CASES NOS. A15 (II:A), A26 (IV) AND B43
FULL TRIBUNAL
DECISION NO. DEC 137-A15 (II:A)/A26 (IV)/B43-FT

THE ISLAMIC REPUBLIC OF IRAN,
Claimant,

and

THE UNITED STATES OF AMERICA,
Respondent.

CORRECTION TO AWARD

AND

DECISION ON REQUEST FOR CORRECTION AND ADDITIONAL AWARD

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I. INTRODUCTION

1. On 10 March 2020, the Tribunal rendered Award No. 604-A15(II:A)/A26(IV)/B43-FT (the "Partial Award") in the present Cases.[1] At issue in the Partial Award were claims brought by the Islamic Republic of Iran ("Iran") for compensation from the United States of America ("United States") for losses Iran had allegedly suffered as a result of a violation by the United States of its obligations under the Algiers Declarations[2] to arrange for the transfer to Iran of Iranian tangible properties subject to the jurisdiction of the United States on 19 January 1981, when the Algiers Declarations entered into force, and to restore Iran's financial position to that which existed prior to 14 November 1979.[3] The properties that were the main subject of dispute in the present Cases were tangible properties of a non-military nature, which Iran identified in a series of separate claims ("Individual Claims").

2. In the Partial Award, the Tribunal dismissed certain of Iran's Individual Claims and upheld others, and it awarded damages on a number of the Individual Claims upheld, including: (i) Claim G-105 (Khuzestan Water and Power Authority/Exide Corp.); (ii) Claim G-32 (Iran Bastan Museum/Oriental Institute of the University of Chicago); (iii) Claim Supp. (2)-55 (Iran Air/Plessey Dynamics Corp.); (iv) Claims G-11 and Supp. (2)-67 (Iran Air/U.S. Customs); (v) Claim G-7 (Iranian Ministry of Roads and Transportation ("MORT")/Port of Vancouver); (vi) Claim G-8 (MORT/Gulf Ports Crating Co.); and (vii) Claim G-13 (MORT/Shipside Packing Co. ("Shipside")).[4]

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[1] *Islamic Republic of Iran* and *United States of America*, Award No. 604-A15(II:A)/A26(IV)/B43-FT (10 Mar. 2020).

[2] 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").

[3] On 14 November 1979, the President of the United States issued Executive Order No. 12170, which 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."

[4] *See* Partial Award, para. 2386 (Claim G-105); para. 2464 (Claim G-32); para. 2269 (Claim Supp. (2)-55); para. 2307 (Claims G-11 and Supp. (2)-67); para. 2172 (Claim G-7); para. 2084 (Claim G-8); and para. 2208 (Claim G-13).

3. On 9 April 2020, the United States submitted a request for correction of the Partial Award and for an additional award (hereinafter referred to, as appropriate, as "Request," "Request for Correction," or "Request for Additional Award").[5]

4. On 30 April 2020, Iran submitted its comments on the United States' Request.

5. On 14 May 2020, the United States submitted its response to Iran's comments of 30 April 2020.

6. On 28 May 2020, Iran submitted its comments on the United States' response of 14 May 2020.

II. REQUEST FOR CORRECTION

7. Pursuant to Article 36 of the Tribunal Rules of Procedure ("Tribunal Rules"), the Tribunal may correct "any errors in computation, any clerical or typographical errors, or any errors of similar nature."[6]

A. Further Detail on the Tribunal's Calculation of Pre-Award Interest

1. The Contentions of the Parties

8. The United States seeks a correction to the calculation of pre-award interest on the amount awarded by the Tribunal on Claim G-105.[7] The United States contends that, "to allow the Parties to determine whether there are any other errors in [the Partial Award's pre-award interest] calculations," additional information concerning the Tribunal's calculations is required. Accordingly, relying on Article 36 of the Tribunal Rules, the United States requests: (i) disclosure of the source of the prime lending rates the Tribunal relied on to calculate pre-award interest on the amounts awarded in the Partial Award; and (ii) an explanation of the methodology underlying the Tribunal's calculations.

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[5] "Request of the United States for Correction of the Award and an Additional Award," 6 Apr. 2020.

[6] Article 36 of the Tribunal Rules of Procedure provides, in pertinent part:

> 1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature . . . .

[7] *See infra* paras. 19-23.

9. In the alternative, the United States requests the same information under Article 35 of the Tribunal Rules (interpretation of the award).[8]

10. The United States contends that, if the requested additional information is not disclosed, "the United States will be deprived of its ability to assess the correctness of [the Tribunal's] calculations" of pre-award interest.

11. Iran asserts that the United States' request under Article 36 of the Tribunal Rules for the disclosure of additional information has no legal basis under the Tribunal Rules or the Tribunal's practice. Concerning the United States' alternative request under Article 35 of the Tribunal Rules, Iran contends that "no ambiguous matter can be detected in the Tribunal's decision as to the method by which it calculated the pre-award interest such as might warrant an interpretation of the Partial Award" under that provision.

2. The Tribunal's Decision

12. As an initial matter, the method and basis for the determination of pre-award interest on amounts awarded are within the exercise of the Tribunal's own discretion. In the Partial Award, the Tribunal set out in adequate detail and specificity the manner in which it exercised this discretion, as follows:

> [T]he Tribunal awards Iran simple pre-award interest on all amounts awarded to Iran for its Individual Claims 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 interest shall run, as set out below, up to and including the date of this Partial Award.[9]

13. Article 36 of the Tribunal Rules only permits a party to request that the Tribunal correct in the award any error "in computation," any "clerical or typographical" error, or any error "of similar nature."[10] The United States' present request that the Tribunal provide additional information concerning its calculations of pre-award interest in the Partial Award manifestly

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[8] Article 35 of the Tribunal Rules provides, in relevant part:

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

[9] Partial Award, para. 2568.

[10] *See supra* para. 7.

does not concern the correction of any such error. Thus, it is outside the scope of Article 36 and must be denied.

14. With respect to the United States' alternative request under Article 35 of the Tribunal Rules, there is no ambiguity in the language of the Partial Award describing the method and basis for the calculation of pre-award interest that would justify an interpretation pursuant to that provision.[11] To reiterate, the Partial Award sets out in adequate detail and specificity the method and basis for the calculation of the pre-award interest.[12]

15. Significantly, moreover, the Partial Award uses language virtually identical to that which the Tribunal used to describe the method and basis for calculating pre-award interest in *Islamic Republic of Iran* and *United States of America*, Award No. 602-A15(IV)/A24-FT (2 July 2014) ("Award No. 602"), which neither Party ever suggested was ambiguous or unclear.[13] Indeed neither the United States nor Iran has ever questioned the accuracy of the pre-award interest calculations in Award No. 602 or inquired about the source of the prime rates relied on, or the method used, by the Tribunal in calculating pre-award interest for that award.

16. In light of the foregoing, the United States' alternative request under Article 35 of the Tribunal Rules must likewise be denied.

17. Though there is no requirement under the Tribunal Rules, or elsewhere, for the Tribunal to do so, the Tribunal, in the circumstances, is prepared to provide the Parties with some additional detail concerning its calculation of pre-award interest in the Partial Award.

18. For that calculation, the Tribunal relied on the same source of publicly available historical prime-rate data that the Tribunal had used in calculating pre-award interest in Award No. 602. Further, it used the same basis and method that the Tribunal had used for Award No. 602 – that is, it calculated the pre-award interest based on the monthly prime lending rates

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[11] *See, e.g.*, *Paul Donin de Rosiere et al.* and *Islamic Republic of Iran et al.*, Decision No. DEC 57-498-1, para. 6 (10 Feb. 1987), *reprinted in* 14 IRAN-U.S. C.T.R. 100, 102 (Article 35, paragraph 1, of the Tribunal Rules is intended to apply "only where an award contains language which is ambiguous."); *Ford Aerospace & Communications Corp.* and *Islamic Republic of Iran et al.*, Decision No. DEC 59-93-1, para. 6 (23 Apr. 1987), *reprinted in* 14 IRAN-U.S. C.T.R. 255, 256 (Article 35, paragraph 1, of the Tribunal Rules is intended to apply "only where an award contains language which is ambiguous.").

[12] *See supra* para. 12.

[13] *See* Award No. 602, para. 288.

during the relevant period from the dates indicated in the Partial Award as of which interest would run on each amount awarded until 10 March 2020, the date of filing of the Partial Award. For its calculations, the Tribunal used prime-rate data that was publicly available at that time.

B. Claim G-105

1. The Contentions of the Parties

19. As noted, the United States asserts that the Tribunal has erred in computing pre-award interest for Claim G-105. Accordingly, it requests that the Tribunal make the appropriate correction.

20. Iran contends that, while the United States has asserted an error in the Tribunal's calculation of the pre-award interest awarded for Claim G-105, the United States has failed to state what correction should be made or to identify what methodology or data should be used to make the correction. Consequently, Iran argues, the United States' correction request does not properly fall within the scope of Article 36 of the Tribunal Rules.

