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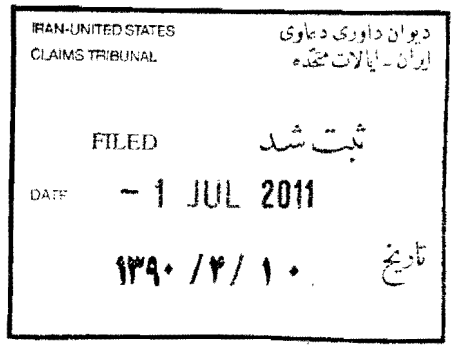
IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASES NOS. A3, A8, A9, A14 AND B61
FULL TRIBUNAL
DECISION NO. DEC 134-A3/A8/A9/A14/B61-FT



THE ISLAMIC REPUBLIC OF IRAN,
Claimant,

and

THE UNITED STATES OF AMERICA,
Respondent.

DECISION

I. INTRODUCTION

1. On 17 July 2009, the Tribunal rendered Award No. 601[1] ("Partial Award No. 601") in Cases Nos. A3, A8, A9, A14, and B61 (hereinafter referred to as "Case No. B61"). At issue in that Award was, *inter alia*, a claim brought by the Islamic Republic of Iran ("Iran") for compensation from the United States of America ("United States") for losses that Iran alleged it had suffered as a result of the United States' refusal, on 26 March 1981, to allow the export of certain export-controlled properties allegedly owned by Iran and located in the United States or otherwise subject to the jurisdiction of the United States on 19 January 1981, when the Algiers Declarations[2] were concluded. In Section VI.C of Partial Award No. 601, the Tribunal held, *inter alia*:

> 158. It follows from the Tribunal's recognition of a right on the part of the United States under Paragraph 9 of the General Declaration[3] to refuse export, in accordance with "U.S. law applicable prior to November 14, 1979," which right the United States had expressly safeguarded in that Paragraph, that Iran did not possess a right, either before 14 November 1979 or after the entry into force of the Algiers Declarations, to export its military properties. The Tribunal therefore determines that the United States' refusal on 26 March 1981 to allow the export of Iran's military properties did not deprive Iran of a right of export, because it did not possess that right in the first place.[4]

The Tribunal further held:

> 166. [T]he evidence in this Case shows that, prior to 14 November 1979, the United States exercised its sovereign right to refuse the export to Iran of Iran's export-controlled properties, and that the United States effectively halted such export prior to that date. The Tribunal finds that the actions by the United

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[1] *Islamic Republic of Iran* and *United States of America*, Award No. 601-A3/A8/A9/A14/B61-FT (17 July 2009), *reprinted in* 38 IRAN-U.S. C.T.R. 197.

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

[3] Paragraph 9 of the General Declaration provides:

> Commencing with the adherence by Iran and the United States to this Declaration and the attached Claims Settlement Agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

General Declaration Para. 9, 1 IRAN-U.S. C.T.R. at 6.

[4] Partial Award No. 601, para. 158, 38 IRAN-U.S. C.T.R. at 259.

> States in refusing such export were consistent with United States law applicable prior to 14 November 1979.[5]

The Tribunal went on to conclude:

> 170. In light of the foregoing, the Tribunal finds that Iran has not proven that, as a result of the United States' refusal, on 26 March 1981, to allow the export of Iran's export-controlled properties, it suffered a deterioration of its financial position prior to 14 November 1979 (either through the deprivation of its property or any of the rights associated therewith) that would require restoration pursuant to General Principle A.[6] Iran has failed to prove that it in fact suffered any losses caused by the action taken by the United States in prohibiting export that would be compensable under the implicit obligation derived from Paragraph 9 and General Principle A of the General Declaration.[7] It follows therefore that there are no losses to compensate.[8]

In paragraph 172 of Partial Award No. 601, the Tribunal further noted that,

> in light of all the above determinations and the ultimate conclusion reached on the question of compensable losses, it is not necessary to set out in detail in this Partial Award an analysis of each of the specific Individual Claims. The application of the methodology for assessing whether Iran suffered any compensable losses as a result of the United States' 26 March 1981 refusal to allow the export of Iranian export-controlled properties would lead to the same result in each and every claim, namely, a finding of no compensable losses.[9]

Accordingly, based on the foregoing, the Tribunal dismissed on the merits Iran's claim based on the implicit obligation.[10]

2. On 3 August 2009, Iran submitted a "Request for Revision of Partial Award No. 601" ("Request for Revision" or "Request") based on a number of "fundamental errors of

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[5] *Id.* para. 166, 38 IRAN-U.S. C.T.R. at 262 (footnote omitted).

[6] General Principle A of the General Declaration provides:

> Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9.

General Declaration, 1 IRAN-U.S. C.T.R. at 3.

[7] Concerning the "implicit obligation," *see infra* note 17.

[8] Partial Award No. 601, para. 170, 38 IRAN-U.S. C.T.R. at 263.

[9] *Id.* para. 172, 38 IRAN-U.S. C.T.R. at 264.

[10] *Id.* para. 183 (g), 38 IRAN-U.S. C.T.R. at 267. Concerning the "implicit obligation," *see* text accompanying note 7 and *infra* note 17.

procedure" and "manifest errors of law" allegedly committed by the majority in rendering Partial Award No. 601.

3. In its Request, Iran also asks that Messrs. Krzysztof Skubiszewski and Gaetano Arangio-Ruiz, who formed part of the majority in Partial Award No. 601, recuse themselves from participating in the consideration of Iran's Request for Revision. On 5 August 2009, Iran presented challenges to both President Skubiszewski and Mr. Arangio-Ruiz pursuant to Article 10 of the Tribunal Rules of Procedure. In support of the two challenges, Iran invoked, *inter alia*, grounds similar to those it invoked in support of its request that the two arbitrators recuse themselves from participating in the consideration of Iran's Revision Request. By decision of 5 March 2010, the Appointing Authority rejected in their entirety Iran's challenges against Messrs. Skubiszewski and Arangio-Ruiz.

4. On 17 August 2009, the United States submitted its comments on Iran's Request for Revision, asking that the Tribunal deny that Request.[11]

5. By letters of 1 October 2009 addressed to the Agents of the two Governments, Messrs. Skubiszewski and Arangio-Ruiz informed the Parties that they did not intend to recuse themselves from participating in the Tribunal's consideration of Iran's Request for Revision.

6. On 8 February 2010, President Krzysztof Skubiszewski passed away.

7. On 21 June 2010, Mr. Hans van Houtte was appointed Member of the Tribunal. On 2 July 2010, he was appointed President of the Tribunal.

8. On 18 November 2010, Iran submitted its "Response to the Respondent's Comments on the Request for Revision of Partial Award No. 601."

9. By Communication of 8 December 2010, the Tribunal informed the Parties that, considering all the circumstances, including the procedural circumstances of Case No. B61, particularly the multiple post-hearing proceedings, the Tribunal had determined that the continued participation of former Members Messrs. Koorosh H. Ameli, Mohsen

[11] In its 17 August 2009 submission, the United States also presented a request, pursuant to Article 37 of the Tribunal Rules of Procedure, that "the Tribunal issue an additional award dismissing any claim of Iran relating to the February 26, 1981 Treasury Regulations" ("Request for an Additional Award"). The Tribunal ruled on the United States Request for an Additional Award in a separate Decision filed today.

Aghahosseini, and Hamid Reza Oloumi Yazdi in Case No. B61 would not advance the orderly and efficient functioning of the arbitral process, while the participation of their successors would satisfy that standard.[12] Accordingly, the Tribunal decided that Messrs. Ameli, Aghahosseini, and Oloumi Yazdi would not serve under Article 13, paragraph 5, of the Tribunal Rules with respect to any aspect of Case No. B61.

10. On 7 January 2011, the United States presented a reply to Iran's submission of 18 November 2010.

II. CONTENTIONS

A. Iran

11. Iran requests that the Tribunal reconsider and revise Section VI.C of Partial Award No. 601 based on its "inherent power" to do so. Iran argues that the Tribunal has the authority to reconsider and revise its awards in exceptional circumstances, "especially where the erroneous application of laws and rules of procedure together with the non-compliance with the terms of the Algiers Declarations, as earlier interpreted by the Tribunal, have led to pronouncements outside the power and jurisdiction of the Tribunal."

