

CASES NOS. A15 (II:A), A26 (IV) AND B43

FULL TRIBUNAL

AWARD NO. 604-A15 (II:A)/A26 (IV)/B43-FT

THE ISLAMIC REPUBLIC OF IRAN,

Claimant,

and

THE UNITED STATES OF AMERICA,

Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL دیوان داورى دعوى ایران-ایالات متحده	
CASE NO:	A15 (II:A) پرونده شماره:
FILING DATE:	10 MAR 2020
DOCUMENT NO:	2350
	تاریخ ثبت: ۱۳۹۸ / ۱۲ / ۲۰
	شماره سند:

PARTIAL AWARDAppearances:

For the Claimant:

Mr. Mohammad H. Zahedin Labbaf,
Agent of the Islamic Republic of
Iran,
Dr. Siamak Karamzadeh,
Agent of the Islamic Republic of
Iran,
Mr. Samuel Wordsworth, QC,
Counsel for the Islamic Republic
of Iran,
Mr. David Sellers,
Counsel for the Islamic Republic
of Iran,
Mr. William Thomas,
Counsel for the Islamic Republic
of Iran,
Professor Chester Brown,
Counsel for the Islamic Republic
of Iran,
Mr. David Davies,
Counsel for the Islamic Republic
of Iran,

Professor Andreas Zimmermann,
Counsel for the Islamic Republic
of Iran,
Professor Christian Tams,
Counsel for the Islamic Republic
of Iran,
Ms. Natasha Harrington,
Counsel for the Islamic Republic
of Iran,
Mr. Greg Falkof,
Counsel for the Islamic Republic
of Iran,
Ms. Naomi Briercliffe,
Counsel for the Islamic Republic
of Iran,
Ms. Natalie Limbasan,
Counsel for the Islamic Republic
of Iran,
Mr. David Lindsey,
Counsel for the Islamic Republic
of Iran,
Ms. Laura Zielinski,
Counsel for the Islamic Republic
of Iran,
Ms. Alexandra Kerjean,
Counsel for the Islamic Republic
of Iran,
Mr. W. Pydiamah,
Counsel for the Islamic Republic
of Iran,
Ms. Gillian Forsyth,
Assistant to Counsel,
Ms. M. Niknejad,
Assistant to Counsel,
Ms. Fanny Sarnel,
Assistant to Counsel,
Mr. Ali Mokhberolsafa,
Legal Adviser to the Agent,
Mr. Hassan Behrooz Mahdavi,
Legal Adviser to the Agent,
Mr. Mehdi Soroush,
Legal Adviser to the Agent,
Mr. A. Allahjari,
Claimant's Representative,
Mr. A. H. Abdolhamid,
Claimant's Representative,
Mr. S. Mansouri,
Claimant's Representative,
Mr. A.R. Lahabi,
Claimant's Representative,

Mr. M.H. Mohazeb,
Claimant's Representative,
Mr. O. Ghanami,
Claimant's Representative,
Mr. F. Dabiri,
Claimant's Representative,
Mr. E. Haditabar,
Claimant's Representative,
Mr. Rabia Eskini,
Claimant's Representative,
Mr. Reza Fazel,
Claimant's Representative,
Mr. Abdolkhalil Moazamzadeh,
Claimant's Representative,
Mr. Alireza Khankarami,
Claimant's Representative,
Mr. Mohsen Najafi,
Claimant's Representative,
Mr. Masoud Nouri,
Claimant's Representative,
Mr. A. Sherafat,
Claimant's Representative,
Mr. A. Mosoudpour,
Representative of the Ministry for
Islamic Culture and Guidance,
Mr. H. Mafi,
Representative of the Ministry for
Islamic Culture and Guidance,
Mr. M. Omidvand Chali,
Representative of the Ministry for
Islamic Culture and Guidance,
Mr. H. Arab Najafi,
Representative of Sound and
Vision of the Islamic Republic of
Iran,
Mr. D. Ashrafi,
Representative of Sound and
Vision of the Islamic Republic of
Iran,
Mr. K. Fakim Hashemi,
Representative of Hamadan Glass
Company,
Mr. M. Ebrahimi,
Representative of the Ministry of
Roads and Transportation,
Mr. B. Ghavami,
Representative of the Ministry of
Roads and Transportation,

Mr. G. Rafiei,
Representative of Iran Aseman
Airlines,
Mr. A. Khazaie,
Observer,
Mr. Ali Fahim Danesh,
Observer,
Ms. Z. Taghizadeh,
Observer.

For the Respondent:

Ms. Kathleen A. Wilson
Agent of the United States of
America,
Mr. Paul S. Veidenheimer,
Deputy Agent of the United States
of America,
Ms. Mary McLeod
Principal Deputy Legal Adviser,
United States Department of
State,
Ms. Lisa J. Grosh,
Assistant Legal Adviser, United
States Department of State,
Mr. John Daley,
Deputy Assistant Legal Adviser,
United States Department of
State,
Sir Daniel Bethlehem, QC,
Counsel for the United States of
America,
Mr. Theodore Kill,
Attorney-Adviser, United States
Department of State,
Mr. David M. Bigge,
Attorney-Adviser, United States
Department of State,
Ms. Laura Conn,
Attorney-Adviser, United States
Department of State,
Ms. Nicole Thornton,
Attorney-Adviser, United States
Department of State,
Mr. Jonas Lerman,
Attorney-Adviser, United States
Department of State,
Mr. John Blanck,
Attorney-Adviser, United States
Department of State,

Mr. Abbas Ravjani,
Attorney-Adviser, United States
Department of State,

Ms. Anne Cusick,
Attorney-Adviser, United States
Department of State,

Ms. Alicia Cate,
Attorney-Adviser, United States
Department of State,

Mr. Harry Barnes,
Attorney-Adviser, United States
Department of State,

Ms. Anna Melamud,
Attorney-Adviser, United States
Department of State,

Mr. David Salie,
Attorney-Adviser, United States
Department of State,

Mr. Audrius Kirvelaitis,
Attorney-Adviser, United States
Department of State,

Ms. Megan Grimball,
Attorney-Adviser, United States
Department of State,

Mr. Julian Simcock,
Attorney-Adviser, United States
Department of State,

Ms. Sharon Swingle,
Assistant Director, United States
Department of Justice,

Mr. Neale Bergman,
Attorney-Adviser, United States
Department of State,

Ms. Eva Dantzler,
Attorney-Adviser, United States
Department of State,

Ms. Lana Ulrich,
Paralegal, United States
Department of State,

Mr. John Calopietro,
Paralegal, United States
Department of State,

Ms. Mariama Yilla,
Paralegal, United States
Department of State,

Ms. Teshia Ferguson,
Paralegal, United States
Department of State,

Mr. Anjail Al-Ugdah,
Paralegal, United States
Department of State,
Ms. Abby Lounsberry,
Paralegal, United States
Department of State,
Ms. Kristyn Dunleavy,
United States Embassy,
The Hague,
Ms. Brittany Villareal,
United States Embassy,
The Hague,
Mr. Felipe Awad,
Legal Intern, United States
Embassy, The Hague.

Table of Contents

	Page
I. INTRODUCTION	16
II. FACTUAL BACKGROUND.....	18
III. FIRST PHASE OF THE PROCEEDINGS	23
A. Introduction.....	23
B. Award No. 529.....	25
1. Executive Order No. 12281	26
2. The Treasury Regulations Issued After 19 January 1981	27
a) <i>Properties of Which Iran Was not the Sole Owner</i>	28
b) <i>Properties Owned by Iran but Where the Right to Possession Was Contested</i> ...	28
c) <i>Properties as to Which the Sale Could Be Licensed</i>	29
d) <i>Properties Subject to United States Export Control Laws</i>	30
3. Further Proceedings	31
IV. SECOND PHASE OF THE PROCEEDINGS	32
A. Procedure	32
B. Merits.....	37
1. General Issues	37
a) <i>Introduction</i>	37
b) <i>Scope of the United States' Obligation Under Paragraph 9</i>	38
(1) "Properties" Within the Scope of Paragraph 9	38
(a) <i>Introduction</i>	38
(b) <i>Iran's Contentions</i>	38
(i) <i>The Proper Interpretation of the Term "Iranian properties" in the</i> <i>Algiers Declarations</i>	39
(ii) <i>A Broad Definition of "Property" in International Law</i>	42
(iii) <i>Non-Applicability of Lex Rei Sitae and UCC Section 2-401 to the</i> <i>Interpretation of the Term "Iranian Properties"</i>	43
(iv) <i>Changed Circumstances</i>	44
(v) <i>Competent Forum</i>	45
(c) <i>The United States' Contentions</i>	45
(i) <i>Criteria for Properties to Fall Within the Scope of Paragraph 9</i>	45
(ii) <i>"Iranian Properties" Include only Those Tangible Properties in Which</i> <i>Iran Held Uncontested and Non-Contingent Title</i>	45
(iii) <i>The Lex Rei Sitae Determines Whether Title Had Been Transferred to</i> <i>Iran</i>	47
(iv) <i>UCC Section 2-401 as the Relevant Rule for the Transfer of Title</i>	48
(v) <i>Competent Forum</i>	48
(d) <i>The Tribunal's Decision</i>	49
(i) <i>The Issues Before the Tribunal</i>	49
(ii) <i>In Award No. 529, the Tribunal Has Interpreted the Term "All Iranian</i> <i>Properties" as "Tangible" Properties "Solely Owned by Iran"</i>	50
(iii) <i>Title Is Indicative of Property Being "Solely Owned by Iran"</i>	63
(iv) <i>Determining Whether Legal Title Has Passed to Iran in Accordance</i> <i>With General Principles of Private International Law</i>	67
(v) <i>The General Principles of Private International Law</i>	71
(2) <i>The United States' Obligations Under the Algiers Declarations with Respect to</i> <i>Iranian Tangible Properties</i>	83

(a)	<i>Introduction</i>	83
(b)	<i>The Date on Which the United States' Paragraph 9 Obligation Arose</i>	84
(i)	<i>The Parties' Contentions</i>	84
(ii)	<i>The Tribunal's Decision</i>	85
(c)	<i>The Nature of the United States' Paragraph 9 Obligation</i>	86
(i)	<i>The Parties' Contentions</i>	86
(ii)	<i>The Tribunal's Decision</i>	89
(3)	<i>Role Ascribed to Iran Under Paragraph 9</i>	91
(a)	<i>The Parties' Contentions</i>	91
(b)	<i>The Tribunal's Decision</i>	94
(4)	<i>Iran's Alternative Claim Based on Paragraph 8 of the General Declaration</i> ...	97
(a)	<i>The Parties' Contentions</i>	97
(b)	<i>The Tribunal's Decision</i>	99
(5)	<i>Iran's Alternative Claim Based on General Principle A of the General Declaration</i>	103
(a)	<i>The Parties' Contentions</i>	103
(b)	<i>The Tribunal's Decision</i>	105
2.	<i>Responsibility of the United States</i>	108
a)	<i>Introduction</i>	108
b)	<i>Individual Claims</i>	108
(1)	<i>Claim G-15 (Tehran Museum of Contemporary Art/Clerk)</i>	108
(a)	<i>Introduction</i>	108
(b)	<i>Factual Background</i>	108
(c)	<i>The Parties' Contentions</i>	110
(d)	<i>The Tribunal's Decision</i>	112
(2)	<i>Claim G-16 (Tehran Museum of Contemporary Art/Eisenman)</i>	114
(a)	<i>Introduction</i>	114
(b)	<i>Factual Background</i>	114
(c)	<i>The Parties' Contentions</i>	116
(d)	<i>The Tribunal's Decision</i>	118
(3)	<i>Claim G-18 (Ministry of Culture and Arts/Forough)</i>	119
(a)	<i>Introduction</i>	119
(b)	<i>Factual Background</i>	120
(c)	<i>The Parties' Contentions</i>	122
(d)	<i>The Tribunal's Decision</i>	124
(4)	<i>Claims Supp. (2)-11 and (2)-12 (National Iranian Radio and Television/Kamran and Claudia Mashayekhi)</i>	130
(a)	<i>Introduction</i>	130
(b)	<i>Factual Background</i>	131
(c)	<i>The Parties' Contentions</i>	135
(d)	<i>The Tribunal's Decision</i>	138
(i)	<i>Preliminary Issue: The Small Claims Settlement Agreement</i>	138
(ii)	<i>Remaining Issues: Claim Supp. (2)-11: The Office Equipment and Two Automobiles</i>	140
(iii)	<i>Remaining Issues: Claim Supp. (2)-12: The Musical Instruments and Bows</i>	141
(iv)	<i>Overall Conclusion</i>	143
(5)	<i>Claim Supp. (1)-5 (Hamadan Glass Co./Henry F. Teichmann, Inc.)</i>	143
(a)	<i>Introduction</i>	143
(b)	<i>Factual Background</i>	143

(c) <i>The Parties' Contentions</i>	147
(d) <i>The Tribunal's Decision</i>	148
(6) Claims Involving the Iranian Ministry of Road and Transportation (MORT) (Claims G-7, G-8, and G-13)	152
(a) <i>General Introduction</i>	152
(b) <i>Factual Background Common to Claims G-7 and G-8</i>	152
(c) <i>Claim G-7 (MORT/Port of Vancouver)</i>	155
(i) <i>Introduction</i>	155
(ii) <i>Factual Background</i>	155
(iii) <i>The Parties' Contentions</i>	160
(iv) <i>The Tribunal's Decision</i>	164
(d) <i>Claim G-8 (MORT/Gulf Ports Crating Co.)</i>	168
(i) <i>Introduction</i>	168
(ii) <i>Factual Background</i>	168
(iii) <i>The Parties' Contentions</i>	176
(iv) <i>The Tribunal's Decision</i>	178
(e) <i>Claim G-13 (MORT/Shipside Packing Co.)</i>	183
(i) <i>Introduction</i>	183
(ii) <i>Factual Background</i>	183
(iii) <i>The Parties' Contentions</i>	186
(iv) <i>The Tribunal's Decision</i>	189
(7) Claims G-11 and Supp. (2)-67 (Iran Air/U.S. Customs)	190
(a) <i>Introduction</i>	190
(b) <i>Factual Background</i>	191
(c) <i>The Parties' Contentions</i>	191
(d) <i>The Tribunal's Decision</i>	193
(8) Claim G-131 (Air Taxi Co./Piedmont Aviation, Inc.)	194
(a) <i>Introduction</i>	194
(b) <i>Factual Background</i>	195
(c) <i>The Parties' Contentions</i>	199
(d) <i>The Tribunal's Decision</i>	201
(9) Claim G-146 (Aseman Airlines/Aircraft Governor Inc.)	203
(a) <i>Introduction</i>	203
(b) <i>Factual Background</i>	203
(c) <i>The Parties' Contentions</i>	206
(d) <i>The Tribunal's Decision</i>	208
(10) Claim Supp. (1)-3 (Ministry of Agriculture of Iran/ EROS/ERIM)	209
(a) <i>Introduction</i>	209
(b) <i>Factual Background</i>	209
(c) <i>The Parties' Contentions</i>	211
(d) <i>The Tribunal's Decision</i>	214
(11) Claims Supp. (2)-44 and (2)-56 (Iran Air/Airesearch Manufacturing Co.)	217
(a) <i>Introduction</i>	217
(b) <i>Factual Background</i>	218
(c) <i>The Parties' Contentions</i>	220
(d) <i>The Tribunal's Decision</i>	223
(i) <i>Preliminary Issue: The Settlement Agreement Between Iran Air and Garrett</i>	223
(ii) <i>Claim Supp. (2)-44: Purchased Items</i>	223
(iii) <i>Claim Supp. (2)-56: Repair Items</i>	225

(iv) Overall Conclusion	226
(12) Claim Supp. (2)-49 (Iran Air/Midway Electronics Inc.).....	227
(a) Introduction	227
(b) Factual Background	227
(c) The Parties' Contentions	228
(d) The Tribunal's Decision	231
(13) Claim Supp. (2)-55 (Iran Air/Plessey Dynamics Corp.).....	233
(a) Introduction	233
(b) Factual Background	233
(c) The Parties' Contentions	234
(d) The Tribunal's Decision	234
(14) Claim Supp. (2)-64 (Iran Air/Scott Aviation).....	235
(a) Introduction	235
(b) Factual Background	235
(c) The Parties' Contentions	238
(d) The Tribunal's Decision	240
(i) Claim for Damages for the Non-Return of Parts.....	240
(ii) Claim for the Advance Payment	242
(iii) Overall Conclusion	243
(15) Claim G-105 (Khuzestan Water and Power Authority/Exide Corp.)	243
(a) Introduction	243
(b) Factual Background	243
(c) The Parties' Contentions	245
(d) The Tribunal's Decision	248
(16) Claim G-109 (Red Crescent/Schueler & Co., Inc.)	251
(a) Introduction	251
(b) Factual Background	252
(c) The Parties' Contentions	253
(d) The Tribunal's Decision	255
(17) Claim G-111 (Tehran Urban & Suburban Railway Co./Zokor International Ltd.).....	256
(a) Introduction	256
(b) Factual Background	256
(c) The Parties' Contentions	259
(d) The Tribunal's Decision	267
(i) Preliminary Issues: (1) Alleged Withdrawal or Abandonment of Claim G-111; (2) Effects of the 21 December 1984 Settlement Agreement	267
(ii) "Iranian Properties" Within the Jurisdiction of the United States	270
(18) Claim G-128 (Mazandaran Wood and Paper Industries/Stadler Hurter Ltd.).....	275
(a) Introduction	275
(b) Factual Background	276
(c) The Parties' Contentions	282
(d) The Tribunal's Decision	285
(19) Claim G-31 (Mazandaran University/Walter J. Johnson Inc.)	290
(a) Introduction	290
(b) Factual Background	290
The Periodicals	291
The Encyclopedia	291
(c) The Parties' Contentions	292
(d) The Tribunal's Decision	294

(20) Claim G-32 (Iran Bastan Museum/Oriental Institute of the University of Chicago).....	297
(a) <i>Introduction</i>	297
(b) <i>Factual Background</i>	297
(i) <i>Joint Excavation and the Loan of the Chogha Mish Artifacts</i>	298
(ii) <i>Return of Part of the Chogha Mish Artifacts</i>	299
(iii) <i>Correspondence Relating to Alleged Non-Returned Chogha Mish Artifacts and Filing of Claim G-32</i>	299
(iv) <i>Actions in Cooperation with State Department</i>	301
(v) <i>The Rubin Litigation</i>	302
(vi) <i>Return of the Chogha Mish Artifacts to Iran</i>	304
(c) <i>The Parties' Contentions</i>	304
(d) <i>The Tribunal's Decision</i>	309
(21) Claim G-115 (Museum of Natural History of Iran/Dr. Douglas Lay).....	313
(a) <i>Introduction</i>	313
(b) <i>Factual Background</i>	313
(c) <i>The Parties' Contentions</i>	318
(d) <i>The Tribunal's Decision</i>	320
(22) Claim G-162 (Bank Saderat Iran/Non-Ferrous Metal Exchange)	324
(a) <i>Introduction</i>	324
(b) <i>Factual Background</i>	324
(c) <i>The Parties' Contentions</i>	326
(d) <i>The Tribunal's Decision</i>	327
(23) Claims Involving Kharg Chemical Company.....	328
(a) <i>General Introduction</i>	328
(b) <i>Factual Background Common to All Claims Involving Kharg</i>	328
(c) <i>Individual Claims Involving Kharg</i>	332
(i) <i>Claim G-165 (Kharg/Gearench Manufacturing Co.)</i>	332
(ii) <i>Claim G-166 (Kharg/Semler Industries)</i>	336
(iii) <i>Claim G-168 (Kharg/General Tire International Co.)</i>	338
(iv) <i>Claim G-169 (Kharg/Fisher Controls Co.)</i>	341
(v) <i>Claim G-170 (Kharg/Franklin Export Co.)</i>	344
(vi) <i>Claim G-171 (Kharg/C.S.C. Inc, later: Chicago Valve and Pipe Corp.)</i> ...	348
(vii) <i>Claim G-172 (consolidated with Claim G-176) (Kharg/Midland Pipe & Supply Co.)</i>	354
(viii) <i>Claim G-173 (Kharg/The Foxboro Co.)</i>	368
(ix) <i>Claim G-174 (Kharg/Sagebrush Pipeline Supply Co. & Process Sales, Inc.)</i>	371
(x) <i>Claim G-175 (Kharg/Fisher Controls Co.)</i>	379
(xi) <i>Claim G-177 (Kharg/Big Three Industries, Inc.)</i>	381
(xii) <i>Claim G-178 (Kharg/Arnessen Supply Corp.)</i>	385
(xiii) <i>Claim G-179 (Kharg/Barr-Saunders, Inc.)</i>	389
(xiv) <i>Claim G-180 (Kharg/PanelFab International Corp.)</i>	393
(xv) <i>Claim G-181 (Kharg/Rapid Industrial Corp.)</i>	396
(xvi) <i>Claim G-182 (Kharg/Englewood Electric Supply)</i>	398
(xvii) <i>Claim G-183 (Kharg/ The Harco Corp.)</i>	402
(xviii) <i>Claim G-184 (Kharg/Wilson Industries, Inc.)</i>	405
(xix) <i>Claim G-185 (Kharg/The Falk Corp.)</i>	407
(xx) <i>Claim G-186 (Kharg/R.J. Drews & Sons, Inc.)</i>	410

(xxi) Claim G-187 (Kharg/The Kerite Co.).....	416
(xxii) Claim G-188 (Kharg/Electro Wire, Inc.).....	419
(xxiii) Claim G-189 (Kharg/Powers Industries, Inc.).....	421
(xxiv) Claim G-190 (Kharg/American Society of Mechanical Engineers)	424
(xxv) Claim 1996-A (Kharg/Cooper Energy Services)	425
(xxvi) Claim 1996-B (Kharg/Dallas Instruments, Inc.)	430
(xxvii) Claim 1996-C (Kharg/Ingersoll Rand Equipment Corp.)	432
(xxviii) Claim 1996-D (Kharg/Scientific Energy Systems Corp.)	433
(xxix) Claim 1996-E/F (Kharg/Wilson Industries, Inc.)	436
3. Reparation	456
a) Introduction.....	456
b) Causation	458
c) Mitigation of Damages	460
d) Evidentiary Standards.....	462
e) Individual Claims	466
(1) Claim G-18 (Ministry of Culture and Arts/Forough)	466
(a) Introduction	466
(b) Causation	466
(i) The Parties' Contentions	466
(ii) The Tribunal's Decision	467
(c) Valuation.....	468
(i) The Parties' Contentions	468
(ii) The Tribunal's Decision	476
(2) Claim Supp. (2)-12 (National Iranian Radio and Television/Kamran Mashayekhi).....	486
(a) Introduction	486
(b) The Parties' Contentions	486
(i) Iran's Contentions	486
(ii) The United States' Contentions	492
(c) The Tribunal's Decision	494
(i) Return of the Four Gagliano Instruments and Two Bows	494
(ii) Method of Valuation: Fair Market Value	495
(iii) Valuation of the Four Gagliano Instruments.....	497
(iv) Valuation of the Two Bows	499
(v) Conclusion	500
(3) Claim G-8 (MORT/Gulf Ports Crating Co.)	501
(a) Causation	501
(i) The Parties' Contentions	501
(ii) The Tribunal's Decision	505
(b) Valuation.....	507
(i) The Parties' Contentions	507
(ii) The Tribunal's Decision	523
(4) Claim G-7 (MORT/Port of Vancouver).....	542
(a) Causation	542
(b) Valuation.....	544
(i) The Parties' Contentions	544
(ii) The Tribunal's Decision	555
(5) Claim G-13 (MORT/Shipside Packing Co.).....	563
(a) Introduction	563
(b) The Parties' Contentions	564

(i)	<i>Iran’s Contentions</i>	564
(ii)	<i>The United States’ Contentions</i>	565
(c)	<i>The Tribunal’s Decision</i>	567
(i)	<i>Claim for Loss of Use</i>	567
(ii)	<i>Claims for “Additional Costs”</i>	568
(iii)	<i>Mitigation</i>	570
(iv)	<i>The Tribunal’s Total Award on Claim G-13</i>	571
(6)	<i>Contentions of the Parties and Expert Witness Evidence Common to the Claims Concerning Aircraft Parts</i>	571
(a)	<i>Introduction</i>	571
(b)	<i>The Parties’ Contentions</i>	572
(i)	<i>Iran’s Contentions</i>	572
(ii)	<i>The United States’ Contentions</i>	575
(7)	<i>Claim Supp. (2)-55 (Iran Air/Plessey Dynamics Corp.)</i>	578
(a)	<i>Introduction</i>	578
(b)	<i>The Parties’ Contentions</i>	579
(i)	<i>Iran’s Contentions</i>	579
(ii)	<i>The United States’ Contentions</i>	581
(c)	<i>The Tribunal’s Decision</i>	582
Conclusion	585
(8)	<i>Claims G-11 and Supp. (2)-67 (Iran Air/U.S. Customs)</i>	585
(a)	<i>Introduction</i>	585
(b)	<i>The Contentions of the Parties</i>	586
(i)	<i>Iran’s Contentions</i>	586
(ii)	<i>The United States’ Contentions</i>	588
(c)	<i>The Tribunal’s Decision</i>	591
(i)	<i>Replacement Value</i>	591
(ii)	<i>Fair Market Value</i>	592
(iii)	<i>Conclusion</i>	595
(9)	<i>Claim G-131 (Air Taxi/Piedmont Aviation, Inc.)</i>	595
(a)	<i>Introduction</i>	595
(b)	<i>The Parties’ Contentions</i>	596
(i)	<i>Iran’s Contentions</i>	596
(ii)	<i>The United States’ Contentions</i>	598
(c)	<i>The Tribunal’s Decision</i>	600
(i)	<i>Fair Market Value</i>	600
(ii)	<i>Loss of Use</i>	602
(iii)	<i>Conclusion</i>	603
(10)	<i>Claim Supp. (2)-56 (Iran Air/Airesearch Manufacturing Co.)</i>	603
(a)	<i>Introduction</i>	603
(b)	<i>The Parties’ Contentions</i>	604
(i)	<i>Iran’s Contentions</i>	604
(ii)	<i>The United States’ Contentions</i>	605
(c)	<i>The Tribunal’s Decision</i>	607
(11)	<i>Claim G-105 (Khuzestan Water and Power Authority/Exide Corp.)</i>	609
(a)	<i>Introduction</i>	609
(b)	<i>The Parties’ Contentions</i>	609
(i)	<i>Iran’s Contentions</i>	609
(ii)	<i>The United States’ Contentions</i>	611
(iii)	<i>The Tribunal’s Decision</i>	613

(12) Claim G-32 (Iran Bastan Museum/Oriental Institute of the University of Chicago).....	614
(a) <i>Introduction</i>	614
(b) <i>The Parties' Contentions</i>	615
(i) <i>Iran's Contentions</i>	615
(ii) <i>The United States' Contentions</i>	624
(c) <i>The Tribunal's Decision</i>	631
(i) <i>Return of the Chogha Mish Artifacts</i>	631
(ii) <i>Loss of Use</i>	631
(iii) <i>Legal Fees and Expenses</i>	636
(iv) <i>Overall Conclusion</i>	639
(13) Claim G-115 (Museum of Natural History of Iran/Dr. Douglas Lay).....	639
(a) <i>Introduction</i>	639
(b) <i>The Parties' Contentions</i>	640
(c) <i>The Tribunal's Decision</i>	640
(14) Claim G-172 (Kharg/Midland Pipe & Supply Co.).....	641
(a) <i>Introduction</i>	641
(b) <i>The Parties' Contentions</i>	642
(i) <i>Iran's Contentions</i>	642
(ii) <i>The United States' Contentions</i>	644
(c) <i>The Tribunal's Decision</i>	645
(15) Claim G-174 (Kharg/Sagebrush Pipeline Supply Co. & Process Sales, Inc.).....	652
(a) <i>Introduction</i>	652
(b) <i>The Parties' Contentions</i>	653
(i) <i>Iran's Contentions</i>	653
(ii) <i>The United States' Contentions</i>	654
(c) <i>The Tribunal's Decision</i>	655
(16) Claim 1996-E/F (Kharg/Wilson Industries, Inc.)	659
(a) <i>Introduction</i>	659
(b) <i>The Parties' Contentions</i>	660
(i) <i>Iran's Contentions</i>	660
(ii) <i>The United States' Contentions</i>	661
(c) <i>The Tribunal's Decision</i>	661
V. INTEREST.....	667
A. Iran Is Entitled to Pre- and Post-Award Interest.....	667
B. Calculation of Pre-Award Interest	668
1. Claim G-18 (Ministry of Culture and Arts/Forough)	668
2. Claim Supp. (2)-12 (National Iranian Radio and Television/Kamran Mashayekhi)	
.....	668
3. Claim G-8 (MORT/Gulf Ports Crating Co.).....	669
a) <i>Claim for Diminution of Asset Values Due to Deterioration</i>	669
(1) Porta-Kamp Housing Units.....	669
(2) Morgan Rock-Crushing Equipment.....	670
b) <i>Claims for "Additional Costs"</i>	670
(1) Storage and Repackaging Costs and Costs of Disposal of Unsalvageable Porta-Kamp Housing Units.....	670
(2) MORT's Travel Expenses.....	670
(3) MORT's United States Legal Fees and Expenses	671
(4) Costs for Extending Warehouse Leases.....	672
(5) Costs for Warehouse Security.....	672

4.	Claim G-7 (MORT/Port of Vancouver).....	673
	a) <i>Claim for Diminution of Asset Values Due to Deterioration</i>	673
	(1) Transworld Housing Units.....	673
	(2) Morgan Rock-Crushing Equipment.....	673
	b) <i>Claims for “Additional Costs”</i>	673
	(1) Storage Costs	673
	(2) MORT’s United States Legal Fees and Expenses	674
5.	Claim G-13 (MORT/Shipside Packing Co.).....	674
	a) <i>Claim for Storage Costs</i>	674
	b) <i>Claim for Repackaging Costs</i>	675
6.	Claim Supp. (2)-55 (Iran Air/Plessey Dynamics Corp.).....	675
7.	Claims G-11 and Supp. (2)-67 (Iran Air/U.S. Customs)	675
8.	Claim Supp. (2)-56 (Iran Air/Airesearch Manufacturing Co.)	676
9.	Claim G-105 (Khuzestan Water and Power Authority/Exide Corp.)	676
10.	Claim G-32 (Iran Bastan Museum/Oriental Institute of the University of Chicago)	
	676
11.	Claim G-172 (Kharg/Midland Pipe & Supply Co.).....	677
12.	Claim G-174 (Kharg/Sagebrush Pipeline Supply Co. & Process Sales, Inc.)	678
13.	Claim 1996-E/F (Kharg/Wilson Industries, Inc.)	678
14.	Overall Conclusion on Pre-Award Interest.....	678
VI.	COSTS	679
VII.	TOTAL AMOUNT AWARDED	679
VIII.	AWARD	680

I. INTRODUCTION

1. At issue in the present Cases are claims brought by the Islamic Republic of Iran (“Iran”) against the United States of America (“United States”) asserting a violation by the United States of its obligations under the Algiers Declarations¹ to arrange for the transfer to Iran of Iranian 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 1979.² (Iran and the United States will be hereinafter also referred to, collectively, as the “Parties.”) The properties that are the main subject of dispute in the present Cases (the “disputed properties”) are tangible properties of a non-military nature, which Iran identified in a series of separate claims (“Individual Claims”).³

2. The bulk of the disputed properties were not subject to United States export-control laws. The Tribunal, in the Partial Award rendered on 6 May 1992 in the present Cases,⁴ held that the Treasury Regulations issued by the United States in February 1981 were inconsistent with the United States’ obligations under the Algiers Declarations. Iran contends that these Treasury Regulations prevented the return to Iran of certain non-export-controlled properties that Iran alleges were owned by it and located in the United States or otherwise subject to the jurisdiction of the United States on 19 January 1981. Included among the disputed non-export-controlled properties are, among other things, artworks, antique musical instruments, various

¹ Declaration of the Government of the Democratic and Popular Republic of Algeria (General Declaration), 19 Jan. 1981, 1 IRAN-U.S. C.T.R. 3, and Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration), 19 Jan. 1981, 1 IRAN-U.S. C.T.R. 9 (collectively, “the Algiers Declarations”).

² 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.” See *infra* para. 8.

³ Tangible properties of a military nature are at issue in Case No. B1 (Claims 2 and 3) and in Cases Nos. A3, A8, A9, A14, and B61 (hereinafter “Case No. B61”). Case No. B1 (Claims 2 and 3) involves Iran’s direct purchase of defense articles from the United States Government through its Foreign Military Sales Program. Case No. B61 involved, *inter alia*, claims by Iran against the United States for compensation for losses incurred as a result of the United States’ refusal to license the export of certain tangible military properties that Iran alleged were owned by it and located in the United States or otherwise subject to the jurisdiction of the United States on 19 January 1981. In *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, the Tribunal dismissed parts of Case No. B61.

⁴ *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. The Tribunal’s holdings in Award No. 529-A15-FT that are relevant to the present Cases are discussed in detail *infra*.

tools and items of equipment for use on large-scale projects in Iran, electronic equipment, aircraft parts, archeological objects and fossils, and academic publications.

3. Iran requests that the Tribunal order the United States to compensate Iran for all losses it suffered as a result of the United States' failure to arrange for the transfer of the non-export-controlled properties in question. Iran also requests that the Tribunal order the United States to arrange for the transfer of certain of those properties or, in the alternative, to pay compensation therefor.

4. Included in the present Cases are also claims by Iran relating to a small number of properties that were subject to United States export-control laws and that Iran alleges were owned by it and located in the United States or otherwise subject to the jurisdiction of the United States on 19 January 1981. These claims concern, *inter alia*, mobile spectrum monitoring units, nuclear reactor fuel, a computer system, and satellite image processing equipment. In these claims, Iran seeks compensation from the United States for all losses it alleges to have suffered, *inter alia*, as a result of the refusal by the United States to license the export of those export-controlled properties.

5. Iran had signed purchase agreements with private suppliers concerning many of the disputed properties prior to the Islamic Revolution of 1979. The disputed properties comprise new items that were never delivered to Iran and items that Iran had sent to the United States for repair and return or on loan for scientific or other purposes.

6. According to its final pleadings, as the maximum monetary relief, Iran seeks over USD 39 million and over EUR 285,000, allegedly representing the value of the disputed properties, and over USD 79 million in other damages. Iran also seeks interest on all amounts claimed.

7. In support of its claims, Iran relies primarily on General Principle A and Paragraph 9 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981 ("General Declaration"), which provide:

General Principle A

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 4-9.⁵

Paragraph 9

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.⁶

II. FACTUAL BACKGROUND

8. Following the seizure of the United States Embassy in Tehran, on 14 November 1979, the President of the United States issued Executive Order No. 12170 (hereinafter also referred to as the “Blocking Order”), which blocked the transfer of “all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.”⁷

9. The United States Department of the Treasury subsequently issued a series of “Iranian Assets Control Regulations,” implementing Executive Order No. 12170 (“Blocking Regulations”).⁸ These Regulations blocked all property in which Iran had “any interest of any nature whatsoever.” Section 535.201 of the Blocking Regulations provided that no such property “may be transferred, paid, exported, withdrawn or otherwise dealt in except as authorized.” Iranian property and property interests were defined in detail in Section 535.311 of the Blocking Regulations.⁹ The blocked property included numerous tangible properties

⁵ General Declaration, General Principle A, 1 IRAN-U.S. C.T.R. at 3.

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

⁷ E.O. 12170, 44 F.R. 65729.

⁸ See 31 C.F.R. Part 535. Most of the United States Treasury Regulations cited in this Award may be found in 3 A. LOWENFELD, TRADE CONTROLS FOR POLITICAL ENDS (2nd ed., 1983), DS-735 *et seq.*

⁹ Pursuant to Section 535.311, the notions of “property” and “property interests” included

money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, bankers’ acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness,

that Iran owned or in which Iran held some type of interest, including properties that it had purchased from United States suppliers and properties that Iran had sent to the United States for repair.

10. In 1980, the United States conducted a census of blocked Iranian assets. On 9 April 1980, the Department of the Treasury issued Section 535.615 of the Regulations, which required persons subject to the jurisdiction of the United States to file a report on Form TFR-615 with respect to any property subject to the jurisdiction of the United States, in their “possession or control” between 14 November 1979 and 31 March 1980, “in which there was any direct or indirect interest of Iran or any Iranian entity.” The deadline for the submission of reports on Form TFR-615 was 15 May 1980. Reporting pursuant to Section 535.615 was mandatory. In this regard, the General Instructions contained in Section 535.615 indicated that failure to comply with the reporting requirements entailed penalties.¹⁰

11. On 19 January 1981, simultaneously with the adherence by the two Governments to the Algiers Declarations, the President of the United States issued Executive Orders Nos. 12279, 12280, and 12281, effective immediately, directing the transfer of Iranian Government assets. Executive Order No. 12281 dealt with “properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities.” Pursuant to paragraph 1-101 of the Order, all persons subject to the jurisdiction of the United States in possession or control of such properties were “licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent.” Paragraph 1-101 of the Order continued as follows: “[e]xcept

powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors’ sales agreements, land contracts, real estate and any interest therein, leaseholds, grounds rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever; and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

¹⁰ The General Instructions, in this connection, pointed to section 206 of the International Emergency Economic Powers Act, as in force at the time, which provided:

(a) A civil penalty of not to exceed \$10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

(b) Whoever, willfully violates any license, order, or regulation, issued under this title shall, upon conviction, be fined not more than \$50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

50 U.S.C. Section 1705 (as in force in April 1980).

where specifically stated, this license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.” The Order further stated in paragraph 1-102 that “[a]ll persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to” Iranian properties. The Order also nullified all court-ordered attachments, injunctions, and the like obtained after 14 November 1979, including those derived from the 1979 Blocking Order and Regulations relating to Iranian properties.

12. In implementation of Executive Order No. 12281, the Department of the Treasury, on 26 February 1981, issued Regulations that revoked, in part, the 1979 Blocking Regulations and further specified the order to transfer Iranian properties. Section 535.215 of the Regulations, titled “Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States,” repeated the transfer direction of Executive Order No. 12281 and made that direction applicable to properties as defined in Section 535.333 of the Regulations. The latter Section, in subsection (a), defined the properties whose transfer was directed to include “all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts.” Subsection (c) stated that “[l]iabilities and property interests may be considered contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the asset by virtue of the existence of a defense, counterclaim, set-off or similar reason.” According to subsection (b), properties are “not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged.”