2. The Tribunal's Decision

21. In the Partial Award, the Tribunal held that pre-award interest on the USD 14,972 awarded on Claim G-105 would run from 30 September 1983 until the date of the filing of the Partial Award, and it went on to award Iran USD 40,191.57 in pre-award interest on that Claim.[14]

22. The Tribunal acknowledges that, in the Partial Award, it erroneously calculated the pre-award interest on the USD 14,972 awarded on Claim G-105, not from 30 September 1983, as the Partial Award specified, but rather from the end of August 1981. Thus, an error in computation has arisen as a result of this error that must be corrected pursuant to Article 36 of the Tribunal Rules.

23. The actual amount of pre-award interest on the USD 14,972 awarded on Claim G-105, calculated from 30 September 1983 until 10 March 2020, the date of the filing of the Partial

[14] *See* Partial Award, para. 2597.

Award, is USD 35,810.81. The Partial Award is corrected accordingly. The corrected page of the Partial Award is attached.

C. Claim G-32

1. Introduction

24. In Claim G-32, Iran sought, among other things, damages resulting from the legal fees that it had incurred in defending certain archeological artifacts excavated from the Chogha Mish site in Iran and lent to the Oriental Institute of the University of Chicago ("Chogha Mish Artifacts") in the attachment proceedings before the United States District Court for the District of Illinois in *Jenny Rubin et al. v. Field Museum of Natural History, University of Chicago, Oriental Institute and Iran* ("*Rubin* Litigation").[15] The Chogha Mish Artifacts were returned in their entirety to Iran on 22 April 2015.[16]

25. In a letter to the Tribunal, dated 25 November 2016, Iran specified that, in Claim G-32, it was seeking "only half of the legal costs that it has incurred [in the *Rubin* Litigation] by April 22, 2015 when the Chogha Mish artifacts were returned."[17]

26. On Claim G-32, the Tribunal awarded Iran "50 percent of the total legal fees and expenses charged to Iran between July 2006 and June 2015" in the *Rubin* Litigation, or USD 852,709.75.[18] More specifically, the Tribunal awarded Iran 50 percent of the legal fees and expenses set out in three series of invoices from Iran's attorneys, charging Iran from July 2006 until the termination of the attachment proceedings in the *Rubin* Litigation, as follows: "(i) USD 863,268.96 between July 2006 and July 2012 . . . ; (ii) USD 658,949.45 between August 2012 and September 2014 . . . ; and (iii) USD 183,201.16 between November 2014 and June 2015 . . . ."[19]

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[15] In Claim G-32, Iran originally also sought the return of the Chogha Mish Artifacts. *See* Partial Award, paras. 1069 &1101.

[16] *See* Partial Award, para. 2439.

[17] *See also* letter from the Agent of the Islamic Republic of Iran to the Tribunal, 2 June 2016 (submitting invoices "for the legal costs that the Claimant has additionally incurred as a result of the U.S. attachment proceedings in the period between October 1, 2014 and April 22, 2015").

[18] *See* Partial Award, para. 2463.

[19] *See* Partial Award, para. 2456. *See also id.* para. 2463.

27. The USD 183,201.16 for the period November 2014 until June 2015 is covered by six invoices issued by the law firm MoloLamken. The last of those invoices, dated 1 June 2015, includes ten time entries and five expense entries dating from after 22 April 2015 and totaling USD 8,669.79.

2. The Contentions of the Parties

28. The United States contends that the Tribunal in the Partial Award incorrectly included USD 8,669.79 in legal fees and expenses incurred by Iran after 22 April 2015 when calculating its award for the period November 2014 to June 2015. There is no dispute, the United States points out, that Iran is not entitled to legal fees and expenses post-dating 22 April 2015, when the Chogha Mish Artifacts were transferred to Iran. Accordingly, the United States requests that the Tribunal reduce its award of legal fees and expenses on Claim G-32 by half of this amount, or USD 4,334.90, and make a corresponding adjustment to the pre-award interest.

29. In its comments of 30 April 2020 on the United States' Request for Correction, Iran asserts:

> Although the Tribunal refers to the amount of $183,201.17 as legal costs incurred by Iran for the period November 2014 to June 2015, the Partial Award's references to the period after April 22, 2015 appear[] to be no more than a clerical error which would not impact the total amount awarded by the Tribunal.

In this connection, pointing to a statement made by its counsel at the Hearing and to letters and documents it submitted to the Tribunal after the Hearing, Iran contends that, in fact, the Tribunal, for the period November 2014 to 22 April 2015, erroneously awarded Iran USD 480.16 less than the actual amount that Iran was charged by its attorneys.

30. In Iran's view, the United States has not identified any computational error in the Partial Award. However, Iran asserts, if the Tribunal "were to reconsider its decision in relation to Iran's legal costs for the period November to April 22, 2015, such reconsideration should take into account Iran's actual damages for the entire periods . . . ."

3. The Tribunal's Decision

31. The Tribunal recognizes that, in determining in the Partial Award the damages Iran incurred between November 2014 and 22 April 2015 (the date on which the Chogha Mish

Artifacts were returned to Iran), the Tribunal erroneously included ten time entries and five expense entries on MoloLamken's 1 June 2015 invoice dating from after 22 April 2015 and totaling USD 8,669.79. Hence, an error in computation has arisen as a result of this mistake that must be corrected pursuant to Article 36 of the Tribunal Rules. Consequently, the Tribunal reduces its award of legal fees and expenses on Claim G-32 by 50 percent of USD 8,669.79,[20] or USD 4,334.90. The corrected amount awarded on Claim G-32 is therefore USD 848,374.85.

32. Further, to account for this correction, the Tribunal adjusts the amount of pre-award interest awarded on Claim G-32 downward to USD 298,137.72.

33. The corrected pages of the Partial Award are attached.

34. To the extent that Iran is also requesting a correction of the award of legal fees and expenses on Claim G-32,[21] the Tribunal may not entertain any such request because it was not made within "thirty days after the receipt of the award," as prescribed by Article 36 of the Tribunal Rules.

D. Claim Supp. (2)-55 and Claim G-11/Supp. (2)-67

1. Introduction

35. On Claim Supp. (2)-55, the Tribunal in the Partial Award awarded Iran USD 12,991.80 as the fair market value of three actuators.[22] On Claims G-11 and Supp. (2)-67, the Tribunal awarded Iran USD 14,719.48 as the fair market value of 15 aircraft parts.[23]

36. To assess the fair market value of the items at issue in those Claims, the Tribunal applied the cost approach.[24]

2. The Contentions of the Parties

37. The United States requests "that the Tribunal correct certain errors in its technological obsolescence calculations with respect to Claim Supp. (2)-55 and Claims G-11 and

[20] *See supra* para. 26.

[21] *See supra* paras. 29-30.

[22] *See* Partial Award, para. 2268.

[23] *See* Partial Award, para. 2307.

[24] *See* Partial Award, paras. 2258 & 2298.

Supp. (2)-67." In relation to Claim Supp. (2)-55, the United States contends that the Partial Award incorrectly applied a deduction of 6.36 percent for technological obsolescence despite holding, in its reasons for this Claim, that an adjustment of 9 percent should be applied.[25] The United States thus requests that the Partial Award's valuation of the fair market value of the three actuators at issue be reduced by USD 603.05.

38. In relation to Claims G-11 and Supp. (2)-67, the United States contends that the Partial Award incorrectly applied a deduction of 7.82 percent for technological obsolescence, despite holding that an adjustment of 12 percent would be applied.[26] The United States thus requests that the Partial Award's valuation of the fair market value of the aircraft parts at issue be reduced by USD 667.07.

39. The Tribunal notes that adjustments for technological obsolescence of 9 and 12 percent were in fact applied in the Partial Award for Claim Supp. (2)-55 and Claim G-11/Supp. (2)-67, respectively, in calculating the fair market value of the items at issue.[27] The difference, however, is that the Partial Award calculated the 9 and 12 percent adjustments on the basis of the estimated original price of the items, whereas the United States proposes to calculate the 9 and 12 percent adjustments on the basis of the higher indexed value of the items.

40. The United States points out that, in Claims G-105, G-172, G-174, and 1996-E/F, the Tribunal calculated the deductions for technological obsolescence based on the indexed value of the items, rather than on their original price. There is no suggestion in the text of the Partial Award, the United States continues, "that the Tribunal intended to apply a different methodology in just two of the eleven cost approach valuations that it carried out in this case."

