds

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[285] *See supra* para. 134.

[286] *Marriott Corp. et al. v. Rogers & Wells*, 438 N.Y.S. 2d, 330, 332,

[287] *See supra* para. 134 and note 284.

[288] *See supra* para. 134.

[289] *See supra* para. 139.

[290] *See* Partial Award No. 590, paras. 184, 214 A (h) (1), 34 IRAN-U.S. C.T.R. at 157-58, 168, and *supra* para. 139. The Tribunal also notes that Executive Order 12294 suspended execution of those two decisions and declared them to be without legal effect. *See supra* para. 124. The courts of the State of New York, however, did not give effect to that Executive Order with respect to the two decisions.

be returned to Rogers & Wells. This was also the contemporaneous position of the United States Government, which, in the statement of interest it filed in July 1981 in the New York State Supreme Court, supporting the Foundation's motion to vacate, requested that the court vacate the 5 May 1981 Order and direct Marriott to return the funds to Roger & Wells;[291] in the United States' view, "insofar as [Executive Order 12294] and [implementing Treasury Regulations] suspended claims, the [5 May 1981 Order] should not have been issued."

277. The decision of 17 December 1981 of the Supreme Court and the December 1983 decision of the New York Court of Appeals, for their part, violated the United States' General Principle B obligation to terminate legal proceedings involving claims arguably falling within the Tribunal's jurisdiction and were, therefore, "'null and void *ab initio*, and without effect on the international plane.'"[292]

278. On this claim, Iran seeks damages resulting from the United States' failure to nullify the 5 May 1981 Order. That order was "in existence after 19 July 1981,"[293] and the Tribunal holds that the legal expenses Iran sustained in attempting to have that order vacated and the escrow funds returned to Rogers & Wells were "reasonably incurred."[294] Thus, in application of the Reasonably Incurred Standard established by Partial Award No. 590,[295] the Tribunal holds that the United States has breached its obligations under the Algiers Declarations concerning the nullification of the 5 May 1981 Order.[296] This conclusion necessarily applies also to the 28 April 1981 decision of the Appellate Division, which prompted the 5 May 1981 Order. The Tribunal's task is therefore to determine "the nature and amount of damages, if any, Iran suffered as a result of" that Order.[297]

279. If the United States had complied with its obligations concerning the nullification of the 28 April 1981 decision of the Appellate Division and, crucially, of the 5 May 1981 Order, the escrow funds would have been returned by Marriott to Rogers & Wells, and they would

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[291] *See supra* note 284.

[292] IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 509 (7th ed. 2008) ("In principle proceedings in municipal courts involving excess of jurisdiction are 'null and void *ab initio*, and without effect on the international plane.'") (*quoting* Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Judgment, 1970 I.C.J. 3, 106 (Separate Opinion of Judge Fitzmaurice) (5 Feb.)).

[293] Partial Award No. 590, para. 214 A (h) (2), 34 IRAN-U.S. C.T.R. at 168.

[294] *Id.*

[295] *See supra* para. 123.

[296] *See* Partial Award No. 590, para. 214 A (h) (2), 34 IRAN-U.S. C.T.R. at 168 and *supra* paras. 137-140.

[297] *See* Partial Award No. 590, para. 214 A (h) (2), 34 IRAN-U.S. C.T.R. at 168.

have been released to Marriott only when Marriott would have obtained, from a competent court, a decision resolving its dispute with the Foundation and holding that the conditions in the Escrow Agreement for the release of the funds to Marriott had been satisfied.[298] Because the claim underlying that dispute between Marriott and the Foundation fell within the Tribunal's jurisdiction,[299] under General Principle B, solely the Tribunal was competent to decide it, to the exclusion of United States courts. As it happened, Marriott did not submit that claim to the Tribunal by 19 January 1982, the deadline for filing of claims established by Article III, paragraph 3, of the Claims Settlement Declaration. This is likely because, having already been paid the escrow funds by Rogers & Wells pursuant to the 5 May 1981 Order, it had no incentive to do so. Consequently, no competent court has ever determined that Marriott was entitled to the escrow funds, which should therefore have remained in the escrow account. For the reasons stated above, the Appellate Division was not competent under the Algiers Declarations to make that determination.[300]

280. Under the applicable New York law, title remains in the person depositing the property into escrow (the depositor) until the conditions of the escrow agreement are fulfilled.[301] Where there is a dispute, until a competent forum determines, with retroactive effect, whether the conditions of the escrow agreement have been met, title to the property in escrow must be presumed to have remained with the depositor. With respect to the dispute between Marriott and the Foundation underlying the Marriott lawsuit, however, by 19 January 1982, the Tribunal, the only forum competent under the Algiers Declarations to resolve that dispute and, in that context, to determine whether the conditions in the Escrow Agreement for the release of the U.S.$50,000 to Marriott had been satisfied, was no longer

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[298] *See also* the statement of interest that the United States Government filed in July 1981 in the New York State Supreme Court, supporting the Foundation's application that the court vacate the 5 May 1981 Order, *supra* para. 274 and note 284.