13. Section 535.215 also repeated the wording of paragraph 1-101 of Executive Order No. 12281 to the effect that, “[e]xcept where specifically stated, this license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.”¹¹ In this context, Section 535.437 of the Regulations, also issued on 26 February 1981,

¹¹ See *supra* para. 11.

provides that the transfer of properties pursuant to the Regulations remains subject to export control under United States law, including licenses for the transfer of military equipment.¹²

14. On 23 September 1981, the United States transmitted a diplomatic note to the Algerian Embassy in Washington, D.C. (which was acting as intermediary between the two Governments), relating to Iranian military properties in the possession of private parties who are subject to the jurisdiction of the United States. In the diplomatic note, the United States reiterated its position that it was “unable to license the export of Iranian-owned military supplies and equipment presently in the United States.” Because exports of military supplies and equipment to Iran did not meet the criteria for licensing under United States law applicable prior to 14 November 1979, the United States contended, the deferral of their transfer to Iran was “fully consistent with the obligations of the United States under [P]aragraph 9.”

15. Further, the United States indicated that several private parties holding “Iranian-owned military supplies” had informed it that the items in their possession were deteriorating and declining in value. The United States then noted that those private parties had requested it to approve the sale of that property to prevent any further erosion in value. Stating its belief that it would be in the best interests of both the United States and Iran to conserve the value of this Iranian property, the United States proposed to license the disposition of the property for this purpose and to order that the proceeds be deposited in an interest-bearing account in the name of the appropriate Iranian governmental entity until the holders of those properties and the Iranian Government settled and resolved their claims through negotiation or arbitration; the balance of the account would then be transferred to Iran. In an enclosure to the diplomatic note, the United States listed examples of such properties, which allegedly included some properties purchased by Iran but never delivered to it by the private holders.

16. In 1982, the United States conducted a second census of blocked Iranian assets. In May 1982, the Department of the Treasury issued Section 535.625 of the Regulations, which required persons subject to the jurisdiction of the United States to file a report on Form TFR-625 with respect to “all tangible property subject to the jurisdiction of the United States,”

¹² Section 535.437 provides in full:

Nothing in this part in any way relieves any persons subject to the jurisdiction of the United States from securing licenses or other authorizations as required from the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part. This includes licenses for transactions involving military equipment.

in which they had an interest or which was in their “possession or control” between 14 November 1979 and 19 January 1981, and in which there existed “any direct or indirect interest or an asserted interest of Iran or an Iranian entity.” The deadline for the submission of reports on Form TFR-625 was 1 July 1982. Reporting pursuant to Section 535.625 was mandatory. In this regard, the General Instructions contained in Section 535.625 indicated that both civil and criminal penalties were provided under the International Emergency Economic Powers Act.¹³ Furthermore, in the introduction to the General and Specific Instructions for reporting on Form TFR-625, the Department of the Treasury stated:

Although reporters are asked to report as to tangible property in which Iran had, or asserted, any interest during the specified time period, in the view of the Treasury Department the existence of an Iranian “interest” in property does not necessarily render the property “Iranian property” for purposes of the Regulations. In other words, an “interest” of Iran in property sufficient to trigger the applicability of the blocking provision (section 535.201 of the Regulations) during the period of economic sanctions against Iran is not, in every case, equivalent to legal or beneficial ownership of the property sufficient to bring it within the scope of the relevant transfer directive (section 535.215) implementing the provisions of the Algiers Accords. Accordingly, the Treasury Department does not regard statements made on Form TFR-625, in and of themselves, to be determinative of ownership rights to reported property.

17. On 22 July 1982, the Department of the Treasury issued Section 535.540 of the Regulations, which permits the public sale of certain Iranian tangible property that is “encumbered or contested” within the meaning of Section 535.333, subsections (b) and (c), and that, “because it is blocked by § 535.201, may not be sold or transferred without a specific license.”¹⁴ Pursuant to Section 535.540, a license can be issued for the public sale of Iranian tangible property provided that the holder (1) certifies that good faith efforts over a reasonable period to obtain payment of any amount owed by Iran have been unsuccessful; (2) establishes (normally through an opinion of legal counsel) that he has, under United States law applicable prior to 14 November 1979, a right to sell the property by methods not requiring judicial proceedings; (3) guarantees that the sale will be at public auction and will be made in good faith in a commercially reasonable manner; and (4) agrees to give Iran at least 30 days’ notice of the sale, as well as 30 days’ notice to this Tribunal if the holder has filed a claim with it. The proceeds of any sale (minus reasonable costs of sale) may be: (1) deposited in a blocked

¹³ 50 U.S.C. Section 1701 *et seq.* See *supra* note 10.

¹⁴ See *supra* para. 12.

account in the name of the licensee; (2) disposed of in accordance with United States law applicable prior to 14 November 1979, which may include unrestricted use of the proceeds, provided the licensee has posted a bond in the amount of the sale proceeds in favor of the United States. Section 535.540 provides that the “proceeds of any such sale shall be deemed to be property governed by § 535.215 of this part,”¹⁵ and that “[a]ny part of the proceeds that constitutes Iranian property which under § 535.215 is to be transferred to Iran shall be so transferred in accordance with that section.”

18. On 25 July 2001, the Department of the Treasury amended, *inter alia*, Section 535.333, subsections (b) and (c), of the Regulations to read:

(b) Properties do not cease to fall within the definition in paragraph (a), above, merely due to the existence of unpaid obligations, charges or fees relating to such properties, or undischarged liens against such properties.

(c) Liabilities and property interests of the Government of Iran, its agencies, instrumentalities, or controlled entities may be considered contested only if the holder thereof reasonably believes that Iran does not have title or has only partial title to the asset. After October 23, 2001, such a belief may be considered reasonable only if based upon a bona fide opinion, in writing, of an attorney licensed to practice within the United States stating that Iran does not have title or has only partial title to the asset. For purposes of this paragraph, the term holder shall include any person who possesses the property, or who, although not in physical possession of the property, has, by contract or otherwise, control over a third party who does in fact have physical possession of the property. A person is not a holder by virtue of being the beneficiary of an attachment, injunction or similar order.

III. FIRST PHASE OF THE PROCEEDINGS

A. Introduction

19. On 25 October 1982, Iran presented its Statement of Claim in Case No. A15 (II:A), asserting that the United States had “failed to arrange immediately for the transfer to Iran of all Iranian non-financial assets located in the United States.” In its Statement of Claim, Iran invoked Paragraph 9 of the General Declaration (“Paragraph 9”), which, Iran stated, obligated the United States “to arrange immediately for the transfer to the Government of Iran of its physical property.”

¹⁵ See *supra* para. 12.

20. In addition to legal briefs, in the first phase of these proceedings, each Party has, pursuant to Orders of the Tribunal, submitted reports providing extensive information regarding alleged Iranian properties in the United States, such as descriptions of items of property and indications as to holders, the owner, and location of properties.¹⁶

21. At various times during the first phase of these proceedings, Iran requested that the Tribunal order the United States to produce copies of the census reports filed in 1980 and 1982 in response to Sections 535.615 and 535.625, respectively, of the Regulations¹⁷ and any summaries prepared by the United States of the information contained in those reports. The United States objected, stating, *inter alia*, that the census reports were not material to the interpretative issues raised by Iran's claims in the present Cases because a significant percentage of those census reports contained no information at all concerning tangible properties; and, further, that the United States was not in a position to provide the census reports because they were privileged and confidential in that they contained information that was commercially sensitive and partly relating to claims of United States nationals against Iran before the Tribunal. The Tribunal did not accept Iran's requests for the production of the census reports.

22. By Order of 11 November 1983, the Tribunal requested that the United States submit a list, based on the census reports filed with the United States in response to Sections 535.615 and 535.625 of the Regulations, "identifying any Iranian tangible non-military property of which [the United States] has knowledge, which is located in the United States, and which has not been identified in the documents filed to date by the Islamic Republic of Iran." On 6 December 1983, the United States, in compliance with the Tribunal's Order, produced a list identifying seven Iranian tangible properties in the United States that did not appear in the documents submitted by Iran in the present Cases to that point.

¹⁶ The United States submitted a report on 17 September 1984; Iran, for its part, submitted a report on 17 December 1984 and a supplemental report on 17 July 1985. Subsequently, pursuant to the Tribunal's Order of 4 September 1985, in which it requested that the Parties present in a consolidated and updated fashion the information already provided concerning the properties at issue, the United States submitted a Consolidated Report on 30 October 1985, which it supplemented on 18 February 1986, and Iran submitted a Consolidated Report on 13 November 1987. With their Hearing Memorials in the first phase of the proceedings, Iran and the United States submitted updated reports on 17 January 1990 and 5 July 1990, respectively. With its submission of 1 February 1991, the United States proffered a further report.

¹⁷ See *supra* paras. 10 and 16.

23. The first phase of these proceedings culminated on 6 May 1992 with the issuance of a Partial Award, in which the Tribunal made a number of determinations that are relevant to the present phase of the proceedings. *See Islamic Republic of Iran and United States of America*, Award No. 529-A15-FT (6 May 1992) (“Award No. 529”).¹⁸ Significant procedural events relating to the first phase of these proceedings are recounted in Award No. 529.¹⁹

24. The Tribunal delineates below its determinations in Award No. 529 that have a bearing on this second phase of these proceedings.

B. Award No. 529

25. As related in Award No. 529, in its pleadings in the first phase of Case No. A15 (II:A), Iran argued that the United States had breached its obligations under the Algiers Declarations by failing to arrange for the immediate transfer to Iran of all Iranian tangible properties subject to United States jurisdiction or, in the alternative, by failing to compensate Iran for the United States’ refusal to arrange for such transfer. Iran submitted that such an obligation followed from General Principle A and Paragraph 9 of the General Declaration. The United States had prevented the return of Iranian tangible properties, Iran contended, by issuing Executive Orders and Treasury Regulations that did not require their transfer if storage and other charges, as well as tax and warehouse liens, had not been paid, if the properties were otherwise not owned by Iran, or if they were subject to United States export controls. The United States had issued Treasury Regulations that permitted licenses for the sale of Iranian properties, and it had granted a number of such licenses. Iran claimed that, as a result of the various Executive Orders and Treasury Regulations, it had suffered damages for continued storage charges, lost use of the property, diminution in value, legal fees and expenses, and other damages.

26. Consequently, Iran sought an award declaring that the United States had breached the Algiers Declarations, compelling the United States to arrange for the transfer of Iran’s properties that had not been transferred, and ordering the United States to compensate Iran for all direct and indirect damages that Iran had allegedly suffered from this breach, with the amount of such damages to be determined at a later stage of the proceedings. Iran also requested that the Tribunal direct the United States to revoke Section 535.333 of the Regulations as well as Executive Order No. 12281, insofar as Iranian property is defined, and

¹⁸ *See supra* note 4.

¹⁹ *See* Award No. 529, paras. 2-8, 28 IRAN-U.S. C.T.R. at 114-17.

to redefine the term property for the purpose of Section 535.215 of the Regulations as any “property in which the Government of Iran has an interest.” A number of holdings in Award No. 529 that have a bearing on this second phase of the proceedings are discussed below.

1. Executive Order No. 12281

27. In analyzing whether Executive Order No. 12281 of 19 January 1981²⁰ complied with the Algiers Declarations, the Tribunal, in paragraph 40 of Award No. 529, as an initial matter, described the scope of the United States’ obligations under the Algiers Declarations with respect to tangible Iranian properties:

It seems clear from the reference in paragraph 9 of the General Declaration to “Iranian” properties, that the obligation of the United States with respect to tangible properties was limited to properties that were owned by the Government of the Islamic Republic of Iran, or its “agencies, instrumentalities, or controlled entities” as Executive Order No. 12281 specified. As stated in paragraph 9, the obligation extended to all such properties whether located in the United States or abroad. This geographical scope, as well as the words “mobility” and “free transfer” in General Principle A and the reference in paragraph 9 to U.S. law applicable prior to 14 November 1979, indicate that the obligations of the United States were, first, to remove all restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of Iranian tangible properties and, second, to direct persons subject to the jurisdiction of the United States holding any Iranian properties to transfer such properties as directed by the Government of Iran. In addition, whereas the obligation to “arrange for” the transfer of properties did not include an obligation for the United States itself to ship any Iranian properties to Iran, the United States had an obligation to take steps, upon indication from Iran, to ensure that the holders of those properties would transfer them to Iran.²¹

²⁰ See *supra* para. 11.

²¹ Award No. 529, para. 40, 28 IRAN-U.S. C.T.R. at 125-26. The Tribunal repeated this holding in the *dispositif* of Award No. 529 in the following terms:

The obligations of the United States under the General Declaration of 19 January 1981 with respect to tangible Iranian properties were, first, to remove the restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of those properties and to direct persons holding those properties who were subject to the jurisdiction of the United States to transfer the properties as directed by the Government of Iran and, second, to take steps to ensure that this directive will be complied with.

Id. para. 77 (a), 28 IRAN-U.S. C.T.R. at 140.

28. The Tribunal then found, and the Parties agreed, that the issuance of Executive Order No. 12281 by the President of the United States did not violate any of the above obligations of the United States. In reaching this conclusion, the Tribunal stated:

[Executive Order No. 12281] was addressed to all persons subject to the jurisdiction of the United States in possession or control of Iranian tangible properties. It directed and compelled those persons to transfer such properties as directed by the Government of Iran, and thereby took steps towards ensuring that such transfer would be made to a place selected by Iran. To remove existing obstacles to the transfer of the Iranian properties and to prevent the creation of new ones, the Order provided further that: (i) all prior authorizations for acquiring or exercising any right, power, or privilege with respect to the properties were revoked; (ii) all rights, powers, and privileges relating to the properties and that derived from attachments, injunctions, etc., in any litigation on or after 14 November 1979 were nullified; and (iii) all persons subject to the jurisdiction of the United States were prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties. These directions and prohibitions in Executive Order No. 12281 were consistent with the United States' obligation under the Algiers Declarations to arrange for the transfer to Iran of Iranian tangible properties.²²

29. Because both Parties considered Executive Order No. 12281 to be in compliance with the Algiers Declarations, the Tribunal concluded that the Executive Order "formed part of the 'practice' of the treaty for purposes of its interpretation as provided in Article 31(3) of the Vienna Convention on the Law of Treaties."²³

2. The Treasury Regulations Issued After 19 January 1981

30. Next, the Tribunal considered whether the Treasury Regulations issued by the United States Department of the Treasury subsequent to January 1981 were consistent with the commitments the United States had undertaken in the Algiers Declarations. In so doing, the Tribunal examined the provisions of those Regulations as they applied to different categories of Iranian properties.

²² *Id.* para. 41, 28 IRAN-U.S. C.T.R. at 126. *See also id.* para. 77 (b) (*dispositif*), 28 IRAN-U.S. C.T.R. at 140 ("United States Executive Order No. 12281 of 19 January 1981 was consistent with the obligations of the United States under the General Declaration.").

²³ *Id.* para. 48, 28 IRAN-U.S. C.T.R. at 129.

a) *Properties of Which Iran Was not the Sole Owner*

31. The Tribunal noted that both it and the Parties agreed that “Iran was not entitled to possession of properties owned by others or if it had only a partial or contingent interest in such property.”²⁴ Accordingly, the Tribunal held that “United States Treasury Regulations that excluded from the transfer direction [of Executive Order No. 12281] properties in which Iran had only a partial or contingent interest were consistent with the obligations of the United States under the General Declaration.”²⁵ This, the Tribunal explained, “would include properties as to which Iran’s ownership was contingent on the fulfilment of certain contractual obligations.”²⁶

b) *Properties Owned by Iran but Where the Right to Possession Was Contested*

32. The Tribunal observed that, as a result of Section 535.333 of the Regulations, subsection (a) (to the extent that it defined the “properties” subject to the transfer direction as all “uncontested” properties) and subsections (b) and (c),²⁷ any holder of Iranian property who reasonably believed that Iran owed him money for storage, repair, breach of contract, expropriation, or any other reason was not compelled to return the property to Iran. Stating that it found it “difficult to justify a definition that excludes properties admittedly owned solely by Iran in view of the scope of [Paragraph 9,] which extends to ‘all Iranian properties,’”²⁸ after providing extensive reasons,²⁹ the Tribunal held:

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, counterclaims, set-offs or similar reasons, were inconsistent with the obligations of the United States under the General Declaration. The

²⁴ *Id.* para. 43, 28 IRAN-U.S. C.T.R. at 127.

²⁵ *Id.* para. 77 (c), 28 IRAN-U.S. C.T.R. at 140.

²⁶ *Id.* para. 43, 28 IRAN-U.S. C.T.R. at 127.

²⁷ *See supra* para. 12.

²⁸ *Id.* para. 47, 28 IRAN-U.S. C.T.R. at 128.

²⁹ Reasons stated by the Tribunal in this context will be discussed, to the extent required, *infra*, in connection with the merits of Iran’s present claims.

Tribunal is not on the present record in a position to determine the relevant facts with respect to any particular property.³⁰

The parts of Section 535.333 of the Regulations that the Tribunal held to be inconsistent with the United States' obligations under the General Declaration will hereinafter also be referred to as the "Unlawful Treasury Regulations."

c) Properties as to Which the Sale Could Be Licensed

33. Section 535.540 of the Regulations permits the sale of Iranian tangible assets by the holder of that property under certain conditions and after obtaining a license from the Department of the Treasury.³¹

34. In Award No. 529, the Tribunal noted that, if any holder of Iranian property receiving a license to sell such property pursuant to Section 535.540 was a holder by virtue of one of the exemptions from the transfer obligation that were found elsewhere in the Regulations, liability already existed if the exemption was one that violated the obligations of the United States pursuant to General Principle A and Paragraph 9; thus, licensing of the sale of the property could not affect that liability.³² If, on the other hand, the exemption was consistent with the obligations of the United States, the Tribunal continued, it was difficult to see how the licensing of the sale of the property held pursuant to that exemption would give rise to any liability of the United States.³³ Accordingly, the Tribunal concluded:

United States Treasury Regulations that permit the sale of Iranian properties by the holders of those properties under certain conditions and pursuant to treasury licenses are not, *per se*, inconsistent with the obligations of the United States under the General Declaration, but the Tribunal is not presently in a position to determine whether any licenses authorizing sales pursuant to those Regulations were either consistent or inconsistent with the obligations of the United States under the General Declaration.³⁴

³⁰ Award No. 529, para. 77 (d), 28 IRAN-U.S. C.T.R. at 140.

³¹ *See supra* para. 17.

³² *See* Award No. 529, para. 58, 28 IRAN-U.S. C.T.R. at 133.

³³ *See id.*

³⁴ *Id.* para. 77 (e), 28 IRAN-U.S. C.T.R. at 140.

d) *Properties Subject to United States Export Control Laws*

35. As noted, Section 535.215 of the Regulations, which repeats the language of paragraph 1-101 of Executive Order No. 12281, provides: “Except where specifically stated, this license, authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.”³⁵ In Award No. 529, the Tribunal, relying on the precedent of the Partial Award in *Islamic Republic of Iran and United States of America*, Award No. 382-B1-FT (31 Aug. 1988) (“Award No. 382”),³⁶ held that Section 535.215 represented the implementation of the “U.S. law clause”³⁷ found in Paragraph 9 of the General Declaration. Consequently, as it had done in Award No. 382,³⁸ the Tribunal determined:

United States Treasury Regulations authorizing it to refuse to permit exports of Iranian properties that were subject to United States export control laws applicable prior to 14 November 1979 and the refusal of the United States pursuant to those laws to permit exports of such properties were consistent with the obligations of the United States under the General Declaration.³⁹

In referring to United States export control laws, the Tribunal meant those laws that authorize the President of the United States to prohibit exports for reasons of national security. These laws include the United States Arms Export Control Act, the Atomic Energy Act of 1954, the Nuclear Non-Proliferation Act of 1978, and the Export Administration Act of 1979.⁴⁰

36. The Tribunal, further relying on the precedent of Award No. 382,⁴¹ went on to hold that the United States “has an implicit obligation under the General Declaration to compensate Iran

³⁵ See *supra* para. 13.

³⁶ *Islamic Republic of Iran and United States of America*, Award No. 382-B1-FT, para. 46 (31 Aug. 1988), reprinted in 19 IRAN-U.S. C.T.R. 273, 287.

³⁷ See Award No. 529, para. 59, 28 IRAN-U.S. C.T.R. at 133-34. Paragraph 9 provides that “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” (emphasis added). Paragraph 9 is quoted in full *supra*, in para. 7.

³⁸ See Award No. 382, para. 62, 19 IRAN-U.S. C.T.R. at 292-93.

³⁹ Award No. 529, para 77 (f), 28 IRAN-U.S. C.T.R. at 140-41; see also *id.* para. 59, 28 IRAN-U.S. C.T.R. at 134.

⁴⁰ See *id.* para. 60, 28 IRAN-U.S. C.T.R. at 134.

⁴¹ See Award No. 382, paras. 65-66, 19 IRAN-U.S. C.T.R. at 293-94 (holding that, although Paragraph 9 does not expressly state any United States obligation to compensate Iran in the event that certain articles are not returned because of the provisions of United States law applicable prior to 14 November 1979, such an obligation is implicit in that Paragraph).

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.”⁴²

3. Further Proceedings

37. The Tribunal, in Award No. 529, deferred any determinations concerning specific properties and possible damages to a second phase of the proceedings in the present Cases. It stated:

71. At the present stage of the proceedings and upon the present record, the Tribunal does not deem it feasible to address the issue of specific properties or possible losses incurred by Iran with respect to those properties. Rather, the Tribunal will direct by a separate Order the filing of further pleadings and evidence, following which a Hearing will be scheduled.

72. The following points should be understood as to the scope of potential liability and damages:

73. First, 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.

74. Second, each Party shall have the burden of proving the facts relied on to support its claim or defence concerning the compensation at issue.

75. Third, in 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.

76. Fourth, with respect to Iranian property that has not been transferred as required by the General Declaration because the United States has not fulfilled its obligations under the General Declaration, the withdrawal by Iran of a claim against the holder of that property or the settlement of such a claim between Iran and the holder of the property subsequent to 26 February 1981 does not *per se* relieve the United States from liability to Iran for losses caused by such non-transfer.⁴³

38. Accordingly, the Tribunal, in the *dispositif*, determined that “[f]urther proceedings and submissions with respect to Part II:A, including issues related to individual properties and the

⁴² *Id.* para. 77 (g), 28 IRAN-U.S. C.T.R. at 141. *See also id.* paras. 61-65, 28 IRAN-U.S. C.T.R. at 134-37.

⁴³ *Id.* paras. 71-76, 28 IRAN-U.S. C.T.R. at 139.

determination of compensation and interest, will be described and scheduled by separate Order.”⁴⁴

IV. SECOND PHASE OF THE PROCEEDINGS

A. Procedure

39. By Order dated 30 June 1992, the Tribunal established the schedule for the submission by the Claimant of “its 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 the submission by the Respondent of its brief and evidence in response.

40. By Order dated 26 February 1993, the Tribunal, noting that the properties at issue in Case No. B43 also appeared to be at issue in Case No. A15 (II:A), consolidated those two Cases for further proceedings and determination. It further determined that proceedings in the two consolidated Cases would be governed by the Tribunal’s Order of 30 June 1992 in Case No. A15 (II:A).

41. By Order dated 2 June 1993 in Cases Nos. A15 (I:A), (I:B), (I:C), A15 (II:A), A26, and B43, the Tribunal consolidated Case No. A26 (IV) with the previously consolidated Cases Nos. A15 (II:A) and B43. It further determined that the proceedings in Cases Nos. A15 (II:A), A26 (IV), and B43 remained subject to the Tribunal’s Order of 30 June 1992 in Case No. A15 (II:A).

42. On 22 September 1995, 6 October 1995, 26 December 1995, and 26 December 1996, Iran submitted its brief and evidence on all remaining issues to be decided in the present Cases.

43. On 26 September 2001, the United States submitted its response to Iran’s brief and evidence.

44. On 17 May 2006, Iran submitted its brief and evidence in rebuttal.

45. On 20 July 2010, the United States requested that the Tribunal suspend all filing deadlines in the present Cases until certain overlapping issues in Cases Nos. A3, A8, A9, A14,

⁴⁴ *Id.* para. 77 (j), 28 IRAN-U.S. C.T.R. at 141.

and B61 (“Case No. B61”) were resolved (“Request for Suspension”). The United States argued that the overlap between the present Cases and Case No. B61 had been “heightened” by the Tribunal’s Award No. 601-A3/A8/A9/A14/B61-FT in Case No. B61 (“Award No. 601”).⁴⁵

46. In particular, the United States observed that Iran’s claims in the present Cases and Case No. B61 involved the alleged failure by the United States to transfer both non-export-controlled and export-controlled properties such that any conclusions the Tribunal were to draw in Case No. B61 would necessarily apply to the export-controlled and non-export-controlled properties at issue in the present Cases. Thus, according to the United States, the resolution of Case No. B61 would have significant bearing on issues central to the resolution of the present Cases. The United States further argued that it would be fundamentally unfair to require it to make its final rebuttal submission dealing with the overlapping issues in the present Cases without the benefit of both Iran’s initial submissions on the overlapping issues and ultimately the Tribunal’s decision on those issues in Case No. B61.

47. By Order of 8 October 2010, the Tribunal denied the United States’ Request for Suspension. In its Order, the Tribunal further determined as follows:

The Respondent may, without prejudice to either Party, limit its brief and evidence in rebuttal in Cases Nos. A15 (II:A), A26 (IV), and B43 by excluding from that submission any discussion of issues concerning the unlawful Treasury Regulations in so far as they relate to Iran’s export-controlled properties at issue in Cases Nos. A15 (II:A), A26 (IV), and B43, including whether damages were caused by those Regulations with respect to those properties, and what was the nature and extent of those damages.

48. On 17 January 2011, the United States submitted its brief and evidence in rebuttal of Iran’s brief and evidence in rebuttal in the present Cases. In accordance with the Tribunal’s Order of 8 October 2010, the United States excluded from its rebuttal submission any

⁴⁵ *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. In Award No. 601, the Tribunal noted that some export-controlled properties remained in the present Cases, and that some non-export-controlled properties remained in Case No. B61. See Award No. 601, paras. 21 and 180, 38 IRAN-U.S. C.T.R. at 211, 266. The Tribunal further determined that the Unlawful Treasury Regulations (*see supra* para. 32) were also unlawful in Case No. B61 and applied both to Iranian non-export-controlled properties and Iranian export-controlled properties. See Award No. 601, paras. 174-76, 183 (i), 38 IRAN-U.S. C.T.R. at 264-65, 267. By Order of 17 July 2009 in Case No. B61, scheduling further proceedings in that Case, the Tribunal, *inter alia*, directed that Iran submit “its brief and evidence with respect to all issues concerning the unlawful Treasury Regulations” in Case No. B61, “including whether damages were caused by those Regulations and the nature and extent of any such damages.” Case No. B61, Order of 17 July 2009.

discussion of “whether the particular exemption in the [Unlawful Treasury Regulations] ‘may have caused damages, and, if so, to what extent’ in connection with Iran’s export-controlled properties.”

49. By Order of 27 March 2012, the Tribunal invited the Parties to address the relevance of Award No. 601 in Case No. B61 to the present Cases. On 24 August 2012 and 7 January 2013, respectively, Iran and the United States submitted their briefs on that issue. Subsequently, on 7 March 2013, Iran submitted its reply to the United States’ brief, and, on 15 July 2013, the United States submitted its rejoinder to Iran’s reply.

50. By letter dated 6 September 2013, the Tribunal, *inter alia*, requested in preparation for the Hearing in the second phase of the proceedings in the present Cases that “the Parties submit . . . a list of all claims to be decided.” The Tribunal also stated that “[c]laims that are included in these Cases” but which had not been included in the schedule for the Hearing in the second phase of these proceedings would be “decided by the Tribunal on the basis of the documents before it.” Iran responded by letter filed 16 September 2013 enclosing a “list of all claims which are pending in these cases and are to be decided by the Tribunal.” The United States responded by letter filed 18 September 2013, stating that, “[s]ince filing Case A/15(II:A) in 1982, Iran has raised nearly three hundred claims in this Case” and arguing that, by submitting a list of only 103 claims with its letter dated 16 September 2013, “Iran acknowledges that the nearly two hundred other claims that it has brought against the United States are no longer pending and should be dismissed without further consideration.” The United States further requested that “the Tribunal’s Award in this Case should dismiss all claims not identified in the list attached to Iran’s letter of September 16, 2013.”

51. The Hearing in the second phase of the proceedings in the present Cases took place over forty-nine days between 7 October 2013 and 20 January 2015 at Parkweg 13, The Hague. The Hearing was divided into nine clusters. The first cluster was devoted to General Issues in the present Cases and was heard on 7-11 October 2013. The remaining eight clusters were devoted to Individual Claims and consisted of the following: (i) claims brought by the Tehran Museum of Contemporary Art, the Iranian Ministry of Islamic Guidance, and the National Iranian Radio and Television, which was heard from 14 through 18 October 2013 and involved works of art, antique musical instruments, and various equipment; (ii) a claim asserted by Hamadan Glass Company, which was heard on 21-24 January 2014 and involved various tools and items of equipment; (iii) claims brought by the Iranian Ministry of Roads and

Transportation, which was heard on 13-16 and 19-20 May 2014 and involved pre-fabricated housing units, rock-crushing equipment, cranes, and other roadbuilding equipment; (iv) claims presented by Iran Air, Iran Aseman, and the Iranian Ministry of Agriculture, which was heard on 23-24 June, 26-27 June, 30 June, and 1 July 2014 and involved, among other things, aircraft parts sent to the United States for repair as well as various aircraft equipment; (v) claims brought by the Khuzestan Water and Power Authority, the Iranian Red Crescent Society, Tehran Metro, and the Mazandaran Wood and Paper Industries, which was heard on 23-26 and 29-30 September 2014 and involved, among other things, Exide batteries, battery chargers, elastic orthopedic bandages, tunneling equipment, and a steam generator power boiler; (vi) claims asserted by Mazandaran University, Iran Bastan Museum, and the Iranian Museum of Natural History, which was heard on 10-14 November 2014 and involved, among other things, academic publications, Chogha Mish Artifacts held by the Oriental Institute of the University of Chicago, and various fossils; (vii) claims presented by Kharg Chemical Company Ltd., which was heard on 15-19 December 2014 and involved, among other things, a cash payment made under a letter of credit, various tools and equipment, pre-fabricated housing parts, and a gas engine compressor system; and, finally, (viii) 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, which was heard on 12-16 and 19-20 January 2015 and involved export-controlled properties – namely, mobile spectrum monitoring units, Triga nuclear fuel, a computer, satellite imaging processing equipment, and a hydraulic test cart.

52. Between 18 April 2013 and 14 November 2014, the Claimant sent eight letters to the Tribunal, informing it that it had decided to withdraw, and requesting that the Tribunal terminate the arbitral proceedings insofar as they were related to, the following 26 claims: G-20, G-23, G-25, G-33, G-34, G-104, G-108, G-110, G-114, G-119, G-129, G-130, G-133, G-147, G-152, G-155, G-157, Supp. (1)-6, Supp. (2)-10, Supp. (2)-20, Supp. (2)-21, Supp. (2)-33, Supp. (2)-41, Supp. (2)-42, Supp. (2)-54, Supp. (2)-69, and Supp. (3)-1. In respect of each request, the Tribunal provided the Respondent with an opportunity to raise any justifiable grounds for objection in accordance with Article 34 (2) of the Tribunal Rules of Procedure (“Tribunal Rules”).

53. In respect of Claim G-114, the Respondent requested that the Tribunal make an award of costs in its order terminating the arbitral proceedings insofar as they were related to this Claim. Following an exchange of submissions, the Tribunal issued an Order dated

13 May 2014 terminating the arbitral proceedings insofar as they were related to this claim and denying the Respondent's request for an award of costs.

54. In respect of Claim G-147, the Respondent similarly requested that the Tribunal rule on its request for an award of legal fees and expenses to the Respondent before terminating the arbitral proceedings. On 23 June 2014, the Tribunal issued an Order, in which it stated that it would rule on the Respondent's request for an award of legal fees and expenses and terminate the arbitral proceedings in the present Award. An exchange of submissions by the Parties followed the Tribunal's Order. Having considered those submissions, the Tribunal holds that the circumstances invoked by the Respondent do not warrant granting its request for an award of costs. The Tribunal also hereby terminates the arbitral proceedings in the present Cases insofar as they relate to Claim G-147 pursuant to Article 34 (2) of the Tribunal Rules.

55. In respect of the other claims listed in paragraph 52 above, the Tribunal issued Orders dated between 3 April 2013 and 14 December 2014 terminating the arbitral proceedings insofar as they related to those claims pursuant to Article 34 (2) of the Tribunal Rules.

56. The Tribunal also issued Orders dated 13 January 2016 and 17 February 2016 terminating the arbitral proceedings insofar as they related to Claims G-14 and G-17, and Claim G-116, respectively, following corresponding joint requests from the Parties pursuant to Article 34 (1) of the Tribunal Rules.

57. As requested by the Tribunal at the Hearing, on 4 March 2015 Iran submitted a "Summary Table of Claims," in which it indicated the relief it was requesting with respect to each of its Individual Claims.

58. 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

- (b) any pending claims that “had not been included in the schedule for the Hearing in the second phase of these proceedings”⁴⁶ and that are not addressed in the present Partial Award.

59. In light of the procedural history of the present Cases,⁴⁷ and to avoid potentially conflicting decisions in the present Cases and Case No. B61, all questions concerning the Unlawful Treasury Regulations, in so far as they relate to Iran’s export-controlled properties at issue in the present Cases, are also separated for later decision. In due course, the Tribunal will issue an Order addressing the procedural steps to be taken in this matter.

60. Accordingly, the present Partial Award deals only with Iran’s claims relating to non-export-controlled properties.

B. Merits

1. General Issues

a) Introduction

61. In this section, the Tribunal deals only with the main General Issues arising in the present Cases: (i) “properties” within the scope of Paragraph 9; (ii) the point in time at which the United States’ obligation under Paragraph 9 arose; (iii) the nature of the United States’ obligation under Paragraph 9; (iv) the role ascribed to Iran under Paragraph 9; (v) Iran’s alternative claim based on Paragraph 8 of the General Declaration; and (vi) Iran’s alternative claim based on General Principle A. Other issues will be addressed, to the extent required, in connection with the Tribunal’s discussion of the Individual Claims.

⁴⁶ See *supra* para. 50.

⁴⁷ See *supra* paras. 45-49.

b) *Scope of the United States' Obligation Under Paragraph 9*

(1) "Properties" Within the Scope of Paragraph 9

(a) *Introduction*

62. Paragraph 9 provides that the obligation in that Paragraph applies to "all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs."⁴⁸

(b) *Iran's Contentions*

63. According to Iran, the Parties agree that goods shipped by Iran to the United States for repair, on loan to entities within the United States, or purchased and delivered to Iranian agents within the United States, constitute "Iranian properties." For Iran, therefore, the issue at the crux of the present Cases is whether Paragraph 9 applies "to an item ordered by an Iranian entity from a United States seller which had not been delivered as at 14th November 1979 and which was then affected by the U.S. assets freeze such that it couldn't then be delivered to Iran."

64. In Iran's view, the properties encompassed by Paragraph 9 include properties that remained undelivered. Thus, Iran asserts that the term "Iranian properties" in Paragraph 9 encompasses

both tangible properties to which Iran had title as well as properties to which Iran had a right to have title transferred to it because of its interest in the property. It would also include property interests, and an interest in this sense would include a right to the property or a right in the property, and that right could arise, for example, by virtue of having paid or being liable to pay the relevant purchase price.

Finally, properties would also include liabilities due to Iran, for example prepayments by Iran, debts owed to Iran, and the like.

In support of its view, Iran advances the following five arguments.

⁴⁸ See *supra* para. 7.

(i) *The Proper Interpretation of the Term “Iranian properties” in the Algiers Declarations*

65. Iran submits that the meaning of the term “Iranian properties” in Paragraph 9 should be determined “as a matter of treaty interpretation” in accordance with international law. Iran avers that in this regard there is no *renvoi* to domestic law, since the drafters of Paragraph 9 could have specifically stated that the applicable domestic law should determine which properties were “Iranian,” but did not do so. Iran underscores the fact that neither the General Declaration, nor Awards No. 529 and No. 601, refer to domestic law in connection with the term “Iranian properties.”

66. Iran submits that Paragraph 9 was intended specifically to overcome the issue that properties, which were the subject of the Blocking Order of 14 November 1979, could not be transferred to Iran as a result thereof.⁴⁹ Therefore, Iran asserts that the scope of properties covered by Paragraph 9 should extend to the same broad range of interests as the Blocking Order and its implementing regulations. Iran argues that a broad interpretation of the term “Iranian properties” in Paragraph 9 would be in line with the Paragraph’s object, purpose, and context, in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties (“Vienna Convention”).⁵⁰ This reading of Paragraph 9, according to Iran, is bolstered by its reading of General Principles A and B of the General Declaration. General Principle A,⁵¹ for Iran, is evidence of the United States’ commitment to re-initiate the movement of Iranian assets, and, therefore, no distinction can be drawn either between assets that Iran had sent for repair and those it had purchased, or between sales contracts where there had been a formal delivery, and where there had not. General Principle B,⁵² according to Iran, reflects the intention that all legal proceedings between Iran and United States persons before domestic courts be terminated. Thus, Iran concludes, a reading of Paragraph 9 that required United

⁴⁹ *See supra* para. 8.

⁵⁰ Vienna Convention on the Law of Treaties, *opened for signature* 23 May 1969, 1155 U.N.T.S. 331, 81 I.L.M. 679 (entered into force 27 Jan. 1980).

⁵¹ *See supra* para. 7.

⁵² General Principle B, among other things, obliges the United States, through the procedures provided in the Claims Settlement Declaration,

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

States courts to resolve disputes as to whether properties should be considered “Iranian properties” would stand in contradiction to General Principle B. Moreover, in requiring the nullification of all attachments, General Principle B must, according to Iran, be premised on an understanding of properties in a very wide sense, since attachments under United States law can be levied against properties, interests in properties, debts, liabilities, and the like.