41. Iran contends that the errors alleged by the United States are not computational errors under Article 36 of the Tribunal Rules. According to Iran, the fact that the Tribunal decided to apply both index and technological obsolescence adjustments to the original price in Claim Supp. (2)-55 and Claims G-11 and Supp. (2)-67 is not a computational error; had the Tribunal decided to make the adjustments (*i.e.*, the index and depreciation for technological obsolescence) in sequential order, the stages for carrying out the calculation would have been defined in separate steps in the Partial Award, as the Tribunal did for appropriate deductions

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[25] *See* Partial Award, para. 2264.

[26] *See* Partial Award, para. 2303.

[27] *See* Partial Award, paras. 2264 (Claim Supp. (2)-55) & 2303 (Claims G-11 and Supp. (2)-67).

to account for the physical state of the items on the date of valuation. Further, Iran asserts that that the United States' comparison between the approaches adopted by the Tribunal in Claim Supp. (2)-55 and Claims G-11 and Supp. (2)-67, on the one hand, and Claims G-105, G-172, G-174, and 1996-E/F, on the other, is irrelevant. In relation to Claims G-105, G-172, G-174, and 1996-E/F, Iran continues, the Tribunal apparently chose a different method for the application of the adjustments.

3. The Tribunal's Decision

42. The Tribunal's calculations of the fair market values of the items at issue in (i) Claim Supp. (2)-55 and Claims G-11 and Supp. (2)-67 and (ii) Claims G-105, G-172, G-174, and 1996-E/F are all based on the cost approach. The way the Tribunal implemented the cost approach, however, diverges between the two sets of claims: for Claim Supp. (2)-55 and Claims G-11 and Supp. (2)-67, the Partial Award calculated the adjustments for depreciation based on the original prices of the items; by contrast, for Claims G-105, G-172, G-174, and 1996-E/F, it calculated those adjustments based on the higher indexed values of the items, which it determined by increasing the original prices on the basis of the appropriate Producer Price Indices ("PPIs").

43. The Tribunal acknowledges that it did not intend in the Partial Award to implement the cost approach differently in those two sets of claims. There are otherwise no justifiable reasons for the Partial Award's inconsistent implementation of the same method (the cost approach) for the same purpose (determining the fair market value of tangible properties). This inconsistent implementation of the cost approach is the result of an error in calculation that must be corrected pursuant to Article 36 of the Tribunal Rules.

44. The Tribunal holds that the correct implementation of the cost approach is that which the Partial Award adopted for Claims G-105, G-172, G-174, and 1996-E/F. Accordingly, adjustments for depreciation should be calculated based on the indexed values of the items, which, in turn, are determined by increasing the original prices of the items on the basis of the appropriate PPIs.[28] Hence, the fair market values of the items at issue in (i) Claim Supp. (2)-55

[28] *See* Partial Award, paras. 2384-85 (Claim G-105); 2492-93, 2498-99 (Claim G-172); 2535-36 (Claim G-174); 2551-52, 2557-58 (Claim 1996-E/F).

and (ii) Claims G-11 and Supp. (2)-67, as recalculated correctly implementing the cost approach, are, respectively: (i) USD 12,388.76[29] and (ii) USD 14,052.42.[30]

45. Consequently, the corrected amount awarded on Claim Supp. (2)-55 is USD 12,388.76, and the corrected amount awarded on Claims G-11 and Supp. (2)-67 is USD 14,052.42.

46. Further, to account for these corrections, the Tribunal adjusts the amount of pre-award interest awarded on Claim Supp. (2)-55 downward to USD 34,448.29 and the amount of pre-award interest awarded on Claims G-11 and Supp. (2)-67 downward to USD 39,074.28.

47. The corrected pages of the Partial Award are attached.

E. Claim G-7

48. The United States requests that the Tribunal correct errors in paragraphs 2114 and 2148 of the Partial Award. The United States points out that: (i) in paragraph 2114, Iran's claim for storage costs is incorrectly stated as USD 1,9***77***,000; it should be USD 1,9***67***,000; and (ii) in paragraph 2148, "January 1981" in the first sentence should be "January 1979."

49. Iran has no objection to the requested corrections.

50. The United States has identified typographical and clerical errors in paragraphs 2114 and 2148 of the Partial Award,[31] which the Tribunal hereby corrects.

51. The corrected pages of the Partial Award are attached.

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[29] This figure is the result of the following steps: (i) 24,733.63 (original value) increased by 41.68% (PPI)=35,042.61; (ii) 35,042.61- 3,153.83 (9% reduction to account for technological obsolescence)=31,888.78; (iii) 31,888.78-11,161.07 (35% x 31,888.78 (reduction to account for repaired state))=20,727.71; (iv) 20,727.71-8,338.95 (deduct repair costs)=USD 12,388.76 (fair market value). *See* Partial Award, paras. 2261-67.

[30] This figure is the result of the following steps: (i) 29,753.96 (original value) increased by 53.34% (PPI)=45,624.72; (ii) 45,624.72-5,474.96 (12% reduction to account for technological obsolescence)=40,149.76; (iii) 40,149.76-14,052.41 (35% x 40,149.76 (deduction to account for repaired state))=26,097.35; (iv) 26,097.35-12,044.93 (30% x 40,149.76 (deduction to account for repair costs))=USD 14,052.42 (fair market value). *See* Partial Award, paras. 2300-05.

[31] *See supra* para. 48.

F. Claim G-8

52. The United States requests a correction to paragraph 1983 of the Partial Award. The United States asserts that Iran's claims for storage and repackaging costs under Claim G-8 total USD 1,8***25***,010, rather than USD 8***52***,010.26, as stated in the Partial Award.

53. The United States also requests that the Tribunal correct a typographical error in the amount of pre-award interest on legal fees and expenses under Claim G-8; this amount, which is listed in paragraph 2582 of the Partial Award as USD 50,661**.**08, should be USD 50,661**.**08.[32]

54. Iran has no objection to the requested corrections.

55. The United States has identified typographical errors in paragraphs 1983 and 2582 of the Partial Award,[33] which the Tribunal hereby corrects.

56. The corrected pages of the Partial Award are attached.

G. Claim G-13

1. Introduction

57. On Claim G-13, the Tribunal in the Partial Award held that the United States had breached its obligations under the General Declaration with respect to the G-13 Materials.[34] Accordingly, the Tribunal found the United States liable to Iran, *inter alia*, for storage costs that MORT had incurred for the G-13 Materials after 1 March 1981, the earliest possible date on which the Tribunal estimated that MORT could have shipped those items to Iran, until the end of January 1984, when the G-13 Materials were shipped to Iran.[35] The Tribunal went on to award Iran damages, as follows:

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[32] This typographical error occurred only in the English text of the Partial Award, so, no correction to the Farsi text is required.

[33] *See supra* paras. 52 & 53.

[34] *See* Partial Award, para. 576.

[35] In paragraph 2199 of the Partial Award, the Tribunal held:

> As an initial matter, the Tribunal holds that the United States is not liable to Iran for any storage costs relating to the G-13 Materials that MORT incurred until 1 March 1981, the earliest date on which, absent the United States' breach of the Algiers Declarations, the Tribunal estimates that MORT could have possibly shipped those items to Iran. Hence, the United States is liable to Iran only for the storage costs MORT incurred after that date until the end of January 1984, when the G-13 Materials were shipped to Iran.

> The Tribunal finds that the best available evidence on record to determine the monthly storage costs incurred by MORT for the G-13 Materials is the amount agreed by MORT and Shipside in the 6 January 1984 settlement agreement. In the settlement agreement, MORT agreed to pay Shipside USD 168,000 for storage and related charges from 1 May 1980 through 31 December 1983. Consequently, MORT agreed to pay Shipside a monthly storage rate of USD 3,818.18. Accordingly, on this basis, the Tribunal holds that the total storage costs MORT incurred after 1 March 1981 until the end of January 1984 was USD 133,623.10. Consequently, the Tribunal awards this amount to Iran.[36]

2. The Contentions of the Parties

58. The United States requests a correction to Claim G-13 because, according to the United States, the Tribunal in the Partial Award has miscalculated the amount of storage costs in awarding damages to Iran. In the United States' view, while the G-13 Materials did not ship to Iran until January 1984, Iran did not pay Shipside any storage charges for January 1984. Therefore, argues the United States, according to the Tribunal's reasoning, the United States should be responsible only for storage costs incurred after 1 March 1981 through 31 December 1983 (*i.e.*, a period of 34 months). The United States asserts that the Partial Award's calculation of USD 133,623.10 "appears rather to mistakenly include a period of liability of 35 months."

59. Iran states that, "if the Tribunal finds that an error has actually occurred in its calculation of storage[] charges in Claim G-13 . . . , Iran would defer to the Tribunal's judgment."

3. The Tribunal's Decision

60. In the Partial Award, the Tribunal assumed that MORT continued to pay storage charges to Shipside beyond 31 December 1983, the date until which MORT had undertaken to pay storage charges under the 6 January 1984 settlement agreement,[37] till the end of January 1984, when the G-13 Materials were shipped to Iran.[38] On this basis, the Tribunal awarded Iran damages equal to the storage costs that MORT had incurred after 1 March 1981 until the end of January 1984.[39]

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[36] Partial Award, para. 2200 (footnote omitted).