[299] *See supra* para. 139.

[300] *See supra* para. 274.

[301] *See* Press v. Marvalan Industries, Inc. et al., 422 F.Supp. 346 (D.N.Y. 1976) (the incidents of ownership remain in the person depositing the property into escrow until the conditions of the escrow agreement are fulfilled); National Union Fire Insurance Co. Pittsburgh, Pennsylvania v. Proskauer Rose Goetz & Mendelsohn et al., 165 Misc.2d 539, 634 N.Y.S.2d 609 (N.Y.S.2d 1994) (the interest of ownership remains in the person depositing the property into escrow until the conditions of the escrow agreement are fulfilled); Jofen v. Epoch Biosciences, Inc., 2002 WL 1461351 (S.D.N.Y. 2002) (as a general principle of New York law, the placing of property in escrow does not pass title to the incidents of ownership to the beneficiary until the condition precedent for the release of the escrow has been met). *See also* Knoll et al. v. Butler et al., 675 A.2d 1308 (Pa. Commw. Ct. 1996) (if the conditions of escrow do not occur, the escrow depositary would normally return the escrowed money to the depositor/buyer unless the facts of the particular escrow agreement were extraordinary) (law of Pennsylvania).

available.[302] In this situation, but for the 28 April 1981 decision of the Appellate Division, the escrow funds would have remained the property of the Foundation, the original depositor of the funds. The 28 April 1981 decision of the Appellate Division and the 5 May 1981 Order, which directed Rogers & Wells to release the escrow funds to Marriott, effectively deprived the Foundation of the money to which, in the circumstances, but for those decisions it would have continued to hold title. The Tribunal awards Iran compensation for the Foundation's loss of title to those funds, which title, had the United States vacated the 28 April 1981 decision of the Appellate Division and the 5 May 1981 Order, the Foundation would have retained.[303]

281. In view of the foregoing, the Tribunal holds that Iran suffered damages in the amount of U.S.$50,000 as a result of the United States' failure to comply with its obligations under the Algiers Declarations concerning the nullification of the 5 May 1981 Order of the New York State Supreme Court. Accordingly, the Tribunal awards this amount to Iran.

IV. INTEREST

282. In accordance with Tribunal practice,[304] the Tribunal holds that Iran is entitled to interest on the amounts owed to it by the United States under this Award in order to compensate Iran for damages suffered due to delay in payment.

A. Rate of Interest

283. Under customary international law, as expressed in Article 38 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, the rate of interest on a sum due by the internationally responsible State "shall be set so as to

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[302] The Tribunal has considered the argument that Iran could have chosen to bring a claim against the United States before the Tribunal under Paragraph 8 of the General Declaration. While it may be correct that Iran could have chosen to do so, Iran's actual choice to bring this Claim H under General Principle B was an equally legitimate course of action: a breach of the General Principle B obligation had occurred and a loss had been caused. In response to a Separate Opinion's taking issue with Iran's procedural choices, it may be observed that once again the Tribunal is confronted with the need to clearly distinguish between the litigation involving a private United States corporation and an Iranian entity that should have been brought before the Tribunal and whose treaty non-compliant determination by a United States court caused Iran's loss for which the Claimant seeks to be compensated, on the one side, and a Paragraph 8 dispute between the two State Parties, on the other. Marriott would have had to come to the Tribunal but, in effect, was relieved from having to do so by a United States court. Iran had a choice as regards the cause of action.

[303] The Tribunal thus does not conclude that the Foundation was entitled to receive the escrow funds.

[304] *See, e.g.*, *Atomic Energy Organization of Iran* and *United States of America*, Award No. 246-B7-1 (15 Aug. 1986), *reprinted in* 12 IRAN-U.S. C.T.R. 25, 28.

achieve [full reparation]."[305] With this parameter in mind, the Tribunal will set a rate of interest that is "reasonable, taking due account of all pertinent circumstances, which the Tribunal is entitled to consider by virtue of the discretion it is empowered to exercise in this field."[306] In exercising this wide discretion, the Tribunal will select a rate of interest that neither under- nor overcompensates the Claimant for the damage it actually suffered.

284. Iran seeks simple interest at the rate of ten percent per annum from the date Iran paid the amount in question until the date of payment of the Award. In support of this claim, Iran relies on a number of decisions rendered in the mid- and late 1980s by Tribunal Chambers in official claims[307] between Iran and the United States.[308] The Tribunal finds that, while an award of simple ten-percent interest might have been reasonable at the time those decisions were rendered, it would not be reasonable today in light of the steady decline in interest rates since 1990 as well as the dramatic fall in interest rates as a result of the global financial crisis of 2008.