12. According to Iran, the Tribunal has acknowledged in past decisions that the exceptional circumstances under which it may exercise its authority to reconsider and revise its awards are not limited to fraud, forgery, and perjury. In support, Iran relies, in particular, on the Tribunal's decision in *Harold Birnbaum*, where the Tribunal stated that it "[did] not exclude that, apart from fraud, a similar exceptional and serious ground or grounds might possibly constitute the basis for an application for the revision of its Awards."[13] In Iran's view, the Tribunal has recognized that even procedural errors can constitute exceptional circumstances justifying the revision of its awards.[14]

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[12] In 2008, Messrs. Ameli, Aghahosseini, and Oloumi Yazdi all resigned as Members of the Tribunal. Each participated in the Tribunal deliberations that preceded the issuance of Partial Award No. 601. On 1 July 2009, Mr. Hamid Reza Nikbakht Fini succeeded Mr. Oloumi Yazdi, and Mr. Mir Hossein Abedian Kalkhoran succeeded Mr. Ameli. On 22 September 2009, Mr. Seyed Jamal Seifi succeeded Mr. Aghahosseini.

[13] *Harold Birnbaum* and *Islamic Republic of Iran*, Decision No. DEC 124-967-2, para. 19 (14 Dec. 1995), *reprinted in* 31 IRAN-U.S. C.T.R. 286, 291.

[14] In this connection, Iran points to a footnote in Award No. 586-A27-FT, where the Tribunal stated:

> The Tribunal recognizes that no tribunal can declare itself immune from procedural error or the possibility of fraud, forgery, or perjury that it may not detect. In such hypothetical cases,

13. Further, Iran contends more generally that recourse to the Tribunal's inherent power to revise its awards is justified in instances where the integrity of the Tribunal's processes has been subverted.

14. Iran bases its Request for Revision on "fundamental errors of procedure" and "manifest errors of law," allegedly committed by the majority in Partial Award No. 601, which led to "decisions subverting and undermining the integrity of the Tribunal's proceeding." Under the Tribunal's practice, argues Iran, those errors constitute exceptional circumstances warranting the revision of an award.

1. Fundamental Errors of Procedure and Violations of Due Process

15. Iran contends that, in rendering Partial Award No. 601, the majority has committed three fundamental errors of procedure, thereby disregarding the principle of due process and violating Iran's fundamental rights under the Tribunal Rules.

16. First, Iran asserts, the majority violated Iran's due-process rights by basing its decision on a legal argument that was never raised by the Parties. In this context, Iran contends that the argument that Iran did not possess a right of export under United States export-control legislation, either before 14 November 1979 or after entry into force of the Algiers Declarations,[15] was not raised by the Parties in their written or oral pleadings, nor was it placed before them by the Tribunal during the proceedings. Rather, the majority put forward that argument for the first time in Partial Award No. 601, thereby taking the Parties by surprise. By this conduct, Iran argues, the majority deprived Iran of the full opportunity to present its arguments concerning the reasoning underlying the Tribunal's decision to dismiss Iran's claim in Partial Award No. 601; and it contravened the command in Article 15, paragraph 1, of the Tribunal Rules of Procedure that the parties be "treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case."

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however, revision of the award could be done only by the Tribunal, if it concluded that it had the authority to do so, not by any other court.

Islamic Republic of Iran and *United States of America*, Award No. 586-A27-FT, para. 64 n.6 (5 June 1998), *reprinted in* 34 IRAN-U.S. C.T.R. 39, 58 n.11 (citations omitted).

[15] *See supra* note 2.

17. Second, Iran asserts that the majority in Partial Award No. 601 violated Iran's due-process rights by failing "to act in accordance with the longstanding procedure set forth by the Tribunal in [Award No. 529-A15-FT in Case No. A15 (II:A)[16]] and subsequent orders for deciding Iran's losses."

18. To place Iran's present contentions in their proper context, some background is required. In Award No. 529 in Case No. A15 (II:A) ("Partial Award No. 529"),[17] the Tribunal, at that stage of the proceedings and upon the record before it, did not "deem it feasible to address the issue of specific properties or possible losses incurred by Iran with respect to those properties;"[18] it therefore required further pleadings and evidence from the Parties in that respect.[19] As to the scope of potential liability and damages, the Tribunal pointed out that "liability of the United States exists where the United States has failed to fulfill its obligations under the General Declaration and Iran suffers losses as a result thereof."[20] It further pointed out that "each Party shall have the burden of proving the facts

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[16] *Islamic Republic of Iran* and *United States of America*, Award No. 529-A15-FT (6 May 1992), *reprinted in* 28 IRAN-U.S. C.T.R. 112 ("Partial Award No. 529").

[17] *Id.* At issue in Case No. A15 (II:A) is the United States' obligation under the Algiers Declarations to arrange for the transfer to Iran of certain tangible properties within the United States jurisdiction. While Iran's claims in Case No. B61 primarily involve export-controlled properties, Iran's claims in Case No. A15 (II:A) primarily involve non-export-controlled properties. (Concerning the relationship between Case No. B61 and Case No. A15 (II:A), *see* Partial Award No. 601, paras. 11-21, 38 IRAN-U.S. C.T.R. at 207-11.) In Partial Award No. 529 in Case No. A15 (II:A), the Tribunal, *inter alia*, made the following determinations concerning United States liability:

> United States Treasury Regulations that excluded from the transfer direction properties which were owned solely by Iran but as to which Iran's right to possession was contested by the holders of such properties on the basis of any liens, defences, counter-claims, set-offs or similar reasons, were inconsistent with the obligations of the United States under the General Declaration. The Tribunal is not on the present record in a position to determine the relevant facts with respect to any particular property.
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> . . . .
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> The United States has an implicit obligation under the General Declaration to compensate Iran for losses it incurs as a result of the refusal by the United States to permit exports of Iranian properties subject to United States export control laws applicable prior to 14 November 1979.

Partial Award No. 529, para. 77 (d) and (g), 28 IRAN-U.S. C.T.R. at 140, 141.

[18] *Id.* para. 71, 28 IRAN-U.S. C.T.R. at 139.

[19] *Id.* paras. 67 and 71, 28 IRAN-U.S. C.T.R. at 137, 139. Subsequent to the issuance of Partial Award No. 529, on 30 June 1992, the Tribunal issued an Order in Case No. A15 (II:A), scheduling further pleadings in that Case – namely, (i) Iran's "brief and evidence concerning all the remaining issues to be decided in this Case, including issues related to individual properties and the determination of compensation and interest," and (ii) the United States' "brief and evidence in response."

[20] Partial Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

relied on to support its claim or defence concerning the compensation at issue."[21] It then went on to state, in paragraph 75:

> [I]n determining the amount of compensation, the Tribunal will take into account as to each property evidence of any loss by Iran, the position of Iran that existed prior to 14 November 1979 with respect to such property, and the contractual arrangements and other relevant circumstances of the transactions relating to such property.[22]

19. Iran contends in its present Request for Revision that, in compliance with the procedure laid out in paragraph 75 of Partial Award No. 529, it invested significant amounts of money and time in Case No. B61 for the purpose of substantiating, in numerous written pleadings and evidentiary submissions as well as during the lengthy hearing, some sixty claims involving valuable military properties. Thus, Iran asserts, the majority in Partial Award No. 601, "in order to conclude that Iran has suffered no losses, should have precisely and thoroughly considered the Parties' evidence in each and every claim as required by" the Tribunal in paragraph 75 of Partial Award No. 529. Iran concludes that the Tribunal decided Iran's claim on a general and purely abstract basis without considering any of the documents submitted by the Parties. In so doing, the majority in Partial Award No. 601 "misled Iran," thereby violating fundamental principles of procedure.

20. Third, Iran contends that the majority in Partial Award No. 601 "improperly admitted" into the record of Case No. B61 certain evidence that the United States had submitted with its 1 March 2006 Response to Iran's 1 February 2005 "Supplemental Documents."

21. To place this last contention in its proper context, some background is required. On 1 February 2005, Iran made a ten-volume submission of "Supplemental Documents."[23] By Order of 1 April 2005, the Tribunal, *inter alia*, admitted into evidence Iran's Supplemental Documents and permitted the United States to submit a response directing that "such response . . . be limited to those documents."[24] The United States submitted a seven-volume

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[21] *Id.* para. 74, 28 IRAN-U.S. C.T.R. at 139.

[22] *Id.* para. 75, 28 IRAN-U.S. C.T.R. at 139.