67. From this perspective, Iran submits that delivery cannot be considered part of the test for “Iranian properties,” since that would be contrary to the purpose of Paragraph 9. In that respect, Iran argues that requiring delivery to Iran of the properties at issue in the present Cases in order for these properties to be considered “Iranian properties” would defeat the purpose of Paragraph 9 since, if the property had been physically delivered to Iran, the obligation to arrange for its transfer would not apply; this is because Iran would already be in possession of the property, and there would be nothing to transfer.

68. Moreover, according to Iran, at the time of, and in the period immediately after, the conclusion of the Algiers Declarations, the Parties viewed Paragraph 9 as containing a broad definition of property. Iran submits that the common understanding of the Parties in this regard can be seen in the language used by the United States in contemporary Executive Orders and Treasury Regulations enacted to implement those Orders, the language on the forms relied on for the census of Iranian properties conducted in 1982, and in the *travaux préparatoires*, diplomatic notes, and material filed in the course of the present Cases.

69. First, as regards the Executive Orders and Treasury Regulations, Iran points out that Executive Order No. 12281,⁵³ issued concurrently with the conclusion of the Algiers Declarations, evinced the shared understanding of the Parties that Paragraph 9 would refer to a broad definition of property that would be akin to the usage of the term underlying the Blocking Order of 14 November 1979 and Section 535.311 of Treasury Regulations that implemented the Blocking Order,⁵⁴ thereby including “every conceivable interest in property, however

⁵³ See *supra* para. 11.

⁵⁴ Section 535.311 (Property; property interests) reads as follows:

Except as defined in § 535.203(f) for the purposes of that section, the terms “property” and “property interest” or “property interests” shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, bankers’ acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships,

held,” such as liabilities owed to Iran and advance payments. Iran submits that there is further support for its contention in Section 535.215 of the Treasury Regulations, issued on 26 February 1981, which uses the formulation “properties in which Iran or an Iranian entity has an interest, held by any person subject to the jurisdiction of the United States.”⁵⁵ For Iran, it is clear that the United States itself, in Sections 535.215 and 535.333 of the Treasury Regulations of 26 February 1981, so understood and implemented its Paragraph 9 obligation by directing persons subject to the jurisdiction of the United States to transfer to Iran and its controlled entities all “liabilities” and property interests of Iran, including “debts.”⁵⁶

70. Second, as another example of the Parties’ common understanding of the broad meaning of “Iranian properties” in Paragraph 9, Iran notes that the forms relied on for the 1982 census of Iranian properties conducted by the United States referred to beneficial ownership, as well as to properties in which there was an Iranian interest.⁵⁷ Reading the term “Iranian properties” in Paragraph 9 to include items over which Iran had beneficial ownership would, according to Iran, be in line with the Tribunal’s jurisprudence.

71. Third, Iran submits that certain diplomatic notes and material filed in the course of the present Cases constitute evidence of “subsequent practice” in accordance with Article 31(3)(b) of the Vienna Convention⁵⁸ and support a broad interpretation of the term “Iranian properties” in Paragraph 9. Iran points in particular to a series of diplomatic notes exchanged between the Parties in 1981 and 1982, addressing various, as the diplomatic notes termed them, “Iranian-owned military supplies” that suppliers in the United States wished to sell since they could not

real estate mortgages, deeds of trust, vendors’ sales agreements, land contracts, real estate and any interest therein, leaseholds, grounds rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

31 C.F.R. § 535.311. *See supra* para. 9 & note 9.

⁵⁵ *See supra* para. 12.

⁵⁶ Section 535.333 of the Treasury Regulations provides, in relevant part:

(a) The term “properties” as used in § 535.215 includes all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts. It does not include bank deposits or funds and securities ...

⁵⁷ *See supra* para. 16.

⁵⁸ *See supra* note 50.

be exported for want of an export license.⁵⁹ Iran notes that the United States was treating those items as Iranian property, despite the fact that they had not been delivered. Iran also relies on several reports submitted by the United States to the Tribunal, listing property as “GOI-owned” property.⁶⁰ Moreover, in Iran’s view, the intention of the drafters of Paragraph 9 was to ensure that a wide range of properties that had been blocked would be unblocked. Iran contends that the *travaux préparatoires* of the Algiers Declarations, in particular the November 1980 Resolution of Iran’s Majlis (“Majlis Resolution”),⁶¹ confirm this intention as one of the main principles of the settlement reached by the Algiers Declarations.

72. In addition, Iran advances the argument that a broad interpretation of the term “Iranian properties” in Paragraph 9 would be in line with its context and the object and purpose of the General Declaration, in accordance with Article 31(1) of the Vienna Convention.⁶² Iran reiterates in this regard its assertion that Paragraph 9 was intended as a corollary to the freezing of properties by the United States pursuant to the Blocking Order of 14 November 1979 and the 1979 Treasury Regulations.

73. Therefore, according to Iran, the definition of “Iranian properties” in Paragraph 9 includes, not only properties and property interests of Iran, whether delivered to Iran or not, but also liabilities owed to Iran and advance payments paid out by Iran.

(ii) A Broad Definition of “Property” in International Law

74. According to Iran, international law accords a broad interpretation of the term “properties,” limiting its scope neither to tangible properties only, nor to properties by reference to legal title. In support of this argument, Iran adduces several examples, which, it contends, reflect the “generally accepted” broad interpretation of the ordinary meaning of the term “property” in international law and, in turn, for the purposes of interpreting Paragraph 9. Moreover, Iran submits that international law interprets the term “property” to include interests

⁵⁹ See *supra* para. 68.

⁶⁰ See *supra* para. 20. “GOI-owned” was used as an abbreviation in these reports for “Government of Iran-owned.”

⁶¹ The “Majlis” is the Islamic Consultative Assembly of Iran, Iran’s legislative body. See General Declaration, Preamble, 1 IRAN-U.S. C.T.R. at 3.

⁶² See *supra* note 50.

in property.⁶³ At least certain of these examples, in Iran's view, are "well known" and "often regarded as a source of customary international law."

75. Iran further submits that, in general, the Tribunal has had recourse to general principles of international law in interpreting the Algiers Declarations and has not considered itself bound to conduct a choice-of-law analysis or to apply domestic law.⁶⁴ For Iran, the Tribunal is at liberty to determine the law most appropriate in order to achieve the objectives of the Algiers Declarations, which include, in particular, the restoration of Iran's financial position to that which existed prior to 14 November 1979 and ensuring the mobility and free transfer of Iranian assets to Iran.

(iii) Non-Applicability of Lex Rei Sitae and UCC Section 2-401 to the Interpretation of the Term "Iranian Properties"

76. Iran argues that it does not consider the *lex rei sitae* to be applicable to the determination of which properties would fall within the scope of Paragraph 9. Aside from its argument that the interpretation of the term "Iranian properties" should be based on international law, Iran deems the application of the *lex rei sitae* to be inappropriate, since the default rule in United States law is that title transfers upon delivery of the property in question. For Iran, the application of the *lex rei sitae* would defeat the purpose of Paragraph 9, since the *lex rei sitae* would in many instances require that the properties in question had been delivered to Iran prior to 19 January 1981, which would mean that very few properties would have been subject to the obligation in Paragraph 9.

77. Iran submits that the Uniform Commercial Code ("UCC") Section 2-401 is not applicable to the interpretation of the term "Iranian properties" in Paragraph 9, for four reasons. First, Iran asserts that the UCC would substantially frustrate the benefit to Iran of Paragraph 9, being a "carefully confined position of domestic law" limited to private seller-buyer issues. Second, according to Iran, the wording of Paragraph 9 confines the applicable United States law to the relevant export control laws, as the Tribunal held in Award No. 529.⁶⁵ Third, even

⁶³ Iran cites, *inter alia*, Treaty of Amity, Economic Relations, and Consular Rights, Iran-U.S., 15 Aug. 1955, 284 U.N.T.S. 93; and *Amoco Int'l Finance Corp. and Islamic Republic of Iran et al.*, Award No. 310-56-3, para. 107 (14 July 1987), reprinted in 15 IRAN-U.S. C.T.R. 189, 220.

⁶⁴ See, e.g., *Harnischfeger Corp. and Ministry of Roads and Transportation et al.*, Award No. 175-180-3 (26 Apr. 1985), Dissenting Opinion of Richard M. Mosk, reprinted in 8 IRAN-U.S. C.T.R. 119, 140.

⁶⁵ Iran cites Award No. 529, para. 1, 28 IRAN-U.S. C.T.R. at 130.

if United States domestic law were applicable to the interpretation of Paragraph 9, Iran submits that the New York Supreme Court, Appellate Division, recognized that the term “property” and “interest in property” in administrative regulations such as Office of Foreign Assets Control (“OFAC”) regulations, cannot be limited only to properties to which one has title. Lastly, Iran submits that UCC Section 2-401 is not intended to apply in a public law context. In any case, according to Iran, even if UCC Section 2-401 were applicable, it provides only a default rule for the passage of title upon delivery, and therefore the Tribunal would have to examine each of the individual contracts in the various claims in order to determine what the relevant parties have agreed with regard to the transfer of title.

(iv) *Changed Circumstances*

78. Iran moreover contends, by reference to Article V of the Claims Settlement Declaration and an earlier decision of the Tribunal, that the doctrine of changed circumstances should be taken into account, considering that events in Iran resulted in the disruption of many of its pre-revolutionary contractual arrangements, leading to non-delivery of items by its United States contractors.⁶⁶ Iran also submits that Article V of the Claims Settlement Declaration mandates that changed circumstances should be treated “on the same level as ‘contract provisions.’”

79. Relatedly, Iran argues that requiring delivery of items before considering such items to be “Iranian properties” for the purpose of Paragraph 9 would undermine the purpose of the obligation to arrange for their transfer and would also be contrary to Award No. 601. For Iran, since delivery was made impossible by the United States’ embargo against it, Iran should be considered the owner of the respective properties even where delivery had not yet taken place. Therefore, relying on paragraphs 151 and 152 of Award No. 601, Iran argues that elements such as clauses in contracts relating to the properties at issue, the law applicable to those contracts, or whether Iran had paid for all or some of the items claimed, may be relevant evidence in determining whether such properties are Iranian, but are not dispositive of that question.

⁶⁶ Iran cites *Questech, Inc. and Ministry of National Defence of the Islamic Republic of Iran*, Award No. 191-59-1 (20 Sept. 1985), reprinted in 9 IRAN-U.S. C.T.R. 107, 122-23.

(v) *Competent Forum*

80. In the case of contested ownership, Iran submits that, if there is a dispute between the United States and Iran as to whether a particular piece of property falls within the term “Iranian properties” for the purposes of Paragraph 9, that dispute should be resolved by the Tribunal. Iran specifically rejects the proposition that a domestic court would have jurisdiction to decide whether an item falls within the term “Iranian properties.” Iran’s position is predicated on two grounds. First, any determination by a domestic court would confuse the private and international law relationships in the present Cases. For Iran, the Tribunal has jurisdiction to decide all questions of fact and law arising out of Iran’s claims against the United States for breaches of Paragraph 9. A decision otherwise, for Iran, would involve the Tribunal effectively delegating an essential part of its function to various domestic courts. Second, Iran considers that allowing domestic courts to interpret Paragraph 9 would be inconsistent with General Principle B, which calls for the termination of all litigation as between the governments of each Party and the nationals of the other.⁶⁷

(c) *The United States’ Contentions*

(i) *Criteria for Properties to Fall Within the Scope of Paragraph 9*

81. The United States submits that, in order for any particular item of property to fall within the scope of Paragraph 9, Iran must show that: (i) the property was tangible, still in existence, and within the jurisdiction of the United States as of 19 January 1981; (ii) the claiming entity was controlled by the Government of Iran as of the date of the Algiers Declarations; and (iii) Iran held uncontested, non-contingent legal title to the property as of 19 January 1981.

(ii) *“Iranian Properties” Include only Those Tangible Properties in Which Iran Held Uncontested and Non-Contingent Title*

82. In the United States’ view, although the Tribunal has held that almost all aspects of the United States Treasury Regulations dated 26 February 1981 were consistent with its obligations under the Algiers Declarations, the definition of “Iranian properties” in these Regulations was the one point held to be inconsistent. The United States submits that Paragraph 9 only encompasses tangible property, and not an intangible right or interest in relation to an item of

⁶⁷ See *supra* note 52.

property. Moreover, for the United States, any obligation it may have under Paragraph 9 cannot come into effect until the factual and legal ownership over the property in question has been resolved.

83. The United States rejects Iran's contentions that the term "Iranian properties" should be broadly defined as including any interest in property, noting that the Algiers Declarations could not have required the transfer to Iran of the entirety of tangible property in which Iran had only an interest. Moreover, according to the United States, that the definition of the term "property" in OFAC regulations is broader than properties to which one has title does not help Iran, since the class of Iranian interests and assets that was blocked on 14 November 1979 was much broader than the class of properties that Iran actually owned.

84. The scope of "Iranian properties" in Paragraph 9, the United States contends, cannot include properties that were not Iranian and within the jurisdiction of the United States on 13 November 1979, because Paragraph 9 did not create an obligation on the part of the United States to put Iran in a better position than it was on 13 November 1979. It is the position of the United States that its obligation under Paragraph 9, when read with General Principle A, was not to remedy the effects of the blocking measures enacted by the Blocking Order of 14 November 1979. Instead, it was to put Iran in the position that it was in prior to the asset freeze.

85. According to the United States, Executive Order No. 12281, which was drafted and shared with Iran during the negotiation of the Algiers Declarations, mirrors the "plain and accepted meaning of the" Declarations. On the other hand, the Blocking Order, which was issued on 14 November 1979, did not. For the United States, therefore, the scope of the Blocking Order is not co-extensive with that of Paragraph 9, with the latter referring only to a much narrower category of "Iranian properties."

86. The United States interprets the term "Iranian properties" in Paragraph 9 as meaning "properties to which Iran has title." Relying on the Tribunal's decision in Award No. 529, the United States submits that it has no responsibility as regards properties for which ownership remains contested, since Award No. 529 limited the definition of "Iranian properties" in Paragraph 9 to those which Iran owns and, specifically, where Iran's title was uncontested and non-contingent. The United States rejects any reliance on the language used in the forms employed for its 1980 and 1982 census of blocked Iranian assets, contending that the census

included properties with respect to which Iran's interest would have been partial and contingent and, therefore, not subject to any obligation under Paragraph 9. Therefore, the United States submits that ownership of an item of property follows from title.

(iii) *The Lex Rei Sitae Determines Whether Title Had Been Transferred to Iran*

87. In determining whether title in an item of property had been transferred to Iran, the United States argues that, because public international law does not supply rules for deciding the ownership of property, the Tribunal must engage, as other international courts and tribunals do, in a *renvoi* analysis, that is, the Tribunal should have recourse to domestic law in deciding the present Cases.⁶⁸ The United States contends that international law contains no substantive rules of property law and cannot be a source of rights in property, so that it would be the municipal law of the state where the property is located that determines whether a particular right *in rem* exists, the scope of that right, and in whom it vests.⁶⁹

88. The United States contends that the *lex rei sitae* rule should determine the passage of title to the properties claimed in the present Cases. The United States emphasizes that, while Article 33 of the Tribunal Rules indicates that the Tribunal is to apply the choice of law rules that it considers applicable, in the context of the transfer of title in property, there is near uniform agreement that the *lex rei sitae* is the applicable conflict rule. According to the United States, the proprietary effects of any transfer of title will depend on the *lex rei sitae*, which will determine whether delivery of the property to the transferee is necessary for title to pass, or whether title passed to the transferee by mere agreement. In this context, the United States submits that, if the underlying contracts in the present Cases had been produced by Iran, it would be agreeable to applying the terms of those contracts as regards the transfer of title. However, in their absence, the United States asserts that municipal law could apply even in cases where the dispute is primarily governed by international law, especially where the particular claim at international law requires a determination of the party's rights and

⁶⁸ The United States cites *Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain)*, Judgment, 1970 I.C.J. 3 (5 Feb.).

⁶⁹ The United States cites Zachary Douglas, *The Hybrid Foundations of Investment Treaty Arbitration*, 74 BRIT. Y.B. INT'L L. 151, 197-98 (2003) and HEGE ELIZABETH KJOS, *APPLICABLE LAW IN INVESTOR-STATE ARBITRATION: THE INTERPLAY BETWEEN NATIONAL AND INTERNATIONAL LAW* 157-158 (2013).

obligations in accordance with national law. The United States points out that this position is in line with the Tribunal's jurisprudence on the matter.⁷⁰

89. For the United States, the application of the *lex rei sitae* in deciding whether title in property has been transferred is long established, given the "unusual consistency of state practice in application of the *lex situs* rule, [and] the number of authorities supporting it as a rule of private international law."

(iv) *UCC Section 2-401 as the Relevant Rule for the Transfer of Title*

90. In the view of the United States, the Tribunal should, as a consequence of using the *lex rei sitae* test, apply UCC Section 2-401 as the relevant rule in order to decide whether title to a particular piece of property had been transferred to Iran.

91. In support of its position that UCC Section 2-401 is applicable in the present Cases, the United States observes that Iran's claims for the pieces of property in question are founded in its contracts with private United States citizens and corporations that are subject to domestic law, and not international law. The United States asserts that, since disputes relating to these contracts cannot be brought to the Tribunal directly, nor against the United States indirectly, the present proceedings do not entitle Iran to have its disputes with private United States contractors resolved according to international law.

(v) *Competent Forum*

92. The United States submits that where ownership of a claimed item of property is in dispute, Iran would be required to pursue title to that property, or contract performance, in United States or other appropriate domestic courts. The United States more specifically objects to Iran's proposal that the Tribunal resolve any contestation of title in the context of the present Cases on three grounds. First, for the United States, such a proposal is unfeasible and unsupported by the negotiating history of the Algiers Declarations. Second, according to the United States, Iran had an obligation to quiet title to contested property by bringing suit in the United States. Third, the United States underscores due process concerns if the Tribunal were to resolve an ownership dispute without the individual property holders being party to such a

⁷⁰ The United States cites *George E. Davidson (Homayounjah) and Islamic Republic of Iran*, Award No. 585-457-1, paras. 69 and 71 (5 Mar. 1998), reprinted in 34 IRAN-U.S. C.T.R. 3, 22-23; and *Frederica Lincoln Riahi and Islamic Republic of Iran*, Award No. 600-485-1, paras. 165-172 (27 Feb. 2003), reprinted in 37 IRAN-U.S. C.T.R. 11, 57-59.

proceeding, which, the United States observes, they could not become due to the limits of the Tribunal's jurisdiction.

(d) *The Tribunal's Decision*

(i) *The Issues Before the Tribunal*

93. The Tribunal begins by observing that Paragraph 9 is restricted to "all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs."⁷¹ Thus, there are three criteria that an item of property must fulfil before it is encompassed in the scope of Paragraph 9: first, "all" items of property must be "Iranian properties"; second, the items must be located in the United States and abroad; and, third, the items must not fall within the scope of the preceding Paragraphs of the General Declaration.

94. The Tribunal notes that there is broad agreement between the Parties as to the second criterion, and that, in both Parties' views, this criterion means that the claimed items of property in the present Cases must have been within the jurisdiction of the United States as at 19 January 1981. In many instances, however, the Parties disagree as to whether claimed properties were in fact within the jurisdiction of the United States on that date.

95. As to the third criterion, the Tribunal observes that, with the exception of an alternative argument advanced by Iran with regard to Paragraph 8, there has been no other argument made by either Party that the items claimed in the present Cases fall within the scope of the Paragraphs preceding Paragraph 9. The Tribunal will turn to Iran's alternative Paragraph 8 argumentation below.⁷²

96. The Tribunal therefore considers that, apart from its consideration of Iran's alternative Paragraph 8 argument below, it is not called upon to elaborate further on the second and third criteria for items of property to fall within the scope of Paragraph 9. It will therefore turn to consider the first criterion, that the item claimed falls within the term "all Iranian properties" for the purposes of Paragraph 9.

⁷¹ Paragraph 9 *in fine*.

⁷² See *infra* section IV.B.1.b.4.

(ii) *In Award No. 529, the Tribunal Has Interpreted the Term “All Iranian Properties” as “Tangible” Properties “Solely Owned by Iran”*

97. The Tribunal recalls that the United States’ obligation under Paragraph 9 is restricted to arranging for the transfer of “all Iranian properties” located within the jurisdiction of the United States on 19 January 1981. In Award No. 529, the Tribunal held that “Iran was not entitled to possession of properties owned by others or if it had only a partial or contingent interest in such property.”⁷³ Thus, in accordance with the Tribunal’s holding in Award No. 529, in order for an item of property to fall within the meaning of “Iranian properties” pursuant to Paragraph 9, it had to be solely owned by Iran on 19 January 1981. In its decision in Award No. 601, the Tribunal relied on its findings in Award No. 529, stating that, subject to the United States law clause,

all that was required in order to trigger the transfer obligation was that the properties be “Iranian,” in the sense that they were *solely owned by Iran*. As long as this was the case, it was simply irrelevant whether the properties had been (fully) paid for or not, or whether Iran might have breached its contracts with the United States private companies.⁷⁴ (Emphasis added.)

98. The Tribunal has therefore interpreted the term “all Iranian properties” in Paragraph 9 to mean properties that “were solely owned by Iran.” Sole ownership by Iran of the properties claimed, therefore, is the test for determining whether an item of property falls within the scope of Paragraph 9. This is also borne out by paragraph 40 of Partial Award No. 529, where the Tribunal held:

It seems clear from the reference in paragraph 9 of the General Declaration to “Iranian” properties, that the obligation of the United States with respect to tangible properties was limited to properties that were *owned* by the Government of the Islamic Republic of Iran, or its “agencies, instrumentalities, or controlled entities” as Executive Order No. 12281 specified.⁷⁵ (Emphasis added.)

⁷³ Award No. 529, para. 43, 28 IRAN-U.S. C.T.R. at 127.

⁷⁴ Award No. 601, para. 152, 38 IRAN-U.S. C.T.R. at 256-57.

⁷⁵ Award No. 529, para. 40, 28 IRAN-U.S. C.T.R. at 125-26.

99. Moreover, the Tribunal in Award No. 529 restricted the scope of “Iranian properties” in Paragraph 9 exclusively to “tangible properties”⁷⁶ that can be solely owned. This category of “properties” is smaller than mere interests in property, since such interests in property are neither tangible (and, for the purposes of Paragraph 9, need not be transferred), nor solely owned by the person who asserts his right to them.

100. The Tribunal considers that it has interpreted the meaning of the term “Iranian properties” in Award No. 529 and is not called upon to reopen its decision on the matter. However, in light of the extensive and, at times, novel argumentation provided by both Parties, and in particular Iran, on the matter of the common understanding of the Parties as to the definition of the term “Iranian properties,” the Tribunal considers it helpful briefly to address the Parties’ submissions in this regard.

101. As set out above, the essence of Iran’s argument is that the term “Iranian properties” in Paragraph 9 should be given a broad reading, in line, in Iran’s view, with principles of international law, because of the Parties’ common understanding that this was to be the case. Iran submits that this common understanding of the Parties can be seen from the language used by the United States in Sections 535.215 and 535.333 of the Treasury Regulations, enacted on 26 February 1981 to implement Executive Order No. 12281, the language on the forms relied on for the census of Iranian properties conducted in 1982, and the *travaux préparatoires*, diplomatic notes, and material filed in the course of the present Cases.

102. The Tribunal has consistently held that the Algiers Declarations are to be interpreted in accordance with the Vienna Convention.⁷⁷ The general rule of interpretation is set forth in Article 31 of the Vienna Convention, which provides:

⁷⁶ The reference to “tangible properties” as the scope of properties falling within Paragraph 9 can be found throughout Award No. 529, in particular, at paras. 69 and 77(a) (*dispositif*), 28 IRAN-U.S. C.T.R. at 138 and 140. Such a reference can also be found in Award No. 601, at para. 141, 38 IRAN-U.S. C.T.R. at 252. *See also infra* note 82.

⁷⁷ *See Islamic Republic of Iran and United States of America*, Decision No. DEC 32-A18-FT, at 14-15 (6 Apr. 1984), *reprinted in* 5 IRAN-U.S. C.T.R. 251, 259; *Islamic Republic of Iran and United States of America*, Award No. ITL 63-A15(I:G)-FT, para. 17 (20 Aug. 1986), *reprinted in* 12 IRAN-U.S. C.T.R. 40, 46; *Islamic Republic of Iran and United States of America*, Decision No. DEC 62-A21-FT, para. 8 (4 May 1987), *reprinted in* 14 IRAN-U.S. C.T.R. 324, 328; *Islamic Republic of Iran and United States of America*, Award No. 382-B1-FT, para. 47 (31 Aug. 1988), *reprinted in* 19 IRAN-U.S. C.T.R. 273, 287; *Islamic Republic of Iran and United States of America*, Award No. 590-A15(IV)/A24-FT, para. 73 (28 Dec. 1998), *reprinted in* 34 IRAN-U.S. C.T.R. 105, 129; *Islamic Republic of Iran and United States of America*, Award No. 597-A11-FT, para. 181 (7 Apr. 2000), *reprinted in* 36 IRAN-U.S. C.T.R. 84, 128-29; and *United States of America and Islamic Republic of Iran*, Decision No. DEC 130-A28-FT, para. 53 (19 Dec. 2000), *reprinted in* 36 IRAN-U.S. C.T.R. 5, 21. (*See supra* note 50.)

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.⁷⁸

103. Applying Article 31 of the Vienna Convention, the text of the treaty is the starting point in the “search for the real intention of the contracting parties in using the language employed by them.”⁷⁹ While interpretation must be based above all upon the text of the treaty,⁸⁰ “[b]efore one can draw any conclusions concerning the clarity of the text, one has to interpret the terms

⁷⁸ Vienna Convention, art. 31.

⁷⁹ LORD MCNAIR, *THE LAW OF TREATIES* 366 (1961).

⁸⁰ In *United States of America and Islamic Republic of Iran*, Decision No. DEC 37-A17-FT, para. III.9 (18 June 1985), *reprinted in* 8 *IRAN-U.S. C.T.R.* 189, 200-201, the Tribunal, in discussing Article 31 of the Vienna Convention, noted that the “‘object and purpose’ do not form any independent basis for interpretation, but rather are factors to be taken into account in the determination of the ‘meaning to be given to the terms of the treaty.’” The Tribunal went on to note:

The terms themselves should be given primary weight in the analysis of the text. This is even more than normally so in a case like the present one where the [Algiers] Declarations were not the result of direct negotiations between the Governments of Iran and the United States, but of indirect negotiations through a third Government.

employed in their context and in light of the object and purpose of the treaty.”⁸¹ As will be discussed below, a significant element in this interpretation is consideration of the parties’ “subsequent practice in the application of the treaty,” pursuant to Article 31(3)(b) of the Vienna Convention.

104. The Tribunal finds that the text of Paragraph 9 is clear and unambiguous. The reference in Paragraph 9 to “Iranian properties,” considering the ordinary and natural meaning of this term, leads to the conclusion that the obligation of the United States is with respect to tangible properties that were owned by Iran or its entities, as the Tribunal reiterated various times in Award No. 529.⁸²

105. In affirming this conclusion, the Tribunal also considers the practice of the Parties as evidence of their common understanding of the meaning of the term “Iranian properties” in Paragraph 9. In this connection, the Tribunal notes that Executive Order No. 12281,⁸³ which was issued by the President of the United States to implement the United States’ Paragraph 9 obligation, applied, by its own terms, only to “properties . . . owned by Iran or its agencies, instrumentalities, or controlled entities.”⁸⁴ The Tribunal, in Award No. 529, noted that both Parties considered this Order to be in compliance with the Algiers Declarations.⁸⁵ Thus, the Tribunal held that Executive Order No. 12281 formed part of the practice of the treaty for purposes of its interpretation as provided in Article 31(3)(b) of the Vienna Convention.⁸⁶ The

⁸¹ *Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL 83-B1-FT, para. 84 (9 Sept. 2004), reprinted in 38 IRAN-U.S. C.T.R. 77, 109. See also RICHARD K. GARDINER, TREATY INTERPRETATION 161-62 (2008).

⁸² The reference to “tangible properties” as the scope of properties falling within Paragraph 9 can be found in Award No. 529, paras. 2, 5, 11, 15, 17, 36, 40, 69, and 77 (a) (*dispositif*), 28 IRAN-U.S. C.T.R. at 114, 116, 117, 118, 119, 125, 126, 138, 140. That reference can also be found in Award No. 601, para. 141, text accompanying note 119, reprinted in 38 IRAN-U.S. C.T.R. at 252 (reprinted as note 124).

⁸³ See *supra* para. 11.

⁸⁴ Executive Order No. 12281, paragraph 1-101 (emphasis added). See *supra* para. 11.

⁸⁵ Award No. 529, para. 48, 28 IRAN-U.S. C.T.R. at 129. See *supra* para. 29. In its 31 August 1983 Reply to the Statement of Defense of the United States, Iran agreed that the Executive Orders issued by the President of the United States on 19 January 1981 “provide persuasive evidence of the actual intent of the United States and Iran.” With respect to paragraph 1-101 of Executive Order No. 12281, in particular, which directed the transfer of “properties . . . owned by Iran,” Iran noted that that provision “requires . . . the transfer of *Iranian properties* in the possession of persons subject to the authority of the United States” (emphasis added).

⁸⁶ Award No. 529, para. 48, 28 IRAN-U.S. C.T.R. at 129. See *supra* para. 29. It is undisputed that, during the negotiation of the Algiers Declarations, the United States delegation, through the Algerian intermediaries, submitted the draft of Executive Order No. 12281 to the Iranian delegation, which did not object to it. It has therefore been argued that Executive Order No. 12281 represents an “instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty” in accordance with Article 31(2)(b) of the Vienna Convention; and, thus, that it forms part of the

subsequent practice of the parties to a treaty “may be relevant in shedding light on the original intentions of the Parties and is compelling evidence of the parties’ understanding as to the meaning of the treaty’s provisions.”⁸⁷ Indeed, it is “of utmost importance for its interpretation.”⁸⁸ In this context, the International Law Commission, in its commentary on what was to become Article 31(3)(b) of the Vienna Convention, observed:

The importance of such subsequent practice in the application of the treaty, as an element of interpretation, is obvious; for it constitutes objective evidence of the understanding of the parties as to the meaning of the treaty. Recourse to it as a means of interpretation is well-established in the jurisprudence of international tribunals.⁸⁹

106. The Tribunal next turns to Iran’s argument based on the language of Sections 535.215 and 535.333 of the Treasury Regulations implementing Executive Order No. 12281. As noted,⁹⁰ in implementation of Executive Order No. 12281, the United States Treasury Department, on 26 February 1981, issued Regulations that revoked, in part, the 1979 Blocking Regulations⁹¹ and further specified the order to transfer Iranian properties. Section 535.215 of the 26 February 1981 Regulations, titled “Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States,” repeated the transfer direction of Executive Order No. 12281 and made that direction applicable to properties as defined in Section 535.333 of the 26 February 1981 Regulations. The latter Section, in subsection (a), defined the properties whose transfer was directed to include “all uncontested and non-contingent liabilities and property interests of the

context of Paragraph 9 for the purpose of its interpretation. The Tribunal has already held that Executive Order No. 12281 forms part of the practice of the treaty for purposes of interpretation as provided in Article 31(3)(b) of the Vienna Convention. In the circumstances, it is therefore superfluous, for the purpose of interpreting Paragraph 9, for the Tribunal to decide whether that Order also falls within the scope of Article 31(2)(b) of the Vienna Convention.

⁸⁷ *Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL 83-B1-FT, para. 112 (9 Sept. 2004), *reprinted in* 38 IRAN-U.S. C.T.R. 77, 117-18 (footnote omitted).

⁸⁸ Oliver Dörr, *Article 31 of the Vienna Convention (Commentary)*, in VIENNA CONVENTION ON THE LAW OF TREATIES – A COMMENTARY 554 (Oliver Dörr & Kirsten Schmalenbach eds., 2012).

⁸⁹ *Draft Articles on the Law of Treaties*, cmt to art. 27(3)(b) in *Report of the International Law Commission on the work of its eighteenth session*, U.N. Doc. A/6309/Rev. 1 (1966), *reprinted in* [1966] 2 Y.B. INT’L L. COMM. 169, at 221-22, U.N. Doc. A/CN.4/SER.A/1966/Add.1, *quoted in Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL 83-B1-FT, para. 109, 38 IRAN-U.S. C.T.R. at 116. *See also Islamic Republic of Iran*, Interlocutory Award No. ITL 83-B1-FT, paras. 111-12, 38 IRAN-U.S. C.T.R. at 117-18 (citing cases and authorities); *Kasikili/Sedudu Island (Bots. v. Namib.)*, Judgment, paras. 49-50, 1999 I.C.J. 1045, 1075-76 (13 Dec.) (citing cases).

⁹⁰ *See supra* para. 12. *See also* Award No. 529, paras. 44-45, 28 IRAN-U.S. C.T.R. at 127-28.

⁹¹ *See supra* para. 9.

Government of Iran, its agencies, instrumentalities or controlled entities, including debts.” Subsection (c) stated that “[l]iabilities and property interests may be considered contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the asset by virtue of the existence of a defense, counterclaim, set-off or similar reason.” According to subsection (b), properties are “not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged.”

107. The Tribunal recalls the complex context within which the Algiers Declarations were negotiated and concluded, and finds that the 26 February 1981 Treasury Regulations implementing Executive Order No. 12281 cannot meaningfully assist it in the interpretation of the term “Iranian properties” in Paragraph 9. The Tribunal considers that, in order for those Regulations to have any impact on the interpretation of Paragraph 9, they would have to constitute either subsequent agreement between the Parties regarding the interpretation of the Algiers Declarations or subsequent practice in the application of those Declarations that establishes the agreement of the Parties regarding their application for the purposes of Article 31 of the Vienna Convention.⁹²

108. The 26 February 1981 Treasury Regulations constitute neither of these, given Iran’s opposition to the relevant language and operation of these instruments: Iran took the first opportunity it had to object to these same instruments before the Tribunal, which is Iran’s recourse as to the interpretation and application of the Algiers Declarations.

109. On 25 October 1982, in its Statement of Claim in Case No. A15, Iran alleged, among other things, that the United States had violated its international obligations under the Algiers Declarations, more specifically Paragraph 9 of the General Declaration, by its “*willful and deliberate failure to transfer Iranian property manifested through Executive Order No. 12,281 and Treasury Regulation sections 535.333 and 535.540.*” (Emphasis added.) Referring specifically to Section 535.333 of the Treasury Regulations, Iran’s opinion was that

the U.S. Government has prevented return of the Government of Iran’s physical property by issuing Executive Orders and regulations that do not require transfer of this property until storage and other charges and tax liens are paid. . . . The U.S. Government’s failure and refusal to act *constitutes a willful and deliberate*

⁹² Vienna Convention on the Law of Treaties, art. 31(3). *See supra* para. 102.

breach of Paragraph 9 of the General Declaration, which obligates the U.S. Government to arrange immediately for the transfer to the Government of Iran of its physical property. (Emphasis added.)

110. Accordingly, in its Statement of Claim, Iran requested that the Tribunal direct the United States to revoke Section 535.333 of the Regulations as well as Executive Order No. 12281, insofar as Iranian property is defined, and to redefine the term property for the purpose of Section 535.215 of the Regulations as any “property in which the Government of Iran has an interest.”⁹³ It should be noted that, in its Statement of Defense of 21 March 1983, the United States disagreed with Iran’s proposed definition of “Iranian properties” and contended that the United States Paragraph 9 obligation “extend[ed] only to ‘Iranian properties’ and not properties in which Iran only had an interest.”⁹⁴ Iran’s objection led to this Tribunal holding the definition of “Iranian properties” according to Section 535.333 of the Treasury Regulations to be unlawful in Award No. 529.⁹⁵

111. As an initial matter, even assuming that Iran did not object, in the first phase of these proceedings, to the language of Section 535.333, subsection (a), of the Treasury Regulations that refers to “property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts,” the mere absence of an objection would fall short of creating a “subsequent agreement between the parties regarding the interpretation” of the term “Iranian properties” in Paragraph 9, in application of Article 31(3)(a) of the Vienna Convention. While a “subsequent agreement” need not be in treaty form, it “must be such as to show that the parties intended their understanding to be the basis for an agreed interpretation.”⁹⁶ The Tribunal, however, is not prepared to construe a mere failure by Iran to object to the quoted language from Section 535.333, subsection (a), as a manifestation of “a

⁹³ See *supra* para. 26.

⁹⁴ In its Statement of Defense, the United States further asserted:

Although the November 1979 regulations specifically blocked all property and interests in property, Paragraph 9 refers only to “Iranian properties,” thereby implicitly excluding interests in property from the transfer obligation.

The term “Iranian properties” in Paragraph 9 consequently has no application to tangible properties in which Iran has only an “interest”

See also *infra* para. 132.

⁹⁵ Award No. 529, para. 77 (d), 28 IRAN-U.S. C.T.R. at 140. See *supra* para. 32.

⁹⁶ GARDINER, *supra* note 81, at 218.

clear intention”⁹⁷ of the Parties concerning how the term “Iranian properties” should be understood; or as creating “a firm agreement”⁹⁸ of the Parties on what that term means. Accordingly, in the circumstances, the Parties’ conduct did not reach the necessary threshold for the application of Article 31(3)(a) of the Vienna Convention.⁹⁹

112. Similar considerations apply to the question whether the Treasury Regulations enacted by the United States to implement Executive Order 12281 constituted “subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation,” pursuant to Article 31(3)(b) of the Vienna Convention. As Sir Ian Sinclair writes, the “value and significance of subsequent practice will naturally depend on the extent to which it is concordant, common and consistent.”¹⁰⁰ A practice is a “sequence of facts or acts and cannot in general be established by one isolated fact or act or even by several individual applications;”¹⁰¹ it must be adequate to “establish a discernable pattern of behaviour.”¹⁰² The threshold for finding that the conduct of the parties established an “agreement” concerning the interpretation of a treaty is high.¹⁰³ In light of the Parties’ conduct subsequent to the conclusion of the Algiers Declarations, in particular, Iran’s statements to the Tribunal in the first phase of these proceedings as well as the position immediately taken in response by the United States in its Statement of Defense,¹⁰⁴ the Tribunal finds that threshold has not been reached here. For this reason, the Tribunal holds that the Treasury Regulations cannot be considered “subsequent practice” within the meaning of the Vienna Convention, since they do not establish any agreement between the Parties as to the interpretation of the Algiers Declarations.

113. Iran’s argument that the language used by the United States in its 1980 and 1982 census of Iranian properties indicates the common understanding of the Parties fails, in the Tribunal’s view, on the same grounds. The 1980 census conducted by the United States predated any negotiations that led to the Algiers Declarations and is not helpful in interpreting the

⁹⁷ *Id.* at 217.