[37] *See supra* para. 57.

[38] *See supra* para. 57.

[39] *See* Partial Award, para. 2200 & *supra* para. 57.

61. For the Tribunal to change that assumption and now hold that MORT paid storage charges only through 31 December 1983 would not constitute the correction of an error "in computation," a "clerical or typographical" error, or any error "of similar nature" within the meaning of Article 36 (1) of the Tribunal Rules. Rather, it would be tantamount to revising one of its holdings in the Partial Award. This, however, the Tribunal may not do: as the Tribunal has held in *Islamic Republic of Iran* and *United States of America*, Decision No. DEC 134-A3/A8/A9/A14/B61-FT (1 July 2011), the Tribunal has no power to revise a final and binding award.[40]

62. In light of the foregoing, the Tribunal denies the United States' request for a correction to Claim G-13.

III. REQUEST FOR AN ADDITIONAL AWARD

A. The Contentions of the Parties

63. Invoking Article 37 (1) of the Tribunal Rules, the United States requests an additional award to the Partial Award "in connection with the defense raised by the United States concerning Article I of the Claims Settlement Declaration," which, the United States asserts, "was presented in the arbitral proceedings but omitted from the Partial Award."

64. More specifically, the United States contends that, in the cluster involving the claims brought by MORT, the United States asserted a causation defense based on the Parties' obligation set forth in Article I of the Claims Settlement Declaration ("CSD")[41] to promote the

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[40] *See Islamic Republic of Iran* and *United States of America*, Decision No. DEC 134-A3/A8/A9/A14/B61-FT, para. 64 (1 July 2011).

[41] Article I CSD provides:

> Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned. Any such claims not settled within six months from the date of entry into force of this Agreement shall be submitted to binding third-party arbitration in accordance with the terms of this Agreement. The aforementioned six months' period may be extended once by three months at the request of either party.

Article II CSD, in turn, provides:

> 1. An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the

settlement of claims with the Tribunal pursuant to Article II CSD.[42] Despite having been presented with this defense, the United States continues, the Tribunal omitted to consider it in the Partial Award, "fail[ing] to mention Article I of the CSD even once." The United States "requests an additional award so that it can understand the reasons why its causation defense based upon CSD Article I was not accepted by the Tribunal."

65. Iran asserts that the United States' Request for Additional Award should be denied because it does not concern an omitted "claim," as required by Article 37 of the Tribunal Rules, but rather, as the United States expressly contends, an allegedly omitted "defense." Iran emphasizes that, for an additional award to be rendered under Article 37 of the Tribunal Rules, the omission of a "claim" from the award is indispensable. Accordingly, Iran concludes, the United States' Request for Additional Award "cannot by any standards be considered a valid request for an additional award under the Tribunal's Rules and practice."

B. The Tribunal's Decision

66. The Parties disagree fundamentally about whether the scope of a request for an additional award under Article 37 (1) of the Tribunal Rules is limited to "claims" presented but omitted from the award, as Iran contends, or whether such a request may also concern an "omitted" defense, as the United States contends.

67. Article 37 (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.

> Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.
>
> 2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

[42] In its Request for Additional Award, the United States asserts that, at the Hearing, it had argued that the delay in shipment of MORT's properties between January and November 1981 could not have been caused by Section 535.333 of the Treasury Regulations because during that period Iran was actively pursuing settlements with private holders of its properties consistent with its obligation to do so under Article I CSD.

Thus, the text of Article 37 (1) of the Tribunal Rules expressly limits the scope of a request for an additional award to omitted "claims."

68. In the Tribunal's view, it is doubtful that the term "claims" in Article 37 (1) of the Tribunal Rules may be interpreted as also encompassing the term "defenses" or, relatedly, terms such as "arguments" or "issues."[43] First, to conclude that Article 37 (1) may be so interpreted, one would need to overcome the obvious textual hurdle. Second, and in any event, such an interpretation would create a further, fundamental dilemma: in a concrete case, if the Tribunal considered a request for an additional award based on an omitted defense (or argument) "to be justified,"[44] this could possibly lead, in effect, to a revision of the original award through the issuance of a separate award. As noted above, however, the Tribunal has no power to revise a final and binding award.[45]

69. In the present instance, in light of its considerations below, the Tribunal need not decide whether the term "claims" in Article 37 (1) of the Tribunal Rules can be extended to encompass also "defenses."

70. As an initial matter, the Tribunal notes that it has considered all significant arguments raised by the Parties, whether explicitly mentioned in the Partial Award or not, including the United States' defense based on Article I CSD. Concerning the question whether the Partial Award has disposed of that defense, the Tribunal finds that the Partial Award, by a number of its holdings, in essence has necessarily rejected the United States' Article I CSD defense, though it did not explicitly refer to Article I CSD in its reasons.[46] Consequently, the Tribunal dismisses the United States' Request for Additional Award.

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[43] It should be noted in this connection that, in the *travaux préparatoires* of the UNCITRAL Arbitration Rules (1976 and 2010), the Tribunal could find no mention of any ground for an additional award request other than "claims" or "counterclaims" presented but omitted from the award.

[44] Article 37 (2) of the Tribunal Rules.

[45] *See supra* para. 61.

[46] *See* Partial Award, paras. 173-76 & 1948-49. In paragraphs 173-76 of the Partial Award, the Tribunal held, in relevant part:

> 173. The Tribunal recalls that the introductory sentence of Paragraph 9 makes clear that the United States' obligation to arrange for the transfer of all Iranian properties "[c]ommenc[ed] with the adherence by Iran and the United States to [the Algiers Declarations] and the making by the Government of Algeria of the certification described in Paragraph 3." Therefore, the Tribunal determines that United States' Paragraph 9 obligation arose on 19 January 1981.
>
> 174. On that date, the United States was in a position to, and in fact did, begin implementing the first two prongs of its obligation under the General Declaration with respect to Iranian

IV. DECISION

71. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

A. Request for Correction

The United States' Request for Correction is denied insofar as:

(i) it seeks further detail on the Tribunal's calculation of pre-award interest for *Islamic Republic of Iran* and *United States of America*, Award No. 604-A15(II:A)/A26(IV)/B43-FT (10 Mar. 2020); and

(ii) it relates to Claim G-13.

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tangible properties – *i.e.*, removing all restrictions the United States had imposed on the mobility and free transfer of those properties during the freeze period and directing holders of such properties to transfer them as directed by the Government of Iran. . . .

175. However, concluding that the United States also had to take steps to ensure that holders of Iranian properties would transfer such properties on 19 January 1981 seems unreasonable. . . .

176. Since Paragraph 9 does not indicate the moment in time at which the United States was to take additional steps, the Tribunal relies on the general principle of interpretation in good faith, which requires the conclusion that, *in cases where the Unlawful Treasury Regulations are not regarded as the cause for the non-transfer*, the Tribunal will have to carry out a claim-by-claim analysis in order to determine when the United States should have taken additional steps in light of the specific circumstances of each Individual Claim. The Tribunal is not convinced that, in the present Cases, a general pre-determined "grace" period can be established. (Emphasis added.)

In paragraph 1949 of the Partial Award, in particular, the Tribunal held:

1949. After reviewing all the evidence, the Tribunal is convinced that, absent Section 535.333 of the Unlawful Treasury Regulations, the G-8 Materials would indeed have been shipped to Iran earlier. But for that Section, the G-8 Materials would have been subject to the transfer directive of Executive Order No. 12281; thus, Gulf Ports would not have been allowed to retain the G-8 Materials and refuse their transfer until MORT had paid the outstanding storage and security charges. Even if one accepts that MORT's conduct and external factors somehow concurrently caused the delay in shipment, or a measure thereof, as the United States asserts, in the Tribunal's view, Section 535.333 was the principal cause of that delay and of damages MORT suffered as a result. Such delay, and possible damages, were or should have been foreseeable by the United States. In reaching this conclusion, the Tribunal also considers that MORT was forced to enter into settlement negotiations, and ultimately conclude settlement agreements, with Gulf Ports in order to recover its G-8 Materials because Section 535.333 excluded the G-8 Materials from the transfer directive of Executive Order No. 12281, in violation of the Algiers Declarations. Indeed, MORT was under no obligation under the Algiers Declarations to settle the claims of private United States holders before taking delivery of its properties. (Footnote omitted.)

B. Request for Additional Award

The United States' Request for Additional Award is denied.

Dated, The Hague,
27 November 2020

Hans van Houtte
President

Herbert Kronke

Bruno Simma

In the Name of God

H.R. Nikbakht Fini
Dissenting in Part,
Concurring in Part

Charles N. Brower

In the Name of God

M.H. Abedian Kalkhoran

In the Name of God

O. Thomas Johnson

Seyed Jamal Seifi

Rosemary Barkett

amount of storage costs incurred prior to 19 January 1981, allegedly USD 261,307. Accordingly, Iran seeks USD 1,338,693 in storage costs.