285. In its Award of 5 June 1998 in *Islamic Republic of Iran* and *United States of America* (Case No. A27),[309] in determining the applicable rate of simple *post-judgment* interest on the amount awarded to Iran, the Tribunal was guided by the approach taken by Chamber One of the Tribunal in its 1985 Award in *Sylvania Technical Systems, Inc.* ("*Sylvania*"),[310] although

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[305] Int'l Law Comm'n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, Rep. of the Int'l Law Comm'n, 53rd sess, 23 Apr.-1 June, 2 July-10 Aug. 2001, art. 38 (1), U.N. Doc. A/56/10; GAOR, 56th Sess., Supp. No 10 (2001).

[306] *McCollough & Co., Inc.* and *Ministry of Post, Telegraph and Telephone et al.*, Award No. 225-89-3, para. 99 (22 Apr. 1986), *reprinted in* 11 IRAN-U.S. C.T.R. 3, 29.

[307] Pursuant to Article II, paragraph 2, of the Claims Settlement Declaration, 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." Claims Settlement Declaration, art. II (2), 1 IRAN-U.S. C.T.R. at 9.

[308] *See, e.g.*, *Telecommunications Co. of Iran* and *United States of America*, Award No. 457-B55-1 (19 Dec. 1989), 23 IRAN-U.S. C.T.R. 320; *Atomic Energy Organization of Iran* and *United States of America*, Award No. 246-B7-1 (15 Aug. 1986), *reprinted in* 12 IRAN-U.S. C.T.R. 25; *United States of America* and *Islamic Republic of Iran*, Award No. 128-B29-1 (16 May 1984), *reprinted in* 6 IRAN-U.S. C.T.R. 12; *Department of the Environment of the Islamic Republic of Iran* and *United States of America*, Award No. 107-B53-1 (25 Jan. 1984), *reprinted in* 5 IRAN-U.S. C.T.R. 105.

[309] *Islamic Republic of Iran* and *United States of America*, Award No. 586-A27-FT (5 June 1998), *reprinted in* 34 IRAN-U.S. C.T.R. 39.

[310] *Sylvania Technical Systems, Inc.* and *Islamic Republic of Iran*, Award No. 180-64-1 (27 June 1985), *reprinted in* 8 IRAN-U.S. C.T.R. 298.

the Tribunal did not expressly state that it had been so guided.[311] In *Sylvania*, Chamber One held that, in the absence of a contractually stipulated interest rate, it would

> derive a rate of interest based approximately on the amount that the successful claimant would have been in a position to have earned if it had been paid in time and thus had the funds available to invest in a form of commercial investment in common use in its own country. Six-month certificates of deposit in the United States are such a form of investment for which average interest rates are available from an authoritative official source.[312]

Accordingly, in *Sylvania*, Chamber One went on to award the claimant the average rate of interest paid on six-month certificates of deposit in the United States from the time the debt arose to the time of payment of the Award ("Average Six-Month CD Rate").[313]

286. The Tribunal's application of the Average Six-Month CD Rate in determining the *post-judgment* interest in Case No. A27 may have been justified in the circumstances of that particular case, where the Tribunal applied a simple ten-percent annual rate in determining the *pre-judgment* interest awarded to Iran on the ground that "the Second Circuit would likely have awarded such interest if its decision had been to grant enforcement of the *Avco* award."[314] The Tribunal, however, does not deem a similar application of the Average Six-Month CD Rate reasonable in the present Cases. First, it is unrealistic to assume that an Iranian party, had it been paid in time, would have invested the funds in the United States in a form of commercial investment in common use there, such as certificates of deposit. Second, it is more likely that, in order to bridge the period without the money withheld, a public entity such as Iran would need to borrow money.

287. The Tribunal notes that the last available monthly Six-Month CD Rate published by the Federal Reserve Bank of New York ("Federal Reserve Bank") relates to June 2013.[315]

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[311] *See Islamic Republic of Iran* (Case No A27), para. 78, 34 IRAN-U.S. C.T.R. at 61.

[312] *Sylvania Technical Systems, Inc.*, 8 IRAN-U.S. C.T.R. at 320 (footnote omitted).

[313] *Id.* 8 IRAN-U.S. C.T.R. at 322.

[314] *Islamic Republic of Iran* (Case No A27), para. 76, 34 IRAN-U.S. C.T.R. at 60. In its Award in Case No. A27, the Tribunal held that, by virtue of the refusal by the United States Court of Appeals for the Second Circuit to enforce the Tribunal's Award in *Avco Corp.* and *Iran Industries et al.*, Award No. 377-261-3 (18 July 1988), *reprinted in* 19 IRAN-U.S. C.T.R. 200 ("*Avco* Award"), the United States had violated its obligation under the Algiers Declarations to ensure that a valid award of the Tribunal be treated as final and binding, valid, and enforceable in the jurisdiction of the United States. Consequently, the Tribunal awarded Iran the amount of the *Avco* Award, plus interest. *See Islamic Republic of Iran* (Case No A27), para. 83, 34 IRAN-U.S. C.T.R. at 62.

[315] Go to: http://www.federalreserve.gov/datadownload/Preview.aspx?pi=400&rel=H15&preview=H15/discontinued/H0.RIFSPDCNSM06_N.M (last visited 27 June 2014).