⁹⁸ *Id.*

⁹⁹ *See id.* at 217-19.

¹⁰⁰ SIR IAN SINCLAIR, *THE VIENNA CONVENTION ON THE LAW OF TREATIES* 137 (2nd ed., 1984).

¹⁰¹ *Id.*

¹⁰² Dörr, *supra* note 88, at 556.

¹⁰³ *See Kasikili/Sedudu Island (Bots. v. Namib.)*, Judgment, paras. 50-63, 1999 I.C.J. 1045, 1076-87 (13 Dec.).

¹⁰⁴ *See supra* para. 110.

Declarations according to the Vienna Convention. The Treasury Department's instructions for reporting in the 1982 census, ostensibly conducted by the United States in order to discover the range of properties to which its obligations extended, carried the following language:

Although reporters are asked to report as to tangible property in which Iran had, or asserted, any interest during the specified time period, in the view of the Treasury Department, *the existence of an Iranian interest in property does not necessarily render the property Iranian property* for purposes of the regulations. In other words, an interest of Iran in property sufficient to trigger the applicability of the blocking provision (section 535.201 of the regulations) during the period of economic sanctions against Iran *is not, in every case, equivalent to legal or beneficial ownership of the property sufficient to bring it within the scope of the relevant transfer directive* (section 535.215) *implementing the provisions of the Algiers Accords*. Accordingly, *the Treasury Department does not regard statements made on Form TFR-625, in and of themselves, to be determinative of ownership rights to reported property*. Statements made on TFR-625 are without prejudice to the reporter's rights to assert or contest interests in reported property or to make claims relating to such property in an appropriate forum.¹⁰⁵ (Emphasis added.)

The Tribunal can find no basis, on the plain reading of the statements made by the United States in its instructions for its 1982 census, to conclude that the United States took a broad reading of the term "Iranian properties."

114. Finally, in relation to the *travaux préparatoires*, diplomatic notes, and material filed in the present proceedings, the Tribunal again finds itself unable to accept Iran's contention that these documents show a common understanding of the Parties as to a broad definition of the term "Iranian properties." Iran refers to the Majlis Resolution as the preparatory work of the Algiers Declarations and, therefore, a supplementary means of interpretation according to Article 32 of the Vienna Convention.¹⁰⁶ The Tribunal, however, cannot fail to observe that the Resolution was a unilateral statement released by one Party that did not meet with the

¹⁰⁵ See *supra* para. 16.

¹⁰⁶ Article 32 of the Vienna Convention on the Law of Treaties provides:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

agreement of the other, as evidenced by the fact that the terms of that Resolution did not find their way into the Algiers Declarations.

115. Moreover, the diplomatic notes relied on by Iran only refer to the United States' willingness at the time to conserve the value of items of property that were Iranian.¹⁰⁷ In particular, no evidence has been submitted that the list of examples of "Iranian-owned military supplies and equipment" that the United States enclosed with its diplomatic note of 23 September 1981 is based on anything other than communications from the holders telling the United States that, in their eyes, the items were owned by Iran. This is an inadequate basis on which to draw any general conclusions as to the United States' understanding of the intended meaning of Paragraph 9 and of its obligations under that provision.

116. Further, Iran refers to materials proffered by the United States in the present Cases, such as the Reports submitted by the United States concerning Iranian tangible properties in the United States ("United States Reports"), which refer to certain property as "GOI-owned" (or Government of Iran-owned).¹⁰⁸ Iran has argued that the United States Reports represent evidence of the United States' contemporaneous understanding that the term "Iranian properties" in Paragraph 9 also covers properties that had been fully paid for by, but not delivered to, Iran.

117. According to Iran, this understanding of the United States is also reflected in the position the United States took in its Hearing Memorial of 5 July 1990.¹⁰⁹ In Iran's view, prior to the issuance of Award No. 529, the United States never considered Iran having title to an item of property pursuant to private law to be of any relevance in determining whether that item fell within the scope of "Iranian properties."

118. The Tribunal notes, however, that, prior to the issuance of Award No. 529, the United States in fact did rely on Iran having title to an item of property as the criterion for establishing whether that item was "Iranian" for the purposes of Paragraph 9. In the United States Report

¹⁰⁷ See *supra* para. 15.

¹⁰⁸ See *supra* para. 71.

¹⁰⁹ In its Hearing Memorial of 5 July 1990, the United States asserted:

In a contract for the sale of goods where Iran has failed to pay for the goods, the property would not even be subject to transfer pursuant to Paragraph 9 of the General Declaration, since the property would not be Iranian owned.

of 5 July 1990, the United States, in describing “property not subject to Paragraph 9,” referred, among others, to “properties where *title* had not yet passed to Iran” and “properties whose *title* was held by an Iranian entity which was not controlled by the Government of Iran.”¹¹⁰ The United States went on to list, under the category “No GOI-Owned Tangible Property,” properties at issue in the present Cases that, in its view, were not “*Iranian-titled*.” Thus, for example, in Claim G-19, the United States contended that it had “not assume[d] any transfer obligation with respect to [the tangible property in question] pursuant to Paragraph 9 of the General Declaration because Iran ha[d] never acquired *title* to the property.”¹¹¹ The relevance of Iranian title to an item of tangible property, in the United States’ understanding of its Paragraph 9 obligation, is also reflected in earlier pleadings of the United States.¹¹²

119. On the other hand, despite having identified Iran’s title as the criterion for establishing whether an item of property is “Iranian,” in the United States Reports, as well as in its Hearing Memorial of 5 July 1990,¹¹³ the United States, rather incongruously, classified items that had been fully paid for by, but not delivered to, Iran as “GOI-owned tangible properties,”¹¹⁴ which

¹¹⁰ See Report of the United States: Update on Tangible Properties Claimed by Iran, at 20 (5 July 1990) (emphasis added). See also *id.* at 48 (stating that, with respect to a number of claims, “Iran’s allegations are insufficient to demonstrate that the named entities are currently holding or have ever held Iranian-titled property”).

¹¹¹ See Memorial of the United States, at 66 n.39 (5 July 1990) (emphasis added). See also, *e.g.*, *id.* at 22 (Claims G-25 & Supp. (2)-69), 23-24 (Claim G-31), 24 (Claim G-146). See also Report of the United States: Update on Tangible Properties Claimed by Iran, at 20 (5 July 1990), at 12 (Claim Supp. (1)-3 (“claim should be withdrawn because ERIM holds no property to which Iran has title”); *id.* “Comments of the U.S. Government – July 1, 1990,” at 2 (Claim G-5 (“No GOI-owned tangible property” – title “did not pass to Iran”)), 35 (Claim G-107 (“No GOI-owned tangible property” – “Iran has produced no documents evidencing title to property”)), 45 (Claims G-121 & G-124 (“No GOI-owned tangible property” – “title did not pass to Iran”)).

¹¹² For example, in its Statement of Defense of 21 March 1983, in responding to a request by Iran in its Statement of Claim that the Tribunal order the United States to arrange for the transfer of any property “in which the Government of Iran has an interest,” the United States contended:

The transfer obligation under Paragraph 9, however, had a much more limited purpose – *to return to Iran those properties which it uncontestedly owned* without prejudice to the rights of persons who had acquired non-judicial liens in such properties under applicable provisions of U.S. law. (Emphasis added.)

See also United States Rejoinder, at 16-17 (27 Feb. 1984) (in discussing Iran’s “substantive rights of ownership,” the United States equated “ownership” with “title”); Comments of the United States, at 4 (16 Aug. 1985) (stating that the category “No GOI-owned tangible property” contains “items which the United States believes *should be deleted from Claim IIA/IIB . . . because the holder claims title never passed to Iran . . .*” (emphasis added)).

¹¹³ See *supra* para. 118.

¹¹⁴ See, *e.g.*, the items of property at issue in withdrawn Claims G-14 and G-17. See also Memorial of the United States, at 83 n.50 (5 July 1990) (contending that Iran did not own the property at issue, given that the property holder had title to the property “because Iran had not made full payment for the items” (and, under the terms of the contract, title did not pass until shipment had been made)).

is at odds with the applicable United States law governing the passage of title to tangible property.¹¹⁵

120. Moreover, the United States included far-reaching disclaimers in those Reports. For example, in the 1985 United States Report, it stated:

This consolidated report is not intended to address fully the various legal issues that form the basis of Iran's claim. Furthermore, all information supplied in this report is based on representations made to the United States by individuals and U.S. companies, documentation made available by those companies and documents submitted by Iran. The United States was not a party to these transactions. Canvassing the number of companies involved in this claim has been an enormous undertaking, particularly given the lapse of time since the relevant transaction occurred. For these reasons, the United States reserves the right to supplement this report and to further address any legal issues.¹¹⁶

121. It is an accepted principle of treaty interpretation that, depending on the circumstances of a specific case, certain probative value may be ascribed to the unilateral conduct of a State when it relates to the performance of a treaty obligation that relates to that State; as an element of interpretation, such unilateral conduct might assist in shedding light on that State's understanding of its treaty obligations.¹¹⁷ As indicated above, however, the United States Reports exhibit a significant degree of incongruity.¹¹⁸ Importantly, moreover, the disclaimer that the United States included in its 1985 Report makes clear that the Reports were "not intended to address fully the various legal issues that form the basis of Iran's claim."¹¹⁹ In

¹¹⁵ As will be discussed more fully below, the United States legal system is delivery-based – that is, as a general rule, it requires delivery of a purchased item of tangible property in order for title to pass. Thus, pursuant to Section 2-401 UCC, unless "otherwise explicitly agreed" by the parties to the sales contract, "title passes to the buyer at the time and place at which the seller completes his performance with respect to the physical delivery of the goods." (*See infra* para. 155). Consequently, under United States domestic law, unless the contractual parties explicitly agreed that title to an item sold to an Iranian entity would pass to that entity upon partial or full payment of the purchase price, title would pass to the Iranian entity only upon delivery. Therefore, as a general rule, under United States law, full payment of the purchase price is irrelevant to the passage of title to goods.

¹¹⁶ Consolidated Report of the United States, at 4 (30 Oct. 1985).

¹¹⁷ *See Draft Articles on the Law of Treaties, in Report of the International Law Commission covering the work of its sixteenth session, U.N. GAOR 19th Sess., Supp. No. 9, U.N. Doc. A/5809 (1964), reprinted in [1964] 2 Y.B. INT'L L. COMM. 173, at 204; Yves Le Bouthillier, Article 32 of the Vienna Convention (Commentary), in 1 THE VIENNA CONVENTION ON THE LAW OF TREATIES – A COMMENTARY 862 (Olivier Corten & Pierre Klein eds., 2011). See also SINCLAIR, supra note 100, at 138; Oliver Dörr, Article 32 of the Vienna Convention (Commentary), in VIENNA CONVENTION ON THE LAW OF TREATIES – A COMMENTARY 581 (Oliver Dörr & Kirsten Schmalenbach eds., 2012).*

¹¹⁸ *See supra* para. 119.

¹¹⁹ *See supra* para. 120.

these circumstances, the Tribunal is not prepared to consider the United States Reports as adequate evidence of a contemporaneous understanding of the United States that the term “Iranian properties” in Paragraph 9 also covers properties that had been fully paid for by, but not delivered to, Iran, when, under the applicable law, legal title to such properties remained with a third party – the seller. Nor do they provide an adequate basis for the Tribunal to presume a framework from which to infer any such understanding.

Admissions by the United States as to Iran’s Ownership of Specific Items of Tangible Property at Issue in Individual Claims

122. The Tribunal notes the following admission the United States made in a submission filed on 16 August 1985, proposing that the Parties each submit a consolidated report rather than the joint report originally requested by the Tribunal:¹²⁰

The status of the ownership question will be apparent from these [consolidated reports]. Inclusion of an item in its claim constitutes Iran’s contention that the item is owned by the Government of Iran. *The United States has conceded Iran’s ownership (although not necessarily its right to possession) in all properties classified in sub-categories A-D of category I: “Government of Iran (GOI)-owned tangible property in U.S. on January 19, 1981.” . . .* In fact, the United States has challenged Iran’s claim of ownership only in category II.A. That category, “No GOI-owned tangible property” contains items which the United States believes should be deleted from Claim IIA/IIB either because the holder claims title never passed to Iran or because the items were apparently purchased by an entity other than the Government of Iran. Properties in all other categories are not properly a part of Claim IIA/IIB for other reasons, as indicated.¹²¹

123. As a general matter, concerning the legal consequences of an admission, Bin Cheng writes that, unlike estoppel,

an admission does not preemptorily preclude a party from averring the truth. It has rather the effect of an *argumentum ad hominem*, which is directed at a person’s sense of consistency, or what in logic is paradoxically called the

¹²⁰ By Order of 16 December 1983, the Tribunal had requested that the Parties submit a joint report identifying the Iranian properties located in the United States that were at issue in the present Cases. In light of comments received by the Parties, by Order of 4 September 1985, the Tribunal advised that it deemed it no longer necessary that the Parties submit a joint report; it invited each Party to submit, instead, separate consolidated reports on the Iranian properties located in the United States.

¹²¹ Comments of the United States, at 4 (16 Aug. 1985) (emphasis added).

“principle of contradiction.” An admission is not necessarily conclusive as regards the facts admitted. Its force may vary according to the circumstances.¹²²

Consequently, an admission, while not having binding effect, “can still be adduced as evidence to weaken the case which the party making the statement or admission now puts forward.”¹²³

In the words of Derek Bowett,

[a]n estoppel will exclude altogether evidence of a disputed fact, whereas an admission will either render evidence superfluous where there is no other evidence to contradict the admission or, where there is such contradictory evidence, will weaken or perhaps nullify the contradictory evidence – depending on the relative weight of the admission and such evidence.¹²⁴

124. The Tribunal will consider admissions made by the United States in these proceedings as to Iran’s ownership of specific items of tangible property at issue in Individual Claims in light of the principles delineated above.

(iii) *Title Is Indicative of Property Being “Solely Owned by Iran”*

125. At this stage of the proceedings, the Tribunal is charged with applying its decision in Award No. 529. Thus, it will determine whether claimed properties were “solely owned by Iran,” and, therefore, whether they constitute “Iranian properties” within the meaning of Paragraph 9.

126. It is not in dispute that some of the items of property claimed by Iran are “Iranian properties” because they already belonged to that category when they first entered the jurisdiction of the United States and remained so on 19 January 1981. These include Iranian properties in the United States on loan, or those sent to the United States for repair. The Parties are in broad agreement that these two categories concern properties that were “solely owned by Iran” on 19 January 1981, falling within the scope of the United States’ obligation under Paragraph 9. However, a substantial category of items consists mainly of properties that were the subject of various purchase agreements between Iran and a seller within the jurisdiction of the United States. The Parties take diametrically opposing views as to the test by which to

¹²² BIN CHENG, *GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS* 143 (Grotius Publications 1987) (1953).

¹²³ Derek W. Bowett, *Estoppel Before International Tribunals and Its Relation to Acquiescence*, 33 BRIT. Y.B. INT’L L. 176, 196 (1957).

¹²⁴ *Id.* at 197.

determine whether the properties in this third category can be considered to be “solely owned by Iran,” *i.e.*, whether title has been transferred between the United States contractor and the Iranian entity.

127. Iran’s view is that ownership of tangible property that is the subject of a sale is a broad concept that includes “a contractual right to the delivery” of that property. Iran emphasizes that neither Paragraph 9 nor Awards Nos. 529 and 601 refer to “title.”

128. The United States contends that sole ownership requires non-contingent and uncontested title to the property in question. According to the United States, customary international law contains no substantive rules of property law, and the Tribunal should apply the applicable domestic property law.

129. In the Tribunal’s view, the legal basis of the ownership of property is title, the strongest conceivable of all real rights, and title is the right or proof of ownership.¹²⁵ Indeed, ownership in the sense of “title,” in many civil law systems, is generally characterized as a “full” *in rem* right, as opposed to “limited,” or “specific,” *in rem* rights (such as, for example, possession, usufruct, pledge, and various types of security interest, etc.). Ownership, as an *in rem* right, entitles the holder in question to immediate and absolute control over objects. Ownership rights are “absolute.”¹²⁶ How ownership is acquired is subject to detailed rules, which vary from legal system to legal system. In some legal systems, such as those of Iran, this is effected by mere (contractual) consent, in others, such as the United States (as a default rule), by *titulus* (contract) and *modus* (*e.g.*, delivery), and, in a third group, by what is known as a “*real consent*,” abstract from the underlying contractual agreement, plus *modus* (such as delivery or any one of a number of statutory equivalents). The above is a matter of substantive law. It does not pre-determine the framing of conflict-of-laws rules, in particular, the relevant connecting factor.

130. As noted, a substantial category of items in the present Cases consists of properties that were the subject of various purchase agreements between Iran and a seller within the jurisdiction of the United States. In these instances, ownership rights have effect, not only

¹²⁵ See, *inter alia*, *In re Vancouver Improvement Company*, [1893] 3 BCR 601 (Drake J.); *Haw River Land & Timber Company, Inc. v. Lawyers Title Insurance Corporation*, 152 F.3d 275 (1998).

¹²⁶ See Jacob H. Beekhuis, *Structural Variations in Property Law*, in 6 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW (Property and Trust) 8 (Frederick H. Lawson ed., 1975). Concerning French law, see FRANÇOIS TERRÉ & PHILIPPE SIMLER, *DROIT CIVIL – LES BIENS* 147 (Daloz 9th ed. 2014).

between seller and buyer, *i.e.*, the parties to the contract (*inter partes*), but also *erga omnes*. The interrelation between contract and property law, as well as between ownership *inter partes* and *erga omnes*, is subject to the detailed rules that vary from legal system to legal system. For the Tribunal's further analysis, it is important to note that, in this Partial Award, all cases of transfer of property through purchase only raise this question *inter partes* and do not involve third parties with competing property claims.

131. The Tribunal further observes that, in both common and civil property law, title to property has to be distinguished from interest in property. Interest in an item of property or an asset is any right the holder may have. Title to that item of property or asset measures the strength of that interest and gives the holder the right to immediate possession of the property or asset.¹²⁷ The Tribunal concludes that title to property is therefore the objective means by which to determine the question of ownership over the property claimed and to conclude whether the property falls within the scope of Paragraph 9. Any interest in a claimed item of property that falls short of title would be insufficient to show that the item was "solely owned by Iran." In the Tribunal's view, it stands to reason that an item of property cannot be "solely owned by Iran" if a third party holds legal title to the item, while Iran merely holds an interest therein.

132. It should be noted in this context that both Parties agreed, in their pleadings during the first phase of the proceedings, that the United States' Paragraph 9 obligation does not cover properties in which Iran only had an interest, rather than legal title. In its Statement of Defense of 22 March 1983, the United States contended that its Paragraph 9 obligation "extend[ed] only to 'Iranian properties' and not properties in which Iran only had an interest."¹²⁸ In addition, as noted, the United States identified Iran's having title to an item of tangible property as the

¹²⁷ DUNCAN SHEEHAN, *THE PRINCIPLES OF PERSONAL PROPERTY LAW* 13 (Hart 2011). *See also* UGO MATTEI, *BASIC PRINCIPLES OF PROPERTY LAW: A COMPARATIVE LEGAL AND ECONOMIC INTRODUCTION* 86-91 & 99-122 (Praeger 2000).

¹²⁸ In its Statement of Defense, the United States further asserted:

Although the November 1979 regulations specifically blocked all property and interests in property, Paragraph 9 refers only to "Iranian properties," thereby implicitly excluding interests in property from the transfer obligation.

The term "Iranian properties" in Paragraph 9 consequently has no application to tangible properties in which Iran has only an "interest," including tangible properties for which Iran has not paid, over which title or ownership is contested, and in which other persons have legal rights, such as possessory liens, superior to those of Iran. This is a logical interpretation, since an obligation to transfer mere interests in properties would lead to absurd results.

criterion for establishing whether that item was “Iranian” for the purposes of Paragraph 9.¹²⁹ Iran, for its part, in its 31 August 1983 Reply to the United States Statement of Defense,¹³⁰ contended:

Ironically, the United States attempts to justify the truncated definition of “Iranian property” in . . . section 535.333 of the Treasury Regulations by reference to the definitions of Iranian property adopted by the United States in [the Blocking Order of 14 November 1979], which was designed to bar Iran from access to its assets. . . . It is obvious that in order to maximize the impact of economic measures taken against Iran in 1979, the United States would have employed the broadest possible definition of “Iranian property.” . . . Thus, the definition of Iranian property included not only property *owned outright* by Iran, but also property of others in which Iran could claim “an interest.” Consistent with General Principle A, which promises to restore Iran to its pre-freeze position, Iran’s position is that under Paragraph 9 of the General Declaration, the United States must arrange for the return of properties to which [Iran] is entitled under international and general United States law. *Iran does not ask the United States to arrange for the transfer of properties legally owned by third parties solely because Iran may have some legal interest in that property.*¹³¹ (Emphasis added.)

133. The Tribunal further notes that beneficial ownership of an item does not constitute sole ownership in the sense of holding title over that item. Therefore, the Tribunal finds that, even if beneficial ownership could be established over an item of property claimed in the present Cases, such beneficial ownership would be insufficient to bring that item of property within the scope of Paragraph 9.

134. Accordingly, in order to apply the decision taken by the Tribunal in Award No. 529 that the term “Iranian properties” refers to properties “solely owned by Iran,” the Tribunal must determine, for goods sold, whether title to the properties claimed had been transferred to Iran as at 19 January 1981.

¹²⁹ See *supra* para. 118.

¹³⁰ Addressing the United States’ argument quoted *supra* at para. 132 and note 128.

¹³¹ The quoted section of Iran’s 31 August 1983 Reply is titled: “The Extent of the United States’ Duty under Paragraph 9 to Return All Iranian Property Is not Determined by the Definitions of Iranian Property in the Blocking Orders.”

(iv) *Determining Whether Legal Title Has Passed to Iran in Accordance With General Principles of Private International Law*

135. The Tribunal now turns to the test by which to determine whether legal title to property in the present Cases that was the subject of a sale had passed to Iran as of 19 January 1981, thereby bringing it within the scope of the term “Iranian properties” in Paragraph 9. This exercise is to be distinguished from the interpretation of Paragraph 9, which the Tribunal has carried out in application of the relevant rules of general international law.¹³²

136. Article V of the Claims Settlement Declaration (“Article V”) provides:

The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

Thus, under this provision, the Tribunal “shall decide all cases on the basis of respect for law.” Accordingly, while Article V affords the Tribunal wide discretion to choose the applicable law in deciding cases,¹³³ it does not grant the Tribunal the authority or discretion to devise its own rules to decide whether Iran had title to a claimed item of property in the present Cases on 19 January 1981.

137. The Tribunal is unaware of any rules or principles of general public international law that govern the passage of legal title to an item of tangible property.¹³⁴ This is not surprising:

¹³² See *supra* paras. 102-121.

¹³³ See, e.g., *CMI International, Inc. and Ministry of Roads and Transportation et al.*, Award No. 99-245-2, at 8-9 (27 Dec. 1983), reprinted in 4 IRAN-U.S. C.T.R. 263, 267-68, where the Tribunal stated:

It is difficult to conceive of a choice of law provision that would give the Tribunal greater freedom in determining case by case the law relevant to the issues before it. Such freedom is consistent with, and perhaps almost essential to, the scope of the tasks confronting the Tribunal, which include not only claims of a commercial nature . . . but also claims involving alleged expropriations or other public acts, claims between the two Governments, certain claims between banking institutions, and issues of interpretation and implementation of the Algiers Declarations.

See also *United States of America and Islamic Republic of Iran*, Award No. 574-B36-2, para. 70 (3 Dec. 1996), reprinted in 32 IRAN-U.S. C.T.R. 162, 179; *Anaconda-Iran, Inc. and Islamic Republic of Iran et al.*, Interlocutory Award No. ITL 65-167-3, para. 130 (10 Dec. 1986), reprinted in 13 IRAN-U.S. C.T.R. 199, 232.

¹³⁴ See, e.g., Douglas, *supra*, note 69, at 197 (“Customary international law contains no substantive rules of property law.”).

rules governing passage of title to tangible property are characteristically within the purview of the domestic jurisdiction of states. Thus, in determining whether a right *in rem* exists, international tribunals may look to municipal law.¹³⁵ Accordingly, the Tribunal holds that, in order to determine whether, in a specific case, legal title to an individual item of property has been transferred to Iran, it must apply, where identifiable, the relevant domestic law governing passage of title.¹³⁶ In turn, in establishing what that domestic law is, the Tribunal applies the rule laid down in Article V. This provision instructs the Tribunal to apply a choice-of-law analysis to determine the relevant substantive law.

138. In this context, the Tribunal has specifically applied “general principles” of private international law in its decisions. In *Economy Forms Corp. v. Iran*, Chamber One found that United States law applied to determine the validity of the contract at issue since “the centre of gravity of these dealings was in the United States, that being the test under general principles of conflicts of law.”¹³⁷ Again, in *Harnischfeger Corp. v. Ministry of Roads and Transportation*, the Tribunal found:

¹³⁵ In discussing this matter in the context of investment-treaty arbitration, Zachary Douglas writes:

Customary international law contains no substantive rules of property law. They cannot be a source of rights in property. Nor do investment treaties purport to lay down rules for acquiring rights *in rem* that are exercisable against the world at large. It is therefore the municipal law of the host state that determines whether a particular right *in rem* exists, the scope of that right, and in whom it vests.

Douglas, *supra* note 134, at 197-98 (footnotes omitted). More specifically, noting that investment treaties characteristically contain, in the form of a definition, an enumeration of the types of covered investments, Zachary Douglas further writes:

“Investments” are, therefore, given an “objective” treaty definition. But this definition does not in some way detach the rights *in rem* that underlie those investments from the municipal law that creates and gives recognition to those rights. Investment treaties do not contain substantive rules of property law. There must be a *renvoi* to a municipal property law. Insofar as investment treaties require a territorial nexus between the investment and one of the contracting state parties, that property law is the municipal law of the state in which the investor alleges that it has an investment.

Douglas, *supra* note 134, at 198.

¹³⁶ Determining whether Iran holds title to a claimed item of property may be considered somewhat akin to the determination of a “*concept préjudiciel*” in private international law, which François Rigaux describes in the following terms: “*Quand l’effet juridique réclamé au titre de question principale requiert la réalisation d’une condition, il se peut que celle-ci, exprimée dans une notion juridique appelée concept préjudiciel, doive être vérifiée selon une loi autre que la loi applicable à la question principale.*” François Rigaux, *Les situations juridiques individuelles dans un système de relativité générale : cours général de droit international privé*, in 213 RECUEIL DES COURS 166 (1989).

¹³⁷ *Economy Forms Corp. and Islamic Republic of Iran et al*, Award No. 55-165-1, at 12 (14 June 1983), reprinted in 3 IRAN-U.S. C.T.R. 42, 48.

The agreement . . . makes no reference to governing law; however, under general choice of law principles, the law of the United States, the jurisdiction with the most significant connection with the transaction and the parties, must be taken to govern this specific case¹³⁸

The Tribunal took the same line of reasoning in considering a contract with an explicit choice of law provision in *CMI International Inc. v. Iran*,¹³⁹ as did Chamber Two in its decision in *Isaiah v. Bank Mellat*.¹⁴⁰

139. The Tribunal additionally observes that there is a line of precedent showing the application by international arbitral tribunals of the general principles of private international law that can be traced to the jurisprudence of the mixed arbitral tribunals in the early 20th century.¹⁴¹ For instance, the Franco-German mixed arbitral tribunal in its decision of

¹³⁸ *Harnischfeger Corp. and Ministry of Roads and Transportation et al.*, Award No. 144-180-3 (13 Jul. 1984), reprinted in 7 IRAN-U.S. C.T.R. 90, 99.

¹³⁹ *CMI International, Inc. and Ministry of Roads and Transportation et al.*, Award No. 99-245-2, at 8-9 (27 Dec. 1983), reprinted in 4 IRAN-U.S. C.T.R. 263, 267-68.

¹⁴⁰ *Benjamin R. Isaiah and Bank Mellat*, Award No. 35-219-2, at 10-11 (30 Mar. 1983), reprinted in 2 IRAN-U.S. C.T.R. 232, 237.

¹⁴¹ J.P. Niboyet, *Jurisprudence des tribunaux arbitraux mixtes*, 40 RECUEIL DES COURS 221 (1932). See also *Chausson v. The German State*, Franco-German Mixed Arbitral Tribunal, 7 Dec. 1921, 1 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 587; *B. Kitzinger v. A. Dann*, Anglo-German Mixed Arbitral Tribunal, 15 and 22 Feb. 1922, 1 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 847; *Canale Schuler v. Consorts Schuler*, Franco-German Mixed Arbitral Tribunal, 10 Mar. 1922, 1 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 899; *Bonnet-Dupeyron v. Ephraim Meyer*, Franco-German Mixed Arbitral Tribunal, 5 May 1922, 2 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 89; *Stevan Rajkovitch v. Maschinenfabrik u. Mühlenbauanstalt G. Luther A.G.*, and *Maschinenfabrik u. Mühlenbauanstalt G. Luther A.G. v. Stevan Rajkovitch*, Germano-Yugoslav Mixed Arbitral Tribunal, 2 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 641; *Vereinigte Schmirgel & Maschinenfabrik A.G. v. Perbal*, Franco-German Mixed Arbitral Tribunal, 28 Nov. 1922, 2 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 753; *Fiegel v. Guillot*, Franco-German Mixed Arbitral Tribunal, 8 Jan. 1923, 2 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 786; *Stoehr & Co. and Wulfing et Sohn v. Louis et Cie*, Germano-Belgian Mixed Arbitral Tribunal, 25 May 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 286; *Lévy et Cie v. Commerz und Diskontobank*, Franco-German Mixed Arbitral Tribunal, 9 Jan. 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 328; *Schwab and Sommer v. The German State*, Franco-German Mixed Arbitral Tribunal, 27 Mar. 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 340; *La Suédoise Grammont v. Roller*, Germano-Belgian Mixed Arbitral Tribunal, 16 Oct. 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 570; *1^o Industrielle Foncière v. von Scharfenberg and Beutler*, Franco-German Mixed Arbitral Tribunal, 26 Nov. 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 872; *Goldschmiedt v. Marie Fremery et Co (in liquidation)*, Germano-Czechoslovak Mixed Arbitral Tribunal, 24 May 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 1020; *Ville de Neuf-Brisach v. The German State*, Franco-German Mixed Arbitral Tribunal, 3 Oct. 1923, 4 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 366; *Bleyfus v. The German State*, Franco-German Mixed Arbitral Tribunal, 16 Jun. 1924, 4 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 417; *Goldschmiedt v. Heesch Hinrichsen et Cie*, German-Czechoslovak Mixed Arbitral Tribunal, 4 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 530; *P. Negreanu et Fils v. Meyer et Fils*, Romano-German Mixed Arbitral Tribunal, 16 Jun. 1925, 5 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 200; *Andelhof v. Friedrich Wilhelm L.V.A.G.*, Germano-Belgian Mixed Arbitral Tribunal, 3 Apr. 1925, 5 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 346; *R.T.S. Tolson v. August Paudler*, Anglo-German Mixed Arbitral Tribunal, 11 Mar.,

30 March 1926 noted that, as an international institution, it was not merely to apply the rules of domestic national laws to resolve a conflicts of law issue, since those rules only bind the national courts of the country in question. Instead, the tribunal held that it was to seek a solution to the conflict-of-laws question from the general principles of private international law.¹⁴² More recently, the arbitrator in the *Liamco* case made reference to the general principles of conflict of laws, finding that the question of the applicable law should be determined by “the general principles governing the conflict of laws in private international law.”¹⁴³ The same approach was taken by the arbitral tribunal in *Texaco v. Libya*.¹⁴⁴

140. The Tribunal observes that there are other instances of arbitral decisions explicitly applying the “general principles of law” in relation to private international law. In *Petroleum Development (Trucial Coast) Ltd. v. Sheikh of Abu Dhabi*, Lord Asquith referred to “the application of principles rooted in the good sense and common practice of the generality of civilised nations.”¹⁴⁵ The same reference to such general principles was made by Cavin J. in *Sapphire International Petroleum Ltd. v. National Iranian Oil Co.*,¹⁴⁶ as well as by the tribunal

9 Oct. and 3 Nov. 1925, 5 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 637; *Gutberlet et Cie v. Société Rémoise d’Imprimerie “Jeanne d’Arc,”* Franco-German Mixed Arbitral Tribunal, 13 Jul. 1925, 5 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 790; *E. Luttges and Co. v. Ormiston and Glass Limited*, Anglo-German Mixed Arbitral Tribunal, 28 and 30 Apr. and 15 Jul. 1926, 6 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 564; *The English and French States c. The Bulgarian State*, Anglo-Bulgarian Special Arbitral Tribunal, 10 Nov. 1926, 6 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 943; *Ditta Bochumer Verein v. Società Anonima Officine Ferroviarie Meridionali*, Germano-Italian Mixed Arbitral Tribunal, 28 May 1926, 7 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 221; *V. Tiedmann et al. v. The Polish State*, Germano-Polish Mixed Arbitral Tribunal, 1 Nov. 1926, 7 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 702; *Bela Tass v. The Czechoslovak State*, Hungaro-Czechoslovak Mixed Arbitral Tribunal, 29 Jul. 1927, 7 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 881; and *Banque du Bruxelles v. The German State and Disconto Gas*, Germano-Belgian Mixed Arbitral Tribunal, 2 Aug. 1929, 9 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES 302.

¹⁴² *Zeppenfeld v. The German State*, Franco-German Mixed Arbitral Tribunal, 30 Mar. 1926, 6 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES INSTITUÉS PAR LES TRAITÉS DE PAIX 243.

¹⁴³ *Libyan American Oil Co. (LIAMCO) v. Government of the Libyan Arab Republic*, Award (12 Apr. 1977), 62 ILR 141, 171; see also *Saudi Arabia v. Arabian American Oil Co. (Aramco)* (23 Aug. 1958), 27 ILR 117, 154-56.

¹⁴⁴ *Texaco Overseas Petroleum Co. et al. v. Government of the Libyan Arab Republic*, Preliminary Award (12 Jan. 1977), 53 ILR 389, 442.

¹⁴⁵ *Petroleum Development (Trucial Coast) Ltd. v. Sheikh of Abu Dhabi*, Award (12 Aug. 1951), 1 ICLQ 247, 250.

¹⁴⁶ *Sapphire International Petroleum Ltd. v. National Iranian Oil Co.*, Award (15 Mar. 1963), 13 ICLQ 1011, 1015.

in *British Petroleum (Libya) Ltd. v. Libya*.¹⁴⁷ Significantly, appellate courts in Austria,¹⁴⁸ England,¹⁴⁹ France,¹⁵⁰ Italy,¹⁵¹ and the United States of America¹⁵² have recognized arbitral awards that were based on the “general principles” of private international law.

141. A long line of jurisprudence, mirroring that of the Tribunal, confirms the application of general principles of private international law in determining whether title to property has been transferred. The Tribunal considers itself in good company in applying such general principles in the present Cases in order to define the test of “sole ownership” enunciated in Award No. 529 as the interpretation of the term “Iranian properties” for the purposes of Paragraph 9.

(v) *The General Principles of Private International Law*

142. It follows from the foregoing reasoning that the Tribunal must establish, in accordance with the general principles of private international law, the rules of law by which to determine whether the properties claimed were “solely owned by Iran,” in the sense that title to such properties, which were the subject of a sale to an Iranian entity, had been transferred to Iran as at 19 January 1981,¹⁵³ and, therefore, whether they fell within the ambit of the term “Iranian properties” triggering the United States’ obligation under Paragraph 9.

143. In the Tribunal’s view, the material of such general principles of private international law can be found primarily in the actual practice of States, in the form of national legislation and jurisprudence, as well as in the jurisprudence of international courts and tribunals faced with the issue.

¹⁴⁷ *BP Exploration Co. (Libya) Ltd. v. Government of the Libyan Arab Republic* (10 Oct. 1973 & 1 Aug. 1974), 53 ILR 297.

¹⁴⁸ *SA Norsolor v. Pabalk TS*, Supreme Court, Austria, 18 Nov. 1982, IX Y.B. COM. ARB. 159 (1984).

¹⁴⁹ *Deutsche Schachtbau GmbH v. Ras Al Khaimah National Oil Co.*, [1987] 3 WLR 1023, 1035 (Donaldson MR) (Note: This case was reversed by the House of Lords on different grounds.); *Home and Overseas Insurance Co. Ltd v. Mentor Insurance Co. (UK) Ltd.*, [1990] 1 WLR 153, 166 (Lloyd J.); and *Channel Tunnel Group Ltd. v. Balfour Constructions Ltd.*, [1993] AC 334 (Lord Mustill).

¹⁵⁰ *SA Norsolor v Pabalk TS*, Cour d’appel, Paris, DALLOZ 101 (1985).

¹⁵¹ *Fratelli Damiano snc v. August Töpfer GmbH*, Corte di Cassazione, 8 Feb. 1982, (1982) Riv. dir. int. priv. proc. 829, cited in P. NYGH, AUTONOMY IN INTERNATIONAL CONTRACTS 195 n.111 (1999).

¹⁵² *Ministry of Defense of the Islamic Republic of Iran v. Gould Inc.*, 887 F.2d. 1357 (9th Cir. 1989), at 1364-65.

¹⁵³ See *supra* para. 134.

144. The basic rule, emanating from national legislation and jurisprudence, is unquestionably that proprietary rights to movable property are governed by the *lex rei sitae*, i.e., the law of the place where the goods are located at the time of their transfer.¹⁵⁴ For instance, Article 966 of the Iranian Civil Code provides that ownership is governed by the *lex rei sitae*.¹⁵⁵ Courts in the United States, at least traditionally, take a similar position in applying the *lex rei sitae*.¹⁵⁶ The Tribunal further notes that the *lex rei sitae* in all matters governs *le statut réel*, in accordance with Article 3 of the French Civil Code.¹⁵⁷ Article 87, paragraph 1, of the Belgian Code of Private International Law, Article 51 of the Italian Statute on Private International Law (No. 218), Article 10 of the Spanish Civil Code, Article 21, paragraph 1, of the Turkish Act No. 5718 on Private International Law, and Article 127 of the Dutch *Burgerlijk Wetboek Boek 10* reflect the same stance. Germany's approach to private international law is succinctly contained in Articles 3 and 43 to 46 of the Introductory Law to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*), which, read together, likewise provide that interests in property are governed by the law of the country in which the property is situated.¹⁵⁸ The Tribunal observes that the same approach is also adopted by § 31 of the

¹⁵⁴ See, e.g., Gian Carlo Venturini, *Property*, in 3 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW – PRIVATE INTERNATIONAL LAW, pt. 2, ch. 21, secs. 21-3, 21-7, 21-25, 21-26 (Kurt Lipstein ed.).