[23] Partial Award No. 601, para. 22, 38 IRAN-U.S. C.T.R. at 211.

[24] *Islamic Republic of Iran* and *United States of America*, Cases Nos. A3, A8, A9, A14, and B61, Order, paras. 10-12 (1 Apr. 2005), *reprinted in* 38 IRAN-U.S. C.T.R. 153, 155. In admitting Iran's Supplemental Documents, the Tribunal stated:

Response to Iran's Supplemental Documents on 1 March 2006.[25] Iran subsequently requested that the Tribunal reject as inadmissible the United States' 1 March 2006 Response, claiming that it contravened the Tribunal's Order of 1 April 2005.[26] In Partial Award No. 601, the Tribunal, in addressing Iran's objection, as an initial matter noted that, "during the lengthy Hearing in this Case, Iran has had the opportunity to respond, and did respond, to the evidence and argument submitted by the United States with its Response."[27]

22. The Tribunal went on to determine that the forty-six-page brief included in Volume I of the United States' 1 March 2006 Response[28] was not admissible because it constituted, in effect, an unauthorized post-Hearing brief.[29] The Tribunal, however, admitted into the record of Case No. B61, *inter alia*, certain exhibits included in Volume I ("contested exhibits"); in making this determination, the Tribunal noted that the contested exhibits were "responsive to a number of exhibits included in Iran's Supplemental Documents addressing, *inter alia*, the exportability of Iran's export-controlled properties prior to 14 November 1979, valuation methodology, and the quantum of Iran's losses."[30] Included among the contested exhibits were affidavits by Dr. Zbigniew Brzezinski, National Security Adviser to United States President James Earl Carter, Jr.,[31] and Ms. Rose Biancaniello, a licensing officer in the United States Department of State Office of Munitions Control at the times here relevant,[32] as well as a number of exhibits attached thereto.[33]

23. Iran asserts that the majority in Partial Award No. 601 "has questionably admitted" into the record the contested exhibits. According to Iran, this action by the majority is inconsistent with its refusal to admit the forty-six-page brief included in Volume I of the

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> The Tribunal is reluctant to permit an untimely filing to disrupt its proceedings. It is also reluctant to reject as untimely evidence which, while late, may be important for the fair resolution of the Claims involved.

Id. para. 10, 38 IRAN-U.S. C.T.R. at 155.

[25] Partial Award No. 601, paras. 22, 96 nn.55-56, 38 IRAN-U.S. C.T.R. at 212, 236 nn.60-61.

[26] *Id.* paras. 22, 91, 38 IRAN-U.S. C.T.R. at 211-12, 234-35.

[27] *Id.* para. 95, 38 IRAN-U.S. C.T.R. at 236.

[28] Volume I of the United States' 1 March 2006 Response consisted of a forty-six-page brief and five exhibits. *Id.* para. 94, 38 IRAN-U.S. C.T.R. at 235.

[29] *Id.* para. 97, 38 IRAN-U.S. C.T.R. at 236.

[30] *Id.* para. 96, 38 IRAN-U.S. C.T.R. at 236.

[31] *Id.* para. 31, 38 IRAN-U.S. C.T.R. at 215.

[32] *Id.* para. 32, 38 IRAN-U.S. C.T.R. at 216.

[33] *Id.* paras. 94 n.54, 96, 38 IRAN-U.S. C.T.R. at 235-36 n.59.

United States' 1 March 2006 Response, which brief was based on those very same contested exhibits. In addition, Iran contends that, contrary to the majority's holding, nothing in Iran's Supplemental Documents concerned the exportability of Iran's export-controlled properties prior to 14 November 1979.

2. Manifest Errors of Law

24. Iran contends that, as a result of the fundamental errors of procedure described above, the majority in Partial Award No. 601 committed "manifest errors of law" in rendering that Award. In Iran's view, had it been given the opportunity to present its views "on the sole ground for dismissing Iran's claim, i.e., Iran's right to export . . . the Iranian properties under the U.S. export control law," it would have shown that the majority in Partial Award No. 601 was under a grave misunderstanding, and thus it could have averted the issuance of Partial Award No. 601. The majority's errors alleged by Iran are described, in brief, below.

a. Right of Export

25. First, Iran asserts that the Tribunal's holding, in paragraph 158 of Partial Award No. 601, that, either before 14 November 1979 or after the entry into force of the Algiers Declarations, Iran did not possess a right to export its military properties[34] is erroneous because it is inconsistent with the Tribunal's findings in Award No. 382 in Case No. B1[35] ("Partial Award No. 382") and in Partial Award No. 529 in Case No. A15 (II:A).

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[34] *See supra* para. 1.

[35] *Islamic Republic of Iran* and *United States of America*, Award No. 382-B1-FT (31 Aug. 1988), *reprinted in* 19 IRAN-U.S. C.T.R. 273 ("Partial Award No. 382"). At issue in Case No. B1 (Claim 4) were the United States' obligations under the Algiers Declarations concerning the transfer to Iran of certain Iranian military properties that were in the possession of the United States pursuant to contracts concluded by Iran and the United States under the "Foreign Military Sales" (FMS) Program. In Partial Award No. 382, the Tribunal held that, through the proviso "subject to the provisions of U.S. law applicable prior to November 14, 1979" in Paragraph 9 of the General Declaration (*supra* note 3), the United States preserved its right to refuse the export of Iranian properties subject to United States export-control laws applicable prior to 14 November 1979; thus, by refusing to license exports of Iranian properties subject to such export-control laws, the United States did not violate its obligations under the Algiers Declarations. Partial Award No. 382, paras. 46-62, 19 IRAN-U.S. C.T.R. at 287-93. In Partial Award No. 382, the Tribunal went on to note that it did not necessarily flow from the above holding that the General Declaration does not require compensation of Iran when the application of the proviso in Paragraph 9 of the General Declaration has the effect of preventing the transfer to Iran of the Iranian properties referred to in that Paragraph. *Id.* para. 65, 19 IRAN-U.S. C.T.R. at 293. Although Paragraph 9 of the General Declaration does not expressly state any obligation to compensate Iran in the event that certain articles are not returned because of the provisions of U.S. law applicable prior to 14 November 1979, the Tribunal held in Partial Award No. 382 that "such an obligation is implicit in that Paragraph." *Id.* para. 66, 19 IRAN-U.S. C.T.R. at 294.

26. Iran identifies a number of alleged inconsistencies between Partial Award No. 601, on the one hand, and Partial Awards Nos. 382 and 529, on the other. In this context, Iran asserts, in particular, that in paragraph 158 of Partial Award No. 601 the majority improperly revisited "the issue of Iran's right of export under the U.S. Arms Export Control Act," which, Iran contends, the Tribunal had already finally decided in Iran's favor in Partial Award No. 382 and in Partial Award No. 529.

27. Further, Iran alleges that the Tribunal in Partial Award No. 529 found that the risk that the United States would not grant the licenses necessary to export Iran's export-controlled properties prior to 14 November 1979 was irrelevant for purposes of establishing the United States' liability; by this determination, Iran asserts, the Tribunal necessarily decided "the issue of export and its related risk . . . in favor of Iran."

28. Accordingly, Iran contends that the majority's conclusion, in Partial Award No. 601, that Iran has not proven that it suffered any compensable losses in Case No. B61 has invalidated the Tribunal's holding, in Partial Award No. 382 and Partial Award No. 529, that the United States has an implicit obligation under the General Declaration to compensate Iran for losses it incurred as a result of the refusal by the United States to permit exports of Iranian properties subject to United States export-control laws applicable prior to 14 November 1979.[36]

29. Iran argues that, by failing to follow Partial Award No. 529 in rendering Partial Award No. 601, the majority has contradicted its own ruling that Partial Award No. 529 has *res judicata* effect with respect to Case No. B61.[37] Consequently, Iran contends, the majority in Partial Award No. 601 "has exceeded its powers foreseen in the Claims Settlement Declaration[] and the Tribunal Rules."

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[36] *See* Partial Award No. 382, para. 66, 19 IRAN-U.S. C.T.R. at 294; Partial Award No. 529, para. 77 (g), 28 IRAN-U.S. C.T.R. at 141.

[37] In Partial Award No. 601, the Tribunal determined that

> the Tribunal's holding in [Partial Award No. 529] that the United States has an implicit obligation under the General Declaration to compensate Iran for losses it has incurred as a result of the refusal by the United States to permit the export of Iran's export-controlled properties has *res judicata* effect in Case No. B61.