The Tribunal further notes that, as of December 2013, the Federal Reserve Bank has ceased publication of the 6-month certificate of deposit rates. On 5 December 2013, the Federal Reserve Bank of New York made the following announcement:

> **Discontinuance of CD rates (secondary market)**
> As of the release on December 16, 2013, the H.15 will cease publication of the 1-month, 3-month, and 6-month CD rates. Recent attrition has reduced both the number and types of institutions that provide quotes creating a challenge to construct statistically robust estimates of CD rates, and it is not feasible to resume publication. The historical rates will remain available through the Federal Reserve Board's Data Download Program (DDP).[316]

The Tribunal therefore would not be in a position to use the Average Six-Month CD Rate for all of the relevant period even if it accepted that it would be reasonable to apply it in these Cases.

288. Accordingly, having considered all relevant circumstances and the submissions made, in the present Cases, the Tribunal deems it fair and reasonable to award Iran simple pre-judgment interest on all amounts awarded to Iran at an annual rate (365-day basis) equal to the average prime bank lending rate in the United States during the period from the dates the Tribunal has determined that those amounts are due up to and including the date of this Award. In selecting the prime bank lending rate in the United States as the rate of interest applicable in these Cases, the Tribunal was also mindful of Article 7.4.9 (2) of the UNIDROIT Principles 2010, which provides:

> The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.[317]

[316] Go to: http://www.federalreserve.gov/feeds/h15.html (last visited 27 June 2014).

[317] International Institute for the Unification of Private Law, *UNIDROIT Principles of International Commercial Contracts* (2010) art. 7.4.9 (2).

B. Calculation of Pre-Judgment Interest

1. Specific Litigation Expenses

289. The Tribunal holds that simple pre-judgment interest on the specific litigation expenses that the Tribunal has found to be compensable[318] shall run year by year from the assumed date of payment by Iran.[319] Accordingly, the pre-judgment interest on the individual amounts that the Tribunal has awarded Iran,[320] calculated as set forth above,[321] is as follows:

Year of payment	Amount paid $	Date of payment	Pre-judgm. Interest $
1981	2,167.01	11 October 1981	5,259.73
1982	1,254.69	1 July 1982	2,899.66
1983	28,659.16	1 July 1983	62,558.80
1984	55,858.32	1 July 1984	115,554.41
1985	5,527.37	1 July 1985	10,827.32
1986	7,579.85	1 July 1986	14,155.79
1987	620.13	1 July 1987	1,106.84
1988	804.20	1 July 1988	1,364.89
1989	1,714.56	1 July 1989	2,736.88
1991	22,377.37	1 July 1991	31,317.25
1992	5,228.04	1 July 1992	6,932.15
1993	1,576.35	1 July 1993	1,993.62
Total	133,367.05		256,707.34

2. Monitoring Expenses

290. Similarly, simple pre-judgment interest on the monitoring expenses that the Tribunal has found to be compensable shall run from the dates on which those expenses have been deemed by the Tribunal to have been paid by Iran. As a matter of convenience, the Tribunal shall assume that: (i) the U.S.$70,000 in expenses for monitoring services performed by Shack & Kimball[322] were paid on 1 July 1982; (ii) the U.S.$7,338.12 in expenses for monitoring services performed by seven other law firms[323] were paid on 1 July 1983; and (iii)

[318] *See supra* paras. 194-204.

[319] As a matter of convenience, the Tribunal assumes that all expenses paid in a given year were paid on a single date in the middle of the relevant period of payment.

[320] *See supra* paras. 195, 196, 204.

[321] *See supra* para. 288.

[322] *See supra* para. 236

[323] *See supra* para. 239.

the U.S.$7,456.60 in further monitoring expenses [324] were paid on 1 July 1983. Accordingly, the pre-judgment interest on those amounts, calculated as set forth above,[325] is as follows:

Amount paid $	Date of payment	Prejudgment interest $
70,000	1 July 1982	161,773.88
7,338.12	1 July 1983	16,018.06
7,456.60	1 July 1983	16,276.68
Total 84,794.72		194,068.62

3. Marriott "Other Losses"

291. Simple pre-judgment interest on the U.S.$50,000 awarded as "other losses" related to the Marriott lawsuit[326] shall run from 19 July 1981, the date on which the United States' obligation to nullify the 5 May 1981 Order of the New York State Supreme Court accrued. The pre-judgment interest on that amount, calculated as set forth above,[327] is U.S.$123,530.41.

4. Aggregate Pre-judgment Interest

292. Accordingly, the aggregate pre-judgment interest awarded on the amounts found due and owing to Iran under this Award is U.S.$574,306.37.

V. TOTAL AMOUNT AWARDED

293. In light of the foregoing, the Tribunal awards Iran a total of U.S.$842,468.14 in these Cases. This sum includes U.S.$268,161.77, the total of the amounts found due and owing to Iran under this Award, and U.S.$574,306.37, the aggregate pre-judgment interest on those amounts. Further, the Tribunal awards Iran simple post-judgment interest on U.S.$842,468.14 at the successive prevailing prime bank lending rates in the United States for the period of non-payment of this Award.