¹⁵⁵ Article 966 of the Iranian Civil Code provides in full:

Possession, ownership and other rights over movable or immovable properties are subject to the laws of the country in which they are situated. Nevertheless, the transfer of a movable property from one country to another may not affect the rights that persons may have acquired over that property in accordance with the laws of the country in which the property was first situated.

Civil Code of Iran, art. 966 (M.A.R. Taleghany trans., Fred B. Rothman & Co. 1995).

¹⁵⁶ See RESTATEMENT (FIRST) OF CONFLICT OF LAWS ¶¶ 255-310 (1934) (strict rule: connecting factor is *situs*); RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 244 (1)-(2) (1971) (connecting factor: pursuant to § 244 (1), “the most significant relationship”; pursuant to § 244 (2), as a default rule, the “location of the chattel at the time of the conveyance”); ROGER C. CRAMTON, DAVID P. CURRIE & HERMA H. KAY, CONFLICT OF LAWS 35 (3rd ed., West Publishing Co. 1981); Symeon C. Symeonides, *National Monograph Relating to the United States of America*, in INTERNATIONAL ENCYCLOPAEDIA FOR PRIVATE INTERNATIONAL LAW, Suppl. 44, para. 558 (Wolters Kluwer 2018).

¹⁵⁷ See also FRIEDRICH CARL VON SAVIGNY, A TREATISE ON THE CONFLICT OF LAWS AND THE LIMITS OF their OPERATION IN RESPECT OF PLACE AND TIME 139 para. 367 (W. Guthrie trans., Stevens & Sons 1869); BERNARD AUDIT & LOUIS D’ABOUT, DROIT INTERNATIONAL PRIVÉ ¶ 212 *et seq.* (7th ed., Economica 2013); and MARIE-CHRISTINE MEYZEAUD-GARAUD, DROIT INTERNATIONAL PRIVÉ 134 (Bréal 2008); a practical application of this rule by a French court can be found in the decision in Civ. 1er, 8 Jul. 1969, BULL. 1969, n. 268.

¹⁵⁸ CHRISTIAN VON BAR, INTERNATIONALES PRIVATRECHT, BAND II: BESONDERER TEIL 545 (Beck 1991); BRAM AKKERMANS, THE PRINCIPLE OF *NUMERUS CLAUSUS* IN EUROPEAN PROPERTY LAW 163-165 (Intersentia 2008); THOMAS RAUSCHER, INTERNATIONALES PRIVATRECHT: MIT INTERNATIONALEM UND EUROPÄISCHEM VERFAHRENSRECHT 318-319 (3rd ed., Beck 2009). The Tribunal is aware that argument has been made for a less strict approach in relation to the property law applicable to tangible movables (*Mobiliarsachenrecht*) (see J. KROPHOLLER, INTERNATIONALES PRIVATRECHT 558 (6th ed., Mohr Siebeck 2006)), in particular, in relation to goods and security interests in goods sold in a trans-border transaction and awaiting export (see Ulrich Drobnig & Herbert Kronke, *Die Anerkennung ausländischer Mobiliarsicherungsrechte nach deutschem Internationalen*

Austrian Act on Private International Law and Articles 99 and 100 of the Swiss Federal Act on Private International Law. The Tribunal further notes that a long line of English jurisprudence provides support for the conclusion that the proprietary rights on movables are governed by the *lex rei sitae*.¹⁵⁹

145. In addition, there is jurisprudence of international courts and tribunals applying the *lex rei sitae* in determining the ownership of movable property. For example, faced with the question of whether to apply French or German law in determining if title had passed in a sale of goods, the Franco-German mixed arbitral tribunal explicitly applied the *lex rei sitae* of French law, although both French and German law would have led to the same result.¹⁶⁰

146. However, although the principle that the *lex rei sitae* governs property rights is generally accepted, its implementation may differ, depending on the specifics of the case and the legal system involved. Furthermore, the scope of the *lex rei sitae*, and, thus, the extent to which the *lex rei sitae* governs the actual transfer of title between seller and buyer, “can vary widely between the states.”¹⁶¹

147. One of the elements affecting the scope of the *lex rei sitae* for determining whether title in goods sold has been transferred from the seller to the purchaser is the inevitable reality that such transfer has its origins in a sales contract. French writers in particular make this point

Privatrecht, in DEUTSCHE ZIVIL-, KOLLISIONS- UND WIRTSCHAFTSRECHTLICHE BEITRÄGE ZUM X. INTERNATIONALEN KONGREß FÜR RECHTSVERGLEICHUNG IN BUDAPEST 1978 91 (Mohr Siebeck 1978)) so as to allow for greater freedom of contract as between the parties, and as long as the legitimate interests of third parties are safeguarded. However, it is significant that these arguments have not found legislative support when the German Parliament, in 1999, reviewed and recast the relevant provisions of Articles 43 to 46 of the *Einführungsgesetz*.

¹⁵⁹ CHRIS M.V. CLARKSON & JONATHAN HILL, *THE CONFLICT OF LAWS* 475 (4th ed., Oxford University Press 2011); 2 DICEY, MORRIS AND COLLINS ON *THE CONFLICT OF LAWS* 1337 (Lord Collins of Mapesbury, et al. eds., 15th ed. 2015) (quoting *Air Foyle Ltd. v. Center Capital Ltd.* [2002] EWHC 2535 (Comm.), [2003] 2 LLOYD’S REP. 753) (“The proposition that the *lex situs* governs the transfer of rights in chattels has been judicially described as being ‘long established beyond challenge,’ which for all practical purposes it certainly now is.”). See also *Cammell v. Sewell* (1860) 5 H&N 728, 744 (Crompton J.).

¹⁶⁰ *Schreider v. Metenett*, Franco-German Mixed Arbitral Tribunal, 26 Jul. 1922, 2 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES INSTITUÉS PAR LES TRAITÉS DE PAIX 334. Another decision of relevance is *Weil Cyriaque v. The German State*, Franco-German Mixed Arbitral Tribunal, 30 Oct. 1928, 9 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES INSTITUÉS PAR LES TRAITÉS DE PAIX 525, in relation to the choice between French and Russian law. See also Jean-Paulin Niboyet, *Jurisprudence des tribunaux arbitraux mixtes*, 40 RECUEIL DES COURS 221, 224 (1932).

¹⁶¹ Louis d’Avout, *Property and Proprietary Rights*, in 2 *ENCYCLOPEDIA OF PRIVATE INTERNATIONAL LAW* 1430 (Jürgen Basedow, et al. eds., 2017).

referring to the “law of the source”¹⁶² (of the passage of the title). In a similar vein, as regards the point of departure, United States authors suggest that, while the relationship between contract and title aspects in a sale is so close that the UCC has largely made the distinction obsolete in inter-state cases, an independently operating *situs* rule is of greater importance where there is no uniformity of substantive law and potentially diverse market policies of the jurisdictions involved come into play.¹⁶³ Some domestic conflict-of-laws systems have attempted to reconcile the law governing the contractual basis of the transfer of title between the parties to the contract (*inter partes*) with the effect of such transfer on third parties (*erga omnes*), such as creditors, tax authorities, and insolvency administrators, who may have their own interest in the property, or individuals who are contemplating to acquire, or have acquired, the property. Others, such as German conflict of laws, for instance, ignore the contractual origin: even where the sales contract is found to be void, the purchaser may acquire title under the *lex rei sitae* if the *situs* is Germany or another jurisdiction based on the principles of “separation” and “abstraction.”

148. In a large number of conflict-of-laws systems, however, the binding force of the sales contract seems a condition precedent for the transfer of title. In some conflict-of-laws systems, such as those of France¹⁶⁴ and Belgium,¹⁶⁵ the transfer of title between seller and purchaser (*inter partes*) is, in principle,¹⁶⁶ governed by the law applicable to the sales contract (*lex contractus*), whereas the question of whether title has been transferred *erga omnes*, *i.e.*, with

¹⁶² [*L*]oi de la source. See BERNARD AUDIT & LOUIS D’AVOUT, *supra* note 157, ¶ 841.

¹⁶³ PETER HAY, PATRICK J. BORCHERS, SYMEON C. SYMEONIDES, *CONFLICT OF LAWS* 1217-1222 (6th ed., West Publishing Co. 2018).

¹⁶⁴ See BERNARD AUDIT & LOUIS D’AVOUT, *supra* note 157, ¶ 845 (the *lex contractus* should apply if no interests of third parties are involved); DOMINIQUE BUREAU & HORATIA MUIR WATT, 2 *DROIT INTERNATIONAL PRIVÉ* ¶¶ 668-69 (4th ed. 2017); PIERRE MAYER & VINCENT HEUZÉ, *DROIT INTERNATIONAL PRIVÉ* ¶ 675 (11th ed. 2014).

¹⁶⁵ While the solution that the acquisition of title (but neither the content nor the exercise of that right *in rem*) is governed by the law applicable to the underlying contract and, consequently, to party autonomy, is *not* reflected in the relevant provision (Article 87) nor clearly stated by commentators, it is implied by the illustrative examples given in the parliamentary *travaux préparatoires*. Concerning the former, see MARC FALLON & FRANÇOIS RIGAUX, *DROIT INTERNATIONAL PRIVÉ* 673-75 (3rd ed. 2005); JOHAN ERAUW & HENRI STORME, BEGINSELEN VAN BELGISCH PRIVAATRECHT XVII, *INTERNATIONAAL PRIVAATRECHT*, paras. 550-51 (2009); Caroline Clijmans, *Article 87 – Recht toepasselijk op zakelijke rechten*, in JOHAN ERAUW, MARC FALLON, ERNA GULDIX, JOHAN MEEUSEN, MARTA PERTEGÁS SENDER, HANS VAN HOUTTE, NADINE WATTÉ, PATRICK WAUTELET, *HET WETBOEK INTERNATIONAAL PRIVATRECHT BECOMMENTARIEËRD – LE CODE DE DROIT INTERNATIONAL PRIVÉ COMMENTÉ* 448-54 (2006). Concerning the latter, see *Sénat de Belgique, Session extraordinaire de 2003, 7 juillet 2003, Proposition de loi portant le Code de droit international privé*, 3-27/1 at 114, 115.

¹⁶⁶ *But see also infra* para. 151.

regard to third persons with their own interests or competing property claims, is governed by the *lex rei sitae*.

149. In this connection, the Tribunal notes that for years during the course of this arbitration, the United States had argued that, in order to determine whether Iran obtained title to a particular property, and, thus, whether such property is “Iranian” within the meaning of Paragraph 9, the terms of the underlying contract between the vendor and the Iranian purchaser should be the first point of reference. According to the United States, it is only where the contract does not address or resolve the issue of title that the Tribunal will need to resort to the law governing the transaction (*lex contractus*). However, at the Hearing in the present Cases, the United States eventually argued that it is rather the municipal law of the state where the goods are located (*lex rei sitae*) that determines whether a particular right *in rem* exists, the scope of that right, and in whom it vests.

150. The Tribunal notes that the Decision of 30 April 1923 of the Belgian-German Mixed Arbitral Tribunal expressly distinguished between title *erga omnes* and *inter partes*:

[T]he Tribunal unanimously considers that the law of the country where the property, be it movable or immovable, is located (*lex rei sitae*) is the only one to govern the transfer of title, *at least as regards third parties* Apart from the effects of the contract entered into by the parties, that is, as regards the acquisition of title vis-à-vis third parties, the only issue in this case, the conflict of laws specialists of the most diverse countries . . . – Belgium, Germany, France, Italy, Spain, Austria, Greece, Switzerland etc. – admitted the *lex rei sitae* (Translation from French original.)¹⁶⁷

151. While the Decision emphasizes that the critical criterion for a generally acceptable conflicts rule is its effectiveness vis-à-vis third parties, it does not include any statement as to what the tribunal would have applied had the question before it been whether the other contracting party had acquired title. In any event, in this Tribunal’s view, the following sentences of the Decision would appear to carry the greatest weight:

¹⁶⁷ *Bartelous v. The German State*, German-Belgian Mixed Arbitral Tribunal, 30 Apr. 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES INSTITUÉS PAR LES TRAITÉS DE PIX 274, 277 (emphasis added). (“[L]e Tribunal estime que le droit en vigueur dans le pays où se trouve la chose (*lex rei sitae*) est le seul applicable au transfert de la propriété, *tout au moins à l’égard des tiers*. . . . Qu’abstraction faite des effets du contrat entre les parties, c’est, en ce qui concerne l’acquisition de la propriété à l’égard des tiers, seule en question en l’espèce, à l’unanimité que la *lex rei sitae* a été admise par les spécialistes du droit international privé, appartenant aux pays les plus divers – Belgique, Allemagne, France, Italie, Espagne, Autriche, Grèce, Suisse etc. . . . réunis à Madrid en 1911.”).

That [the *situs* rule] alone may put an end to the uncertainties that are caused in practice, notably for those contracts that are concluded by correspondence, by the theory that makes the acquisition of the property dependent upon the determination of the law to which the sale itself is submitted.¹⁶⁸ (Translation from French original.)

And, again, certainly significant for our purposes:

That at most this rule may, in light of *general principles* of law, be modified when it is not about, like here, removing a legal condition on the transfer of property, but to the contrary about adding a contractual condition to the legal conditions, when for example, the thing is located in Belgium, those who contract in Germany agree that title will not pass before delivery to the buyer is effected.¹⁶⁹ (Translation from French original, emphasis added.)

In other words, the tribunal considered that, for the rule to be a general principle, one might envisage that the parties to the underlying sales contract could contractually *add* conditions known only to the law of the place where the contract was entered into *to* the legal requirements for the acquisition of title posed by the *lex rei sitae*. Yet again put differently, the parties could render the acquisition of title more onerous by agreeing on the cumulative applicability of the requirements of the *lex rei sitae* and the *lex contractus*.

152. In most instances, the fact that some aspects of the sale and the transfer of title to the goods sold are governed by the contract and the *lex contractus* and that other aspects are governed by the *lex rei sitae* has no practical impact, because most often the same domestic law will be applicable as *lex contractus* and *lex rei sitae*. However, whenever the law of the contract does not coincide with the *lex rei sitae*, the moment of transfer of title under the law of the contract may differ from the moment of transfer under the *lex rei sitae*.

¹⁶⁸ *Bartelous v. The German State*, German-Belgian Mixed Arbitral Tribunal, 30 Apr. 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES INSTITUÉS PAR LES TRAITÉS DE PAIX 274, 277 (“Qu’elle [the *situs* rule] seule peut mettre fin aux incertitudes que soulève en pratique, notamment pour les contrats conclus par correspondance, la théorie qui fait dépendre l’acquisition de la propriété de la détermination du droit auquel est soumise la vente elle-même.”).

¹⁶⁹ *Bartelous v. The German State*, German-Belgian Mixed Arbitral Tribunal, 30 Apr. 1923, 3 RECUEIL DES DÉCISIONS DES TRIBUNAUX ARBITRAUX MIXTES INSTITUÉS PAR LES TRAITÉS DE PAIX 274, 278 (“Que tout au plus cette règle peut-elle, en vertu de principes généraux du droit, recevoir un tempérament lorsqu’il s’agit, non pas comme ici, de supprimer une condition légale du transfert de propriété, mais au contraire d’ajouter une condition conventionnelle aux conditions légales, quand par exemple, la chose se trouvant en Belgique, ceux qui contractent en Allemagne conviennent que la propriété ne sera transmise à l’acheteur qu’à partir de la tradition.”).

153. In this context and turning briefly to the position of the *substantive law* of domestic legal systems, the Tribunal notes that there are two approaches governing the passing of title to movable property, one that is consent-based, and the other that is delivery-based. In the “consent-based” systems, title to property is, as a rule, passed by the sales agreement between the parties alone. There is no need for additional elements, such as delivery, for the passing of title to be effective. The Iranian,¹⁷⁰ Belgian,¹⁷¹ Bulgarian, Cypriot, English and Welsh,¹⁷² French,¹⁷³ Irish, Italian,¹⁷⁴ Maltese, Polish, Portuguese,¹⁷⁵ and Scottish legal systems are “consent-based.”¹⁷⁶

154. To elaborate on Iranian law, the Tribunal recalls that, as provided in Volume 1, Book 2, Part 2, Chapter 3, Section 1, of the Iranian Civil Code, as a general rule, title to property sold passes upon the conclusion of the sales contract. Delivery has no effect upon the passing of title (except to invalidate the sales contract (and the passing of title) where certain goods cannot be delivered). Under Iranian contract law, Article 362(1) of its Civil Code provides that, unless the parties otherwise agree, “[a]s soon as the sale is effected, the purchaser becomes the owner of the subject-matter of the sale and the seller becomes the owner of its price.”¹⁷⁷ Ownership of assets that do not yet exist when the contract is concluded is transferred to the buyer as soon as they are manufactured and identifiable.¹⁷⁸

155. The United States legal system, as well as those of Austria, China, the Czech Republic, Estonia, Germany, Greece, Hungary, Japan, Korea, Latvia, Lithuania, the Netherlands, Slovakia, Slovenia, Spain, and Switzerland, as a general rule, require delivery, or a so-called “real” substitute for delivery, in order for title to pass. In the Individual Claims at issue in the

¹⁷⁰ Civil Code of Iran, arts. 339, 362(1), and 365 (M.A.R. Taleghany trans., Fred B. Rothman & Co. 1995). See also SAYED HASSAN AMIN, COMMERCIAL LAW OF IRAN 50-53 (1986).

¹⁷¹ CODE CIVIL [C.CIV.] art 1138 (Belg.).

¹⁷² English Sale of Goods Act, 1979, s. 17; Rawlinson v. Mort (1905) 93 LT 555. See also Robert Stevens, *Party Autonomy and Property Rights*, in PARTY AUTONOMY IN INTERNATIONAL PROPERTY LAW 83, 94-95 (Roel Westrik & Jeroen van der Weide eds., 2011).

¹⁷³ Brigitta Lurger et al., *Acquisition and Loss of Ownership of Goods*, in 9 PRINCIPLES OF EUROPEAN LAW 488-509 (Sellier/Stämpfli 2011).

¹⁷⁴ Codice civile [C.c.] art. 1376 (It.).

¹⁷⁵ Código civil [CC], art. 1317 (Port.).

¹⁷⁶ Brigitta Lurger et al., *supra* note 173, at 488-509.

¹⁷⁷ Civil Code of Iran, art. 362(1) (M.A.R. Taleghany trans., Fred B. Rothman & Co. 1995) (emphasis added).

¹⁷⁸ See N. KATOZIAN, 1 CIVIL LAW, SPECIFIC CONTRACTS 126-27.

present Cases, where delivery is required, such delivery does not necessarily have to be to Iran itself. For example, title to property could have been transferred to Iran upon the properties being delivered to the freight forwarder, by agreement of the parties.

156. The Tribunal further observes that, in a number of “delivery-based” systems, as well as in “consent-based” systems, the parties are allowed to contractually agree on the moment the title is transferred.¹⁷⁹ For instance, in the United States, freedom of contract allows for parties to decide upon the moment that title to property passes.¹⁸⁰ UCC Sections 2-401(1)-(3) provide, first and foremost, that “title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.” In the absence of such an agreement, title to property passes upon the “physical delivery of the goods.” Thus, under the UCC, the parties to a contract can explicitly agree that title will pass at a point in time other than delivery.¹⁸¹

157. Iran has argued that, were the Tribunal to apply the *lex rei sitae*, it would necessarily find that for properties acquired, and located, in the United States, the delivery would constitute a crucial criterion for title to pass. In Iran’s view, the criterion for delivery would lead to excluding from the scope of the United States’ obligation properties that were not delivered, the very category of properties that was intended to have been restored to Iran. Therefore, Iran contends, such an approach would defeat the purpose of an obligation on the United States to arrange for the transfer of all Iranian properties under Paragraph 9.

158. The Tribunal cannot accept Iran’s contentions. As the Tribunal’s analysis, *supra*, shows, the circumstance that purchased properties were located on United States territory on 19 January 1981 need not necessarily lead to the conclusion that all these properties had actually to be delivered to Iran in order to pass title to Iran.

159. The Tribunal finds it expedient to consider here Iran’s argument about the effect of changed circumstances on its determination of scope of “Iranian properties.” Iran has argued that the events in Iran resulting from the Islamic Revolution of 1979, and the changed circumstances that led to non-delivery of its items by its United States contractors, should be considered by the Tribunal in deciding the present Cases where, under the law applicable,

¹⁷⁹ Brigitta Lurger et al., *supra* note 173, at 467-88 & 567-80.

¹⁸⁰ UCC §§ 2-401(1)-(3).

¹⁸¹ See also *Sherman County Bank v. Kalhoff*, (1980) 288 N.W.2d 24, 205 Neb. 392; *Northwestern Flyers, Inc. v. Olson Brothers Manufacturing Co., Inc.*, C.A. Iowa (1982), 679 F.2d 1264.

delivery triggers the transfer of title. The Tribunal is unpersuaded by Iran’s arguments. The applicability of the principle of changed circumstances would depend on whether such principle was relevant under the applicable law. The Tribunal notes in this regard that it has found no such exception in the systems of law requiring delivery of the item for title to pass.

160. Reverting to the Tribunal’s objective of identifying a general principle of *private international law* and its rationale, the Tribunal notes that, while the relevant conflict-of-laws analysis and the analysis of the position according to the applicable substantive law are to be kept distinct in principle,¹⁸² they are nonetheless related. This is chiefly because, as emphasized, ownership or title, as an *in rem* right, is “absolute.”¹⁸³ Unlike obligations, or *in personam* rights, which are “relative” rights and owed by the obligor to the obligee, ownership entitles the holder to immediate and absolute control over the asset not only vis-à-vis the other party to a transaction, such as in a sales contract (*inter partes*), but also vis-à-vis everyone else (*erga omnes*).¹⁸⁴ It is on account of this peculiarity that there is a particular need for legal certainty in matters of property law, as recognized in all legal systems.

161. At the level of conflict of laws, the particular need for legal certainty has been expressed by the overwhelming preference for the *situs*, *i.e.*, the place where a chattel is located at the relevant point in time, as the connecting factor. It provides the desirable stability and is not subject to manipulation by the parties to a transaction based on party autonomy, which is the preferred basis upon which the law applicable to contractual obligations is determined. This is why the vast majority of legal systems, including the law of Iran¹⁸⁵ and, at least traditionally, the United States Restatement (Second) of Conflict of Laws¹⁸⁶ have opted for a rule according

¹⁸² See *supra* para. 129.

¹⁸³ See *id.*

¹⁸⁴ See *supra* para. 130.

¹⁸⁵ See *supra* para. 144.

¹⁸⁶ See *id.* In recent times, United States courts rarely, if at all, make reference to the *lex rei sitae* rule; this is, however, the result of the fact that both transfer of title by sale and the taking of security in movables are governed by UCC §§ 2 and 9, as adopted in the various States, and because in international cases in the post-conflict-of-laws-revolution period, courts tend to apply either the *lex fori* or embark upon some kind of governmental interest analysis. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS, ch. 9 (Property), topic 3 (Movables), reporter’s note, introductory note and Title A (Conveyances), cmts. c, f (highlighting the general rule of § 6 (most significant relationship) and, in particular, the importance of the “values of certainty, predictability and uniformity of result”) (1971; June 2018 update). For the exceedingly rare recent cases where the *lex rei sitae* rule was applied outright, see *Chih Shen Chen v. Intoplast Group Ltd.*, 11 F. Supp. 3d 824, 837 (S.D. Tex. 2014) and *Schoeps v. Museum for Modern Art*, 594 F. 2d 461, 468 (S.D.N.Y. 2009). In *Schoeps*, the court, while recognizing that, in the normal course of events, Swiss law as the law of the place where the transfer took place would apply, applied New York law because the painting in question had been immediately shipped to New York, paid for by check made out to

to which matters of property law and, in particular, the acquisition of title to movable property is governed by the *lex rei sitae*.¹⁸⁷ Arguments in favor of greater party autonomy, as advanced – particularly in relation to the creation and recognition of security interests and title retention in cross-border transactions where rendered public by way of registries – by some commentators in the 1970s, have not found support with legislators tasked with reviewing and recasting such provisions.¹⁸⁸ Where legislators did provide some freedom, such as in Article 104(1) of the Swiss Federal Act on Private International Law, its scope is limited: according to Article 116(2) the parties’ choice must be explicit or otherwise beyond doubt, and it must be made clear that the choice was meant to determine, not only the law governing the contract but also the proprietary aspects of the transaction.¹⁸⁹ As has been pointed out, the distinction between the relationship *inter partes* and effects *erga omnes* reflects the infelicitous compromise adopted in the 1958 Hague Convention on the Law Applicable to the Transfer of Title in the International Sale of Movables.¹⁹⁰ That compromise was meant to bridge four divides: first, on the surface of the negotiations, the types of rights of both seller and buyer as well as of third parties that needed to be considered had initially been contentious; second, the acquisition of title from a non-owner and the significantly divergent relevant rules in the substantive law of legal systems needed to be addressed; third, the issue as to whether insolvency scenarios were to be contemplated; fourth and most fundamentally, whether the convention was to address the *inter partes* relationship at all, a notion rejected by the Nordic countries whose substantive law, not being based on Roman law heritage, does not encounter

a New York bank and had been in the possession of a major New York cultural institution for over 70 years. For an early outline of “better law” and “interest analysis” approaches, see David F. Cavers, *The Conditional Seller’s Remedies and the Choice-of-Law Process – Some Notes on Shanahan*, 35 N.Y.U. L. REV. 1126 (1960), warning (at 1141) against “depeçage,” *i.e.*, having effects *inter partes* and effects vis-à-vis third parties governed by different laws.

¹⁸⁷ See *supra* para. 144.

¹⁸⁸ On the discussion and the reasons for rejecting calls for more party autonomy, see Einführungsgesetz zum Bürgerlichen Gesetzbuche/IPR Arts. 43-46 (Internationales Sachenrecht), Article 43 nos. 14, 19 *et seq.*, in HEINZ-PETER MANSEL, JULIUS VON STAUDINGERS KOMMENTAR ZUM BÜRGERLICHEN GESETZBUCH MIT EINFÜHRUNGSGESETZ UND NEBENGESETZEN (Sellier-de Gruyter 2015); BERND VON HOFFMANN & KARSTEN THORN, INTERNATIONALES PRIVATRECHT § 12 nos. 1-12 (Beck, 9th ed. 2007).

¹⁸⁹ Bundesgericht [BGer] [Federal Supreme Court] 26 Jul. 2006, 6P.28/2006 (Switz.), at E.7.3; Anton Heini, Article 104 nos. 5, 9, in DANIEL GIRSBERGER, ANTON HEINI, MAX KELLER, JOLANTA KREN KOSTKIEWICZ, KURT SIEHR, FRANK FISCHER, PAUL VOLKEN, ZÜRCHER KOMMENTAR ZUM IPRG (Schulthess, 2d ed., 2004); Pius Fisch, Article 104 nos. 8, 13-18, in HEINRICH HONSELL, NEDIM PETER VOGT, ANTON K. SCHNYDER, STEPHEN V. BERTI, BASLER KOMMENTAR INTERNATIONALES PRIVATRECHT (Helbing & Lichtenhahn, 3rd ed. 2013).

¹⁹⁰ Convention sur la loi applicable au transfert de la propriété en cas de vente à caractère international d’objets mobiliers corporel (15 Apr. 1958).

any problems worth being regulated in this respect.¹⁹¹ This instrument has been ratified by only one State and is generally considered inadequate for today's commercial needs.¹⁹² It is noteworthy that, among the numerous jurisdictions where private international law was codified in the course of the intervening decades, only Belgium appears to have followed that example.¹⁹³

162. The principal reason for not following the French and Belgian example is, obviously, that that would be incompatible with the Tribunal's determination that it should identify and apply a *general* principle of private international law. The sheer number of conflict-of-laws systems adhering to the *lex rei sitae* rule¹⁹⁴ speaks for itself. Moreover, and almost as importantly, even French doctrine raises serious questions about this approach that cannot be answered in a satisfactory manner. Significantly, according to authoritative writers, the rule giving prevalence to the *lex contractus* as regards the *inter partes* relationship does not apply where the *lex rei sitae* for its part does not make that distinction.¹⁹⁵ Second, French writers seem to envisage, where considered appropriate, the application of rules of the *lex rei sitae* in their guise of *lois de police*, or interventionist rules, against the chosen *lex contractus*.¹⁹⁶ Third, the rule that the law of the contract may also govern the passage of title as regards the relationship *inter partes* is subject to the condition that there are no third parties who may have an interest in readily ascertaining the legal situation by way of an easy verification based on appearance.¹⁹⁷ The categories of third party routinely mentioned in this context are creditors, insolvency administrators, individuals contemplating the acquisition of an interest in the property, and tax authorities. It is submitted that other public authorities that either have attached, or contemplate attachment of, a chattel pursuant to an authorization rooted in public law must equally be protected against the peril of making assessments based on misleading

¹⁹¹ *Rapport de la Commission Spéciale présenté par M. G. van Hecke*, in CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ, DOCUMENTS RELATIFS À LA HUITIÈME SESSION 3 AU 24 OCTOBRE 1956 6 *et seq.* (ed. Bureau Permanent de la Conférence, La Haye, 1957); ACTES DE LA HUITIÈME SESSION, 3 AU 24 OCTOBRE 1956 21-94 (at 24, 76 and *passim*) (éd. Bureau Permanent de la Conférence, La Haye, 1957) (*see the Delegate Alten (Norway): "... le transfert de propriété entre parties ne présente aucun intérêt"*).

¹⁹² Fisch, *supra note* 189 n.15. The one State that did ratify the 1958 Hague Convention, Italy, did not implement its rules in its 1995 Statute on Private International Law (*see supra* para. 144).

¹⁹³ *See supra* note 165.

¹⁹⁴ *See supra* para. 144.

¹⁹⁵ *See* PIERRE MAYER & VINCENT HEUZÉ, *supra note* 164, no. 677.

¹⁹⁶ *See id.*, nos. 670, 675.

¹⁹⁷ *See id.*, nos. 670, 675, 676.

appearance. On none of these theoretically challenging and highly delicate issues did the Parties present argument or authority.

163. Focusing once again briefly on the relevant conflicts principles and rules of the United States and Iran, the bottom line would appear to be the following: the former, while *generally* accepting the *lex rei sitae* principle as a default solution in the absence of an effective choice of law by the parties (Section 244(2) of the Restatement¹⁹⁸), in relation *specifically* to the acquisition of title based on a *contract of sale*, it defers to the UCC which, in Section 2-401(2), provides that, *unless otherwise explicitly agreed*, title passes to the buyer at the time and place where the seller completes his performance by way of physical delivery of the goods. In other words, an effective (and explicit) choice trumps the fall-back principle of applicability of the *lex rei sitae*. Conversely, the Iranian conflicts rule¹⁹⁹ would appear to be more “classic,” or “conservative,” given that Article 966 of the Iranian Civil Code does not provide, as other conflicts rules do,²⁰⁰ a solution for cases of *conflits mobiles* or for cases in which the requirements for the acquisition of title from different jurisdictions may be pieced together, one after another,²⁰¹ insisting instead on the sole applicability of the law of the *situs* of origin.

164. In light of the foregoing, the Tribunal decides that the *lex rei sitae* is a universal, or general, principle of private international law, and that the substantive law governing the passage of title must be identified pursuant to that principle.

¹⁹⁸ Section 244 of the Restatement (Validity and Effect of Conveyance of Interest in Chattel) provides:

(1) The validity and effect of a conveyance of an interest in a chattel as between the parties to the conveyance are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the conveyance under the principles stated in § 6.

(2) In the absence of an effective choice of law by the parties, greater weight will usually be given to the location of the chattel, or group of chattels, at the time of the conveyance than to any other contact in determining the state of the applicable law.

¹⁹⁹ *See supra* para. 144, note 155.

²⁰⁰ Loi portant le Code de droit internationale privé [Law on the Code of Private International Law], 16 Jul. 2004, art. 87, § 1 (Belg.) (implicitly); Einführungsgesetz zum Bürgerlichen Gesetzbuch [Introductory Act to the Civil Code], art. 43(2) and (3) (Ger.); Burgerlijk Wetboek [Civil Code] arts. 10:127 (5) and 10:130 (Neth.).

²⁰¹ Einführungsgesetz zum Bürgerlichen Gesetzbuch [Introductory Act to the Civil Code], art. 43(3) (Ger.).

(2) The United States' Obligations Under the Algiers Declarations with Respect to Iranian Tangible Properties

(a) *Introduction*

165. 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.

166. In support of its claims in the present Cases, Iran relies also on General Principle A of the General Declaration, which in turn 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.

167. In paragraph 77(a) (*dispositif*) of Award No. 529 the Tribunal described the United States' Paragraph 9 obligation as follows:

The obligations of the United States under the General Declaration of 19 January 1981 with respect to tangible Iranian properties were, first, to remove the restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of those properties and to direct persons holding those properties who were subject to the jurisdiction of the United States to transfer the properties as directed by the Government of Iran and, second, to take steps to ensure that this directive will be complied with.²⁰²

168. This follows on the Tribunal's finding in paragraph 40 of the same Award, where it held that there were three prongs to the United States' Paragraph 9 obligation:

[T]he obligations of the United States were, first, to remove all restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of Iranian tangible properties and, second,

²⁰² Award No. 529, para. 77(a), 28 IRAN-U.S. C.T.R. at 140.

to direct persons subject to the jurisdiction of the United States holding any Iranian properties to transfer such properties as directed by the Government of Iran. In addition, whereas the obligation to “arrange for” the transfer of properties did not include an obligation for the United States itself to ship any Iranian properties to Iran, the United States had an obligation to take steps, upon indication from Iran, to ensure that the holders of those properties would transfer them to Iran.²⁰³

169. As interpreted by the Tribunal, Paragraph 9, therefore, consists of three prongs: first, to remove the restrictions it had imposed during the freeze period upon the mobility and free transfer of Iranian tangible properties; second, to direct persons holding those properties to transfer the properties as directed by Iran; and, third, to take steps, upon indication from Iran, to ensure that the holders of those properties would transfer them to Iran. Accordingly, the Tribunal will apply this interpretation of Paragraph 9 in each of the Individual Claims.

(b) The Date on Which the United States’ Paragraph 9 Obligation Arose

170. The Tribunal now turns to the timing of the United States’ Paragraph 9 obligation, namely, the question of when that obligation arose.

(i) The Parties’ Contentions

Iran’s Contentions

171. Iran argues that, in light of the wording of Paragraph 9, as well as a comparison with the wording of Paragraphs 2 through 8 of the General Declaration, the United States’ obligation under Paragraph 9 was triggered by the adherence by Iran and the United States to the Algiers Declarations and the certification of the Algerian Government that the 52 United States nationals detained at the United States Embassy in Tehran had safely departed from Iran, as provided by Paragraph 3 of the General Declaration. Therefore, the obligation arose upon the entry into force of the Algiers Declarations, *i.e.*, on 19 January 1981. Iran further argues that the Parties never agreed on a “grace” period for the United States to perform its Paragraph 9 obligation. In Iran’s view, this is supported by the fact that the United States began performing that obligation through the issuance, with immediate effect, of Executive Order No. 12281 on 19 January 1981.

²⁰³ Award No. 529, para. 40, 28 IRAN-U.S. C.T.R. at 125-26.

The United States' Contentions

172. The United States contends that the date of any breach of Paragraph 9 will vary from claim to claim and would be “the date after which Iran has taken all steps necessary to make U.S. performance possible . . . and after which the United States has had a reasonable opportunity to implement its transfer directive yet failed to do so.” Furthermore, the United States argues, neither party was expected to act immediately; thus, as it did in prior decisions, the Tribunal should recognize that at least a short period of time was reasonably allowable and necessary for the United States to complete its performance once its obligation to take further steps to arrange for transfer arose with respect to each property.²⁰⁴ According to the United States, “six months from the date that Iran made U.S. performance possible is the shortest reasonable period of time in which the United States could have been expected to act.”

(ii) The Tribunal's Decision

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 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. Specifically, the United States did so by issuing Executive Order No. 12281, which was effective immediately. That Executive Order directed and compelled holders of Iranian tangible properties to transfer them, as directed by the Government of Iran, and removed obstacles existing at that time to the transfer of such properties.²⁰⁵ In accordance with the Tribunal's findings in Award No. 529,²⁰⁶ not only did Executive Order No. 12281 not violate the Algiers Declarations, but indeed it constituted the United States' performance of the first and second prongs of its Paragraph 9

²⁰⁴ The United States cites Award No. 590, paras. 107, 109, and 110, 34 IRAN-U.S. C.T.R. at 139-40.

²⁰⁵ See Award No. 529, para. 41, 28 IRAN-U.S. C.T.R. at 126.

²⁰⁶ See Award No. 529, para. 41, 28 IRAN-U.S. C.T.R. at 126.

obligation. That obligation was later breached as a consequence of the issuance of the Unlawful Treasury Regulations.

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. Such a conclusion is not supported by the plain wording of Paragraph 9 or General Principle A. Nor is it supported by the findings contained in Award No. 529 requiring Iran to provide direction to the property holders and indication to the United States of any need for assistance.

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.

177. Accordingly, the question of exactly at what moment in time the United States was in a position to satisfy the last prong of its Paragraph 9 obligation – *i.e.*, to take steps, upon indication from Iran, to ensure that the holders of those properties would transfer them to Iran – cannot be answered in the abstract and depends on the specific circumstances of each Individual Claim.

(c) The Nature of the United States’ Paragraph 9 Obligation

178. The Tribunal will now turn to the analysis of the nature of the Paragraph 9 obligation. The Parties are in disagreement over the particular nature of the obligation, namely, whether the obligation to “arrange . . . for the transfer” was an obligation of result or an obligation of conduct. The Tribunal sets forth below the main arguments of the Parties.