Partial Award No. 601, para. 125, 38 IRAN-U.S. C.T.R. at 246. In Partial Award No. 601, the Tribunal further determined that, *inter alia*, the holdings in subparagraphs 77 (d) and 77 (k) in the *dispositif* of Partial Award No. 529 as well as certain reasons set forth in paragraphs 59, 60, and 65 thereof also have *res judicata* effect with respect to Case No. B61. *See* Partial Award No. 601, paras. 132-33, 38 IRAN-U.S. C.T.R. at 249-50.

b. Paragraph 166 of Partial Award No. 601

30. Iran takes issue with the following holding in paragraph 166 of Partial Award No. 601:

> [T]he evidence in this Case shows that, prior to 14 November 1979, the United States exercised its sovereign right to refuse the export to Iran of Iran's export-controlled properties, and that the United States effectively halted such export prior to that date. The Tribunal finds that the actions by the United States in refusing such export were consistent with United States law applicable prior to 14 November 1979.[38]

31. Iran contends that the evidence relied on by the majority in Partial Award No. 601 does not support the finding in paragraph 166 that the United States' actions in refusing the export of Iran's military properties were taken pursuant to the United States Arms Export Control Act. Iran argues that such evidence, on the contrary, establishes that the alleged "halt" in the export of Iranian military properties effected by the United States on 12 November 1979 was an action taken, not pursuant to the United States Arms Export Control Act, but rather one taken in the context of an informal economic embargo. An official economic embargo, Iran points out, was imposed by the United States on Iran two days later, on 14 November 1979, through Executive Order 12170.[39]

c. Outstanding Export Licenses

32. Iran contends that, in determining Iran's pre-14 November 1979 financial position, the majority in Partial Award No. 601, even under its own scenario, failed to properly take into account Iran's rights under sixty-eight licenses to export military items to Iran, which, Iran alleges, were outstanding prior to 14 November 1979. Those export licenses represented a rightful component of Iran's pre-14 November 1979 financial position (1) because in fact "no determination was made by the U.S. President in that period to suspend or revoke Iran's outstanding export licenses for the properties subject of this case" pursuant to the United States Arms Export Control Act and (2) because any informal halt of shipments to Iran[40]

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[38] Partial Award No. 601, para. 166, 38 IRAN-U.S. C.T.R. at 262 (footnote omitted), *quoted supra*, at para. 1.

[39] Executive Order 12170, issued by President Carter on 14 November 1979, blocked the transfer of "all property and interests 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." Partial Award No. 601, para. 35, 38 IRAN-U.S. C.T.R. at 217.

[40] *See supra* para. 31.

would not have affected the validity of those export licenses. In Iran's view, these circumstances also show that it possessed a right to export its export-controlled properties before 14 November 1979.

3. Request for Hearing

33. In its submission of 18 November 2010, Iran requests that the Tribunal hold a hearing on Iran's Request for Revision, specifically, with respect to "substantial issues which are all directed at the majority's violation of the Tribunal's mandate and its mandatory procedural rules and Iran's fundamental rights of due process." According to Iran, the "dimensions of such violation and the resulting effects thereof require the Tribunal's tho[]rough and careful review of the issues raised by Iran for reconsideration;" this, in turn, would only be feasible "if, given the great bulk of the pleadings and the complex issues involved, the factual and legal grounds for reconsideration are presented by the Parties in an oral hearing."

B. The United States

34. The United States asserts that Iran's Request for Revision is not permitted under the Algiers Declarations or the Tribunal Rules of Procedure ("Tribunal Rules"), which establish that Tribunal awards are final and not subject to reargument or review. More specifically, the United States points to Paragraph 17 of the General Declaration,[41] Article IV, paragraph 1, of the Claims Settlement Declaration,[42] and Article 32, paragraph 2, of the Tribunal Rules.[43] There is no provision in the Algiers Declarations or the Tribunal Rules, the United States asserts, that provides for a party to appeal or reargue a final award.

35. Further, the United States contends that Iran's Request for Revision falls outside the scope of any review envisaged by the Tribunal Rules or by any practice of the Tribunal. Iran's Request does not seek interpretation or an additional award pursuant to Articles 35 or 37 of the Tribunal Rules,[44] nor has it identified a computational, clerical, or typographical

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[41] Paragraph 17 of the General Declaration provides, *inter alia*, that any dispute between the Parties as to the interpretation or performance of any provision of the General Declaration may be submitted "to binding arbitration." General Declaration Para. 17, 1 IRAN-U.S. C.T.R. at 8.

[42] Article IV, paragraph 1, of the Claims Settlement Declaration provides that "[a]ll decisions and awards of the Tribunal shall be final and binding." Claims Settlement Declaration art. IV, 1 IRAN-U.S. C.T.R. at 10.

[43] Article 32, paragraph 2, of the Tribunal Rules provides that "[t]he award shall be made in writing and shall be final and binding on the parties."

[44] Article 35, paragraph 1, of the Tribunal Rules provides:

error pursuant to Article 36 of those Rules.[45] The Tribunal has consistently rejected any requests for revision that do not fall within the provisions of the Tribunal Rules. According to the United States, Iran's Request, in effect, represents an attempt to appeal and reargue Partial Award No. 601.

36. Concerning Iran's contention that the Tribunal has an inherent power to revise its awards, the United States asserts that, to the extent the Tribunal has contemplated the possibility of reopening a final award, it has been clear that this could only be done in cases where the award was infected by fraud. In support, the United States relies on the Tribunal's Decisions in *Dames & Moore*, *Harold Birnbaum*, and *Ram International Industries Inc.*[46] Where the Tribunal has contemplated whether other exceptional circumstances may justify the exercise of its hypothetical power to revise awards, the United States emphasizes, it has always considered such circumstances with reference to fraud, forgery, or perjury. In this connection, the United States cites *Harold Birnbaum*[47] and *Mark Dallal*.[48] Thus, contrary to what Iran argues in its Request, the Tribunal has never recognized that procedural or substantive errors may constitute exceptional circumstances justifying the exercise of any hypothetical power the Tribunal might have to revise awards.

37. In any event, the United States continues, Iran has not established that the Tribunal has committed any procedural or substantive errors in Partial Award No. 601 that deprived Iran of an opportunity to present its case. In particular, Iran's contention that Partial Award No. 601 is premised upon a procedural error because the parties had not argued the issue on

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

Article 37, paragraph 1, of the Tribunal Rules provides:

> Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

[45] Article 36, paragraph 1, of the Tribunal Rules provides, in relevant part:

> Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature.

[46] *Dames & Moore* and *Islamic Republic of Iran, et al.*, Decision No. DEC 36-54-3 (23 Apr. 1985), *reprinted in* 8 IRAN-U.S. C.T.R. 107; *Harold Birnbaum* and *Islamic Republic of Iran*, Decision No. DEC 124-967-2 (14 Dec. 1995), *reprinted in* 31 IRAN-U.S. C.T.R. 286; *Ram International Industries Inc., et al.* and *Air Force of the Islamic Republic of Iran*, Decision No. DEC 118-148-1 (28 Dec. 1993), *reprinted in* 29 IRAN-U.S. C.T.R. 383.

[47] *Harold Birnbaum*, Decision No. DEC 124-967-2, 31 IRAN-U.S. C.T.R. 286.

[48] *Mark Dallal* and *Islamic Republic of Iran, et al.*, Decision No. DEC 30-149-1 (12 Jan. 1984), *reprinted in* 5 IRAN-U.S. C.T.R. 74.

which the Tribunal decided the case – namely, according to the United States, that Iran's losses must be established by comparison of its financial position at two specified points in time taking into account the fact that there was no guarantee it would be able to export its properties – has no support in the record. The record, on the contrary, shows that the parties submitted extensive briefing on this issue for over a decade prior to the hearing and addressed it numerous times during the hearing itself.

38. With respect to Iran's allegation that Partial Award No. 601 contains manifest errors of law – in particular, that it is inconsistent with Tribunal holdings in Partial Award No. 529 – the United States contends that this is "precisely the kind of challenge to the legal conclusions of the Tribunal that is not reviewable because it seeks to reopen a final award on the merits." Even if it were possible to argue the existence of an inconsistency between those two awards, the Tribunal carefully considered and explained its conclusions in this respect in Partial Award No. 601, and that conclusion is final and not reviewable.