[324] *See supra* para. 241.

[325] *See supra* para. 288.

[326] *See supra* para. 281.

[327] *See supra* para. 288.

VI. AWARD

294. In view of the foregoing,

THE TRIBUNAL DETERMINES AS FOLLOWS:

(a) On Claim A, the Tribunal holds that Iran was reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts subsequent to 19 July 1981 in respect of 84 cases involving claims arguably falling within the Tribunal's jurisdiction or involving claims that had been filed with the Tribunal. To that extent, the United States has not complied with its obligations under General Principle B of the General Declaration or Article VII, paragraph 2, of the Claims Settlement Declaration, as the case may be. The Tribunal further holds that, with respect to 44 of those cases, Iran has proven that it has incurred specific litigation expenses totaling U.S.$70,144.39. Consequently, the Tribunal awards this amount to Iran.

(b) On Claim D, the Tribunal holds that Iran has proven that it has incurred specific litigation expenses totaling U.S.$56,070.32 as a result of making appearances or filing documents in United States courts subsequent to 19 January 1981 in the prudent defense of its interests in nine lawsuits filed after 19 January 1981 involving claims arguably falling within the Tribunal's jurisdiction or involving claims that had been filed with the Tribunal. Consequently, the Tribunal awards U.S.$56,070.32 to Iran.

(c) On Claim G, the Tribunal holds that six post-14 November 1979 attachments remained in effect and actually restrained Iranian assets in the United States after 19 July 1981. By failing to nullify those attachments, the United States has not complied with its obligation under General Principle B of the General Declaration to nullify post-14 November 1979 attachments in a timely fashion. The expenses that Iran has incurred in litigation to lift those attachments are included in the specific litigation expenses that the Tribunal has awarded Iran on Claim A.

(d) On Claim H, the Tribunal holds that two United States court judgments against Iran that remained in existence after 19 July 1981 were subject to the United States' obligations under the Algiers Declarations concerning nullification of judgments against Iran and that Iran reasonably incurred legal expenses in relation thereto totaling U.S.$7,152.34. To that extent, the United States has not complied with its obligations under the Algiers Declarations. Consequently, the Tribunal awards U.S.$7,152.34 to Iran.

(e) The Tribunal holds that expenses that Iran has reasonably incurred in monitoring the suspended litigation against it in the United States are in principle compensable. The Tribunal therefore awards Iran (i) U.S.$70,000 for monitoring services performed by Shack & Kimball; (ii) U.S.$7,338.12 for monitoring services performed by seven other law firms; and (iii) U.S.$7,456.60 in further monitoring expenses.

(f) Finally, the Tribunal awards Iran U.S.$50,000 as "other losses" related to the Marriott lawsuit.

(g) The remaining claims by Iran are dismissed.

(h) The Tribunal further awards Iran pre-judgment interest in the aggregate amount of U.S.$574,306.37.

(i) Accordingly, under the present Award, the Respondent, the United States of America, is obligated to pay the Claimant, the Islamic Republic of Iran, the total sum of Eight Hundred Forty Two Thousand Four Hundred Sixty-Eight United States Dollars and Fourteen Cents (U.S.$842,468.14), plus simple interest at the successive prevailing prime bank lending rates in the United States for the period of non-payment of this Award.

(j) Each Party shall bear its own costs of the arbitration.

Dated, The Hague, 2 July 2014

Hans van Houtte
President

Bengt Broms

Herbert Kronke

In the Name of God

In the Name of God

Hamid Reza Nikbakht Fini
Subject to the attached
"Joint Separate Opinion"

Charles N. Brower
See Concurring and
Dissenting Opinion

M.H. Abedian Kalkhoran
Subject to the attached
"Joint Separate Opinion"

In the Name of God

Gabrielle Kirk McDonald
See Separate Opinion,
Concurring in Part,
Dissenting in Part

Seyed Jamal Seifi
Subject to the attached
"Joint Separate Opinion"