(i) The Parties’ Contentions

Iran’s Contentions

179. Iran contends that the United States’ Paragraph 9 obligation is one of result. Indeed, Iran asserts, the Tribunal has already so characterized that obligation. Relying on the findings

in Award No. 529, Iran maintains that it was not sufficient for the United States to pass legislation directing the transfer, but that it had to take steps to ensure that the transfer actually took place. Responding to arguments by the United States,²⁰⁷ Iran asserts that the use by the Tribunal in Award No. 529 of the words to “take steps” does not mean that the Tribunal intended to “downgrade” the United States’ Paragraph 9 obligation to an obligation of conduct, *i.e.*, to take reasonable steps.

180. Iran maintains that the United States’ construction of its obligation in Paragraph 9 as one of conduct is not borne out by the language of Paragraph 9, which makes no reference to reasonable steps or best endeavors. According to Iran, had the Parties intended Paragraph 9 to be limited to a best endeavors obligation, they would have used appropriate language to that effect.

181. In addition, according to Iran, the fact that it was within the power of the Federal Government of the United States to direct and ensure that Iranian properties were transferred to Iran, in the same way as it was in the Government’s power to freeze such property beforehand, points to an obligation of result rather than one of conduct. In support, Iran refers to the text of Executive Order No. 12281,²⁰⁸ which it views as drafted on precisely that basis.

182. Iran further seeks support in General Principle A as giving rise to an obligation of result on the part of the United States. Iran deems that General Principle A forms an important part of the context of Paragraph 9, as well as constituting a commitment in its own right. In the same vein, Iran argues that the Tribunal’s Award in Case No. A11 (“Award No. 597”)²⁰⁹ also suggests that the United States’ Paragraph 9 obligation constitutes an obligation of result. In this connection, Iran contrasts Points II and III of the General Declaration, which include Paragraph 9, with Point IV of the General Declaration by citing the Tribunal’s characterization of those Points in Award No. 597. In the passages of that Award referred to by Iran, the Tribunal observed, *inter alia*, that, with regard to Points II and III, the Parties “established a

²⁰⁷ See *infra* para. 184.

²⁰⁸ See *supra* para. 11.

²⁰⁹ *Islamic Republic of Iran and United States of America*, Award No. 597-A11-FT (7 Apr. 2000), reprinted in 36 IRAN-U.S. C.T.R. 84.

detailed mechanism through which the United States would arrange for or cause the return of . . . assets to Iran.”²¹⁰ In Award No. 597, the Tribunal further observed that,

While in Points II and III the United States assumed an obligation of result – *i.e.*, the obligation to cause or arrange for the return to Iran of certain specified Iranian assets – in Point IV the United States assumed an obligation of conduct or means – *i.e.*, the obligation to assist Iran in its Pahlavi-assets litigation in the fashion delineated in Paragraphs 12-15 of the General Declaration.²¹¹

The United States’ Contentions

183. The United States, for its part, contests Iran’s characterization of the United States’ Paragraph 9 obligation as one of result on various grounds, including the following. First, the United States points out, Award No. 529 contains the following specific language: “the obligation to ‘arrange for’ the transfer of properties did not include an obligation for the United States itself to ship any Iranian properties to Iran.”²¹² Such finding, according to the United States, would run counter to a characterization of the United States’ Paragraph 9 obligation as one of result.

184. Second, the United States sees a clear rejection of such a characterization in the findings of the Tribunal in paragraph 40 of Award No. 529, setting out the content of the Paragraph 9 obligation. According to the United States, the Tribunal found that the first two prongs of that obligation, as identified by the Tribunal – namely, “to remove all restrictions [the United States] had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of Iranian tangible properties” and “to direct persons subject to the jurisdiction of the United States holding any Iranian properties to transfer such properties”²¹³ – had been complied with by the United States through Executive Order No. 12281. Hence, the United States argues that the only remaining obligation upon the United States was, in the language of the Award, “to take steps, upon indication from Iran, to ensure that the holders of those properties would transfer them to Iran.”²¹⁴ According to the United States, the nature of the obligation “to take steps” is clearly one of conduct, not of result.

²¹⁰ Award No. 597, para. 196, 36 IRAN-U.S. C.T.R. at 133.

²¹¹ Award No. 597, para. 199, 36 IRAN-U.S. C.T.R. at 133.

²¹² Award No. 529, para. 40, 28 IRAN-U.S. C.T.R. at 126.

²¹³ Award No. 529, para. 40, 28 IRAN-U.S. C.T.R. at 125-126. *See supra* para. 27.

²¹⁴ Award No. 529, para. 40, 28 IRAN-U.S. C.T.R. at 126. *See supra* para. 27.

185. The United States further contests Iran's contention as to the relevance of Award No. 597 in this context. For the United States, the Tribunal's analysis of the United States' obligations under Points II and III, carried out for purposes of contrasting those obligations with those set out in Point IV, did not address the Paragraph 9 obligation specifically and thus does not allow for any inference as to the nature thereof.

186. The United States further points out that the text of General Principle A and, in particular, the language "in so far as possible" contained therein is an important qualifier, which is a basis for the conclusion that the obligation is one of "reasonable endeavor."

187. In sum, the United States concludes that characterizing the United States' obligation under Paragraph 9 as an obligation of result is inaccurate as a matter of substance and in any event serves no practical purpose in the present Cases.

(ii) *The Tribunal's Decision*

188. The Tribunal tends to agree with this last statement of the United States. Indeed, the distinction between obligations of result and obligations of conduct is well-established in systems of civil law tradition and had originally been transposed into the law of state responsibility for internationally wrongful acts, mainly by the International Law Commission.²¹⁵ At times, characterizing certain obligations may assist the Tribunal in making findings as to the breach of a given obligation. In the case of an obligation of result, the obligation requires a specific outcome, and a breach will be found if the specific outcome is not achieved, regardless of the efforts and measures undertaken. In the case of an obligation of conduct, the breach occurs where a given conduct, described in the obligation, is not adopted by a State, regardless of the specific outcome.

189. However, the classification of obligations of result and obligations of conduct has been abandoned in the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts ("ILC Articles"), adopted in second reading in 2001, with a view

²¹⁵ *Obligation de résultat/obligation de moyens* in French; *Erfolgspflicht/Verhaltenspflicht* in German; *Draft Articles on State Responsibility, arts. 20, 21 and 23 (provisionally adopted on first reading)*, in *Report of the International Law Commission on the Work of its Forty-Eighth Session*, U.N. GAOR, 51st Sess., Supp. No. 10, U.N. Doc. A/51/10 (1996), reprinted in [1996] 2(2) Y.B. INT'L L. COMM. 1, 60-61. For criticism of the use of the distinction in the law of state responsibility, see Pierre-Marie Dupuy, *Reviewing the Difficulties of Codification: On Ago's Classification of Obligations of Means and Obligations of Result in Relation with State Responsibility*, 10(2) EUR. J. INT'L L. 371 (1999).

to simplifying the codification exercise.²¹⁶ It was notably considered that, in the law of state responsibility, no specific consequences attached to the breach of either an obligation of result or an obligation of conduct.²¹⁷ Therefore, the distinction was considered not to be operational within the scope of the ILC Articles, in particular also because the rigid distinction between the two obligations is problematic in the context of international law, which also recognizes obligations of a hybrid or complex nature. While international tribunals, including this Tribunal, have at times distinguished between obligations of result and of conduct,²¹⁸ in the particular context of the present Cases, the classification is of no assistance when it comes to assessing the alleged breaches of Paragraph 9 by the United States. As will be seen below, the finding of a breach of the obligation of the United States under Paragraph 9 will very much depend on the circumstances of the specific case and cannot be determined in general terms. At times, a non-transfer of a certain property may still not lead to a finding of a breach by the United States of Paragraph 9, while, in other cases, the United States may be held to have breached Paragraph 9 even where the items at issue have ultimately been transferred to Iran.

190. The Tribunal, having reviewed the extensive arguments made by the Parties, considers that, as such, the words “to arrange . . . for the transfer” do not have any specific legal meaning; in particular, they do not allow the Tribunal to conclude that the Paragraph 9 obligation is either one of conduct or one of result. In the Tribunal’s view, the Parties are presumed to have opted for a rather general, flexible wording as far as the obligations of the United States are concerned. While it bears noting that the term “arrange” in its ordinary sense means “to organize,” “to ensure that (something) is done or provided,” in the specific context of the present Cases, these definitions on their own do not allow the Tribunal to determine with a sufficient degree of certainty the concrete content of the obligation in legal terms.

191. Accordingly, the Tribunal does not deem it suitable to make any such general determination in the context of the present Cases; nor does it hold that the decisions made by the Tribunal in earlier Awards would necessarily impose a general determination in one way

²¹⁶ See *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, in *Report of the International Law Commission on the Work of its Fifty-Third Session*, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10, reprinted in [2001] 2(2) Y.B. INT’L L. COMM. 1 at 26-143 (with commentaries thereto). See also G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/Res/56/83, Annex 1 (Dec. 12, 2001), corrected by U.N. Doc. A/56/10/Corr. 1 and U.N. Doc. A/56/49 (Vol. I/Corr.4).

²¹⁷ Unlike in French law, where the nature of the obligation determines certain rules of proof and evidence.

²¹⁸ See, e.g., Award No. 590, para. 95, 34 IRAN-U.S. C.T.R. at 136. See also Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mex. v. U.S.), Judgment, 2009 I.C.J. 12, para. 27 (19 Jan.).

or another. As will be seen below, in light of the conclusions reached in the Individual Claims, the Tribunal considers that the concrete content of the United States' Paragraph 9 obligation is circumscribed by the specific circumstances surrounding each Individual Claim.

(3) Role Ascribed to Iran Under Paragraph 9

(a) *The Parties' Contentions*

192. Concerning the role ascribed to Iran under Paragraph 9, the Tribunal begins by reciting the contentions of the United States given that many of Iran's contentions are responses to points first raised by the United States.

The United States' Contentions

193. Relying on paragraphs 77 (a) and 40 of Award No. 529,²¹⁹ the United States asserts that its Paragraph 9 obligation is contingent on two actions by Iran. First, Iran must have directed the holder of a piece of Iranian property to transfer that property to Iran; and, second, only if such direction proved to be ineffective, then, Iran must have indicated to the United States that the latter should take steps to ensure that the property would be so transferred. According to the United States, such "direction" and such "indication" constitute obligations of Iran, and Iran, as the Claimant, has the burden of proving that it in fact provided directions to the holders of Iranian properties and indications to the United States.

194. The United States acknowledges that, in accordance with paragraphs 77(a) and 40 of Award No. 529, it has an obligation to take steps to ensure that the property holders would transfer Iranian properties to Iran.²²⁰ This obligation, however, would arise only once Iran has provided the said directions to the holders and indication to the United States, both of which are in fact good faith actions necessary to enable the transfer of Iranian properties. The United States maintains that it has no obligation to investigate and identify all Iranian properties within its jurisdiction that might be subject to Paragraph 9.

195. In the United States' view, directions by Iran to holders of Iranian properties consist of any actions required to enable the transfer of these properties to Iran, including notifying the holders of the identities and the shipping addresses of the Iranian Government recipients of the

²¹⁹ Award No. 529, paras. 40 & 77 (a), 28 IRAN-U.S. C.T.R. at 125-26 & 140. *See supra* paras. 27 & 167.

²²⁰ *See supra* paras. 27 & 167.

properties and, where necessary, paying shipping costs. Not only is direction by Iran to holders a necessary precondition to any further United States Paragraph 9 obligation, the United States asserts, but it is also necessary as a practical matter. Moreover, the United States points out that, not only Award No. 529, but also Executive Order No. 12281 specifically mentions that Iran was to provide directions to property holders. Thus, Iran already knew during the negotiation of the Algiers Declarations that it was required to take that action before invoking any Paragraph 9 obligation of the United States.

196. The United States further contends that, if Iran's direction to a holder did not result in the transfer of Iranian property, Iran was required under Paragraph 9 to indicate to the United States that it should take steps to ensure that the property would be so transferred; only then would the United States' obligation "to take steps" arise. In support, the United States relies on paragraph 40 of Award No. 529, in which the Tribunal held that "the United States had an obligation to take steps, upon indication from Iran, to ensure that the holders of those properties would transfer them to Iran."²²¹ According to the United States, such indication by Iran was a practical necessity because the United States did not know either what properties Iran owned in its jurisdiction or what properties required additional steps to complete the transfer.

197. In response to arguments by Iran,²²² the United States denies that, through the census of blocked Iranian assets that it conducted in 1980 and 1982,²²³ the United States learned of all Iranian properties located in the United States. To the extent that census reports allowed identification of Iranian properties, the United States provided this information to Iran.²²⁴ However, the purpose of the census was not to identify Iranian tangible property in the jurisdiction of the United States; thus, the census reports could not provide exhaustive information thereon. Rather, the United States continues, the purpose of the census was to provide information about Iran's commercial partners and its property interests at issue in those contracts, thereby offering insights about Iran's potential claims. Moreover, the census could not, and did not, capture all Iranian properties in the jurisdiction of the United States, because it relied on private persons to provide accurate information. According to the United States,

²²¹ Award No. 529, para. 40, 28 IRAN-U.S. C.T.R. at 125-26.

²²² See *infra* para. 199.

²²³ See *supra* paras. 10 & 16.

²²⁴ See *supra* para. 22.

this is evidenced by the fact that, in 1983, the United States had no information about over 80 percent of the properties that Iran had identified in its claims in the present Cases.

Iran's Contentions

198. Iran denies that there are any preconditions to performance by the United States of its obligation under Paragraph 9, and, in particular, that Iran was required to take any steps to trigger that obligation. Quoting paragraph 152 of Award No. 601, Iran asserts that “all that was required in order to trigger the transfer obligation was that the properties be ‘Iranian’ in the sense that they were solely owned by Iran.”²²⁵ The primary obligation was on the United States to lift the restrictions on all Iranian properties, direct the holders to transfer them, and ensure that the holders complied with this directive.

199. Iran contends, moreover, that the United States learned of the Iranian properties located within its jurisdiction through the 14 November 1979 Iranian asset freeze.²²⁶ In addition, Iran argues that the Tribunal should assume that the United States had already learned of those properties through the 1980 and 1982 census.²²⁷ Thus, Iran maintains that there was no practical need for Iran to take any actions to initiate the transfer process, in particular, to provide any indication to the United States.

200. Similarly, Iran asserts that, given that the United States was, as it itself admitted, in regular contact with United States claimants and contractors, it was fully capable of satisfying its Paragraph 9 obligation. In addition, having accepted such obligation in the Algiers Declarations, the United States must be deemed to have been capable of fulfilling it, including identifying the relevant Iranian properties and arranging for their transfer to Iran.

201. Hence, Iran contends, pursuant to paragraph 77(a) of Award No. 529, Iran only had the limited role of giving some form of direction to holders of Iranian properties concerning transfer. Indeed, Iran maintains that, in many cases, the individual contracts that it had concluded with the holders already contained the necessary directions. If logistical information about shipping was nevertheless required by the holders, the United States should have sought to obtain such information from Iran.

²²⁵ Award No. 601, para. 152, 38 IRAN-U.S. C.T.R. at 257.

²²⁶ See *supra* paras. 8-9.

²²⁷ See *supra* paras. 10 & 16.

202. Further, Iran argues that the 26 February 1981 Unlawful Treasury Regulations made the transfer of Iranian properties to Iran very difficult, if not impossible in any event; thus, direction by Iran to the holders would have been futile.

(b) *The Tribunal's Decision*

203. In paragraph 40 of Award No. 529, the Tribunal has held that Paragraph 9 obliges the United States to “direct persons subject to the jurisdiction of the United States holding any Iranian properties to transfer such properties *as directed by the Government of Iran*” and “to take steps, *upon indication from Iran*, to ensure that the holders of those properties would transfer them to Iran”²²⁸ (emphasis added). It should be noted that Executive Order No. 12281 contained virtually identical language concerning direction by Iran to holders of Iranian properties: it required that such persons transfer them “as directed after the effective date of this Order by the Government of Iran.”²²⁹ In Award No. 529, the Tribunal, observing that both Parties considered Executive Order No. 12281 to be in compliance with the Algiers Declarations, concluded that the Executive Order “forms part of the ‘practice’ of the treaty for purposes of its interpretation as provided in Article 31(3) of the Vienna Convention on the Law of Treaties.”²³⁰

204. The Tribunal has held earlier in this Partial Award that the United States’ Paragraph 9 obligation *arose* on 19 January 1981, without being contingent on any action by Iran.²³¹ The above-quoted language from paragraph 40 of Award No. 529 leads to the conclusion that, subject to certain exceptions,²³² whether the United States had *fulfilled* its specific obligation to take steps to ensure that holders of Iranian properties within its jurisdiction would transfer them to Iran²³³ depended on: (i) whether Iran had provided the holders with the information necessary for them to effect the transfer and (ii) whether Iran had informed the United States

²²⁸ Award No. 529, para. 40, 28 IRAN-U.S. C.T.R. at 125-26. *See also id.* para. 77 (a), 28 IRAN-U.S. C.T.R. at 140 and *supra* para. 27 & note 21.

²²⁹ *See supra* para. 11.

²³⁰ Award No. 529, para. 48, 28 IRAN-U.S. C.T.R. at 129. *See also supra* para. 29.

²³¹ *See supra* para. 173.

²³² *See infra* paras. 207-208.

²³³ *See supra* para. 27.

that holders were not transferring Iranian properties that should have been transferred pursuant to the transfer directive contained in Executive Order No. 12281.

205. The Tribunal considers that direction and indication do not represent enforceable legal obligations of Iran under Paragraph 9, since the only obligor under that provision is the United States. Strictly speaking, direction and indication represent burdens in Iran's own interest, in the sense that, absent their performance, in principle, the United States' responsibility for failing to take steps to ensure that holders would transfer Iranian properties to Iran could not be engaged.²³⁴ More fundamentally, direction and indication are necessary as a matter of practicality. For example, absent direction from Iran, a holder could not know to whom and where to ship a piece of property to Iran. Due to the changes in Iran following the Islamic Revolution of 1979, holders of Iranian properties could not reasonably be expected to rely on any such directions received prior to 14 November 1979.

206. Further, absent any indication from Iran, in principle, the United States could not know of the existence of specific properties within its jurisdiction that holders had not transferred to Iran as directed by Executive Order No. 12281. Indeed, the United States could fulfill its obligation to take steps to ensure that holders would effect the transfer only if it was actually aware of such properties. In this connection, the United States could not reasonably be expected to seek out and identify all Iranian properties within its jurisdiction that holders had not transferred as required by Executive Order No. 12281.

207. The Tribunal does recognize that, in situations where direction to holders or indication to the United States was unnecessary or futile, Iran could not reasonably have been expected to take those actions. For example, direction by Iran to a holder would have been unnecessary where the holder already knew where and to whom specific Iranian properties had to be shipped. Similarly, an indication by Iran to the United States would have been unnecessary where the United States had already learned, through other sources – for instance, from the

²³⁴ In this sense, direction and indication would be akin to an *Obliegenheit* under, for example, Swiss and German private law, that is, a requirement that the obligee contribute what is necessary to enable performance by the obligor. By way of example, under an insurance contract, the insurer is obliged to indemnify the insured party in case an insured event materializes. In order to be able to satisfy this obligation, however, the insurer requires the cooperation of the insured party in reporting the insured event; without such cooperation, the insurer cannot perform. See, e.g., ANDREAS VON TUHR & HANS PETER, 1 ALLGEMEINER TEIL DES SCHWEIZERISCHEN OBLIGATIONENRECHTS 12-13 (1979).

holders themselves or in proceedings before the Tribunal – that, despite direction by Iran to a holder, specific Iranian properties had not been transferred.

208. Furthermore, Iran’s direction to a holder and indication to the United States would have been futile where Iranian properties within the jurisdiction of the United States were being withheld by their holders based on Section 535.333 of the Unlawful Treasury Regulations. As noted, that Section allowed holders of Iranian properties to contest Iran’s right to possession thereof on the basis of any liens, defenses, counterclaims, set-offs, or similar reasons.²³⁵ By adopting and maintaining Section 535.333, the United States made plain that properties with respect to which Iran’s right to possession had been so contested by a holder were excluded from the transfer direction of Executive Order No. 12281. Thus, even if Iran had provided directions to a holder of such properties and an indication to the United States, the United States would not have arranged for their transfer to Iran. Hence, direction and indication by Iran with respect to contested properties would not offer any prospects of success.

209. Whether Iran’s direction to a holder or indication to the United States was in fact unnecessary or futile must be determined in each Individual Claim based on the evidence presented.

210. Moreover, the Tribunal finds itself unable to accept Iran’s argument based on the 1980 and 1982 census reports.²³⁶ The census reports do not form part of the record of the present Cases. While the Tribunal did not grant Iran’s requests for the production of the census reports in the first phase of these proceedings, nothing prevented Iran from presenting a fresh request for their production in the second phase, when considerations originally militating against production may no longer have existed.²³⁷ However, Iran elected not to do so. In these circumstances, the Tribunal is not prepared to speculate as to the author or the content of the census reports.

211. The Tribunal will not in the abstract define what constitutes adequate direction by Iran to holders, or what constitutes indication by Iran to the United States. Nor will it attempt to describe the manner in which the United States was to “arrange . . . for the transfer” of properties to Iran. Rather, the Tribunal will determine these questions in the context and

²³⁵ See *supra* para. 32.

²³⁶ See *supra* para. 199.

²³⁷ See *supra* para. 21.

specific circumstances of each Individual Claim. In so doing, the Tribunal will make a claim-by-claim inquiry into whether the United States did everything it reasonably could have done to satisfy its Paragraph 9 obligation to take steps to ensure that Iranian properties would be transferred to Iran considering the information the United States possessed about the properties that are the subject of Iran's claims.²³⁸

(4) *Iran's Alternative Claim Based on Paragraph 8 of the General Declaration*

(a) *The Parties' Contentions*

212. The Tribunal has rejected Iran's argument that the phrase "Iranian properties" in Paragraph 9 also covers liabilities, including cash sums and debts, due to Iran by its private contractual partners.²³⁹ Iran argues in the alternative that, if cash payments made by Iran to such persons are not covered by Paragraph 9, then, in any event, they are subject to the United States' obligation under Paragraph 8 of the General Declaration ("Paragraph 8"). Paragraph 8 provides in pertinent part:

Commencing with the adherence of Iran and the United States to this Declaration and the [Claims Settlement Declaration] and the conclusion of arrangements for the establishment of the Security Account . . . , the United States will act to bring about the transfer to the Central Bank [*i.e.*, the Bank of England²⁴⁰] of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in Paragraphs 5 and 6 above,^[241] to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

Paragraph 3 of the General Declaration, in turn, provides in relevant part:

[I]n the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will thereupon instruct the Central Bank to transfer immediately

²³⁸ See *supra* paras. 169 & 211.

²³⁹ See *supra* para. 99. See also *infra* paras. 828-829 & note 475.

²⁴⁰ See Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, 19 Jan. 1981, 1 IRAN-U.S. C.T.R. 13; Escrow Agreement, 20 Jan. 1981, 1 IRAN-U.S. C.T.R. 16.

²⁴¹ Paragraphs 5 and 6 of the General Declaration concern "Assets in Foreign Branches of U.S. Banks" and "Assets in U.S. Branches of U.S. Banks," respectively. See *infra* paras. 225 & 226.

all monies or other assets in escrow with the Central Bank pursuant to this Declaration

213. Iran asserted its alternative claim based on Paragraph 8 for the first time in its rebuttal brief and evidence of 17 May 2006 and further addressed it at the Hearing.

Procedural Objections

214. The United States objects to the admissibility of Iran's Paragraph 8 claim, arguing, among other things, that it represents an impermissible new claim that contravenes Article 20 of the Tribunal Rules. According to the United States, Iran's unreasonable delay in pursuing this Claim has prejudiced the United States. Consequently, the United States maintains that Iran's Paragraph 8 claim was filed late and should be rejected.

215. In response, Iran denies that its Paragraph 8 claim represents a new, late-filed claim. Rather, it merely represents an alternative head of claim based on a different legal theory. Moreover, it has been extensively discussed by the Parties, both in their written and oral pleadings; therefore, the United States has had every opportunity to address the issue. Accordingly, Iran asserts, the United States has suffered no prejudice through Iran's reliance on Paragraph 8.

Iran's Contentions

216. On the merits of its Paragraph 8 claim, Iran argues that the cash sums it paid to private contractual partners toward the purchase of properties represented "Iranian financial assets" within the meaning of Paragraph 8, because such sums were held in the United States and were not subject to Paragraphs 5 and 6 of the General Declaration ("Paragraphs 5 and 6"). Hence, Iran contends that the United States is obliged under Paragraph 8 to bring about the transfer of those cash sums to Iran.

217. Iran asserts that the principal aim of Paragraph 8 may well have been to cover Iranian deposits and securities held in foreign banks, whether in branches located in the United States or abroad, as the United States contends.²⁴² Iran maintains that, nevertheless, cash sums Iran paid to United States contractors as advance payments still represent "Iranian financial assets," albeit held in United States banks "in accounts in the name of the contractor." According to

²⁴² See *infra* para. 220.

Iran, while they are “not in the name of Iran,” such cash sums held in United States banks still represent a liability due to Iran, which, in turn, represents an Iranian financial asset within the meaning of Paragraph 8.

The United States’ Contentions

218. The United States contests that cash sums Iran paid to private contractual partners represented “Iranian financial assets” within the meaning of Paragraph 8. In support, the United States advances a number of arguments. First, the United States argues that such cash sums were not owned by Iran, as required by Paragraph 8.

219. Second, even assuming, *arguendo*, that they were so owned, they would not have been capable, as a legal matter, of being transferred to the Bank of England to be held in escrow;²⁴³ hence, they could not fall within the scope of Paragraph 8. The reason for this, according to the United States, is that Iran’s business partners could not unilaterally cancel their existing contracts with Iran and transfer any advance payments received under the contracts to the Bank of England, rather than performing their contractual obligations to Iran (which may have included delivering the contractually stipulated tangible properties).

220. Moreover, the United States points out that Paragraph 8 expressly excludes from its scope Iranian deposits and securities held in foreign and domestic branches of United States banks; those deposits and securities, rather, are covered by Paragraphs 5 and 6, respectively.²⁴⁴ Thus, according to the United States, a contextual interpretation shows that the purpose of Paragraph 8 was to bring about the transfer to the Bank of England of all Iranian funds and securities held in foreign banks, whether in branches located in the United States or abroad, if such funds and securities were subject to United States jurisdiction.

(b) The Tribunal’s Decision

221. As an initial matter, the Tribunal must determine the admissibility of Iran’s Paragraph 8 claim. Article 20 of the Tribunal Rules provides in relevant part:

During the course of the arbitral proceedings either party may amend or supplement his claim . . . unless the arbitral tribunal considers it inappropriate

²⁴³ See *supra* para. 212.

²⁴⁴ See *supra* note 241.

to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances.

Article 20 of the Tribunal Rules affords wide latitude to a party seeking to amend or supplement its claim, and the Tribunal's practice accords with this liberal approach.²⁴⁵ In determining whether to accept a newly added or amended claim, the Tribunal "must consider whether the other Party would be prejudiced by the proposed amendment, whether the other Party has had an opportunity to respond to the newly-added or amended claim, and whether the proposed amendment would needlessly disrupt or delay the arbitral process."²⁴⁶

222. Upon analysis, the Tribunal finds that, though it was asserted for the first time in Iran's rebuttal brief and evidence of 17 May 2006, Iran's alternative Paragraph 8 claim neither disrupted nor delayed the arbitral proceedings. Further, the United States has had the opportunity to respond, and did in fact respond, to the legal and factual issues raised by that claim, both in its rebuttal evidence and brief of 17 January 2011 and at the Hearing. Thus, the United States has had the full opportunity to present its case, as required by Article 15 of the Tribunal Rules. In these circumstances, admission of Iran's alternative claim would not prejudice the United States. Accordingly, the Tribunal determines that Iran's Paragraph 8 claim is admissible under Article 20 of the Tribunal Rules.

223. The Tribunal now turns to the merits of that claim. In analyzing the phrase "Iranian financial assets" in Paragraph 8, the Tribunal applies the general rule of interpretation as set forth in Article 31, paragraph 1, of the Vienna Convention. Under that rule, "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."²⁴⁷

224. In interpreting the words "Iranian financial assets" in Paragraph 8 in their context, the Tribunal analyzes Paragraphs 5 and 6, two further provisions in the General Declaration that deal with Iranian financial assets.

225. Paragraph 5 provides:

²⁴⁵ See *International School Services, Inc. and Islamic Republic of Iran et al.*, Interlocutory Award No. ITL 57-123-1 (30 Jan. 1986), reprinted in 10 IRAN-U.S. C.T.R. 6, 12.

²⁴⁶ *Harris Int'l Telecommunications, Inc. and Islamic Republic of Iran et al.*, Award No. 323-409-1, para. 85 (2 Nov. 1987), reprinted in 17 IRAN-U.S. C.T.R. 31, 56.

²⁴⁷ See *supra* para. 102.

Assets in Foreign Branches of U.S. Banks

5. Commencing upon the completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank, to the account of the Algerian Central Bank, of all Iranian deposits and securities which on or after November 14, 1979, stood upon the books of overseas banking offices of U.S. banks, together with interest thereon through December 31, 1980, to be held by the Central Bank, to the account of the Algerian Central Bank, in escrow until such time as their transfer or return is required in accordance with Paragraph 3 of this Declaration.

226. Paragraph 6 provides:

Assets in U.S. Branches of U.S. Banks

6. Commencing with the adherence by Iran and the United States to this Declaration and the [Claims Settlement Declaration], and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing Security Account specified in [the Claims Settlement Declaration] and Paragraph 7 below, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank, within six months from such date, of all Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3.

227. Further, the Tribunal holds that the Escrow Agreement of 20 January 1981,²⁴⁸ as an implementing instrument of the Algiers Declarations, is also relevant to understanding the meaning of the phrase “Iranian financial assets” in Paragraph 8. In particular, Article 2 of that Agreement provides:

Pursuant to the obligations set forth in Paragraphs 5, 6 and 8 of the Declaration, the Government of the United States will cause Iranian deposits and securities in foreign branches and offices of United States banks, Iranian deposits and securities in domestic branches and offices of United States banks, and other Iranian assets (meaning funds or securities) held by persons or institutions subject to the jurisdiction of the United States, to be transferred to the [Federal Reserve Bank of New York], as fiscal agent of the United States, and then by the [Federal Reserve Bank of New York] to the Bank of England for credit to the account on its books opened in the name of the Banque Centrale d’Algérie as Escrow Agent under this Agreement (the Iranian securities, funds and gold bullion mentioned in Paragraph 1 above and deposits, securities and funds mentioned in this Paragraph 2 and referred to collectively as “Iranian property”).

²⁴⁸ See *supra* note 240.

228. The Tribunal draws two conclusions from analyzing Paragraph 8, taking into consideration Paragraphs 5, 6, and 8 as well as Article 2 of the Escrow Agreement. The first is that those three Paragraphs covered the same types of financial assets, namely, funds, deposits, and securities. What differentiated those provisions was the location at which those financial assets were held, namely: in foreign branches of United States Banks (Paragraph 5); in United States branches of United States banks (Paragraph 6); and in other banks and institutions (Paragraph 8). Conversely, what connected the Iranian financial assets covered by Paragraphs 5, 6, and 8 was that they were all to be transferred to the Federal Reserve Bank of New York (“Fed”), which, in turn, would transfer them to the Bank of England to be held in escrow until the Algerian Government certified to the Algerian Central Bank that the 52 United States nationals detained at the United States Embassy in Tehran had safely departed from Iran. Upon that certification, all those Iranian financial assets would be transferred as required by Paragraph 3 (and further detailed in Article 4 (a) of the Escrow Agreement²⁴⁹).

229. The second conclusion is that, by referring to “Iranian” deposits and securities (Paragraphs 5 and 6) and “Iranian” financial assets (meaning funds or securities) (Paragraph 8), Paragraphs 5, 6, and 8 limited the United States’ transfer obligations to financial assets that were deposited in accounts of which Iran was the beneficiary.

230. As Iran pointed out, cash sums Iran paid to its business partners under their existing contracts were typically held in bank accounts in the name of Iran’s business partners themselves rather than in Iran’s name. Thus, Iran was not the beneficiary of those accounts and had no claims vis-à-vis the banks to the monies deposited therein. At most, depending on the terms of the underlying contracts, Iran may have owned contractual claims against its business partners, including claims for the return of the cash sums it had advanced.

231. Moreover, it would have been neither practical nor sensible for Iran and the United States to include assets deposited in accounts of which third parties were the beneficiaries among the Iranian financial assets that were to be transferred to the Fed, and then to the Bank

²⁴⁹ Article 4 (a) of the Escrow Agreement provides in pertinent part:

As soon as the Algerian Government certifies in writing to the Banque Centrale d’Algérie that all 52 United States nationals . . . , now being held in Iran, have safely departed from Iran, the Banque Centrale d’Algérie will immediately give the instructions to the Bank of England specifically contemplated by the provisions of the Declaration and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, which are made part of this Agreement. . . .

of England, prior to the release of the 52 United States nationals. The pressing circumstances prevailing at the time of the signing of the Algiers Declarations necessarily dictated that the financial assets to be held in escrow by the Bank of England be transferred promptly, and thus immediately identified as “Iranian.” Assets deposited in bank accounts of which parties other than Iran were the beneficiaries, and to which such parties might have had claims, did not fall into that category.

232. Accordingly, the Tribunal dismisses on the merits Iran’s Paragraph 8 claim.

(5) *Iran’s Alternative Claim Based on General Principle A of the General Declaration*

233. The Tribunal has held that cash payments made by Iran to its private contractual partners are not subject to the United States’ Paragraph 9 obligation to arrange for the transfer to Iran of Iranian properties.²⁵⁰ Likewise, the Tribunal has dismissed Iran’s alternative Paragraph 8 claim for any such cash payments.²⁵¹ The Tribunal now turns to Iran’s argument, further in the alternative, that, in any event, such cash payments are covered by the United States’ obligation under General Principle A.

234. As noted, General Principle A of the General Declaration provides that

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.

(a) *The Parties’ Contentions*

Procedural Objections

235. The United States makes a similar procedural objection with regard to Iran’s claim under General Principle A as it had against Iran’s claim under Paragraph 8.²⁵² It contends that,

²⁵⁰ See *supra* para. 99. See also *infra* paras. 828-829 & note 475.

²⁵¹ See *supra* paras. 223-232.

²⁵² See *supra* para. 214.

since Iran's claim under General Principle A for intangible assets has been argued in a "sporadic fashion," it should be dismissed by the Tribunal.

236. In response, Iran contends that its General Principle A claim merely represents an alternative head of claim based on a different legal theory. Moreover, it has been extensively discussed by the Parties, both in their written and oral pleadings. Thus, Iran asserts that the United States has had every opportunity to address the issue.

Iran's Contentions

237. On the merits, Iran argues that a claim for the return of cash payments made by Iran can be sustained on the basis of General Principle A if the Tribunal were to find, contrary to Iran's primary position, that such claim cannot be based on Paragraph 9. Iran contends that General Principle A, not only forms a very important part of the context of Paragraph 9, but also constitutes a commitment in its own right. Iran emphasizes that the Tribunal has found, on several occasions, separate violations of General Principle A by the United States, in particular, in two interlocutory awards rendered by the Tribunal in 1986 and 1990.²⁵³

238. In response to arguments by the United States, Iran argues that the Tribunal's decision in Award No. 529, dismissing Claim II:B in Case No. A15, does not represent a reversal of the Tribunal's previous understanding of General Principle A's autonomous nature.²⁵⁴ Rather, according to Iran, it simply confirms that General Principle A should not be seen in isolation from the other provisions of the General Declaration.

The United States' Contentions

239. The United States contends that the Tribunal has ruled on three occasions on claims brought on the basis of General Principle A. According to the United States, the Tribunal made the following rulings. First, in Case No. A15 (I:G), the Tribunal held that the broad commitments defined in General Principle A are limited by the specific commitments in the

²⁵³ *Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL-63-A15-FT (20 Aug. 1986), reprinted in 12 IRAN-U.S. C.T.R. 40; *Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL-78-A15(I:C)-FT (12 Nov. 1990), reprinted in 25 IRAN-U.S. C.T.R. 247.

²⁵⁴ See Award No. 529, paras. 68-70, 28 IRAN-U.S. C.T.R. at 138-39.

operative paragraphs of the General Declaration.²⁵⁵ Furthermore, the Tribunal held that General Principle A required the Parties to negotiate in good faith on its implementation. Second, in Case No. A15 (I:C), the Tribunal held that the United States had failed to fulfil its obligations under General Principle A, and required the Parties again to negotiate in good faith to resolve their differences.²⁵⁶ Third, in 1992, the Tribunal, in Award No. 529, dismissed Case No. A15 (II:B) on the ground that General Principle A cannot stand by itself.²⁵⁷

240. Accordingly, the United States concludes that the Tribunal's most recent word on this is that General Principle A cannot stand by itself. In any event, the United States submits that, even if the Tribunal was to reverse its finding in Award No. 529, "there is no basis for finding a violation of General Principle A and Iran has not articulated one." The United States further argues that Iran's financial position in respect of all intangible rights was restored to the extent possible when the United States lifted all blocking orders on 19 January 1981. After that date, Iran was restored to all the rights that had been frozen on 14 November 1979.

(b) The Tribunal's Decision

241. As an initial matter and to the extent that the United States has procedural objections against Iran's alternative claim under General Principle A, for the same reasons stated in connection with the United States' objections against Iran's Paragraph 8 claim,²⁵⁸ the Tribunal determines that Iran's General Principle A claim is admissible.

242. The question that arises is whether Iran's claims for the return of cash sums it had paid to its contract partners can be sustained solely on the basis of General Principle A. The starting point for the Tribunal's analysis is the wording of General Principle A.

243. Immediately after its Preamble, the General Declaration provides:

The undertakings reflected in this Declaration are based on the following general principles:

A. Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of

²⁵⁵ Citing *Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL-63-A15-FT, para. 19 (20 Aug. 1986), reprinted in 12 IRAN-U.S. C.T.R. 47-48.

²⁵⁶ Citing *Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL-78-A15(I:C)-FT (12 Nov. 1990), reprinted in 25 IRAN-U.S. C.T.R. 247.

²⁵⁷ Citing Award No. 529, para. 69, 28 IRAN-U.S. C.T.R. at 138.

²⁵⁸ See *supra* paras. 221-222.

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.

[. . .]