1982. Iran further seeks the amount MORT paid to Shipside Packing Co. for repackaging the G-8 Materials prior to shipment to Iran in February 1984,[1017] allegedly USD 486,317. Iran also includes in this amount sums MORT allegedly spent for "disposal of unusable parts," "restoring of the undamaged parts in other warehouses," and "transferring them to the port for shipment to Iran."

1983. Consequently, Iran's claims for storage and repackaging costs total USD 1,825,010.

ii) MORT's Travel Expenses

1984. Iran seeks USD 100,000 in travel expenses allegedly incurred by MORT's representatives on the occasion of their trips to Vienna, Houston, and New Orleans to negotiate the settlements with Gulf Ports and recover the G-8 Materials.[1018] Iran bases that figure on an estimate by MORT, which was unable to locate any evidence documenting those expenses.

iii) MORT's United States Legal Fees and Expenses

1985. Iran seeks USD 100,000 in fees and expenses allegedly charged to MORT by the United States attorneys it retained to assist with the recovery of the G-8 Materials.[1019] In support, Iran has submitted billings from one attorney in Houston, Mr. Harrell Gordon Tillman, totaling USD 11,411.55. The remainder of the amount Iran seeks is based on an estimate by MORT.

iv) Costs for Extending Warehouse Leases

1986. Iran seeks USD 125,500 in costs incurred by MORT for extending the warehouse leases for the storage of the G-8 Materials in Houston and New Orleans after the conclusion of the 24 February 1983 settlement agreement with Gulf Ports.[1020] In support, Iran relies on Mr. Salami's valuation report and Mr. Mahmoudi's affidavit testimony. The latter produced copies of a number of agreements concluded by MORT in late 1983 with lessors of two storage premises for the Porta-Kamp Housing Units at Market Street and McCarty Drive in Houston.

[1017] *See supra* para. 523.

[1018] *See supra* paras. 499, 504-505 & 520.

[1019] *See supra* para. 520.

[1020] *See supra* para. 521.

the Islamic Republic of Iran Shipping Line.

2114. Consequently, Iran's claim for storage costs totals USD 1,967,000.

ii) Travel Expenses

2115. Iran asserts that representatives of MORT incurred travel expenses on the occasion of their various trips to Vienna and to the United States to negotiate the settlements with the Port of Vancouver and recover the G-7 Materials.[1125] Iran contends that, while there is no documentary evidence of these travel expenses on record, it is undisputable that travel expenses were incurred by MORT representatives on those occasions. Iran relies on MORT's estimate that those expenses totaled, at a minimum, USD 120,000.

iii) Legal Fees and Expenses

2116. Iran seeks USD 70,000 in legal fees and expenses allegedly charged to MORT by the lawyers in the United States who had been retained to assist in the recovery of the G-7 Materials. Iran asserts that the Ministry could not locate the corresponding final invoices. In his valuation report, Mr. Salami notes the existence only of evidence of payments of USD 1,922.50 to MORT's lawyers, Morrison Dunn Allen, at USD 75 per hour, equaling approximately 25 hours.

Mitigation of Damages

2117. Iran's arguments concerning mitigation of damages are similar to those it presented in Claim G-8.[1126]

2118. Iran asserts, *inter alia*, that, if the Tribunal were to find that MORT had a duty to mitigate its damages in this Claim, then MORT in fact did attempt to discharge that duty by seeking to conclude the settlement agreements with the Port of Vancouver.

[1125] *See supra* paras. 499, 504-505 & 520.

[1126] *See supra* paras. 1988-1990.

the circumstances of the present Claim, the Tribunal cannot rely on those conclusions, which it regards as too speculative.

2147. Accordingly, absent any reliable proof allowing a precise apportionment, the Tribunal finds it reasonable to assume that the Transworld Housing Units stored in Vancouver deteriorated at an even rate of 10 percent per year between January 1979, which the Tribunal selects as the date of their delivery to the Port of Vancouver for the purpose of this Claim,[1143] and December 1983, when they were shipped to Iran. The Tribunal has determined this rate on the basis of a 50-percent total deterioration of the items over a period of approximately five years.

2148. The Tribunal holds, further, that Iran must bear the damages due to deterioration of the Transworld Housing Units occurring from January 1979 to 1 March 1981, the earliest date on which, absent the United States' breach of the Algiers Declarations, the Tribunal estimates that MORT could have possibly shipped those items to Iran. The United States, for its part, is liable to Iran for damages due to deterioration of the Transworld Housing Units occurring after 1 March 1981 until 31 December 1983. Based on the even deterioration rate of 10 percent per year, the Tribunal finds that the damages due to the deterioration of the Transworld Housing Units amount to USD 2,672,400. Accordingly, the Tribunal awards this amount to Iran.

Morgan Rock-Crushing Equipment

2149. The Parties disagree about the total deterioration suffered by the Morgan Rock-Crushing Equipment between January 1979, the date the Tribunal selects as the date of its delivery to the Port of Vancouver for the purpose of this Claim,[1144] and December 1983, when it was shipped to Iran.

2150. The Tribunal has accepted Mr. Parchami's assessment that, by the time he had observed the Morgan Rock-Crushing Equipment in Khuzestan in 1985, it had deteriorated by 70 percent.[1145]

[1143] *See supra* paras. 432 & 441.

[1144] *See supra* para. 2147.

[1145] *See supra* para. 2028.

the purposes of this Claim, the Tribunal deems it reasonable to assume, conservatively, that the repair costs for the three actuators were 40 percent of their original value. The Tribunal is mindful that a valuation based on the repair costs of a part may imply that, the higher its repair costs are, the higher the part's estimated original value will be. However, in this Claim, the assumption that the repair costs for the three actuators were 40 percent of their original value, rather than 20 or 10 percent, fully neutralizes this objection and reduces the parameter to what it is: a conservative method of valuation.

2261. Accordingly, based on the total repair costs indicated by Plessey, that is, USD 9,893.45,[1200] the Tribunal estimates that the original value of the three actuators was USD 24,733.63.

2262. Having reached an estimate of the original value of the three actuators, the next step in the Tribunal's assessment of their fair market value on 26 February 1981 is to assess their replacement value as of that date by applying the appropriate index and adjustment for depreciation due to technological obsolescence. The Tribunal accepts Mr. Gilbey's assumption that the actuators were purchased on 1 January 1978.[1201]

2263. For the index, the Tribunal relies on the Aircraft and Aircraft Equipment PPI, which was accepted by both Parties' expert witnesses. The index in January 1978 was 63.10 and the index in February 1981 was 89.4, representing an increase of 41.68 percent.

2264. In respect of depreciation, the Tribunal considers it appropriate to adopt Mr. Gilbey's adjustment of 9 percent to account for technological obsolescence.[1202]

2265. Thus, the Tribunal finds that the replacement value of the three actuators on 26 February 1981 was USD 31,888.78.

2266. Further, to assess the fair market value of the three actuators as of 26 February 1981, the Tribunal must make appropriate deductions from their replacement value to account for their physical state on that date, including their state of repair. In this context, the Tribunal notes that Mr. McClellan testified that Mr. Gilbey's adjustment of 35 percent (to account for the fact that the three actuators were not new but have been repaired) was within the usual

[1200] *See supra* para. 790.

[1201] *See supra* para. 2218.

[1202] *See supra* paras. 2219-2220 and 2243.

range of 35-50 percent, and that the United States submitted that such a deduction was acceptable. The Tribunal has therefore applied a deduction of 35 percent to the replacement value.

2267. Finally, on the basis that, as of 1 March 1983, only one of the three actuators was repaired, the Tribunal considers it appropriate to subtract the amount of the outstanding repairs for the other two actuators. The repair costs for the other two actuators were USD 8,338.95.[1203] While the Tribunal notes Mr. McClellan's opinion that the repair costs should be indexed, neither Party provided the Tribunal with guidance as to the adjustment that should be made or the date from which it should be applied.

2268. Based on the foregoing, the Tribunal concludes that the fair market value of the three actuators on 26 February 1981 was USD 12,388.76.

Conclusion

2269. The Tribunal awards Iran USD 12,388.76 on its claim for the fair market value on 26 February 1981 of the three actuators.

(8) Claims G-11 and Supp. (2)-67 (Iran Air/U.S. Customs)

(a) Introduction

2270. In Award No. 529, the Tribunal held that "[l]iability 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."[1204] The Tribunal has found that the United States was in breach of its Paragraph 9 obligation with regard to 15 of the 17 aircraft parts at issue in these two Claims.[1205] The Tribunal finds, and the United States concedes, that, in the circumstances, Section 535.333 of the Unlawful Treasury Regulations was the principal cause of the non-transfer of those 15 aircraft parts to Iran. Thus, the United States is liable in damages to Iran for its breach of the General Declaration.