O. Thomas Johnson
See Separate Opinion,
Concurring in Part,
Dissenting in Part

Annex A

1. Advanced Computer Tech. Corp. v. Information Sys. Iran Org. et al., 80-31 (S.D.N.Y.)
2. Aeromaritime,, Inc. v. Iran, 80-0477 (D.D.C.)
3. Allis-Chalmers Corp. v. Iran, 80-7294 (S.D.N.Y.)
4. American Motors Corp. et al. v. Iran, 80-2140 (D.N.J.)
5. Atlantic Richfield Co. et al. v. Lavan Petroleum, 79-6714 (S.D.N.Y.)
6. Backer, N. et al. v. Uiterwyk Corp. et al. v. Iran et al., 80-1288 (M.D. Fla.)
7. Bank of America Nat'l Trust & Savings Ass'n v. Iran et al., 79-3646 (N.D. Cal.)
8. Behring Int'l, Inc. v. Iran, 79-675 (D.N.J. & 3rd Cir.)
9. Blount Bros. Corp. et al. v. Iran et al., 79-1442 (W.D. Wash.)
10. Blount Bros. Corp. v. Iran et al., 79-2608 (S.D. Tex.)
11. Blount Bros. Corp. v. Iran et al., 79-3376 (D.D.C.)
12. Blount Bros. Corp. v. Iran et al., 79-3892 (N.D. Cal.)
13. Blount Bros. Corp. v. Iran et al., 79-4987 (C.D. Cal.)
14. Blount Bros. Corp et al. v. Iran et al., 79-5431 (N.D. Ill.)
15. Brown & Root, Inc. et al. v. Iran, 80-2042 (S.D. Tex.)
16. Brown & Root S.A. et al. v. Iran, 80-2961 (D. Md.)
17. Brown & Williamson Tobacco Co. v. Iranian Tobacco Co. et al., 81-0283 (S.D.N.Y.)
18. Cabot Int'l Capital Corp. et al. v. Iran, 79-3448 (D.D.C.)
19. Cabot Int'l Capital Corp. v. Iran et al., 80-0098 (S.D.N.Y.)
20. Cabot Int'l Capital Corp. v. Iran et al., 80-0565 (N.D. Cal.)
21. Chicago Bridge & Iron Co. v. Nat'l Iranian Oil Co. et al., 79-5411 (N.D. Ill.), 80-2377 (7th Cir.)
22. Chicago Bridge & Iron Co. v. Iran et al., 80-2864 (N.D. Ill.), 80-8064 (7th Cir.)
23. Combustion Eng'g v. Iran et al., 80-4094 (N.D. Cal.)
24. Combustion Eng'g v. Iran et al., 80-5420 (S.D.N.Y.)
25. Computer Sciences Corp. v. Iran et al., 80-0570 (C.D. Cal.)
26. Continental Mech. of Mid-East v. Iran Elec. Indus. et al., 3-79-1534-D (N.D. Tex.)
27. Control Data Corp. et al. v. Iran et al., 4-80-574 (D. Minn.)
28. Cotco Leasing Co. v. Uiterwyk Corp. v. Iran Express Lines et al., 80-706 (E.D. Pa.)
29. CTI-Container Leasing Corp. v. Uiterwyk Corp. v. Iran, 82-1400; 80-0313 (M.D. Fla.)

30. Daniel, Mann, Johnson & Mendenhall v. Iran et al., 80-0277 (C.D. Cal.), 81-8076 (9th Cir.)
31. Dresser Indus. et al. v. Iran et al., 80-1535 (N.D. Tex.)
32. First Chicago Int'l Bank Corp. v. Bank Melli Iran et al., 79-1002 (E.D. Wisc.)
33. First Nat'l Bank of Chicago v. Agricultural Dev. Bank of Iran et al., 79-1010 (E.D. Wisc.)
34. First Nat'l Bank of Chicago v. Iran, 79-4750 (C.D. Cal.)
35. First Wisconsin Nat'l Bank of Milwaukee v. Iran et al., 79-1001 (E.D. Wisc.)
36. Gifted, Inc. v. Bank Markazi Iran, 80-1007 (C.D. Cal.)
37. Granger Assoc. v. Iran, 80-0169 (N.D. Cal.)
38. Gulf Ports, 80-375 (S.D. Tex.) 81-2298 (5th Cir.)
39. Harza Engineering Int'l v. Iran, 80-1032 (D.D.C.)
40. Harza Engineering Int'l v. Iran et. Al., 80-2971 (N.D. Cal.)
41. Herman Blum Consulting Eng'rs., Inc. v. Iran et al., 80-0025 (N.D. Tex.)
42. Hoffman Export Corp. v. Iran, 80-0524 (C.D. Cal.), 81-5432 (9th Cir.)
43. Int'l Harvester Co. et al. v. Iran et al., 80-1714 (S.D. Cal.), 81-5643 (9th Cir.)
44. Int'l Schools Services, Inc. v. Iran, 80-0277, 80-0278, 80-0279 (D.N.J.)
45. Itek Corp. v. Iran et al., 79-1492 (N.D. Tex.)
46. Itek Corp. v. Iran et al., 79-2383-MA (D. Mass.)
47. Itek Corp. v. Iran, 79-6468 (S.D.N.Y.)
48. Kollmorgen Corp. v. Brown & Root S.A. v. Iran, 80-276 (D. Mass)
49. Lockheed Corp. v. Iran et al., 79-4697 (C.D. Cal.)
50. Mackay, J. v. Iran et al., EC 80-171 WK-P (N.D. Miss.)
51. McCollough & Co. v. Iran, 80-0021 (W.D. Wash.)
52. Mellon Int'l Finance Corp. v. Iran et al.,80-0018 (N.D. Cal.)
53. Mellon Bank, N.A. v. Iran, 80-0019 (N.D. Cal.)
54. Mellon Bank, N.A. v. Iran et al., 80-2092 (C.D. Cal.)
55. Mohajer-Shojaee, R. et al. v. Iran, 80-4097 (E.D. Mich.)
56. Mohtadi, J. et al. v. Iran, 80-4501 (E.D. Mich.)
57. Movsessian, M. v. Iran et al., 80-4478 (N.D. Cal.)
58. National Airmotive Corp. v. Iran et al., 79-3920 (N.D. Cal.)
59. Pan Am World Airways, Inc. et al. v. Bank Melli Iran et al., 79-1190 (S.D.N.Y.)
60. Pfizer, Inc. et al. v. Iran et al., 80-2791 (D.D.C.), 80-2541 (D.C. Cir.)