244. The Tribunal has examined the legal significance and role of General Principle A within the General Declaration in a number of past awards. In its Interlocutory Award in Case No. A15 (I:G) (“ITL Award No. 63”), the Tribunal stated that General Principles A and B “are not simply statements of purpose” but, rather, “[t]hey are expressly described by the parties as the legal basis for their undertakings.”²⁵⁹ The Tribunal added that “[t]he General Principles must be understood as embodying broad legal commitments, with the ways of their implementation being detailed in the following parts of the General Declaration.”²⁶⁰ With specific regard to General Principle A, the Tribunal concluded in that same Interlocutory Award that “the provisions of the two Declarations not only describe and detail the specific acts that the United States will have to undertake in order to implement the broad commitment defined in General Principle A, but they also limit the obligations deriving from this commitment.”²⁶¹ In its subsequent Interlocutory Award in Case No. A15 (I:C) (“ITL Award No. 78”),²⁶² the Tribunal confirmed its holdings in ITL Award No. 63. The Tribunal is mindful that its holdings concerning obligations of the United States in ITL Award No. 63 and ITL Award No. 78 were based solely on General Principle A.²⁶³

²⁵⁹ *Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL-63-A15-FT, para. 17 (20 Aug. 1986), reprinted in 12 IRAN-U.S. C.T.R. 40, 46.

²⁶⁰ *Islamic Republic of Iran*, Interlocutory Award No. ITL 63-A15-FT, para. 17, 12 IRAN-U.S. C.T.R. at 47.

²⁶¹ *Islamic Republic of Iran*, Interlocutory Award No. ITL-63-A15-FT, para. 19, 12 IRAN-U.S. C.T.R. at 47-8.

²⁶² *Islamic Republic of Iran and United States of America*, Interlocutory Award No. ITL-78-A15(I:C)-FT (12 Nov. 1990), reprinted in 25 IRAN-U.S. C.T.R. 247.

²⁶³ See *Islamic Republic of Iran*, Interlocutory Award No. ITL-63-A15-FT, para. 53, 12 IRAN-U.S. C.T.R. at 58 (“It is evident that the financial position of Iran would not be restored ‘in so far as possible’ if the Iranian assets previously transferred in escrow pursuant to the General Declaration were not returned to Iran when they cease to be usable for the purpose of guaranteeing the payment of, and of paying, the debts that Iran promised to pay in Paragraph 2(A) of the Undertakings. The United States will not have fully fulfilled its obligations as long as it has not caused the return of those assets.”); *Islamic Republic of Iran*, Interlocutory Award No. ITL 78-A15(I:C) FT, para. 39 (a), 25 IRAN-U.S. C.T.R. at 263 (“The United States has not fulfilled its obligation under General Principle A of the General Declaration to restore the financial position of Iran, in so far as possible, to that which existed prior to 14 November 1979, by maintaining Treasury Regulations that permit United States account parties to establish blocked accounts on their books in respect of standby letters of credit in favor of Iranian banks other than [certain specified Iranian banks].”).

245. The Tribunal also addressed the role and legal significance of General Principle A in deciding Case No. A15 (II:B) in Award No. 529. In that Case, based solely on General Principle A, Iran had asserted a claim for compensation for storage charges, deterioration, and other losses incurred with respect to Iranian properties from 14 November 1979 until 19 January 1981. In dismissing Iran's claim, the Tribunal stated:

While the Tribunal has found that General Principle A can provide useful guidance in the interpretation of the provisions of the General Declaration, *it cannot stand by itself*. . . . Paragraph 9, which is the paragraph dealing with Iran's tangible properties, requires the United States only to arrange for their transfer; it makes no reference to any duty to compensate Iran for storage charges or depreciation for the freeze period.²⁶⁴ (Emphasis added.)

[. . .]

The Tribunal cannot ignore the fact that General Principle A qualifies the undertaking of the United States by the phrase "within the framework of and pursuant to the provisions of the two Declarations." Within that framework and considering those provisions, the Tribunal holds that the Declaration does not obligate the United States to compensate Iran for storage charges, deterioration, or other losses incurred with respect to Iranian properties prior to 19 January 1981.²⁶⁵

246. Further, in Award No. 601, the Tribunal held:

General Principle A, and in particular the restoration obligation contained therein, must . . . not be read in isolation, but rather must be interpreted within the four corners of the Algiers Declarations. In particular, Paragraphs 4 through 9 of the General Declaration specify how Iran's financial position was to be restored to its pre-14 November 1979 state. The Parties envisaged that restoration of Iran's financial position was to be achieved through the return of its gold bullion, deposits, securities, and other financial assets (*i.e.*, funds and securities), as well as tangible properties.²⁶⁶

247. In the present Cases, the Tribunal concludes that, even if it were to consider General Principle A as a free-standing source of rights and obligations, Iran's alternative claim for the return of cash payments based on that Principle would fail. Cash sums Iran paid to its contract partners as advance payments were a component of Iran's financial position prior to 14 November 1979. The United States satisfied its General Principle A obligations with respect to those assets by removing, on 19 January 1981, all restrictions it had imposed on the

²⁶⁴ Award No. 529, para. 69, 28 IRAN-U.S. C.T.R. at 138.

²⁶⁵ Award No. 529, para. 70, 28 IRAN-U.S. C.T.R. at 139.

²⁶⁶ Award No. 601, para. 141, 38 IRAN-U.S. C.T.R. at 252 (footnotes omitted).

mobility and free transfer of all Iranian assets between 14 November 1979 and 19 January 1981 through Executive Order No. 12281. Thus, on 13 November 1979, Iran possessed, through its entities, contractual claims against its contract partners for the return of any cash payments made under existing contracts. Iran continued to possess those claims on 19 January 1981. If it had so desired, as of that date, Iran could have asserted claims against those business partners; hence, Iran found itself in the same financial position it enjoyed on 13 November 1979. In these circumstances, the Tribunal considers that, to hold that the United States was obliged to ensure the return of cash payments to Iran, would improve that financial position, rather than merely restore it. Accordingly, in light of the foregoing, the Tribunal dismisses Iran's claim based on General Principle A.

2. Responsibility of the United States

a) Introduction

248. In this section, the Tribunal will determine the question of the responsibility of the United States in each of the Individual Claims. In so doing, the Tribunal will apply, among others, the principles it identified in the General Issues section of this Partial Award. The Tribunal sets forth only the main facts and the primary arguments made by the Parties.

b) Individual Claims

(1) Claim G-15 (Tehran Museum of Contemporary Art/Clerk)

(a) Introduction

249. In Claim G-15, Iran seeks the return of a painting entitled "Yellow Grass" by Mr. Pierre Clerk. Alternatively, Iran seeks USD 6,000 as the estimated value of the painting in 2003 (or USD 3,000, its value in 1981). In addition, Iran seeks other losses (in particular, USD 5,975 in legal costs) resulting from the United States' alleged failure to arrange for the transfer of the painting to Iran. Iran also seeks interest on any awarded amounts from 19 January 1981 or, alternatively, 2003.

(b) Factual Background

250. In March 1978, while Mr. Clerk was in Iran, the Tehran Museum of Contemporary Art ("TMCA" or the "Museum") expressed an interest in purchasing an acrylic on canvas entitled

“Yellow Grass” (“Yellow Grass” or the “Painting”). Upon Mr. Clerk’s return to New York, the TMCA decided to purchase the Painting for USD 3,000. In April 1978, Mr. Clerk sent his invoice to the TMCA, and subsequently the Museum paid the agreed USD 3,000. In her affidavit, Ms. Nasrin Faghieh, the Curator for architecture of the TMCA, confirmed that the Museum paid the agreed price, and that Mr. Clerk was expected to ship the Painting to the Museum as expeditiously as possible.

251. In his affidavit, Mr. Clerk stated that he unsuccessfully attempted to contact the Museum on numerous occasions during 1978 regarding shipment of the Painting. By letter dated 9 June 1979 to Mr. Clerk, the TMCA indicated that it had not yet received the Painting and requested Mr. Clerk “to expedite the sending . . . as soon as possible.”

252. Mr. Clerk responded by letter dated 6 July 1979 stating his willingness to send the painting and providing a quotation from a local shipper for an amount of USD 427. Mr. Clerk requested that the TMCA send a check for this amount if it wanted him to proceed with that shipper or, if not, to provide other instructions.

253. On 28 August 1979, the TMCA informed Mr. Clerk that, due to tight currency controls, payment of the shipping costs could not be made without presentation of an airfreight bill. The TMCA requested Mr. Clerk to arrange shipment with the Iranian Embassy. According to Mr. Clerk, he contacted the Iranian Consulate in New York, which instructed him to contact the Cultural Attaché in Washington, D.C., who, in turn, told him to contact the TCMA directly. Since no one knew anything about the Painting, or was willing to pay for the shipping costs, Mr. Clerk stopped attempting to ship “Yellow Grass” and kept it pending further arrangements.

254. In his written affidavit and Hearing testimony, Mr. Clerk explained that, either in late 1979 or early 1980, someone from the Iranian Consulate informed him by telephone that two Iranian officials would pick up “Yellow Grass.” He further explained that, within the hour, two men dressed in suits collected the painting and gave Mr. Clerk a receipt, which he has since misplaced. Mr. Clerk testified that he had no doubt that the men were Iranian agents since, otherwise, they would not have known of the Painting. According to Mr. Clerk, he was never contacted again by any Iranian entity.

255. In view of Mr. Clerk’s alleged failure to deliver “Yellow Grass,” in 1981, Iran contacted the United States law firm O’Dwyer & Bernstein in order to retrieve the Painting. Iran insisted that the TMCA had no knowledge of, or any documents supporting, the alleged delivery of

“Yellow Grass.” After contacting Mr. Clerk, in a memorandum dated 13 April 1982, the law firm informed the TMCA that the Painting was not available for shipping, and that Mr. Clerk had stated that he had released “Yellow Grass” in 1979 to representatives of Iran, but could not locate any receipt.

256. Between 1981 and 1984, the TMCA exchanged several communications with the law firm questioning the veracity of Mr. Clerk’s statements about the delivery of the Painting. In June 1982, the law firm suggested to the TMCA that the only way to recover the Painting was to sue Mr. Clerk. After the filing of this Claim with the Tribunal on 31 August 1983, by letter of 16 December 1983, the law firm informed the Interests Section of the Islamic Republic of Iran in Washington, D.C., that it had found that Mr. Clerk was “virtually judgment-proof,” and advised that it would not be worthwhile to bring an action against him for the return of the Painting.

257. On 18 June 1984, following a suggestion by the United States, the TMCA contacted Mr. Clerk once again by letter requesting that he expedite the shipping of the Painting. The record contains an envelope sent by the TMCA to Mr. Clerk, marked “address unknown,” suggesting that Mr. Clerk did not receive the June 1984 letter.

(c) *The Parties’ Contentions*

Iran’s Contentions

258. Iran argues that, following the purchase of the Painting from Mr. Clerk and full payment of the price by the TMCA, the Painting was beyond any doubt and dispute owned by the TMCA. Iran maintains that, contrary to the United States contentions, the TMCA was an Iranian government-controlled entity on 19 January 1981. Iran relies on a “Decree of the Ministers Council,” documenting a meeting held at the office of the Iranian Prime Minister on 23 October 1979, during which it was decided that certain cultural, scientific, and “philosophy” entities, including the TMCA, would be “placed under the authority of the [Iranian] Ministry of Culture and Higher Education.” Thus, Iran concludes, when the Algiers Declarations were signed, the TMCA was controlled by the Iranian government.

259. Iran further contends that, on 19 January 1981, “Yellow Grass” was located within the jurisdiction of the United States. Moreover, Iran maintains that Mr. Clerk’s statements regarding delivery of the Painting to Iranian representatives are ambiguous, general, and

unsupported. According to Iran, the United States has provided no evidence (apart from Mr. Clerk's affidavit) showing that the Painting was delivered to Iranian representatives.

260. With regard to the need to provide direction to the property holder, Iran contends that, since 1979, the TMCA made it clear to Mr. Clerk that it wanted him to ship "Yellow Grass" to Iran. Iran further argues that the packing and transportation costs of the Painting were included in the sale price.

261. Iran denies that it had any obligation to facilitate the United States' performance of its Paragraph 9 obligation. Iran further argues that the United States failed to take any steps to ensure that the Painting was transferred to Iran, breaching its Paragraph 9 obligation.

The United States' Contentions

262. The United States contends that Iran has failed to show that "Yellow Grass" was within the jurisdiction of the United States on 19 January 1981. The United States argues that Mr. Clerk's statement that he delivered the Painting to Iranian officials in late 1979 or early 1980 is fully consistent with the evidence on record. According to the United States, Iran has not presented any evidence that contradicts Mr. Clerk's statement. Even if the Painting had not been delivered to Iranian officials, which the United States contends is doubtful, since no one else would have known about the purchase thereof, Iran has not shown that "Yellow Grass" was within the jurisdiction of the United States on 19 January 1981. The United States argues that if the Painting had not been delivered to Iranian officials, then, Iran would not have title to "Yellow Grass" since, under the UCC as adopted by the State of New York, title passes upon delivery, and delivery had not taken place. According to the United States, Iran would merely have a contractual right to demand performance. The United States contends that contractual rights are not "Iranian properties" within the meaning of Paragraph 9.

263. The United States maintains that, even if the Tribunal concluded that the Painting was within the jurisdiction of the United States on 19 January 1981, Iran has failed to show that it provided shipping instructions to Mr. Clerk after that date.

264. The United States further contends that it is uncontested that Iran never made arrangements to pay Mr. Clerk's quoted shipping costs. Iran's failure to contact Mr. Clerk with effective shipping instructions and to pay the shipping costs would preclude the United States' responsibility.

265. Finally, the United States argues that Iran has failed to show what additional steps the United States could reasonably have taken, and that, once the Painting was in the hands of Iranian representatives, the United States had no further obligation under Paragraph 9. Moreover, the United States considers that there was never a reason for it to doubt Mr. Clerk's statements regarding the delivery of the Painting.

(d) *The Tribunal's Decision*

266. The threshold issues in this Claim are: (i) whether the Painting was within the jurisdiction of the United States on 19 January 1981; and, if it was, (ii) whether the Painting falls within the scope of the term "Iranian properties" under Paragraph 9.

267. The Tribunal is confronted with a paucity of evidence as to precisely what happened to the Painting in 1979-1980 after the TMCA had paid the purchase price and whether "Yellow Grass" was still within the jurisdiction of the United States on 19 January 1981. Iran argues that the TMCA never received the Painting, and that there is no evidence supporting Mr. Clerk's testimony to the contrary. The United States, for its part, relying on Mr. Clerk's testimony, maintains that the Painting was delivered to Iranian officials at the end of 1979 or the beginning of 1980. According to the United States, therefore, its Paragraph 9 obligation would not be applicable to "Yellow Grass." While the United States has not been able to submit the receipt that Mr. Clerk allegedly received from the Iranian officials who collected the Painting, the Tribunal has no reason to doubt Mr. Clerk's testimony regarding delivery thereof to two Iranian officials. The Tribunal finds it difficult to believe that someone other than Iranian representatives would have known about the purchase of "Yellow Grass" in 1978, and that it was still in Mr. Clerk's studio over a year later.

268. On balance, the Tribunal finds that it has not been presented with evidence establishing with a sufficient degree of certainty that "Yellow Grass" was still within the jurisdiction of the United States on 19 January 1981. Iran, as the Claimant, bears the burden of proving this fact. Iran, however, has not done so. Accordingly, Claim G-15 must fail.

269. Even if the Tribunal were to conclude that "Yellow Grass" was still in the possession of Mr. Clerk and, hence, was within the jurisdiction of the United States on 19 January 1981, Claim G-15 would nevertheless fail because, for the reasons set forth below, the Painting would not have fallen within the scope of the term "Iranian properties" for the purposes of Paragraph 9. In accordance with its findings in the General Issues Section of this Partial

Award,²⁶⁷ the Tribunal would have to determine whether title to the painting had been transferred to Iran as of 19 January 1981, in accordance with the applicable *lex rei sitae*. Had the Painting remained with Mr. Clerk in his studio in New York, the applicable *lex rei sitae* would have been the law of the State of New York.

270. The UCC, as adopted in Title 2 of the New York Code, Commercial Law, governs the sale of goods in the State of New York. Section 2-401, in particular, governs the passage of title to goods sold and provides, in pertinent part:

- (1) . . . [T]itle to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.
- (2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place²⁶⁸

271. There is no evidence that the TMCA and Mr. Clerk reached any explicit agreement regarding the passage of title to “Yellow Grass.” Thus, in accordance with the default rule under Section 2-401 (2) of the New York Code, title to the Painting would have passed to the TMCA upon the physical delivery of the item. In this Claim, if the Tribunal were to conclude that Mr. Clerk never delivered the Painting to Iranian officials, thus accepting Iran’s contention that it never received it, then, title to “Yellow Grass” would never have passed to the Museum. Conversely, if the Painting was delivered to Iranian officials at the end of 1979 or the beginning of 1980, as Mr. Clerk maintains, then, the issue of the United States’ obligation under Paragraph 9 with respect to the Painting would not arise.

272. Since the Tribunal has found that there is no evidence establishing with a sufficient degree of certainty that “Yellow Grass” was within the jurisdiction of the United States on 19 January 1981, the Tribunal need not address the other arguments put forward by the Parties with respect to this Claim, including whether the TMCA fell within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

273. Based on the foregoing, the Tribunal dismisses Claim G-15.

²⁶⁷ See *supra* paras. 135-164.

²⁶⁸ NY Code, Com. Law § 2-401.

(2) Claim G-16 (Tehran Museum of Contemporary Art/Eisenman)

(a) *Introduction*

274. In Claim G-16, Iran seeks either the return of eight drawings and collages (collectively, the “Collages”) created by the United States architect, Mr. Peter Eisenman, which had been purchased by the TMCA, or USD 65,000, the alleged value of the Collages as of 2003, plus interest. Alternatively, Iran seeks USD 13,000, *i.e.*, the alleged value of the Collages as of 1981, plus interest. In addition, Iran requests the reimbursement of legal costs totaling USD 5,975 as consequential damages allegedly incurred as a result of the United States’ alleged failure to arrange for the transfer to Iran of the Collages.

(b) *Factual Background*

275. In May 1978, the Curator for architecture of the TMCA, Ms. Nasrin Faghieh, contacted Mr. Eisenman to inquire about the possible purchase of some of his work. On 5 June 1978, Mr. Eisenman wrote to Ms. Faghieh, enclosing descriptions and prices of the “House X” and “House IV” artworks that were “available for sale” and indicating that he would not ship anything without prior payment.

276. In June 1978, the TMCA ordered the Collages, which were titled “House X Boxes” for the price of USD 13,000 and paid for them. However, Mr. Eisenman never delivered the items to the TMCA.

277. Evidence submitted by Iran indicates that Iran and the Museum took various steps to try to collect the Collages. In December 1981, Iran and the Museum appear to have jointly requested preliminary injunctive relief from the Supreme Court of the State of New York that would prevent Mr. Eisenman from removing, transferring, selling, or otherwise disposing of the Collages. The affirmation by their attorney that appears to have been filed in support of their motion describes several attempts that had been made to obtain delivery of the Collages from Mr. Eisenman. It also stated that Mr. Eisenman had declared, *inter alia*, that: (i) he “would rather burn [the Collages] than see them go to the present regime” in Iran; and (ii) he felt justified in withholding the works of art purchased by the TMCA because his partner was owed money for work done for the Shah’s regime, and Mr. Eisenman did not expect that the new regime would honor this debt.

278. On 20 July 1982, Iran and the Museum jointly filed a complaint before the Supreme Court of the State of New York. In their complaint, they alleged that Mr. Eisenman willfully refused to transfer the artworks, which had been paid for, and sought damages totaling USD 100,000.

279. On or around 28 July 1982, Mr. Eisenman appears to have consented to a temporary restraining order that would prevent him from selling or otherwise disposing of his work pending the outcome of the litigation.

280. In his answer to the complaint, filed on 4 February 1983, Mr. Eisenman stated, *inter alia*, that the “alleged contract” with the TMCA would be void under the constitutions of the United States and the State of New York, because requiring a defendant who is Jewish to provide works of art to the plaintiffs, who are part of a government with anti-Semitic convictions, would violate defendant’s freedom of religion.

281. On 18 June 1984, the Director of the TMCA, referring to the report on Iranian tangible properties that the United States submitted to the Tribunal on 25 May 1984 in the present proceedings, wrote to Mr. Eisenman inviting him to deliver the eight drawings listed in his letter. At the same time, Iran discontinued the proceedings before the Supreme Court of New York and asserted Claim G-16 in the present Cases.

282. According to Mr. Eisenman’s affidavit, the Curator of the TMCA had seen some pieces from his “House X Boxes” and “House X Collages” collection in 1978 and was interested in purchasing exemplars of the same. Mr. Eisenman noted that he had told the Museum how much it would cost to produce the work, as the production of none of the exemplars that would be designated for the Museum had been started, and that he had requested advance payment for the work. Mr. Eisenman further stated that he had not done much work on the Collages by the time of the Shah’s fall and had done no work at all thereafter. He asserted that none of the Collages had ever been finished, and that, over the past twenty years, the various pieces that were cut for Collages had been lost, misplaced, or destroyed.

283. In contrast to Mr. Eisenman’s statements, Ms. Faghih stated in her affidavit that she had selected and purchased the Collages from Mr. Eisenman’s existing collection titled “House Boxes.” According to Ms. Faghih, the Collages were “available,” and Mr. Eisenman’s statement that the TMCA had merely ordered the Collages was incorrect. She stated that she remembered having seen the Collages as finished works. Ms. Faghih further recollected that,

in principle, the TMCA's "dictated policy [was] to place no orders, but to purchase only existing works."

(c) *The Parties' Contentions*

Iran's Contentions

284. According to Iran, the evidence shows that the Collages existed and were located within the jurisdiction of the United States on 19 January 1981. In Iran's view, Mr. Eisenman's statement in his affidavit that none of the Collages was ever finished²⁶⁹ conflicts with contemporaneous documents, in particular, with his letter to Ms. Faghieh, dated 5 June 1978, informing her that "[t]he following are the description and prices of the House X and House IV that are available for sale, as previously discussed."²⁷⁰ Iran notes that, in this letter, Mr. Eisenman said nothing about any future production of the items. Furthermore, Mr. Eisenman's affidavit testimony conflicts with Ms. Faghieh's affidavit, in which she stated that the Collages were in existence when the TMCA ordered them because it was "dictated" policy of the TMCA not to commission any artworks but to purchase only existing ones.²⁷¹

285. In the same vein, Iran argues that, in the proceedings it initiated in the Supreme Court of New York, nothing was said by either party about the non-existence of the items in question. In particular, Iran emphasizes that Mr. Eisenman's only defense in the proceedings was to refuse to ship the Collages for personal reasons, and that he did not invoke the non-existence of the works at the time. Iran recalls that the reason why Mr. Eisenman did not transfer the works to Iran was purely moral or political, namely, because Mr. Eisenman, as a Jewish individual, did not wish to be associated with the post-revolution government in Iran. According to Iran, the acceptance by Mr. Eisenman of the injunction from the Supreme Court of New York not to sell or otherwise dispose of his artworks represents further evidence of the existence of the Collages.²⁷²

286. As to the transfer of title, Iran notes that Mr. Eisenman never contested that title to the Collages had passed to the TMCA; rather, he asserted that the owner of the artworks was the

²⁶⁹ See *supra* para. 282.

²⁷⁰ See *supra* para. 275.

²⁷¹ See *supra* para. 283.

²⁷² See *supra* para. 279.

former regime of the Shah. Iran contends that, even assuming that title had not passed to the TMCA with the conclusion of the sales agreement, Iran would still own the Collages under the principle of beneficial ownership, since the TMCA paid for the Collages.

287. Iran contends that the United States was obligated to remove all restrictions in force between 14 November 1979 and 19 January 1981 on the mobility and free transfer of Iranian properties, and to direct holders to transfer them, as the Tribunal has held in Partial Award No. 529.

288. Accordingly, Iran argues that it is for the United States to show what specific measures it took to comply with its Paragraph 9 obligation to arrange for the transfer of the Collages. In Iran's view, the United States breached that obligation with respect to the Collages. Iran points out that the United States has not presented any document showing that it required Mr. Eisenman to deliver those items. Iran argues that, in fact, the United States, through its policy towards the new Iranian government, encouraged Mr. Eisenman to refrain from delivering the artworks to Iran.

289. Further, Iran argues that the mere fact that Mr. Eisenman retained the artworks constitutes conclusive evidence that the United States has breached its Paragraph 9 obligation, given that Iran was not obliged to make the performance of the United States possible.

The United States' Contentions

290. The United States contends that Iran has failed to establish that all of the Collages physically existed on 19 January 1981, and, hence, that they were within the jurisdiction of the United States at that time. In the United States' view, Mr. Eisenman's affidavit testimony, according to which none of the Collages existed at the time of the sale, is not contradicted by the contemporaneous documents on record. Furthermore, the United States notes, the only evidence of the purported policy of the TMCA not to commission any artworks, but rather to purchase only existing works, is the affidavit testimony of Ms. Faghieh. According to the United States, this testimony is not substantiated by any other evidence.

291. The United States contends that, in any event, Iran has failed to establish that the Museum had uncontested, non-contingent title to the Collages on 19 January 1981. Even assuming that the artworks existed, the United States argues, in the absence of an agreement of the parties to the contrary, the law of the State of New York governs the transaction. According

to New York law, however, title could not have passed until the items' delivery, which indisputably never took place. Therefore, while the TMCA would be entitled to contract performance, it does not have title to the Collages.

292. According to the United States, title to the drawings was contested on 19 January 1981. As recognized by the Tribunal, however, only properties "solely owned by Iran" were to be transferred, but not properties ownership of which was contested. The United States notes that Mr. Eisenman had contested before the Supreme Court of New York that he had ever entered into a sales contract with the TMCA and disputed the TMCA's claim to title. The United States concludes that it is not accurate to say that Mr. Eisenman had not challenged Iran's title to property.

293. The United States further denies that the TMCA had acquired beneficial ownership of the eight Collages.

294. According to the United States, Iran had the obligation to give directions to the holders of its properties, in accordance with the finding of the Tribunal in Award No. 529. In addition, Iran must establish that it has provided an indication to the United States that it needed assistance in achieving the transfer of the Collages. In the present Claim, Iran has not provided any such indication.

(d) The Tribunal's Decision

295. The threshold question in this Claim is whether the Collages had been produced and were in existence within the jurisdiction of the United States on 19 January 1981.

296. The Tribunal has carefully reviewed the evidence, including the affidavit testimonies of Mr. Eisenman and Ms. Faghih. On that basis, the Tribunal concludes that it is confronted with irreconcilable evidence concerning the existence of the Collages within the jurisdiction of the United States on 19 January 1981. In this context, the Tribunal notes the contrasting affidavit testimonies of Mr. Eisenman and Ms. Faghih. As noted, Mr. Eisenman stated that none of the Collages had been finished by 19 January 1981.²⁷³ Ms. Faghih, for her part, stated

²⁷³ See *supra* para. 282.

that she remembers having seen the Collages as finished works, and that, in principle, the TMCA's "dictated" policy was to purchase only existing works.²⁷⁴

297. Iran, as the Claimant, carries the burden of proving the facts on which it relies, namely, in this Claim, the existence of the Collages within the jurisdiction of the United States on 19 January 1981. This, however, Iran has not done. Accordingly, Iran's Claim G-16 must fail.

298. The Tribunal notes that, even assuming, *arguendo*, that the Collages did exist within the jurisdiction of the United States on 19 January 1981, Claim G-16 would nevertheless fail because those items would not have represented "Iranian properties" within the meaning of Paragraph 9. In this context, the same considerations set forth by the Tribunal with respect to Claim G-15 apply, *mutatis mutandis*, to Claim G-16.²⁷⁵ There is no evidence that the TMCA and Mr. Eisenman reached any explicit agreement regarding the passage of title to the Collages. Thus, in accordance with the default rule under the *lex rei sitae*, *i.e.*, Section 2-401(2) of the New York Code,²⁷⁶ title to the Collages could have passed to the TMCA only upon their physical delivery to the TMCA. It is undisputed, however, that such delivery never occurred. Thus, title to the Collages would not have passed to the TMCA, and, accordingly, they would not have represented "Iranian properties," even assuming their existence in the United States on 19 January 1981.

299. In light of its conclusions, *supra*, the Tribunal need not decide whether the TMCA fell within the definition of "Iran" pursuant to Article VII, paragraph 3, of the Claims Settlement Declaration.

300. In view of the foregoing, Claim G-16 is dismissed.

(3) Claim G-18 (Ministry of Culture and Arts/Forough)

(a) *Introduction*

301. In Claim G-18, Iran seeks the return of a violin made by Antonio Stradivari of Cremona in 1718, known as the "ex-Wilmotte" ("Stradivarius"). Alternatively, Iran seeks USD 6 million as the estimated value of the Stradivarius as of 2013, plus damages for loss of use (USD 12,000

²⁷⁴ See *supra* para. 283.

²⁷⁵ See *supra* paras. 269-271.

²⁷⁶ See *supra* para. 270.

per year from 19 January 1981) resulting from the United States' alleged failure to arrange for the transfer of the instrument to Iran. Iran also seeks interest on any awarded amounts.

(b) *Factual Background*

302. In 1975 and 1976, Mr. Ali Forough, an Iranian violinist who became a United States citizen in 1984, started searching for a high-quality violin to purchase for himself. According to Mr. Forough's testimony, sometime in 1976, he located a suitable instrument in London: the "ex-Wilmotte" Stradivarius violin at issue in this Claim. The Stradivarius was initially meant to be paid for with family funds. Made aware of Mr. Forough's search for the instrument, the Ministry of Culture and Arts of Iran ("Ministry"), and later, the Shah, offered to pay for it. According to Mr. Forough's testimony, the Shah and the Ministry decided to give him the instrument as a gift limited to his lifetime in order to appease the criticisms that had arisen in Iran of the possibility of using public funds to purchase such an instrument as an outright gift.

303. In this context, on 12 September 1976, the Shah issued a "binding decree" apparently ordering the purchase of the Stradivarius with the following prerequisites:

Initially, make sure that it is genuine; and then should it be purchased, it should not be given to any specific person, but rather shall be maintained in Roudaki Hall, and shall be placed at the disposal of well known soloists for special performances at appropriate times.

304. Sometime in 1976, the Stradivarius was sent to Paris from London for repair. In late 1976, Dr. Hakoupian of Roudaki Hall traveled to Paris to purchase the Stradivarius on behalf of the Ministry.²⁷⁷ Mr. Forough was also sent to Paris to attend the negotiations between Dr. Hakoupian and the agent of the seller there. As evidenced by the invoice issued by Wurlitzer-Bruck on 22 September 1976, those negotiations resulted in the purchase of the Stradivarius by the Ministry for USD 250,000. Mr. Forough acknowledged this at the Hearing, confirming that, "[Iran] ended up paying for the instrument, absolutely."

305. On 12 October 1976 (*i.e.*, shortly after the sale), Mr. Forough signed a declaration provided by the Ministry acknowledging: (i) the purchase of the Stradivarius by the Ministry; (ii) that the Stradivarius had been "entrusted to [him] in trust" for an initial period of one month; and (ii) that renewal of the term of the arrangement following the expiry of the one month

²⁷⁷ Roudaki Hall is a performing arts complex in Tehran dependent on the Ministry.

period was to be made with the agreement of the Ministry. On 12 December 1976, Mr. Forough signed another acknowledgment and undertaking provided by the Ministry that renewed the arrangement for a period of one year, *i.e.*, until 12 December 1977. The arrangement was renewed again on 22 May 1979 (until 13 December 1979) and on 12 January 1980 (until 13 December 1980).

306. At the beginning of 1980, Roudaki Hall and the Ministry exchanged communications regarding the purchase of the Stradivarius and that of another violin, a Guadagnini that had been acquired by the Ministry and placed at the disposal of Mr. Bijan Khadem Misagh. Eventually, the Ministry instructed Roudaki Hall to contact both Mr. Forough and Mr. Khadem Misagh and request that they either return the instruments or purchase them from the Iranian authorities.

307. According to Mr. Forough's testimony, he was surprised by this request, since, to his mind, the Stradivarius had been a gift from the Shah. However, according to Mr. Forough, he decided not to mention that the Stradivarius had been a gift and, instead, simply offered to buy it in a letter dated 22 June 1980. The relevant part of the letter reads as follows:

I would appreciate it, if you could, do a favor to me and have the honorable authorities agree to my keeping the violin in trust as before.

Should this request not be acceptable, I would appreciate it, in view of my very limited financial capabilities, if you could make and propose arrangements so that I could purchase it in due course within a long period of time, so to enable me pay [*sic*] the price thereof.

308. On 19 July 1980, the Minister rejected both of Mr. Forough's proposals, including the offer to buy the Stradivarius. By letter dated 9 August 1980, Mr. Forough was informed of this decision, and he was requested to deliver, within 15 days, the Stradivarius to the Embassy of Iran. Mr. Forough and his father, Mr. Mehdi Forough, sent a number of letters to Roudaki Hall and the Ministry, repeating the request to purchase the Stradivarius from Iran and referring to the trust arrangement described above.²⁷⁸ Contemporaneously, Roudaki Hall and the Ministry contacted several authorities, including the Iranian Interest Section of the Embassy of the Democratic and Popular Republic of Algeria in Washington, D.C. ("Iranian Interest Section"), seeking their assistance in securing the return of the Stradivarius.

²⁷⁸ See *supra* para. 305.

309. On 13 December 1980, Mr. Forough, on his own initiative, prepared the text of a new document to renew the arrangement concerning the Stradivarius, using the wording of the prior declarations and undertakings described above. By letter dated 5 May 1981, Mr. Forough sent this text to the Ministry. In his letter, he acknowledged that “the violin was lent to me from . . . November 30, 1976,” and that, “[f]rom that time on, . . . Roudaki Hall sent me a typewritten lending agreement which I signed and returned.” He went on to state that he had always considered the Stradivarius as “the property of Roudaki Hall and the Iranian Nation,” and that he had “never doubted that reality.” However, throughout 1981, the Iranian Interest Section sent several letters to Mr. Forough, urging him to return the Stradivarius. These requests were never met.

310. In August 1981, Mr. Khadem Misagh returned the Guadagnini violin to the Iranian Embassy in Vienna. Between September 1981 and May 1984, the Iranian authorities worked with law firms and private investigators in an effort to locate Mr. Forough and recover the Stradivarius. However, Iran did not sue Mr. Forough for the recovery of the Stradivarius in the United States or elsewhere. Mr. Forough stated in his affidavit that, since the early 1980s, the State Department had been in touch with him regarding Iran’s claim but that no Iranian authorities ever contacted him officially following the filing of Claim G-18 with the Tribunal, on 31 August 1983.

(c) *The Parties’ Contentions*

Iran’s Contentions

311. Iran contends that the Ministry was undoubtedly the legal owner of the Stradivarius since it had been fully paid for using Iranian Government funds, and it had been merely given to Mr. Forough to hold in trust. According to Iran, after the last of the agreements between the Ministry and Mr. Forough expired in December 1980, Mr. Forough had no legal basis to retain the Stradivarius. Iran alleges that Mr. Forough’s position that the Stradivarius was a lifetime gift is contrary to the evidence on record and supported only by Mr. Forough’s own testimony.

312. Iran further argues that, contrary to the United States’ assertions, in light of General Principle B,²⁷⁹ Iran was under no obligation to establish title to the Stradivarius before the United States courts. According to Iran, the prerequisite asserted by the United States

²⁷⁹ See *supra* note 52.

regarding the necessity of establishing Iran's title to the property before the United States courts was invented by the United States in order to evade responsibility. Furthermore, Iran maintains that this was a claim deriving from a breach of a treaty signed between two States; therefore, the Tribunal has the authority to decide the issue of the ownership of the Stradivarius even though Mr. Forough is not a party to these proceedings. In any event, according to Iran, it would have made no difference if Mr. Forough had been a party to these proceedings because the United States has presented its defense on the basis of Mr. Forough's position and understanding. Iran contends that the United States has breached Paragraph 9 by failing to arrange for the transfer of the Stradivarius.

The United States' Contentions

313. The United States asserts that there was – and still is – a dispute over title to the Stradivarius between Iran and Mr. Forough that prevented the United States from arranging for the transfer of the Stradivarius under Paragraph 9. According to the United States, the primary legal issue before the Tribunal is only whether title was contested, not the merits of the contest itself. The United States argues that, since it was not a party to the underlying transaction and the events giving rise to the dispute over title to the Stradivarius, the United States could not verify the factual assertions made by Iran and Mr. Forough regarding ownership. Therefore, the United States had no choice but to rely on Mr. Forough's witness testimony.

314. The United States maintains that Iran must resolve the title dispute with Mr. Forough in the United States courts before its Paragraph 9 obligation can be triggered. The United States explains that, under its Constitution, it is prohibited from depriving a United States holder of property without due process of law and submits that such due process could only be provided to Mr. Forough in an action brought by Iran against him in a United States court.

315. The United States observes that the Tribunal ruled in Award No. 529 that the exclusion of property for which ownership was admitted but possession was contested was inconsistent with Paragraph 9. However, the United States submits that the Tribunal did not take issue with the exclusion of property as to which Iran's title – as opposed to possession – was contested. Thus, according to the United States, it bore no responsibility to transfer the Stradivarius.

316. The United States further submits that Iran's argument that it should not be required to establish its title to the Stradivarius in United States court²⁸⁰ is based on a misconstruction of General Principle B. The United States argues that General Principle B requires termination of litigation involving claims of United States nationals against Iran that arguably fall within the Tribunal's jurisdiction. According to the United States, Mr. Forough could not have had recourse to the Tribunal to assert title to the Stradivarius because he was not a United States citizen.

317. Furthermore, the United States contends that, even if the Tribunal finds that it has jurisdiction to resolve the ownership dispute between Iran and Mr. Forough, the evidence does not show that Iran had title to the Stradivarius on 19 January 1981, since it was given to Mr. Forough as a lifetime gift immediately after it had been purchased. The United States argues that, if the Tribunal concludes that the Stradivarius was Iranian property on 19 January 1981, Iran would thus have been in the same financial position with respect to the Stradivarius on that date as it was prior to 14 November 1979. Thus, according to the United States, had it stepped in and returned the Stradivarius to Iran, Iran would have been put in a better financial position than it was prior to 14 November 1979.

318. In any event, the United States argues that Iran never asked the United States for assistance in locating Mr. Forough when Iran hired private investigators and lawyers in the United States. The United States contends that it first learned of this dispute in August 1983, when Iran submitted Claim G-18 to the Tribunal and, from that moment, it was in periodic contact with Mr. Forough.