[1203] *See supra* para. 790.

[1204] Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

[1205] *See supra* paras. 596-597.

and adjustment for technological obsolescence. In so doing, the Tribunal assumes that all 11 aircraft parts were purchased on the same date, 1 January 1977. The available evidence suggests that the aircraft parts were bought between June 1974 and as late as March 1977. However, the Tribunal considers it adequate to adopt the conservative assumption used by Mr. Gilbey and to use 1 January 1977 as the starting point.

2302. For the index, the Tribunal again relies on the Aircraft and Aircraft Equipment PPI, which was accepted by both Parties' expert witnesses. The index in January 1977 was 58.3 and the index in February 1981 was 89.4, representing an increase of 53.34 percent.

2303. Neither Mr. Gilbey nor Iran identified the adjustment used by Mr. Gilbey for this Claim to account for technological obsolescence, but Mr. Gilbey did indicate that he considered the same depreciation curve and technical life for all of the aircraft parts. In light of the 9 percent adjustments applied by Mr. Gilbey in respect of Claim Supp. (2)-55 and (2)-56, and the slightly longer period over which the aircraft parts at issue in this Claim were depreciating (*i.e.*, January 1977 as the starting point rather than January 1978), the Tribunal considers it appropriate to apply an adjustment of 12 percent.[1216]

2304. Thus, the Tribunal finds that the replacement value of the 15 aircraft parts on 26 February 1981 was USD 40,149.76.

2305. Further, to assess the fair market value of the 15 aircraft parts as of 26 February 1981, the Tribunal must make appropriate deductions from their replacement value to account for their physical state on that date, including their state of repair. In this context, the Tribunal notes that Mr. McClellan testified and the United States submitted that Mr. Gilbey's adjustment of 35 percent (in this Claim, USD 14,052.41) was an acceptable means of accounting for the fact that the 15 aircraft parts were not new but have been repaired. As for the state of repair, the Tribunal notes with regret that Iran has not been able to produce the repair orders relating to the aircraft parts, which may have enabled the Tribunal to assess the state of repair of the parts. The Tribunal has also not been provided with evidence that the aircraft parts in question were actually repaired. Thus, the Tribunal considers it appropriate to assume that they were not and applies a further deduction of 30 percent to account for repair costs (USD 12,044.93).

[1216] *See supra* paras. 2219-2220 and 2243.

2306. Based on the foregoing, the Tribunal concludes that the fair market value on 26 February 1981 of the 15 aircraft parts was USD 14,052.42.

(iii) Conclusion

2307. In view of the above, the Tribunal awards Iran USD 14,052.42 for this Claim.

(9) Claim G-131 (Air Taxi/Piedmont Aviation, Inc.)

(a) Introduction

2308. In Award No. 529, the Tribunal held that "[l]iability 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."[1217] The Tribunal has found that the 148 aircraft parts at issue were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations, and that, consequently, the United States has breached its obligation under Paragraph 9 with respect to those aircraft parts.[1218] The Tribunal finds that, in the circumstances, Section 535.333 of the Unlawful Treasury Regulations was the principal cause of the non-transfer of the 148 aircraft parts to Iran – and, ultimately, of their sale at auction in April 1981. Thus, the United States is liable in damages to Iran for its breach of the General Declaration.

2309. According to its Summary Table of Claims, Iran seeks damages on the basis of one of three alternative valuations of the 148 aircraft parts:

(i) between USD 148,419 and USD 162,776, which Iran submits is the "[e]stimated value of the properties as new as at 19 January 1981," depending on the extent to which technological obsolescence is taken into account;

(ii) USD 152,421, which Iran submits is the replacement value as at 19 January 1981; or

(iii) between USD 96,472 and USD 105,805, which Iran submits is the fair market value of the repaired properties as at 19 January 1981.

[1217] Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

[1218] *See supra* para. 631.

by MoloLamken LLP; (ii) USD 658,949.45 between August 2012 and September 2014, which was charged by MoloLamken LLP; and (iii) USD 178,866.26 between November 2014 and 22 April 2015, which was also charged by MoloLamken LLP. Iran submits letters from its United States attorneys, stating that half of the legal fees and expenses charged would be properly attributed to the defense of the Chogha Mish Artifacts. Accordingly, Iran seeks half of the total amount of legal fees and expenses charged by its United States attorneys in connection with the *Rubin* Litigation.

2457. The Tribunal observes that the United States takes a very narrow view on the scope of legal fees and expenses that should be awarded to Iran as a result of Iran's involvement in the *Rubin* Litigation. The Tribunal, however, agrees with Iran that the Chogha Mish Artifacts would not have been within the jurisdiction of the United States had the breach of Paragraph 9 not occurred. Consequently, the Chogha Mish Artifacts would not have become subject to the attachment proceedings in the *Rubin* Litigation in 2003 had the United States not committed a breach of its Paragraph 9 obligation. The legal fees and expenses were incurred by Iran in defending the Chogha Mish Artifacts in the attachment proceedings from July 2006, when it was compelled to enter an appearance in court in order to assert its sovereign immunity over those Artifacts. As a result of appearing before the District Court, Iran became subject to the discovery order in the *Rubin* Litigation. The Tribunal thus concludes that, had Iran not been forced to appear to assert its sovereign immunity over the Chogha Mish Artifacts and the Persepolis collection, it would not have had to defend itself against the discovery of its general assets.

2458. Moreover, in the Tribunal's view, the actions of Iran's counsel in relation to the *Rubin* Litigation were not only limited to appearances in court and court-related work directly connected to those proceedings. Counsel also took other courses of action in order to gather the necessary support for the return of the Chogha Mish Artifacts. These courses of action included correspondence with the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and monitoring the positions taken both by Iran and Iran's adversaries in other litigation proceedings on sovereign immunity, such as the proceedings that were pending in Massachusetts concerning the Hertzfeld Collection. Moreover, Iran's counsel in the *Rubin* Litigation also had to liaise with Iran's representatives before this Tribunal, in order to keep Iran's representative updated as to the status of the Chogha Mish Artifacts. The Tribunal concludes, therefore, that the legal fees and expenses charged to Iran by its United

States attorneys between July 2006 and 22 April 2015 were also caused by the United States' failure to arrange for the transfer of the Chogha Mish Artifacts to Iran. Therefore, the Tribunal cannot agree with the United States' rather artificial method of splitting the legal fees and expenses both into categories of work done and phases of the *Rubin* Litigation.

2459. The Tribunal must then consider the proportion of the legal fees and expenses that could properly be allocated to the breach concerning the Chogha Mish Artifacts. Iran submits that half of the total legal fees and expenses charged to it in the *Rubin* proceedings would properly be considered to have been caused by the United States' breach of Paragraph 9. The United States disagrees. According to the United States, a substantial portion of the legal fees and expenses would have been the same even if the action had been brought only against the Persepolis collection, as opposed to being brought against both the Persepolis collection and the Chogha Mish Artifacts.

2460. In essence, the Tribunal understands the United States' argument to be that, applying the but-for test, the fees and expenses charged for the legal work performed in relation to the Chogha Mish Artifacts had already been incurred for the work done on the Persepolis collection and that, even without any wrongful act on the part of the United States, the legal fees and expenses would still have been incurred by Iran. In other words, the damage caused to Iran by the outlay had already been caused by conduct unrelated to the United States' breach (in relation to the Persepolis collection), when the wrongful conduct (the failure to transfer the Chogha Mish Artifacts) occurred. In the Tribunal's view, this analysis is incorrect. Rather, the Tribunal finds that the conduct unrelated to any United States' breach of Paragraph 9, including any damage caused, remains outside the purview of the Tribunal's considerations. Only the legal fees and expenses caused by the United States' wrongful exposure of the Chogha Mish Artifacts (which constituted "Iranian properties" and fell within the scope of Paragraph 9) to the risk of an attachment, are relevant for the purposes of this Tribunal.

2461. It cannot be said that either an attachment on the Chogha Mish Artifacts, or an attachment on the Persepolis collection, would have been sufficient to cause the total of the legal fees and expenses that Iran incurred. In the circumstances of this Claim, there are no "hypothetical causation" or "multiple joint causes" issues that would have caused the Tribunal to decide otherwise. The fact that the fees for the legal work done appear in the same invoices cannot obscure the distinctness of the causes and their respective effects. The only issue left for the Tribunal's consideration is whether it is feasible to correctly match the volume of work

done, and the legal fees and expenses incurred as a result, to either the Chogha Mish Artifacts or the Persepolis collection, or to neither.