61. Philadelphia Nat'l Bank et al. v. Iran et al., 79-12686 (191st Jud. Dist. Tex.), 3-80-279-C (N.D. Tex.)
62. Philadelphia National Bank et al. v. Iran et al., 79-12687 (191st Jud. Dist. Tex.), 79-1509 (N.D. Tex.)
63. Philip Morris, Inc. v. Iran et al., 81-0238 (S.D.N.Y.)
64. Pullman Swindell et al. v. National Iranian Steel Co. et al., 81-0081 (S.D.N.Y.)
65. Raji, S. et al. v. Bank Sepah Iran et al., 20658/80 (Sup. Ct. N.Y.)
66. S.A. Enterprises Jan De Nul & Dragomar S.P.A. v. Brown & Root S.A. et al., 80-131 (S.D. Tex.)
67. Santa Fe Int'l Corp. v. Nat'l Iranian Oil Co. et al., 79-4780 (C.D. Cal.)
68. Sea-Land Services, Inc. v. Iran et al., 80-1097 (S.D.N.Y.)
69. Security Pacific Nat'l Bank v. Iran et al., 79-1047 (E.D. Wis.)
70. Security Pacific Nat'l Bank v. Iran et al., 79-4661 (C.D. Cal.)
71. Security Pacific Nat'l Bank v. Iran et al., 79-5206 (N.D. Ill.)
72. Security Pacific Nat'l Bank v. Iran et al., 79-6461 (S.D.N.Y.)
73. Smith Int'l, Inc. v. Iran et al., 80-4743-WMB (C. D. Cal.)
74. Starrett Housing Corp. et al. v. Iran et al., 79-1011 (E.D. Wis.)
75. Tchacosh Co. Inc. et al. v. Iran et al., 79-4932 (C.D. Cal.)
76. Touche Ross & Co. v. Iran, 80-0128 (C.D. Cal.)
77. Uiterwyk Corp. v. Iran et al., 80-2-0823-8 (Super. Ct., Clark County, Wash.)
78. Unidyne Corp. v. Iran et al., 80-1029 (E.D. Va.)
79. VSI Corp. v. Iran et al., 80-0591 (C.D. Cal.)
80. Watkins-Johnson Co. et al. v. Iran et al., 79-3963 (N.D. Cal.)
81. Wells Fargo Bank, N.A. v. Polyacryl Iran Corp. et al., 79-3554 & 79-3555 (N.D. Cal.)
82. Westinghouse Electric Corp. v. Iran et al., 80-6210 (S.D.N.Y.)
83. Xerox Corp. et al. v. Iran et al., 80-6080 (S.D.N.Y.)
84. Xtra, Inc. v. Uiterwyk Corp. et al., 79-1021 (M.D. Fla.)

Annex B

1. Aeronutronic Overseas Services, Inc. v. Telecommunication Co. of Iran, C-82-6910 (N.D. Cal.)
2. American Hospital Supply Co. v. Iran et al., 81-1489 (N.D. Ill.)
3. Amir Carpet Corp. v. Iran Air et al., 2080-81 (Super. Ct. N.Y.)
4. Amoco Iran Oil Co. v. Iran et al., 82-0639 (D.D.C.)
5. Arco Exploration, Inc. et al. v. Iran et al., 82-1892 (D.D.C.)
6. Areyh Vera et al. v. Iran et al., 81-0995 (S.D.N.Y.)
7. Cross Co. v. Iran Tractor Manufacturing, 81-0166 (D.D.C.)
8. Flexi Van Leasing v. Iran et al., 82-0463 (D.D.C.)
9. Foremost McKesson, Inc. et al. v. Iran et al., 82-0220 (D.D.C.)
10. General Tire & Rubber Co. et al. v. Iran et al., 82-0114 (D.D.C.)
11. The President and Directors of Georgetown College v. Ferdowski University & Iran, 82-0262 (D.D.C.)
12. Gillette Co. et al. v. Iran, 81-3196 (D.D.C.)
13. Inbucon Int'l Ltd. v. Oil Services Co. of Iran et al., 81-0886 (D.D.C.)
14. Intercontinental Hotels Corp. v. Iran, 82-0408 (D.D.C.)
15. Interpool Ltd. v. Uiterwyk Corp. et al. v. Iran, 82-6716 (S.D.N.Y.)
16. Jafari, K. et al. v. Iran, 81-4043 (N.D. Ill.)
17. Moody Int'l (Middle East) Ltd. v. Nat'l Iranian Oil Co., 81-0885 (D.D.C.)
18. NIC Leasing, Inc. v. Uiterwyk Corp. v. Iran Express et al., 81-3866 (S.D.N.Y.)
19. Oil Field of Texas, Inc. v. Iran et al., 81-1287 (D.D.C.)
20. Otis Elevator Co. v. Iran et al., 82-3523 (D.D.C.)
21. Overseas Private Investment Corp. v. Iran et al., 82-0410 (D.D.C.)
22. Owens-Corning Fiberglass Corp. v. Iran et al., 82-0733 (D.D.C.)
23. Phelps Dodge Corp. et al. v. Iran et al., 82-0113 (D.D.C.)
24. Phillips Petroleum Co. v. Iran, 82-2226 (D.D.C.)
25. R.L. Pritchard & Co. v. Oregon Rainbow et al., 81-0886 (S.D.N.Y.)
26. Raygo Wagner Inc. v. Iran Express Terminal Corp. et al., 81-7241 (Hillsborough County Cir. Ct. Fla.)
27. Saghi, J. et al. v. Iran et al., 83-2165 (D.D.C.)
28. Seaco, Inc. v. Uiterwyk Corp. et al. v. Iran 82-3080 (S.D.N.Y.)
29. Uiterwyk Corp. v. Iran Express Lines et al., 81-0107 (M.D. Fla.)