39. At any rate, the United States asserts, Partial Award No. 529 and Partial Award No. 601 are entirely compatible. In the United States' view, Partial Award No. 529 determined issues of liability but specifically reserved the question whether the United States had caused any losses to Iran. Partial Award No. 601, for its part, took up the question of losses and determined that Iran had not suffered any losses as a result of the decision of the United States to exercise its sovereign right to refuse the export of export-controlled properties.

40. For all the above reasons, the United States asks that the Tribunal summarily reject Iran's Request.

III. REQUEST FOR RECUSAL

41. As noted, Iran asks that Messrs. Krzysztof Skubiszewski and Gaetano Arangio-Ruiz recuse themselves from considering Iran's Request for Revision.[49]

42. President Krzysztof Skubiszewski passed away on 8 February 2010.[50] Iran's request for recusal, to the extent it concerns him, is therefore moot.

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[49] *Supra* para. 3.

[50] *Supra* para. 6.

43. With respect to Mr. Arangio-Ruiz, the Tribunal takes notice of his letter of 1 October 2009 addressed to the Agents of the two Governments, in which he informed the Parties that he did not intend to recuse himself from participating in the Tribunal's consideration of Iran's Request for Revision.[51]

IV. REASONS FOR THE DECISION

44. Iran invokes an alleged "inherent power" of the Tribunal to reopen and reconsider its awards as a basis for its present Request for Revision of Section VI.C of Partial Award No. 601. The Tribunal considers below whether it possesses any such power to do so.

45. The trend for quite some years has been for international courts and tribunals to be expressly empowered in their respective constitutive instruments, in their rules of procedure, or in both to revise otherwise final and binding awards and judgments. This is not surprising given that revision is an extraordinary remedy that can be admissible only in exceptional and stringent circumstances.[52] "The concept of revision adversely affects and undermines the fundamental principle of *res judicata*," so "if applied incorrectly or without the requisite stringency the concept of revision is capable of impairing the stability of juridical relations and legal security."[53]

46. Thus, as early as 1899, a provision was included in the Hague Convention for the Pacific Settlement of International Disputes to the effect that arbitral tribunals would be empowered to revise their awards so long as the parties to the dispute reserved such power to the tribunal in their *compromis*.[54] The same provision was included in the 1907 Hague

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[51] *Supra* para. 5.

[52] *See, e.g.*, KAIYAN HOMI KAIKOBAD, INTERPRETATION AND REVISION OF INTERNATIONAL BOUNDARY DECISIONS 257 (stating that revision is a judicial remedy that must be exercised restrictively, in exceptional circumstances, and as such cannot lightly be provided).

[53] Richard Kreindler, *Applications for "Revision" in Investment Arbitration: Selected Current Issues, in* LIBER AMICORUM BERNARDO CREMADES 679, 681-82 (M.Á. Fernández-Ballesteros & D. Arias eds., 2010). *See also* 3 SHABTAI ROSENNE, THE LAW AND PRACTICE OF THE INTERNATIONAL COURT 1920-2005, 1613 (4th ed. 2006) (emphasizing the exceptional nature of the remedy of revision "as possibly impairing the stability of the jural relations established by the *res judicata*"); W. MICHAEL REISMAN, NULLITY AND REVISION – THE REVIEW AND ENFORCEMENT OF INTERNATIONAL JUDGMENTS AND AWARDS 219-20 (1971) ("While interpretation attempts to sustain a myth of finality, revision incontrovertibly destroys it."); Derek W. Bowett, *Res Judicata and the Limits of Rectification of Decisions by International Tribunals*, 8 AFR. J. INT'L AND COMP. L. 577, 577 (1996) (stating that the respect which States show for awards would be undermined if the awards lacked finality and binding force).

[54] Convention for the Pacific Settlement of International Disputes art. 55, 29 July 1899 ("1899 Hague Convention") (English translation *reprinted in* PERMANENT COURT OF ARBITRATION – BASIC DOCUMENTS 3

Convention for the Pacific Settlement of International Disputes.[55] Further, the Statute of the Permanent Court of International Justice ("P.C.I.J.") expressly conferred on the P.C.I.J. the power to revise its judgments,[56] as does the Statute of the International Court of Justice ("I.C.J.") with respect to the I.C.J.[57] The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("ICSID Convention"), too, explicitly empowers ICSID arbitral tribunals to revise their awards.[58] Other courts and tribunals that have been specifically authorized by their constitutive instruments to revise their judgments include the European Court of Justice,[59] the United Nations Dispute Tribunal,[60] and the United Nations Appeals Tribunal.[61]

47. The rules of procedure of several mixed arbitral tribunals established after the two World Wars expressly empowered the respective tribunals to revise their decisions.[62] Further, the European Court of Human Rights, in establishing the Rules of Court, and the International Tribunal for the Law of the Sea, in establishing the Rules of the Tribunal, have also conferred upon themselves the power to revise their judgments.[63]

(2005)). Article 55, paragraph 1, of the 1899 Hague Convention provides that "[t]he parties can reserve in the 'Compromis' the right to demand the revision of the Award."

[55] Convention for the Pacific Settlement of International Disputes art. 83, 18 Oct. 1907 (English translation *reprinted in* PERMANENT COURT OF ARBITRATION – BASIC DOCUMENTS 19 (2005)).

[56] Statute of the Permanent Court of International Justice art. 61, 16 Dec. 1920 (amended 14 Sept. 1929), P.C.I.J. Publications (ser. D) No. 1, at 26.

[57] Statute of the International Court of Justice art. 61.

[58] Convention on the Settlement of Investment Disputes Between States and Nationals of Other States art. 51, *opened for signature* 18 Mar. 1965, 575 U.N.T.S. 159 (entered into force 14 Oct. 1966).

[59] Protocol on the Statute of the Court of Justice of the European Union art. 44, C 83 OFFICIAL JOURNAL OF THE EUROPEAN UNION 210, 220 (30 Mar. 2010).

[60] Statute of the United Nations Dispute Tribunal art. 12, para. 1, G.A. Res. 63/253, U.N. Doc. A/RES/63/253, at 13 (17 Mar. 2009).

[61] Statute of the United Nations Appeals Tribunal art. 11, para. 1, G.A. Res. 63/253, U.N. Doc. A/RES/63/253, at 19 (17 Mar. 2009).

[62] *See, e.g.*, Rules of Procedure of the Belgo-German Mixed Arbitral Tribunal art. 76, *reprinted in* 1 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES INSTITUÉS PAR LES TRAITÉS DE PAIX 33, 43 (1922); Rules of Procedure of the Franco-German Mixed Arbitral Tribunal art. 79, *id.* at 44, 55; Rules of Procedure of the Anglo-Austrian Mixed Arbitral Tribunal art. 91, *id.* at 622, 635. *See also* Rules of Procedure of the Arbitral Tribunal and Mixed Commission for the London Agreement on German External Debts art. 48 (a), *reprinted in* KARIN OELLERS-FRAHM & NORBERT WÜHLER, DISPUTE SETTLEMENT IN PUBLIC INTERNATIONAL LAW 772, 779-80 (1984); Rules of Procedure of the Arbitral Commission on Property, Rights and Interests in Germany rule 68, [1957] 2 BUNDESGESETZBLATT 230, 249-50.

[63] European Court of Human Rights, Rules of Court rule 80, *available at* http://www.echr.coe.int; International Tribunal for the Law of the Sea, Rules of the Tribunal art. 127, *available at* http://www.itlos.org.

48. The practice of international courts and tribunals with respect to the existence of a power of revision in the absence of any textual basis is inconsistent.[64]

49. With respect to this Tribunal, neither the Claims Settlement Declaration nor the Tribunal Rules provide for the reopening and reconsideration of a case on the merits after an award has been rendered.

50. Article IV, paragraph 1, of the Claims Settlement Declaration commands that "[a]ll decisions and awards of the Tribunal shall be final and binding."[65] This command is confirmed by Article 32, paragraph 2, of the Tribunal Rules, which states that an award rendered by the Tribunal "shall be final and binding on the parties." The Tribunal Rules provide a narrow exception to the basic rule of finality of awards in Articles 35, 36, and 37. Following the issuance of an award, the Tribunal may, in accordance with those provisions, give an interpretation of the award (Article 35), correct "any errors in computation, any clerical or typographical errors, or any errors of similar nature" (Article 36), or "make an additional award as to claims presented in the arbitral proceedings but omitted from the award" (Article 37).[66]

51. In its practice thus far in Tribunal Chambers, the Tribunal has raised but left open the question whether, given the absence of an express grant of authority to the Tribunal to reopen and reconsider cases on the merits after the issuance of an award, it possesses the inherent power to do so "under exceptional circumstances."[67] The Tribunal examined that question at some length in the following two cases.