2462. The Tribunal has reviewed in detail all the invoices for legal fees and expenses that were submitted by Iran. The Tribunal also notes the letters provided by Iran's United States attorneys, Berliner, Corcoran & Rowe LLP and MoloLamken LLP, in which both firms assert that 50 percent of the total billings would properly be allocated to work done on the Chogha Mish Artifacts. The Tribunal has no reason to doubt the assessments made by the United States attorneys, in particular, when taking into account the details provided in all the invoices and the rules of professional conduct and ethics that these United States attorneys are bound by.

2463. Considering the assessments of Iran's United States attorneys, the Tribunal finds that the legal fees and expenses properly allocated to the work done on the Chogha Mish Artifacts constitute 50 percent of the total legal fees and expenses charged to Iran between July 2006 and 22 April 2015. Half of those legal fees and expenses equals USD 848,374.85 (rounded). Accordingly, the Tribunal awards this amount to Iran.

(iv) Overall Conclusion

2464. In conclusion, the Tribunal awards Iran a total of USD 848,374.85 on Claim G-32.

(13) Claim G-115 (Museum of Natural History of Iran/Dr. Douglas Lay)

(a) Introduction

2465. According to its final pleadings, in Claim G-115, Iran seeks compensation for the value of certain geological samples, known as matrices, and of the fossils extracted therefrom by Dr. Douglas Lay of the University of North Carolina. In its Summary Table of Claims, filed on 4 March 2015, Iran specified that it also seeks compensation for "other losses" incurred; the Tribunal understands this head of claim to be for consequential damages. Iran does not specify the amounts it seeks on this Claim. Rather, for direct damages, it requests that the Tribunal appoint an independent expert to assess the evidence and determine the value of the matrices and the extracted fossils.

- on USD 8,570 from 1 December 1983;[1444]
- on USD 2,841.55 from 15 February 1984;[1445]
- on USD 10,000, from 1 January 1984.[1446]

2582. Accordingly, the Tribunal awards Iran a total of USD 50,661.08 in pre-award interest on this head of claim.

(4) Costs for Extending Warehouse Leases

2583. The Tribunal has awarded Iran USD 108,500 on Iran's claim for reimbursement of the moneys MORT paid in rent to lessors in Houston and New Orleans for storage of the G-8 Materials after the conclusion of the 24 February 1983 settlement agreement with Gulf Ports.[1447] Iran has sought interest on its claims for additional costs from January 1984. The Tribunal agrees that this is a reasonable date from which interest should run on these claims. Consequently, the Tribunal awards pre-award interest on USD 108,500 from 1 January 1984. Accordingly, the Tribunal awards Iran a total of USD 256,533.01 in pre-award interest on this head of claim.

(5) Costs for Warehouse Security

2584. The Tribunal has awarded Iran USD 21,000 on Iran's claim for reimbursement of the costs incurred by MORT for the provision of security services for the Porta-Kamp Housing Units in late 1983 and early 1984.[1448] Iran has sought interest on its claims for additional costs from January 1984. The Tribunal agrees that this is a reasonable date from which interest should run on these claims. Consequently, the Tribunal awards pre-award interest on USD 21,000 from 1 January 1984. Accordingly, the Tribunal awards Iran a total of USD 49,651.55 in pre-award interest on this head of claim.

[1444] *See supra* para. 2579.

[1445] *See id.*

[1446] *See supra* para. 2580.

[1447] *See supra* para. 2060.

[1448] *See supra* para. 2063.

16 August 1982, *i.e.*, the mid-point of this date range, is the date from which pre-award interest shall run. Accordingly, the Tribunal awards Iran a total of USD 337,858.34 in pre-award interest on this head of claim.

b) Claim for Repackaging Costs

2593. The Tribunal has awarded Iran USD 44,476 on Iran's claim for repackaging costs.[1458] This amount is based on the costs set out in the contract between MORT and Shipside dated 5 December 1983 for preparation for export shipment, which was attached to Mr. Mahmoudi's affidavit.[1459] This contract requires weekly payments on the basis of adjusted progress estimates that the work will be completed by 10 January 1984 and requires payment of any outstanding amount "immediately" upon completion of the work. The Tribunal also notes that it has relied on the 6 January 1984 settlement agreement to conclude that the G-13 Materials had to be repacked as a consequence of the breach by the United States of its Paragraph 9 obligation. In view of the above, the Tribunal finds that interest should run from 10 January 1984, *i.e.*, the date on which MORT would have paid most, if not all, of the repackaging costs under the contract with Shipside. Accordingly, the Tribunal awards Iran a total of USD 105,025.58 in pre-award interest on this head of claim.

6. Claim Supp. (2)-55 (Iran Air/Plessey Dynamics Corp.)

2594. The Tribunal has awarded Iran USD 12,388.76 as the fair market value of the three actuators at issue in this Claim.[1460] The Tribunal decides that pre-award interest on that amount shall run from 26 February 1981, the date of the United States' breach of its Paragraph 9 obligation. Accordingly, the Tribunal awards Iran USD 34,448.29 in pre-award interest on this Claim.

7. Claims G-11 and Supp. (2)-67 (Iran Air/U.S. Customs)

2595. The Tribunal has awarded Iran USD 14,052.42 as the fair market value of 15 aircraft parts.[1461] The Tribunal decides that pre-award interest on that amount shall run from 26 February 1981, the date of the United States' breach of its Paragraph 9 obligation.

[1458] *See supra* para. 2203.

[1459] *See supra* para. 2041.

[1460] *See supra* para. 2268.

[1461] *See supra* para. 2307.

Accordingly, the Tribunal awards Iran a total of USD 39,074.28 in pre-award interest on this Claim.

8. Claim Supp. (2)-56 (Iran Air/Airesearch Manufacturing Co.)

2596. The Tribunal has awarded Iran USD 3,686.30 for the legal fees and expenses it incurred in relation to the properties at issue in this Claim.[1462] The Tribunal has accepted the invoice of Iran's attorney's, Condon & Forsyth, dated 31 October 1986, as substantiation of Iran's claim. This invoice does not specify a deadline by which the invoice must be paid.[1463] The Tribunal assumes that Iran Air would have paid this invoice, and therefore incurred the cost, within 60 days of the invoice date. On this basis, the Tribunal finds that interest should run from 30 December 1986. Accordingly, the Tribunal awards Iran a total of USD 7,600.47 in pre-award interest on this Claim.

9. Claim G-105 (Khuzestan Water and Power Authority/Exide Corp.)

2597. Tribunal has awarded Iran USD 14,972 as the fair market value of the Items at issue.[1464] Damages in this Claim have been assessed on the basis of the fair market value of the G-105 Items on 30 September 1983,[1465] and the Tribunal decides that interest shall run from that date. Accordingly, the Tribunal awards Iran a total of USD 35,810.81 in pre-award interest on this Claim.

10. Claim G-32 (Iran Bastan Museum/Oriental Institute of the University of Chicago)

2598. The Tribunal has awarded Iran a total of USD 848,374.85 on this Claim. This amount represents the legal fees and expenses charged by Iran's United States attorneys between July 2006 and 22 April 2015 for work performed in the *Rubin* Litigation relating to the Chogha Mish Artifacts.[1466] The Tribunal decides that pre-award interest shall run on the total amount invoiced for that work calculated by calendar year (or portion thereof) between July 2006 and

[1462] *See supra* para. 2359.

[1463] *See supra* para. 2357.

[1464] *See supra* para. 2386.

[1465] *See supra* para. 2381.

[1466] *See supra* para. 2464.

22 April 2015 from the assumed date of payment by Iran.[1467] Accordingly, the pre-award interest on the awarded USD 848,374.85, calculated as set forth above,[1468] is as follows:

Period	Invoiced Amount $	Assumed Date of payment	Pre-Award Interest $
2006 (July-Dec)	85,350.27	1 October 2006	48,284.62
2007	79,678.58	1 July 2007	40,296.68
2008	83,975.06	1 July 2008	36,936.32
2009	87,423.88	1 July 2009	34,807.22
2010 (Jan-Mar, June-July, Oct-Nov)	5,811.41	1 July 2010	2,124.90
2011 (Feb-Dec)	43,417.88	1 July 2011	14,464.37
2012 (Jan-Feb, Apr, June-Dec)	116,948.56	1 July 2012	35,154.55
2013 (Jan-Nov)	174,772.72	1 July 2013	46,864.10
2014 (Jan, Mar, July-Sept, Nov-Dec)	126,397.98	1 July 2014	29,784.81
2015 (Jan, Mar-22 Apr)	44,598.51	1 April 2015	9,420.15
Total	848,374.85		298,137.72

2599. Accordingly, the Tribunal awards Iran USD 298,137.72 in pre-award interest on this Claim.

11. Claim G-172 (Kharg/Midland Pipe & Supply Co.)

2600. The Tribunal has awarded Iran USD 17,204.47 as the fair market value of the items at issue.[1469] The Tribunal decides that 26 February 1981, the date of the United States' breach of its Paragraph 9 obligation, is the date from which pre-award interest shall run on that amount.