30. Uiterwyk Corp. v. Iran Express Lines et al., 81-0108 (M.D. Fla.)

31. Westinghouse Electric Corp. v. Iran et al., 83-3837 (D. Md.)

Annex C

1. American Motors Corp et al. v. Iran, 80-2140 (D.N.J.)
2. Backer, N. et al. v. Uiterwyk Corp. et al. v. Iran et al., 80-1288 (M.D. Fla)
3. Behring Int'l, Inc. v. Iran, 79-675 (D.N.J. & 3rd Cir.)
4. Blount Bros. Corp. v. Iran et al., 79-4987 (C.D. Cal.)
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13. Continental Mech. of Mid-East v. Iran Elec. Indus. et al., 3-79-1534-D (N.D. Tex.)
14. Cotco Leasing Co. v. Uiterwyk Corp. v. Iran Express Lines et al., 80-706 (E.D. Pa.)
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16. First Chicago Int'l Bank Corp. v. Bank Melli Iran et al., 79-1002 (E.D. Wisc.)
17. First Nat'l Bank of Chicago v. Agricultural Dev. Bank of Iran et al., 79-1010 (E.D. Wisc.)
18. Gifted, Inc. v. Bank Markazi Iran, 80-1007 (C.D. Cal.)
19. Herman Blum Consulting Eng'rs., Inc. v. Iran et al., 80-0025 (N.D. Tex.)
20. Hoffman Export Corp. v. Iran, 80-0524 (C.D. Cal.) 81-5432 (9th Cir.)
21. Int'l Harvester Co. et al. v. Iran et al., 80-1714 (S.D. Cal.), 81-5643 (9th Cir.)
22. Int'l Schools Services, Inc. v. Iran, 80-0277, 80-0278, 80-0279 (D.N.J.)
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24. Itek Corp. v. Iran et al., 79-2383-MA (D. Mass.)
25. Itek Corp. v. Iran et al., 79-6468 (S.D.N.Y.)
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28. Mackay, J. v. Iran et al., EC 80-0171 WK-P (N.D. Miss.)
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30. Mohtadi, J. et al. v. Iran, 80-4501 (E.D. Mich.)

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32. Pfizer, Inc. et al. v. Iran et al., 80-2791 (D.D.C.), 80-2541 (D.C. Cir.)
33. Raji, S. et al. v. Bank Sepah Iran et al., 20658/80 (Sup. Ct. N.Y.)
34. Santa Fe Int'l Corp. v. Nat'l Iranian Oil Co. et al., 79-4780 (C.D. Cal.)
35. Security Pacific Nat'l Bank v. Iran et al., 79-1047 (E.D. Wis.)
36. Smith Int'l, Inc. v. Iran et al., 80-4743-WMB (C. D. Cal.)
37. Starrett Housing Corp. et al. v. Iran et al., 79-1011 (E.D. Wis.)
38. Tchacosh Co. Inc. et al. v. Iran et al., 79-4932 (C.D. Cal.)
39. Touche Ross & Co. v. Iran, 80-0128 (C.D. Cal.)
40. Uiterwyk Corp. v. Iran et al., 80-2-0823-8 (Super. Ct., Clark County, Wash.)
41. VSI Corp. v. Iran et al., 80-0591 (C.D. Cal.)
42. Watkins-Johnson Co. et al. v. Iran et al., 79-3963 (N.D. Cal.)
43. Wells Fargo Bank, N.A. v. Polyacryl Iran Corp. et al., 79-3554 & 79-3555 (N.D. Cal.)
44. Xtra, Inc. v. Uiterwyk Corp. et al., 79-1021 (M.D. Fla.)