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[64] International decisions recognizing the existence of an international court's or tribunal's inherent power to revise final and binding awards include: George Moore v. Mexico (U.S.-Mex. Mixed Claims Comm. 26 Jul. 1871), 2 J.B. MOORE, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY 1357 (1898); Lehigh Valley Railroad ("The Sabotage Cases"), 8 R.I.A.A. 160, 187-90 (U.S.-Ger. Mixed Claims Comm. 15 Dec. 1933); Trail Smelter Arbitration (U.S. v. Can.), 3 R.I.A.A. 1938, 1953-54 (U.S.-Can. Arb. Trib. 1941); Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, 1954 I.C.J. 47, 55 (13 July); Antoine Biloune (Syria), et al. v. Ghana Investments Centre, et al., Award on Damages and Costs, paras. 32-35 (*Ad Hoc* UNCITRAL Arb. Trib. 30 June 1990), XIX Y.B. COMMERCIAL ARBITRATION 11, 22-23 (1994). International decisions declining to recognize the existence of a power of revision in the absence of an express authorization include: Benjamin Weil and the La Abra Silver Mining Co. (U.S.-Mex. Mixed Claims Comm. 20 Oct. 1876), 2 J.B. MOORE, *supra*, 1324, 1329; A.H. Lazare (U.S.-Haiti 1886), 2 J.B. MOORE 1749, 1801; Question of Jaworzina (Polish-Czechoslovakian Frontier), Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 8, at 38.

[65] Claims Settlement Declaration art. IV (1), 1 IRAN-U.S. C.T.R. at 10.

[66] *See supra* notes 44-45.

[67] *See, e.g.*, *Henry Morris* and *Islamic Republic of Iran, et al.*, Decision No. DEC 26-200-1, at 2 (16 Sept. 1983), *reprinted in* 3 IRAN-U.S. C.T.R. 364, 365; *Mark Dallal* and *Islamic Republic of Iran, et al.*, Decision No. DEC

52. In *Ram International Industries, Inc.*, the Air Force of the Islamic Republic of Iran requested that Chamber One of the Tribunal reopen the original award in that case[68] on grounds of forgery and perjury. In addressing the question whether it had the inherent power to do so, Chamber One, after considering a number of international decisions and scholarly writings, concluded as follows:

> On the basis of the foregoing review, it might possibly be concluded that a tribunal, like the present one, which is to adjudicate a large group of cases and for a protracted period of time would by implication, until the adjournment and dissolution of the tribunal, have the authority to revise decisions induced by fraud.[69]

Chamber One did not deem it necessary to fully pursue and decide that question for the purpose of that case given that the "required preconditions" for any possible revision had not been met.[70]

53. In *Harold Birnbaum*, Iran requested that Chamber Two of the Tribunal reconsider its original award.[71] In support of its request, Iran cited Chamber One's Decision in *Ram International Industries, Inc.*[72] Chamber Two, however, took a skeptical approach to the

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30-149-1, at 2 (12 Jan. 1984), *reprinted in* 5 IRAN-U.S. C.T.R. 74, 75; *Dames & Moore* and *Islamic Republic of Iran, et al.*, Decision No. DEC 36-54-3, at 18-21 (23 Apr. 1985), *reprinted in* 8 IRAN-U.S. C.T.R. 107, 117-18; *World Farmers Trading Inc.* and *Government Trading Corp., et al.*, Decision No. DEC 93-764-1, para. 3 (3 Oct. 1990), *reprinted in* 25 IRAN-U.S. C.T.R. 186, 187; *Ram International Industries Inc., et al.* and *Air Force of the Islamic Republic of Iran*, Decision No. DEC 118-148-1, paras. 15-20 (28 Dec. 1993), *reprinted in* 29 IRAN-U.S. C.T.R. 383, 387-90; *Harold Birnbaum* and *Islamic Republic of Iran*, Decision No. DEC 124-967-2, paras. 14-22 (14 Dec. 1995), *reprinted in* 31 IRAN-U.S. C.T.R. 286, 289-92; *Frederica Lincoln Riahi* and *Islamic Republic of Iran*, Decision No. DEC 133-485-1, para. 43 (17 Nov. 2004), *reprinted in* 38 IRAN-U.S. C.T.R. 19, 33.

[68] *Ram International Industries, Inc., et al.* and *Air Force of the Islamic Republic of Iran*, Award No. 67-148-1 (19 Aug. 1983), *reprinted in* 3 IRAN-U.S. C.T.R. 203.

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

[70] *Id.* paras. 20 and 23, 29 IRAN-U.S. C.T.R. at 390-91. Concerning required preconditions for a revision, Chamber One stated:

> [O]ne requirement, namely, that an application for revision of an award "may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor" follows closely the language of all reviewed legal provisions, judicial decisions and views of learned writers. Therefore, the Tribunal holds that for the purpose of a revision the new fact has to be decisive, in the sense that when placed alongside the other facts of the case, earlier assessed, it seriously upsets the balance, and consequently the conclusions drawn by the tribunal.

Id. para. 20, 29 IRAN-U.S. C.T.R. at 390 (citations omitted).

[71] *Harold Birnbaum* and *Islamic Republic of Iran*, Award No. 549-967-2 (6 July 1993), *reprinted in* 29 IRAN-U.S. C.T.R. 260.

[72] *See supra* para. 52.

question whether the Tribunal possesses an inherent power to revise its awards. While stating that, "in the absence of exceptional circumstances, for example, allegations of fraud or perjury, it need not decide whether it has an inherent or implied power to revise its final and binding awards,"[73] Chamber Two noted:

> There is not much room for reading implied powers into a contemporary bilateral arrangement; for its authors are aware of past experience. It is to be expected that today, two States that intended to allow the revision of awards rendered by a tribunal established pursuant to a treaty between them would do so by an unequivocal expression of their common will. Clearly Iran and the United States did not so provide in the Algiers Declarations.[74]

Quoting *International Schools Services, Inc.*, in which Chamber One of the Tribunal had observed that "it is questionable whether, even in exceptional circumstances, the Tribunal would have authority to act outside [the Tribunal Rules] to revise or correct an award,"[75] in *Harold Birnbaum*, Chamber Two went on to state:

> [T]he final and binding force of an award does not necessarily exclude the possibility of a revision thereof. But the existence of express rules providing that the award is "final and binding," coupled with the silence of the contracting Parties concerning the possibility of revision, makes it difficult to conclude that any inherent power to revise a final award exists.[76]

54. Indeed, in Article IV, paragraph 1, of the Claims Settlement Declaration, which commands that "[a]ll decisions and awards of the Tribunal shall be final and binding,"[77] the State Parties gave expression to the principle of finality of international arbitral awards. This fundamental principle "serves the purpose of efficiency in terms of an expeditious and economical settlement of disputes."[78] The desire for finality is a significant factor in international arbitration.

55. Article III, paragraph 2, of the Claims Settlement Declaration directs that "the Tribunal shall conduct its business in accordance with the arbitration rules of the United

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[73] *Harold Birnbaum* and *Islamic Republic of Iran*, Decision No. DEC 124-967-2, para. 20 (14 Dec. 1995), *reprinted in* 31 IRAN-U.S. C.T.R. 286, 291.

[74] *Id.* para. 15, 31 IRAN-U.S. C.T.R. at 289-90.

[75] *International Schools Services, Inc.* and *Islamic Republic of Iran, et al.*, Award No. 290-123-1, para. 17 (29 Jan. 1987), *reprinted in* 14 IRAN-U.S. C.T.R. 65, 70-71.

[76] *Harold Birnbaum*, Decision No. DEC 124-967-2, para. 17, 31 IRAN-U.S. C.T.R. at 290.

[77] Claims Settlement Declaration art. IV (1), 1 IRAN-U.S. C.T.R. at 10.

[78] RUDOLPH DOLZER & CHRISTOPH SCHREUER, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW 277 (2008).

Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the Parties or by the Tribunal to ensure that this Agreement can be carried out."[79] Hence, the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL Arbitration Rules"), as in force on 19 January 1981, shall govern all Tribunal proceedings except to the extent that those Rules are modified either by the two State Parties to the Claims Settlement Declaration or by the Tribunal itself.

56. In accordance with its mandate, the Tribunal carefully reviewed and modified the UNCITRAL Arbitration Rules after giving the two State Parties full opportunity to express their views.[80] The Tribunal finally adopted the Tribunal Rules in May 1983.

57. Article 1, paragraph 1, of the Tribunal Rules provides that, "[w]ithin the framework of the Algiers Declarations, the initiation and conduct of proceedings before the arbitral tribunal shall be subject to the following Tribunal Rules which may be modified by the Full Tribunal or the two Governments." This provision accords with Article III, paragraph 2, of the Claims Settlement Declaration.

58. During the process of modification of the UNCITRAL Arbitration Rules neither the Tribunal nor the State Parties concluded that, in order for the Tribunal to carry out its functions under the Claims Settlement Declaration – "to ensure that [the Claims Settlement Declaration] can be carried out"[81] – any exceptions to the fundamental rule of finality of awards were required other than the narrow exceptions provided in Articles 35, 36, and 37 of the Tribunal Rules (respectively, interpretation of the award, correction of the award, and making of an additional award).[82] In particular, neither the Tribunal nor the State Parties deemed it necessary to include a provision permitting the revision of an otherwise final and binding award, even though they were "aware of past experience."[83] In connection with the latter, it should be noted that contemporary dispute-settlement instruments that were in force on the date of the Algiers Declarations, such as the Statute of the International Court of

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[79] Claims Settlement Declaration art. III (2), 1 IRAN-U.S. C.T.R. at 10.

[80] Howard M. Holtzmann, *Drafting the Rules of the Tribunal, in* THE IRAN-UNITED STATES CLAIMS TRIBUNAL AND THE PROCESS OF INTERNATIONAL CLAIMS RESOLUTION 75, 76 (2000).

[81] Claims Settlement Declaration art. III (2), 1 IRAN-U.S. C.T.R. at 10.

[82] *Supra* para. 50.

[83] *Harold Birnbaum* and *Islamic Republic of Iran*, Decision No. DEC 124-967-2, para. 15 (14 Dec. 1995), *reprinted in* 31 IRAN-U.S. C.T.R. 286, 290; *supra* para. 53.

Justice[84] and the ICSID Convention,[85] expressly provide for the revision of final and binding judgments and awards. Notably, further, the 1899 Hague Convention for the Pacific Settlement of International Disputes, to which both Iran and the United States have been parties since 4 September 1900, provides that "[t]he parties can reserve in the 'Compromis' the right to demand the revision of the Award."[86] As Chamber Two stated in *Harold Birnbaum*, "[i]t is to be expected that today, two States that intended to allow the revision of awards rendered by a tribunal established pursuant to a treaty between them would do so by an unequivocal expression of their common will."[87]

59. The Tribunal now turns to the question of inherent powers of international courts and tribunals. As a general matter, the Tribunal accepts that an international arbitral tribunal, such as the present one, possesses certain inherent powers. Inherent powers "are those powers that are not explicitly granted to the tribunal but must be seen as a necessary consequence of the parties' fundamental intent to create an institution with a judicial nature."[88] It has been suggested that "the source of the inherent powers of international courts is their need to ensure the fulfilment of their functions."[89] Thus, for example, the Tribunal has held that it has "an inherent power to issue such orders as may be necessary to conserve the respective rights of the Parties and to ensure that this Tribunal's jurisdiction and authority are made fully effective."[90]

60. With respect to the existence of an international tribunal's inherent power to revise a final and binding award, opinions of legal scholars diverge,[91] and the practice of international

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[84] *Supra* note 57.

[85] *Supra* note 58.

[86] 1899 Hague Convention art. 55, para. 1, *supra* note 54.

[87] *Harold Birnbaum*, Decision No. DEC 124-967-2, para. 15, 31 IRAN-U.S. C.T.R. at 290; *supra* para. 53.

[88] DAVID D. CARON, ET AL., THE UNCITRAL ARBITRATION RULES – A COMMENTARY 915 (2006). *See also* CHESTER BROWN, A COMMON LAW OF INTERNATIONAL ADJUDICATION 56 (2007); Friedl Weiss, *Inherent Powers of National and International Courts: The Practice of the Iran-U.S. Claims Tribunal, in* INTERNATIONAL INVESTMENT LAW FOR THE 21ST CENTURY – ESSAYS IN HONOUR OF CHRISTOPH SCHREUER 185, 186 (C. Binder, U. Kriebaum, A. Reinisch, S. Wittich eds., 2009).

[89] Chester Brown, *The Inherent Powers of International Courts and Tribunals*, 76 BRIT. Y.B. INT'L L. 195, 228 (2005). *See also* Paola Gaeta, *Inherent Powers of International Courts and Tribunals, in* MAN'S INHUMANITY TO MAN – ESSAYS ON INTERNATIONAL LAW IN HONOUR OF ANTONIO CASSESE 353, 364-68 (L.C. Vohrah, F. Pocar, Y. Featherstone, O. Fourmy, C. Graham, J. Hocking & N. Robson eds., 2003).

[90] *E-Systems, Inc.* and *Islamic Republic of Iran, et al.*, Interim Award No. ITM 13-388-FT, at 10 (4 Feb. 1983), *reprinted in* 2 IRAN-U.S. C.T.R. 51, 57.

[91] *See, e.g.*, BROWN, A COMMON LAW OF INTERNATIONAL ADJUDICATION, *supra* note 88, at 171 (stating that the arguments for the existence of the power of revision as an inherent power "are quite compelling;" and that the

courts and tribunals is inconsistent.[92] The Tribunal is aware that the International Court of Justice, in its 13 July 1954 Advisory Opinion in *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*,[93] recognized that the power to revise, in special circumstances, a final and binding award is an inherent power.[94] It should be noted, however, that the Court's Advisory Opinion was followed by United Nations General Assembly Resolution 888 (IX) of 17 December 1954, in which the General Assembly, after taking note of that Opinion, (i) accepted in principle judicial review of judgments of the United Nations Administrative Tribunal ("U.N.A.T.") and (ii) established a Special Committee to study the question of establishing a review procedure for judgments of the U.N.A.T.[95] By Resolution 957 (X) of 8 November 1955, the General Assembly subsequently amended the Statute of the U.N.A.T. by including, *inter alia*, a new Article 12 on revision, which expressly empowered the U.N.A.T. to revise its judgments on the basis of new, decisive facts.[96] Article 12 of the Statute of the U.N.A.T. mirrored to a large extent Article 61, paragraph 1, of the Statute of the International Court of Justice.[97]

61. In the Tribunal's view, in order to determine which powers international courts and tribunals may exercise as inherent powers one must take into account the particular features of each specific court or tribunal, including the circumstances surrounding its establishment, the object and purpose of its constitutive instrument, and the consent of the parties as

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proper administration of international justice militates in favor of the admission of a procedure to take account of new evidence, subject to certain conditions, so long as the exercise of the power is not inconsistent with the terms of the constitutive instrument of the international court); Bowett, *supra* note 53, at 590 (stating that it is "doubtful" whether an international tribunal possesses "any inherent power of revision"); KAIKOBAD, *supra* note 52, at 252 (revision is "a remedy based on consent," and "the power of a tribunal to revise its decisions upon the discovery of a decisive fact is not an inherent power.").

[92] *See supra* note 64.

[93] Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, 1954 I.C.J. 47 (13 July). As a result of the decision of the United Nations General Assembly to establish a new system of administration of justice, including a two-tier formal system comprising a first instance, the United Nations Dispute Tribunal, and an appellate instance, the United Nations Appeals Tribunal, the United Nations Administrative Tribunal was abolished in 2009. *See* G.A. Res. 63/253, U.N. Doc. A/RES/63/253 (17 Mar. 2009). *See supra* notes 60 and 61.

[94] In its Advisory Opinion, the International Court of Justice found that a rule that a judgment is final and without appeal "cannot . . . be considered as excluding the [United Nations Administrative] Tribunal from itself revising a judgment in special circumstances when new facts of decisive importance have been discovered . . . ." Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, 1954 I.C.J. at 55.