[1467] For the purposes of calculating pre-award interest in this Claim, the Tribunal assumes that the total amount invoiced in each calendar year (or portion thereof) was paid on a single date in the middle of that calendar year (or portion thereof).

[1468] *See supra* para. 2568.

[1469] *See supra* para. 2515.

- USD 166,404.42 in the event that the 1774 Nicolò Gagliano cello is not transferred to Iran;
- USD 6,793.34 in the event that the 1804 Joanes Gagliano viola is not transferred to Iran;
- USD 3,202.57 in the event that the two bows are not transferred to Iran.

2605. On the remaining Claims, the Tribunal awards Iran an aggregate pre-award interest of USD 20,219,145.35.

VI. COSTS

2606. Each Party shall bear its own costs of arbitration.

VII. TOTAL AMOUNT AWARDED

2607. In light of the foregoing, the Tribunal awards Iran a total of USD 29,101,538.65 on Claims G-8, G-7, G-13, Supp. (2)-55, G-11 and Supp. (2)-67, Supp. (2)-56, G-105, G-32, G-172, G-174, and 1996 E/F. This sum includes USD 8,882,393.30, the total of the amounts found due and owing to Iran on those Claims under this Partial Award, and USD 20,219,145.35, the aggregate pre-award interest on those amounts.

2608. Further, on Claim G-18, in the event that the Stradivarius is not transferred to Iran within four months of the date of this Partial Award, the Tribunal awards Iran a total of USD 6,654,718.72. This sum includes USD 5,286,583.61 in damages and USD 1,368,135.11, the aggregate pre-award interest on that amount.

2609. Further, on Claim Supp. (2)-12, in the event that the musical instruments and bows are not transferred to Iran within four months of the date of this Partial Award, the Tribunal awards to Iran damages as follows:

- USD 139,000 in the event that the 1780 Giuseppe Gagliano violin is not transferred to Iran;
- USD 155,000 in the event that the 1738 Nicolò Gagliano violin is not transferred to Iran;
- USD 643,000 in the event that the 1774 Nicolò Gagliano cello is not transferred to Iran;
- USD 26,250 in the event that the 1804 Joanes Gagliano viola is not transferred to Iran;
- USD 12,375 in the event that the two bows are not transferred to Iran.

Accordingly, the Tribunal awards Twelve Thousand Three Hundred Eighty-Eight United States Dollars and Seventy-Six Cents (USD 12,388.76) to Iran as the fair market value of the three actuators.

18) On Claims G-11 and Supp. (2)-67, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to 15 aircraft parts at issue in these Claims. The Tribunal further holds that the date of the United States' breach is 26 February 1981, the date on which the United States Department of the Treasury issued Section 535.333 of the Unlawful Treasury Regulations.

Accordingly, the Tribunal awards Fourteen Thousand Fifty-Two United States Dollars and Forty-Two Cents (USD 14,052.42) to Iran as the fair market value of the 15 aircraft parts.

19) On Claim Supp. (2)-56, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to the rotary actuator and the fan assemblies at issue in this Claim. The Tribunal further holds that the United States' breach began on 26 February 1981, the date on which the United States Department of the Treasury issued Section 535.333 of the Unlawful Treasury Regulations, and ceased in March 1987.

Accordingly, the Tribunal awards Three Thousand Six Hundred Eighty-Six United States Dollars and Thirty Cents (USD 3,686.30) to Iran for the legal fees and expenses Iran incurred in relation to the properties at issue.

20) On Claim G-105, the Tribunal holds that the United States has breached its obligations under the General Declaration by failing to take all reasonable steps to ensure that Exide transferred the G-105 Items to Iran. The Tribunal further holds that the date of the United States' breach is 31 August 1983, when the United States learned about Iran's Claim for the G-105 Items.

Accordingly, the Tribunal awards Fourteen Thousand Nine Hundred Seventy-Two United States Dollars and No Cents (USD 14,972) to Iran as the fair market value of the G-105 Items.

21) On Claim G-32, the Tribunal holds that the United States has breached its obligations under the General Declaration by failing to take all reasonable steps to ensure that the Chogha Mish Artifacts would be transferred to Iran. The Tribunal further holds that the United States was in breach of those obligations in the following periods: (i) between 10 October 1985 and 7 September 2000; and (ii) between 17 September 2002 and 9 October 2014.

Accordingly, the Tribunal awards Eight Hundred Forty-Eight Thousand Three Hundred Seventy-Four United States Dollars and Eighty-Five Cents (USD 848,374.85) to Iran, representing the legal fees and expenses charged by Iran's United States attorneys between July 2006 and 22 April 2015 for work performed in the *Rubin* Litigation relating to the Chogha Mish Artifacts.

22) On Claim G-172, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to items of Purchase Orders Nos. KC-790004, KC-790009, and KC-790067. The Tribunal further holds that the date of the United States' breach is 26 February 1981, the date on which the United States Department of the Treasury issued Section 535.333 of the Unlawful Treasury Regulations.

Accordingly, the Tribunal awards Seventeen Thousand Two Hundred Four United States Dollars and Forty-Seven Cents (USD 17,204.47) to Iran as the fair market value of the items at issue.

23) On Claim G-174, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to items of Purchase Orders Nos. KC-790099 and KC-790034. The Tribunal further holds that the date of the United States' breach is 26 February 1981, the date on which the United States Department of the Treasury issued Section 535.333 of the Unlawful Treasury Regulations.

Accordingly, the Tribunal awards Eight Hundred Eighty-Three United States Dollars and Eighty-Three Cents (USD 883.83) to Iran as the fair market value of the items at issue.

24) On Claim 1996 E/F, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to items of Purchase Orders Nos. KC-780456, KC-790054, and KC-790123. The Tribunal further holds that the date of the United States' breach is 26 February 1981, the date on which the United States Department of the Treasury issued Section 535.333 of the Unlawful Treasury Regulations.

Accordingly, the Tribunal awards Eleven Thousand Nine Hundred Sixty United States Dollars and Four Cents (USD 11,960.04) to Iran as the fair market value of the items at issue.

25) On Claim G-131, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to the G-131 Items. The Tribunal further holds that the date of the United States' breach is 26 February 1981, the date on which the United States Department of the Treasury issued Section 535.333 of the Unlawful Treasury Regulations.

The Tribunal dismisses all of Iran's claims for damages in Claim G-131 for lack of proof.

26) On Claim G-115, the Tribunal holds that, during the period from 1 March 1985 until 13 June 1989, the United States was in breach of its Paragraph 9 obligation to take steps to ensure that the matrices and extracted fossils in Dr. Lay's possession would be transferred to Iran.

The Tribunal dismisses in its entirety Iran's request for compensation in Claim G-115 for lack of proof.

27) The remaining Claims by Iran addressed in this Partial Award are dismissed.

28) The Tribunal further awards Iran pre-award interest on the amounts awarded in on Claims G-8, G-7, G-13, Supp. (2)-55, G-11 and Supp. (2)-67, Supp. (2)-56, G-105, G-32, G-172, G-174, and 1996 E/F in the aggregate amount of Twenty Million Two Hundred Nineteen Thousand One Hundred Forty-Five United States Dollars and Thirty-Five Cents (USD 20,219,145.35).

29) Accordingly, under the present Partial Award, on Claims G-8, G-7, G-13, Supp. (2)-55, G-11 and Supp. (2)-67, Supp. (2)-56, G-105, G-32, G-172, G-174, and 1996 E/F, the Respondent, the United States of America, is obligated to pay the Claimant, the Islamic Republic of Iran, the total sum of Twenty-Nine Million One Hundred One Thousand Five Hundred Thirty-Eight United States Dollars and Sixty-Five Cents (USD 29,101,538.65), plus simple interest at the successive prevailing prime bank lending rates in the United States for the period of non-payment of this Partial Award.

30) Further, as stated above, on Claim G-18 and Claim Supp. (2)-12, in the event that the United States is unable to arrange for the transfer of the Stradivarius and the four Gagliano instruments and two bows to Iran within four months of the date of this Partial Award, the Tribunal awards Iran damages and pre-award interest in the amounts specified above.[1474] Simple post-award interest on those amounts at the successive prevailing prime bank lending rates in the United States for the period of non-payment of this Partial Award shall run from the date of this Partial Award.[1475]

C. COSTS

31) Each Party shall bear its own costs of arbitration.

D. FURTHER PROCEEDINGS

32) For reasons of efficiency, the Tribunal separates for later decision:

a. the claims brought by the Iranian Ministry of Post, Telegraph and Telephone, the Atomic Energy Agency of Iran, the Plan and Budget Organization of Iran, and Iran Air that involve export-controlled properties – namely, Claims Supp. (2)-38, G-19, G-102, G-103, and G-112; and

[1474] *See supra* paras. 2568, 2571-2573 & 2611.B.12)-B.13).

[1475] *See supra* paras. 2571 & 2573.