[95] G.A. Res. 888 (IX) (17 Dec. 1954), *available at* http://www.un.org/documents/ga/res/9/ares9.htm.

[96] G.A. Res. 957 (X) (8 Nov. 1955), *available at* http://www.un.org/documents/ga/res/10/ares10.htm.

[97] *Supra* note 57.

expressed in that and related instruments.[98] This principle will guide the Tribunal in determining whether it possesses the inherent power to revise its awards.

62. On 19 January 1981, after protracted and difficult negotiations conducted through the Government of Algeria acting as the official intermediary, Iran and the United States entered into the Algiers Declarations, which consist of a General Declaration and a Claims Settlement Declaration.[99] The Algiers Declarations ended a long and acute political crisis between two Governments that had essentially severed all diplomatic relations and that regarded each other with extreme distrust. This Tribunal, which was one of the measures intended to defuse that crisis, was established through the Claims Settlement Declaration for the purpose of deciding certain claims by nationals of one State against the Government of the other and certain claims between the two Governments.[100] The final settlement of such claims was one of the crucial features of the bargain struck by the two Governments to end the crisis; this aspect is also reflected in Article I of the Claims Settlement Declaration, which provides that "Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned."[101] Against this backdrop, the State Parties' agreement, in Article IV, paragraph 1, of the Claims Settlement Declaration, that "[a]ll decisions and awards of the Tribunal shall be final and binding"[102] acquires particular significance.

63. In the Tribunal's view, to avoid upsetting the strict and careful construction and application of the politically sensitive Algiers Declarations, the Tribunal must be especially cautious in finding that it possesses inherent powers.

64. In light of the above and considering (i) that, when the Tribunal, in consultation with the two State Parties to the Claims Settlement Declaration, modified the UNCITRAL Arbitration Rules, neither the Tribunal nor the two State Parties considered the remedy of revision of a final and binding award necessary "to ensure that [the Claims Settlement Declaration] can be carried out"[103] and (ii) that a mechanism is available under the Claims

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[98] *See also* Gaeta, *supra* note 89, at 370 ("[I]n assessing the inherent nature of an 'unexpressed' power, the unique features of each particular court or tribunal should be taken into account.").

[99] *See supra* note 2.

[100] Claims Settlement Declaration art. II & art. VI (4), 1 IRAN-U.S. C.T.R. at 9-11.

[101] *Id.* art. I, 1 IRAN-U.S. C.T.R. at 10.

[102] *Id.* art. IV (1), 1 IRAN-U.S. C.T.R. at 10.

[103] *Id.* art. III (2), 1 IRAN-U.S. C.T.R. at 10. *See supra* paras. 55-58. After their adoption, the Tribunal Rules have been amended only once. This amendment, which consisted of the addition of a new paragraph –

Settlement Declaration and Article 1, paragraph 1, of the Tribunal Rules to modify those Rules should the Tribunal or the two State Parties to the Claims Settlement Declaration at any point in time deem it necessary and appropriate to provide the remedy of revision,[104] the Tribunal is not prepared to hold that it has an inherent power to revise a final and binding award.[105] Equally crucial, the Tribunal believes that it is, not in the context of a Tribunal decision in a particular case, but rather in the context of a formal modification of the Tribunal Rules that essential features and modalities relating to a remedy of revision – such as its scope, the time limits within which an application for revision may be submitted, and the structure of the revision proceeding[106] – can be established with the proper degree of rigor.

65. Additionally, the Tribunal notes that, to its knowledge, the statutes and rules of procedure of modern international courts and tribunals expressly providing the remedy of revision do not provide for "manifest errors of law" or "fundamental errors of procedure" as grounds for revising a final and binding decision. Rather, they typically provide that an application for revision of such a decision may be made only if it is based upon the discovery of some new and decisive fact; they also specify the time limits within which any such application may be submitted.[107]

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paragraph 5 – to Article 13 (providing that a Tribunal Member who resigned would continue as a member with respect to all cases in which he had participated in a hearing on the merits) was adopted finally on 7 March 1984. *See* Amendment to Tribunal Rules, Article 13, *reprinted in* 7 IRAN-U.S. C.T.R. 317 (1984).

[104] Of course, by agreement of the two State Parties, the Claims Settlement Declaration may be amended to empower the Tribunal to revise final and binding awards.

[105] It has been suggested that, because a decision proven to have been induced by fraud or perjury does not constitute a "decision in law, . . . the right and indeed the duty to render a valid judgment or award must be seen to continue;" and that the "argument that, in such circumstances, the reopening of the case can hardly be described as revision in the normal understanding of the notion is clearly a strong one." KAIKOBAD, *supra* note 52, at 257; *see also* BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 159 (Grotius Publications Ltd., 1987) ("A judgment, which in principle calls for the greatest respect, will not be upheld if it is the result of fraud."); KENNETH S. CARLSTON, THE PROCESS OF INTERNATIONAL ARBITRATION 58 (1946) ("The principle that an award procured through false evidence or other fraud is void has been sustained by a number of writers. . . . It is clear that authority and practice sustain the conclusion that an award fraudulently procured is without obligatory force."); L. OPPENHEIM, 2 INTERNATIONAL LAW – A TREATISE 28 (4th ed., 1926) ("[S]hould one of the parties have intentionally and maliciously led the arbitrators into an essential material error, the award would have no binding force whatever."). Neither fraud nor perjury are alleged in the present case. Consequently, the Tribunal need not address the matter for present purposes.

[106] For example, Article 61 of the Statute of the International Court of Justice (*supra* note 57) provides for a two-stage revision proceeding: the first stage consists of a preliminary hearing on the question whether the petition for revision is admissible; the second stage consists of the hearing on the merits of the question whether and to what extent a particular judgment should be revised (if the petition for revision has been found to be admissible).

[107] *See supra* notes 56-61, 63.

66. In view of the Tribunal's conclusions, *supra*, Iran's request for a hearing on certain "substantial issues"[108] has become moot.

67. The circumstances of this Case do not require further consideration of this matter. Consequently, the Tribunal need not concern itself with the question whether a "manifest error of law" or a "fundamental error of procedure" may possibly constitute grounds for revision where, unlike here, the remedy of revision is available or with the question whether the Tribunal, in rendering Partial Award No. 601, indeed has committed any such errors. In the same vein, the Tribunal does not address Iran's contentions going to the merits of its Revision Request – for example, Iran's contentions that the Tribunal in Partial Award No. 601 based its decision on a legal argument that had not been raised by the Parties or placed before them by the Tribunal;[109] that the Tribunal, in order to determine whether Iran had suffered any losses as a result of the United States' 26 March 1981 refusal to allow the export of Iranian export-controlled properties, should have considered the Parties' evidence with respect to each of the specific Individual Claims;[110] that the Tribunal improperly admitted into the record of Case No. B61 certain evidence that the United States had submitted with its 1 March 2006 Response to Iran's 1 February 2005 "Supplemental Documents";[111] or that, in rendering Partial Award No. 601, the Tribunal has contradicted its own ruling that Partial Award No. 529 has *res judicata* effect with respect to Case No. B61.[112]

68. Likewise, the Tribunal does not address the United States' contentions denying Iran's allegations. As discussed *supra*, the United States contends that the Tribunal did not commit any procedural or substantive errors in Partial Award No. 601;[113] that the Tribunal decided the case on an issue that was in fact argued by the parties;[114] that the Tribunal carefully considered and explained its conclusions in that award;[115] and that Partial Award No. 601 and Partial Award No. 529 are entirely compatible.[116]

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[108] *See supra* para. 33.

[109] *See supra* para. 16.

[110] *See supra* para. 19.

[111] *See supra* para. 20.

[112] *See supra* para. 29.

[113] *See supra* para. 37.

[114] *See id.*

[115] *See supra* para. 38.

[116] *See supra* para. 39.

69. The present Decision is reached unanimously by the Tribunal, without any Member submitting a separate opinion.

70. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

The "Request for Revision of Partial Award No. 601" submitted by the Islamic Republic of Iran dated 3 August 2009 is denied.

Dated, The Hague, 1 July 2011

Hans van Houtte
President

In the Name of God

Bengt Broms

Gaetano Arangio-Ruiz

H.R. Nikbakht Fini

In the Name of God

George H. Aldrich

M.H. Abedian Kalkhoran

In the Name of God

Charles N. Brower

Seyed Jamal Seifi

Gabrielle Kirk McDonald