(d) The Tribunal's Decision

319. In accordance with Paragraph 17 of the General Declaration,²⁸¹ the Tribunal has jurisdiction to resolve disputes as to the interpretation and performance of a provision of the General Declaration. In this Claim, the threshold question is whether the Stradivarius falls within the scope of "Iranian properties" for the purposes of Paragraph 9.

²⁸⁰ See *supra* para. 312.

²⁸¹ Paragraph 17 of the General Declaration provides: "If any other dispute arises between the parties as to the interpretation or performance of any provision of this Declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the Claims Settlement Agreement" General Declaration, Paragraph 17, 1 IRAN-U.S. C.T.R. at 8.

320. The Tribunal finds that the fact that a holder of an item asserts that it, and not Iran, owned the item on 19 January 1981 does not deprive the Tribunal of jurisdiction to decide whether the United States has performed its obligations under Paragraph 9 and, more generally, under the Algiers Declarations – thus, to decide, whenever necessary, whether an item of property is “Iranian” within the meaning of Paragraph 9.²⁸² Where the United States has considered the holder’s position as to the ownership of the item, and thus elected not to arrange for its transfer pursuant to Paragraph 9, the United States has assumed the risk that the Tribunal, after considering all the evidence presented, including Mr. Forough’s extensive testimony,²⁸³ will ultimately conclude that the item is “Iranian” for the purposes of Paragraph 9 and, therefore, find the United States responsible for a violation of that provision. Accordingly, the Tribunal holds that it has jurisdiction to determine who held title to the Violin on 19 January 1981.

321. The Tribunal now turns to the question whether the Violin falls within the scope of the term “Iranian properties” for the purposes of Paragraph 9. There is no dispute that the Stradivarius was located within the jurisdiction of the United States on 19 January 1981. Likewise, there is no dispute that the Ministry falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

322. The Tribunal must determine whether title to the Stradivarius vested in Iran as of 19 January 1981, in accordance with the *lex rei sitae*. There is no dispute between the Parties that the purchase of the Stradivarius took place in Paris (France), and that the Ministry paid for the Stradivarius and acquired title thereto in late 1976, when Dr. Hakoupian of Roudaki Hall, on behalf of the Ministry, and the agent of the seller concluded the contract for the sale of the Stradivarius.²⁸⁴ Under French law, all tangible property – movable or immovable – is subject to the law of the place where it is located.²⁸⁵ Purchase by the Ministry is evidenced, *inter alia*,

²⁸² Once an issue falling within the Tribunal’s jurisdiction is brought before it, the Tribunal has full authority to decide it.

²⁸³ The United States has submitted two written affidavits from Mr. Forough and presented him as a witness during the Hearing. Mr. Forough was extensively examined.

²⁸⁴ *See supra* para. 304.

²⁸⁵ Article 3, paragraph 2 of the French Civil Code provides that “immovables are governed by French law even when owned by aliens.” The scope of this provision has been extended to movables *ut singuli*. *See, e.g.*, P. MAYER & V. HEUZÉ, *DROIT INTERNATIONAL PRIVÉ* 476 (11th ed., LGDJ 2014); B. AUDIT, *DROIT INTERNATIONAL PRIVÉ* 762-763 (6th ed., Economica 2010).

by the invoice issued by Wurlitzer-Bruck dated 22 September 1976,²⁸⁶ in which it was stated that the Stradivarius was purchased and paid for by the Ministry. This was also acknowledged by Mr. Forough himself, who testified at the Hearing that “[Iran] ended up paying for the instrument, absolutely.” Thus, under French law, title to the Stradivarius passed to Iran upon its purchase in Paris in late 1976.

323. With regard to the terms under which Mr. Forough received the Stradivarius upon its purchase by the Ministry, the Tribunal has before it overwhelming contemporaneous documentary evidence showing that the Stradivarius was given to Mr. Forough in a form of trust through consecutive agreements until 13 December 1980. Not only did Mr. Forough sign the four declarations and undertakings presented to him by the Ministry, but once the Iranian authorities requested that he return the Stradivarius, he never made any reference to the existence of a “lifetime gift.” Rather, he insisted on keeping the Stradivarius through the trust arrangement and offered to purchase it from the Ministry. Evidence for this conclusion can be found in the following documents:

- (a) a letter from Mr. Forough to the Managing Director of Roudaki Hall dated 22 June 1980, in which he requested the Ministry to agree to extend the trust arrangement or, in case this was not accepted, to sell the Stradivarius to him;
- (b) a letter dated 5 May 1981 from Mr. Forough to the Minister of Culture and Higher Education in Tehran, in which Mr. Forough acknowledged once again that “after this purchase by the Ministry . . . the violin was lent to me from [30 November 1976] on. From that time on every year . . . Rudaki Hall sent me a typewritten lending agreement which I signed and returned.” Furthermore, he repeated that he had always considered the Stradivarius “as the property of Rudaki Hall and the Iranian nation,” and that he had “never doubted that reality”;
- (c) a letter from Mr. Forough’s father, Mr. Mehdi Forough, to the Iranian Interest Section dated 25 June 1981, stating that his son had sent a letter requesting an extension of the trust of the Stradivarius. Mr. Mehdi Forough also indicated

²⁸⁶ See *supra* para. 304.

that his son was waiting for a response from Tehran regarding his request to further keep the Stradivarius in trust or, alternatively, to purchase it;

- (d) a letter from Mr. Forough to the Iranian Interest Section dated 25 August 1981, reminding them of his offer to purchase the Stradivarius if an extension of the trust agreement was not accepted, highlighting the good care he had taken of the Stradivarius during the years he had it in his possession, and acknowledging that the Stradivarius had been entrusted to him “as a deposit.”

324. In his testimony at the Hearing, Mr. Forough stated that he was repeatedly told that the agreements with the Ministry were “just a formality,” and that the Stradivarius was his and that he could play it “until the end of his life.” According to Mr. Forough’s testimony, these agreements “were created to appease people who were against me having the instrument.”

325. The Tribunal finds that the overwhelming bulk of the evidence does not support Mr. Forough’s assertions regarding the alleged existence of a “lifetime gift” of the Stradivarius. First, the contemporaneous documentary evidence in the record shows that Mr. Forough received the Stradivarius through a form of trust. This is supported by Mr. Forough’s own statements in the communications he sent to the Iranian authorities and the fact that he offered, and insisted on, the purchase of the Stradivarius once the agreement was not renewed. Second, Mr. Forough’s assertions as to the existence of a lifetime gift first emerged only in the United States’ report on Iranian tangible properties of 30 October 1985. Furthermore, the existence of a lifetime gift is, in essence, supported solely by Mr. Forough’s own affidavits and hearing testimony. The Tribunal is aware of and has considered in its analysis the letter sent by Mr. Adrian Sunshine to Mr. Forough on 19 October 1985, recounting Mr. Sunshine’s recollection of the facts surrounding the purchase of the Stradivarius and stating that his understanding was that the Stradivarius was “an unconditional gift for your exclusive use in perpetuity.” However, in light of all the evidence on record, the Tribunal is not persuaded by Mr. Sunshine’s recollection in 1985 of facts that took place almost 10 years before.

326. In the present case, it is undisputed that, starting in August 1980, when Mr. Forough was informed that his offer to purchase the Stradivarius had been rejected, Iran gave repeated directions to the property holder, Mr. Forough, to return the instrument. Particularly relevant for its clarity is the letter sent by the Iranian Interest Section to Mr. Forough dated 22 June 1981, in which it was stated that:

[y]ou are advised that due to the expiration of a 10 day respite granted to you, and as a result of unsuccessful efforts by this office to settle the matter amicably through contacts with you, which met with your neglect and empty promises, you are hereby notified that *within 7 days from the receipt of this notification, which is being sent by registered mail, you must return the priceless violin belonging to the Iranian nation, taken out by you on loan, to this office.* (Emphasis added.)

327. There is one additional element among the facts giving rise to this Claim: the Stradivarius is now probably located in the State of Indiana, and the current *lex rei sitae* is, therefore, the law of Indiana. This is a classic case of what conflicts theory discusses as “*conflict mobile*.” While most modern codified conflict rules regarding property rights specifically address security interests and are only concerned with a situation where chattels are either removed from a foreign country into the territory of the forum or, *vice-versa*, from the territory of the forum to a different jurisdiction, the conflicts rules applied in three jurisdictions (Iran, the Netherlands, and the United States as reflected in the American Law Institute’s Restatement (Second) on Conflict of Laws) provide a broader and abstract solution.²⁸⁷ Since the Tribunal has not been apprised of any (subsequent) dealings with the Stradivarius, the three jurisdictions can be taken to concur that the title acquired by Iran prior to its removal to the United States remained vested upon its removal. The Tribunal accepts that, in the present circumstances, this is an appropriate solution.

²⁸⁷ Article 966 of the Iranian Civil Code provides:

Possession, ownership and other rights over movable or immovable properties are subject to the laws of the country in which they are situated. Nevertheless, the transfer of a movable property from one country to another may not affect the rights that persons may have acquired over that property in accordance with the laws of the country in which the property was first situated.

Civil Code of Iran, art. 966 (M.A.R. Taleghany trans., Fred B. Rothman & Co. 1995).

Article 10:130 of the Civil Code of the Netherlands provides:

Real Property Rights in Things Moved to Another State

Real property rights in a thing that have been acquired or established in conformity with the present Title (Title 10.10), remain vested in that thing, also when that thing is moved to another State. These real property rights cannot be exercised in a way which is incompatible with the law of the State on the territory of which that thing finds itself at the moment that these rights are exercised.

§ 247 of the Restatement (Second) of Conflict of Laws provides:

§ 247 *Moving Chattel into Another State: Effect on Title*

Interests in a chattel are not affected by the mere removal of the chattel to another state. Such interests, however, may be affected by dealings with the chattel in the other state.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 247 (1971).

328. In light of the above, the Tribunal finds that the Ministry held title to the Stradivarius on 19 January 1981. Thus, the Stradivarius falls within the scope of “Iranian properties” within the meaning of Paragraph 9.

329. The Tribunal now turns to the issue of the responsibility of the United States. The United States first learned that the Stradivarius was held by Mr. Forough and located in the United States on 31 August 1983, when Iran presented its Reply to the United States’ Statement of Defense. The relevant question thus becomes whether, from that time, the United States did everything it reasonably could have done to satisfy its Paragraph 9 obligation to take steps to ensure that the Stradivarius in Mr. Forough’s possession would be transferred to Iran.²⁸⁸

330. After the United States learned from Iran that Mr. Forough was the holder of the claimed property, according to Mr. Forough’s affidavit, “since the early 1980s, the State Department has contacted me numerous times to ask me questions about Iran’s claim to the violin.” The United States, in its report on Iranian tangible properties of 30 October 1985, indicated that “[the] Violin was [a] gift to Mr. Forough for use for his lifetime,” suggesting that Iran contact Mr. Forough directly to solve the issue. In its report on Iranian tangible properties to the Tribunal of 13 November 1987, Iran stated that “Ali Forough has no right to the said Violin.” In its 1990 updated report, the United States acknowledged that Iran had purchased the Stradivarius but insisted that it was then given to Mr. Forough for his use and, since Mr. Forough had offered to buy the Stradivarius, suggested that Iran contact Mr. Forough directly regarding his offer to purchase the instrument. The documents attached to that report show that Iran had repeatedly requested the return of the Stradivarius, rejecting Mr. Forough’s offer to purchase it. Notwithstanding the above and the subsequent documents submitted by the Parties, the United States did not change its position and continued to stand by Mr. Forough’s testimony.

331. Considering the above circumstances, the Tribunal finds that once the United States learned about the Stradivarius, it should have arranged for its transfer. The fact that the Ministry might have given the Stradivarius to Mr. Forough in a form of trust for his use is irrelevant because once Iran directed Mr. Forough to return it, the latter should have complied with the request. The United States never disputed that the Ministry purchased the Stradivarius, which constituted an “Iranian propert[y]” on 19 January 1981; however, upon learning of its

²⁸⁸ See *supra* paras. 169 & 211.

existence and Iran's attempts to have it returned, the United States failed to take all reasonable steps to ensure that Mr. Forough transferred the Stradivarius to Iran. From the moment that the United States learned of Iran's Claim, it could have been reasonably expected to follow up on the matter with Mr. Forough and, more importantly, to request that he provide evidence supporting his claim that he had received the Stradivarius as a gift. However, the United States did not do so. Therefore, the United States failed to take any steps to ensure that the Stradivarius was returned to Iran.

332. Accordingly, the Tribunal holds that, with regard to Claim G-18, the United States is in breach of its Paragraph 9 obligation from 31 August 1983.

(4) Claims Supp. (2)-11 and (2)-12 (National Iranian Radio and Television/Kamran and Claudia Mashayekhi)

(a) *Introduction*

333. In Claims Supp. (2)-11 and (2)-12, Iran seeks the return of certain musical instruments and other properties, as set out below, or a maximum of USD 990,625, plus interest, as damages allegedly incurred as a result of the United States' alleged failure to arrange for the transfer to Iran of the properties purchased by a former Iranian employee of the National Iranian Radio and Television and allegedly held within the jurisdiction of the United States.

334. Claim Supp. (2)-11 involves a claim for the return of, or compensation for, certain office equipment and two vehicles. The office equipment comprises two office desks, a conference table, chairs, a black-and-white TV, a color TV, two Sony tape recorders, three Panasonic radios, an office desk, a filing cabinet, an armchair, a coffee table, two CP-16 motion picture cameras, and an electric typewriter. As will be discussed below, while Iran sought the relief described above in its pleadings, it did not include any relief for Claim Supp. (2)-12 in its Summary Table of Claims.²⁸⁹

335. In Claim Supp. (2)-12, Iran seeks the return of, or compensation for, various musical instruments and other related properties. These include a 1738 Nicolò Gagliano violin, a 1780 Giuseppe Gagliano violin, an 1804 Joanes Gagliano viola, a 1774 Nicolò Gagliano cello, a Hill violin bow, and a Dodd cello bow. Other musical instruments, bows, cases, and boxes were

²⁸⁹ See *supra* para. 57.

also previously included in Iran's claim, but, in its Summary Table of Claims, Iran limited its claim to the four musical instruments and two bows listed above. Alternatively, should these properties not be returned to Iran, Iran claims a total of USD 990,625, plus interest, as damages incurred as a result of their non-return.

(b) *Factual Background*

336. Kamran Mashayekhi, an Iranian national, was at the relevant times the Bureau Chief of the Washington, D.C., office of the National Iranian Radio and Television (NIRT), also known as Voice & Vision of Iran. He entered into a Services Purchase Contract for Domestic Nationals with the National Television Organization of Iran on 5 July 1971, initially in London, United Kingdom. This agreement was extended on 29 April 1972 and again on 10 December 1974. At some point after 1974, Kamran Mashayekhi was transferred to Washington, D.C.

337. Claudia Mashayekhi, Kamran Mashayekhi's wife and a United States national, worked as a news writer for NIRT in Washington, D.C., from June 1971 through March 1979.

338. In 1975, NIRT asked Kamran Mashayekhi to inquire about the purchase of certain musical instruments. Accordingly, Kamran Mashayekhi communicated a list of 20 musical instruments and other items to NIRT in 1978. Kamran Mashayekhi evidently received instructions to proceed with the purchase and, on 21 March 1978, the seller he had identified, Jacques Français, issued bills of sale for the following items to NIRT, with payment due within three weeks: (i) three violins, a viola, and a cello; (ii) four violin bows, a cello bow, and a viola bow; and (iii) three single violin cases, one double violin case, one cello case, and six bow cases. On 26 or 27 March 1978, NIRT instructed Iran International Bank to transfer the necessary funds to Kamran Mashayekhi to make the purchases. On 5 April 1978, insurance in favor of NIRT in the amount of USD 465,800 for the instruments, bows, and cases was purchased from Federal Insurance Co. (Chubb International) ("Chubb") through Davis, Dorland & Co. Insurance Brokers.

339. In July 1978, the Washington, D.C., office of NIRT moved to a new location on Wisconsin Avenue. Due to space constraints at the new premises, Kamran Mashayekhi placed various pieces of office furniture owned by NIRT (two office desks, one conference table, and some chairs) into storage with Arco Storage ("Arco"). This furniture was later auctioned to cover unpaid storage fees. Other pieces of office furniture and some equipment (two TVs, two

Sony tape recorders, three radios, an office desk, a filing cabinet, some chairs, an armchair, and a coffee table) were moved to the new Wisconsin Avenue office. Two CP-16 motion picture cameras, as well as the musical instruments described above, were kept in Kamran Mashayekhi's home.

340. In December 1978 or January 1979, Kamran Mashayekhi also placed two automobiles (a Buick station wagon and a 1974 Chevy Vega) into storage with Arco. These were also auctioned by Arco either at the end of February or the beginning of March 1979 to cover unpaid storage fees. Sometime after March 1979, Kamran Mashayekhi arranged for the sale of the remainder of the office furniture and the CP-16 motion picture cameras.

341. The Embassy of Iran in Washington, D.C., first became aware of the disappearance of the instruments on 3 April 1979. That same day, NIRT filed a claim with Chubb "for the disappearance of musical instruments and relating properties."

342. On 4 April 1979, the Embassy of Iran was informed by NIRT's insurance broker, Davis, Dorland & Co., that Kamran Mashayekhi had limited the coverage of NIRT's insurance policy to the four musical instruments that are included in Claim Supp. (2)-12 (*i.e.*, the 1738 Nicolò Gagliano violin, the 1780 Giuseppe Gagliano violin, the 1804 Joanes Gagliano viola, and the 1774 Nicolò Gagliano cello), and that these musical instruments were in Kamran Mashayekhi's possession. Chubb confirmed this information and the insured value of these musical instruments (USD 160,000) by letter dated 26 April 1979.

343. On 11 July and 31 July 1979, the Embassy of Iran attempted, through its lawyers, to contact Kamran Mashayekhi by letter at various addresses in Washington, D.C., and Los Angeles, California. All of counsel's letters were returned undelivered.

344. On 30 July 1979, counsel for Iran reported the matter to the Federal Bureau of Investigation and the Metropolitan Police of the District of Columbia.

345. On 2 August 1979, Kamran and Claudia Mashayekhi filed a complaint against Iran and NIRT before the District Court for the District of Columbia (Civil Action No. 79-2039), alleging that they were owed USD 315,300 for unpaid salaries, sums withheld for retirement and housing, and cash advances made on behalf of the defendants. Subsequently, Kamran and Claudia Mashayekhi also filed a motion for a Protective Order before the same court.

346. On 3 August 1979, counsel for Iran wrote to the Federal Bureau of Investigation and the Metropolitan Police of the District of Columbia concerning the matter of the four musical instruments, noting that, in a 6 December 1978 letter to the insurers, Kamran Mashayekhi had acknowledged that he was holding the musical instruments.

347. On 5 November 1979, Iran filed its Memorandum in opposition to Kamran and Claudia Mashayekhi's Motion for a Protective Order in the District Court. On 3 December 1979, Iran filed its Answer in the District Court to Kamran and Claudia Mashayekhi's Complaint, as well as three counterclaims for tortious conversion, breach of contract, and unjust enrichment; on its counterclaims, Iran demanded damages amounting to USD 500,000, the immediate return of the "rare musical instruments, records and equipment," an injunction preventing their disposition or transfer, and costs.

348. On 13 August 1980, Kamran Mashayekhi was deposed by counsel for Iran in relation to Civil Action No. 79-2039. During his deposition, he testified that the four musical instruments and two bows were in his possession.

349. On 19 January 1981, the claim of Claudia Mashayekhi as co-plaintiff in Civil Action No. 79-2039 became subject to the provisions of the Algiers Declarations because she was a United States national. On 22 April 1981, her claim was severed from that of her husband in Civil Action No. 79-2039.

350. On 10 June 1981, Kamran Mashayekhi's complaint was dismissed by the District Court for the District of Columbia on grounds of sovereign immunity. The District Court's judgment records that Iran's "protective counterclaim for the return of the musical instruments" had been withdrawn because counsel for Iran and NIRT had stated during oral argument that this counterclaim would not be pursued if Kamran Mashayekhi's claim were to be dismissed. That same day, counsel for Iran informed the United States Department of the Treasury that Iran was seeking the return of its properties, including the four musical instruments and bows that are the subject of Claim Supp. (2)-12, pursuant to Section 535.215 (a) of the Treasury Regulations.

351. On 6 August 1981, counsel for Iran wrote again to the Treasury Department, requesting that the United States take "all necessary steps" to return the properties to Iran.

352. By telephone call on 18 September 1981, OFAC communicated to Iran's counsel the Treasury Department's position on Iran's request for return of the properties. According to Iran's account of this call, the Treasury Department's position was that Iran's interests in the properties were "contested" within the meaning of Section 535.333(c) of the Unlawful Treasury Regulations, with the result that Kamran Mashayekhi could continue to hold the properties because, in the Treasury Department's view, he had a counterclaim against Iran.

353. On 29 September 1981, Iran's counsel wrote to the Treasury Department, objecting to its position on Iran's request for return of the properties. Iran's counsel, *inter alia*, wrote:

Mr. Mashayekhi has no claim to present to the Arbitral Tribunal because he is not a U.S. national. Mrs. Mashayekhi, who is a U.S. national, may present a fairly nominal claim to the Tribunal. However, assuming that [NIRT] were to counterclaim against Mrs. Mashayekhi, the custody of the instruments is not joint, and, in any event, their value is at least ten times greater than the most recent statement of Mrs. Mashayekhi's claim. [NIRT] itself, of course, cannot bring a claim before the Arbitral Tribunal, because the Tribunal lacks jurisdiction over claims by Iranian governmental entities against U.S. nationals or non-U.S. nationals. [NIRT] will not sue Mr. Mahsayekhi in U.S. courts for the simple reason that filing such a suit would waive its immunity to a counterclaim in an amount not exceeding the value of the instruments.

[. . .]

[OFAC] informed this office that [it] would undertake orally to advise Mr. Mashayekhi's attorney that the instruments were frozen Iranian assets. We trust that this instruction has been communicated and that Treasury has taken all steps to prevent the sale of the instruments.

354. On 20 January 1982, the United States submitted a Claim on behalf of Claudia Mashayekhi against Iran and NIRT before this Tribunal for unpaid wages and employment benefits in amount of USD 67,580.

355. On 9 August 1982, counsel for Iran wrote again to the Department of the Treasury in anticipation of Kamran Mashayekhi's application for a license to sell the properties, stating its position on why the conditions for the grant of such a license could not be met.

356. In its Statement of Defense dated 22 March 1983 in the present Cases, the United States stated that Kamran Mashayekhi continued to hold the instruments in California.

357. In the United States' report to the Tribunal on Iranian tangible properties in the United States, dated 30 October 1985, the United States stated "Mr. Mashayek[h]i holds one violin and no other property."

358. On 17 May 1990, Iran and the United States concluded a “Settlement Agreement in Claims of Less than \$250,000, Case No. 86 and Case No. B38.” Accordingly, on 22 June 1990, the Tribunal issued an Award on Agreed Terms in the “Claims of Less than \$250,000” and Cases Nos. 86, B38, B76, and B77.²⁹⁰

359. The United States subsequently presented Claudia Mashayekhi’s claim to the United States Foreign Claims Settlement Commission under No. IR-0666. On 26 August 1992, the Foreign Claims Settlement Commission denied Claudia Mashayekhi’s claim for lack of proof.

(c) *The Parties’ Contentions*

Preliminary Issue: The Small Claims Settlement Agreement

360. The United States argues that Claims Supp. (2)-11 and (2)-12 should be dismissed because they are barred by the “Settlement Agreement in Claims of Less Than \$250,000, Case No. 86 and Case No. B38” (“Small Claims Settlement Agreement”).²⁹¹ According to the United States, Claims Supp. (2)-11 and (2)-12 and Claudia Mashayekhi’s previous small claim before the Tribunal are connected with, and related to, the same matters. In this regard, the United States contends that one of Iran’s three counterclaims in the United States District Court for the District of Columbia against the Mashayekhis was for breach of the same employment contract on which Mrs. Mashayekhi based her claim, therefore satisfying the language of the Small Claims Settlement Agreement. The United States also submits that Iran’s position that, in the words of counsel for the United States, “there was no relationship between Mrs. Mashayekhi’s small claim and Iran’s claims for the instruments” is in conflict with the statement Iran’s counsel made to United States District Court that “[t]he first option [Iran] would pursue with respect to the counterclaim is to assert it in front of [the Tribunal].”

361. The United States submits that both Kamran and Claudia Mashayekhi had custody and control of the instruments, rather than Kamran Mashayekhi alone. The United States also observes that Iran filed its counterclaims in the United States District Court against both the Mashayekhis, and not just against Kamran Mashayekhi. Further, Iran’s motion to dismiss the lawsuit on sovereign immunity grounds likewise stated that both Mashayekhis had possession

²⁹⁰ See *United States of America and Islamic Republic of Iran*, Award No. 483-Claims of Less than US \$250,000/86/B38/B76/B77-FT, “Settlement Agreement in Claims of Less Than \$250,000, Case No. 86 and Case No. B38” (22 June 1990), reprinted in 25 IRAN-U.S. C.T.R. 327, 331.

²⁹¹ See *supra* para. 358.

of the instruments. The United States points out that Iran's counsel, moreover, told the District Court that "the counterclaim . . . is properly maintained as a counterclaim in the Claudia Mashayekhi proceeding [at the Tribunal]."

362. The United States notes that the Small Claims Settlement Agreement included a release of liability by Iran, not against the Mashayekhis, but rather against the United States. Moreover, according to the United States, the language of the release is satisfied by the fact that "Iran's claims are related to matters that are themselves related to Mrs. Mashayekhi's small claim." For the United States, Iran therefore had an obligation to discontinue Claims Supp. (2)-11 and (2)-12, in accordance with the Small Claims Settlement Agreement.

363. Iran submits that the Small Claims Settlement Agreement did not settle Claims Supp. (2)-11 and (2)-12. For Iran, Claims Supp. (2)-11 and (2)-12 concern Iranian property that is or was held by Kamran Mashayekhi and are not related to Claudia Mashayekhi or her employment claim. Iran contends that Claims Supp. (2)-11 and (2)-12 could not have been raised: (i) as a counterclaim to the claim brought by Claudia Mashayekhi; or (ii) in connection with matters stated in, related to, arising from, or capable of arising from the claim brought by Claudia Mashayekhi. Iran submits that Claims Supp. (2)-11 and (2)-12 were not covered by the Small Claims Settlement Agreement, which related only to claims filed with the Tribunal by the United States on behalf of United States nationals and, further, to claims of less than USD 250,000. Iran also submits that it is Kamran Mashayekhi, and not Claudia Mashayekhi, who was "in charge" at NIRT's office of the properties claimed in Claims Supp. (2)-11 and (2)-12, which were held "in trust" by him. Iran also points out that the United States contended in its Statement of Defense dated 22 March 1983 that Kamran Mashayekhi alone had asserted a lien on the musical instruments.

364. Iran also argues that the subsequent conduct of both Parties demonstrates that Claims Supp. (2)-11 and (2)-12 are unrelated to Claudia Mashayekhi's claim. Iran notes that the civil case brought by Kamran Mashayekhi against Iran before the District Court (and, consequently, the counterclaim brought by Iran against Kamran Mashayekhi for the return of the properties) continued despite Claudia Mashayekhi's claim having been severed. Iran observes that it also took action vis-à-vis the United States government, through its attorneys, seeking the return of the properties. Iran further notes that, in response to Iran's requests for transfer of the properties, the United States consistently maintained that such transfer could not be made because a lien had been asserted on them. Iran also points to the reports on Iranian tangible

properties submitted by the United States to the Tribunal after the conclusion of the Small Claims Settlement Agreement, in which the United States failed to mention any connection between Claims Supp. (2)-11 and (2)-12 and the Small Claims Settlement Agreement.

Remaining Issues: Iran's Contentions

365. According to Iran, it is undisputed between the Parties that Iran held title to the properties at issue on 19 January 1981, and that those properties were in existence within the jurisdiction of the United States on that date.

366. Iran contends that, by failing to ensure that the disputed properties were transferred to Iran, the United States breached its obligation under Paragraph 9.

367. In this regard, Iran submits that the United States was aware that Kamran Mashayekhi was holding Iranian properties, since Iran's attorneys had exchanged extensive correspondence with the Department of the Treasury and OFAC on the matter. Iran also observes that, despite Iran's repeated contact with the United States, three instruments appear to have been sold between 1983 and 1985. Iran also submits that that the United States' position, discussed below, that the instruments were not in existence within the jurisdiction of the United States on 19 January 1981 is untenable because the United States reported in its Statement of Defense of 22 March 1983 that "Mr. Mashayekhi holds four musical instruments that formerly belonged to NIRT."

Remaining Issues: The United States' Contentions

368. The United States submits that, even assuming, *arguendo*, that the Small Claims Settlement Agreement did not bar Claims Supp. (2)-11 and (2)-12, Iran has failed to prove that the United States breached any obligation under Paragraph 9.

369. With respect to Claim Supp. (2)-11, the United States asserts that the disputed office equipment and other property had been disposed of in 1979 pursuant to Iran's instructions and, therefore, were not owned by Iran on 19 January 1981. In any case, the United States maintains, the list of items at issue in Claim Supp. (2)-11 that was provided by Iran included items for which Iran had proffered no documentary support and for which Iran's description was meaningless. Moreover, the United States contends that Iran never provided any direction to the property holder, Kamran Mashayekhi, to transfer the office equipment and other property

to Iran. Nor did Iran provide any indication to the United States so as to enable it to arrange for the transfer of those properties.

370. In Claim Supp. (2)-12, the United States does not dispute that the claimed musical instruments and bows were Iranian properties within the jurisdiction of the United States on 19 January 1981. The United States, however, points to an admission by Iran in its rebuttal brief and evidence of 17 May 2006 that Kamran Mashayekhi delivered four bows to NIRT on 17 May 1978, meaning that Kamran Mashayekhi only had two bows in his possession on 19 January 1981.

(d) *The Tribunal's Decision*

(i) *Preliminary Issue: The Small Claims Settlement Agreement*

371. The Tribunal first considers whether Claims Supp. (2)-11 and (2)-12 were barred by the Small Claims Settlement Agreement.

372. Article II(i) of the Small Claims Settlement Agreement provides as follows:

The scope and subject matter of this Agreement are:

(i) to settle, dismiss, and terminate definitively, forever and with prejudice all the disputes, differences, claims, counterclaims and matters directly or indirectly raised or capable of arising out of the relationships, contracts, transactions, occurrences, obligations, rights and interests contained in, arising out of, or related to the Claims of less than \$250,000, Case No. 86 and Case No. B38.

373. To that end, Article VI (ii) of the Small Claims Settlement Agreement provides:

(ii) Upon the issuance by the Tribunal of the Award on Agreed Terms, and in contemplation of the payment of the Settlement Amount, the Islamic Republic of Iran shall release and forever and definitively discharge the United States from any and all claims, causes of action, rights, interests and demands, whether in rem or in personam, past, present or future, which have been raised, may in the future be raised, or could have been raised in connection with disputes, differences, claims, counterclaims and matters stated in, related to, arising, or capable of arising from the Claims of less than \$250,000 and/or Case No. 86 and/or Case No. B38.

374. Article I (A) of the Small Claims Settlement Agreement clarifies that the term “‘the Claims of less than \$250,000’ means any and all of the claims of less than \$250,000 each, which have been filed with the Tribunal by the United States on behalf of U.S. nationals.”

375. The Small Claims Settlement Agreement is a treaty between Iran and the United States. As such, the Tribunal considers that it should be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose,” in accordance with Article 31 of the Vienna Convention. A plain reading of the three Articles of the Small Claims Settlement Agreement quoted above shows that the release agreed to by Iran was for all acts related to “claims, causes of action, rights, interests and demands” of less than USD 250,000 that had been submitted by the United States to the Tribunal on behalf of United States nationals. The scope of the release by Iran was therefore limited to the “claims, causes of action, rights, interests and demands” that had been, may be, or could be raised in connection with the “disputes, differences, claims, counterclaims and matters” brought by the underlying parties (*e.g.*, Claudia Mashayekhi). Therefore, the release by Iran in the Small Claims Settlement Agreement did not encompass actions against individuals who were not (and could not be) parties to the relevant underlying proceedings (*e.g.*, Kamran Mashayekhi).

376. In the Tribunal’s view, the mere fact that Kamran and Claudia Mashayekhi were spouses is insufficient to link, with the effect proposed by the United States, their respective employment contracts with NIRT, each of which existed separately and independently of the other. The Tribunal also finds that Kamran and Claudia Mashayekhi’s respective employment contracts cannot be so linked just because Kamran and Claudia Mashayekhi lived together and therefore jointly possessed certain of the properties that would have been the subject of the (potential) counterclaim by Iran against Claudia Mashayekhi.

377. The Tribunal finds support for its conclusions in the fact that, although Claudia Mashayekhi’s claim against Iran was severed from that of Kamran Mashayekhi and withdrawn from proceedings before the United States District Court as a result of the Algiers Declarations, Kamran Mashayekhi’s claim against Iran was continued, at least until it was dismissed without prejudice on grounds of sovereign immunity. Both Iran’s actions in attending the suit and the United States’ actions in severing Kamran Mashayekhi’s suit and subsequently continuing it in United States District Court show that the Parties also considered that, despite having been brought together, Kamran and Claudia Mashayekhi’s suits were separate from each other.

378. In this context, the Tribunal also observes that Claudia Mashayekhi’s claim before the Tribunal was only for USD 67,580, whereas the joint claim of Kamran and Claudia Mashayekhi against Iran and NIRT before the District Court was for USD 315,300; in addition,

in this action, Iran's counterclaims were for USD 500,000 (USD 400,000 of which was attributed to the musical instruments), should Iran's properties not be returned.

379. The Tribunal further observes that, long after the claim against Kamran Mashayekhi had been dismissed without prejudice by the District Court on 10 June 1981, the United States asserted in its Statement of Defense of 22 March 1983 that the properties were held by Kamran Mashayekhi (*i.e.*, not jointly held with Claudia Mashayekhi), which is consistent with his sworn testimony during his deposition in relation to Civil Action Civil Action No. 79-2039. There is a tension, and potentially even an inconsistency, between this statement by the United States and its argument that the same properties could have been the subject of a counterclaim lodged against Claudia Mashayekhi (with the effect that any claims by Iran in respect of those properties were waived as a result of the Small Claims Settlement Agreement).

380. For the foregoing reasons, the Tribunal finds that, in Articles II and VI of the Small Claims Settlement Agreement, Iran agreed to release and waive any action in relation to Claudia Mashayekhi. The Tribunal, however, finds that Iran did not release or waive any actions in relation to Kamran Mashayekhi through the Small Claims Settlement Agreement. Accordingly, the Tribunal holds that the Small Claims Settlement Agreement does not bar Iran from asserting Claims Supp. (2)-11 and (2)-12 before the Tribunal.

(ii) Remaining Issues: Claim Supp. (2)-11: The Office Equipment and Two Automobiles

381. The Tribunal now turns to Claim Supp. (2)-11 relating to the office furniture and equipment and two automobiles.

382. As an initial matter, there is no dispute between the Parties that NIRT falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration.

383. Although in its written pleadings and at the Hearing, Iran sought the return of the items claimed in Claim Supp. (2)-11 or compensation in lieu of their return, it did not seek any such relief in its Summary Table of Claims. Notwithstanding this apparent decision by Iran not to pursue this Claim, the Tribunal notes that, when deposed during proceedings before the United States District Court, Kamran Mashayekhi testified that the office equipment and two automobiles had either been sold or auctioned by March 1979. Iran proffered no countervailing evidence to show that the items claimed still existed and were within the jurisdiction of the

United States on 19 January 1981. The Tribunal therefore holds that Claim Supp. (2)-11 has been insufficiently substantiated by Iran, and that Iran has not met the burden of proof in establishing its Claim.

384. Therefore, the Tribunal dismisses Claim Supp. (2)-11 to the extent it has not already been withdrawn by Iran.

*(iii) Remaining Issues: Claim Supp. (2)-12: The Musical
Instruments and Bows*

385. The Tribunal now turns to Claim Supp. (2)-12 relating to the musical instruments and bows.

386. The Tribunal notes that, although Iran's claim was initially for four instruments, six bows, and a number of instrument boxes, Iran conceded that Kamran Mashayekhi delivered four bows to NIRT on 17 May 1978, meaning that, after that date, he was only in possession of two of the six bows. The Tribunal moreover notes that, in its Summary Table of Claims, Iran no longer maintains a claim for the instrument boxes, and instead only makes a claim for the four Gagliano instruments and the two Hill and Dodd bows.

387. As noted, there is no dispute that NIRT falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration.²⁹² Equally, there is no dispute that the four musical instruments and two bows were within the jurisdiction of the United States on 19 January 1981, and that they were solely owned by Iran on that date. Indeed, in its Statement of Defense dated 22 March 1983, the United States submitted that Kamran Mashayekhi continued to hold the instruments in California.

388. It is further undisputed that Iran was demanding the return of the musical instruments and bows and had in fact directed the property holder Kamran Mashayekhi to return the items to Iran. In response to the suit filed by Kamran and Claudia Mashayekhi before the District Court for the District of Columbia, on 3 December 1979, Iran filed its Answer and Counterclaim, demanding the immediate return of the property.

389. Moreover, on 10 June 1981, Iran wrote to the United States Treasury Department, indicating that it was providing direction, pursuant to Section 535.215(a) of the Unlawful

²⁹² See *supra* para. 382.

Treasury Regulations, for the transfer of the four musical instruments, six bows, and six boxes. On 6 August 1981, Iran again requested that the United States take all necessary steps to obtain the return of the instruments, bows, and boxes to Iran.

390. On 18 September 1981, however, OFAC informed Iran that the United States was not obliged to require that Kamran Mashayeki return the instruments, because, in OFAC's interpretation of Section 535.333(c) of the Unlawful Treasury Regulations relating to contested property interests, Kamran Mashayekhi could continue to hold the musical instruments, for which he had a counterclaim against Iran. Iran objected to this communication by letter of 29 September 1981. Further, on 9 August 1982, concerned that the instruments would be sold, Iran again wrote to the Department of the Treasury to place on record its opposition to the grant of any license that may permit Kamran Mashayekhi to sell the instruments.

391. Despite Iran's actions, it appears that, sometime between 22 March 1983, when the United States reported that Kamran Mashayekhi held the properties, and 30 October 1985, Kamran Mashayekhi sold most of the musical instruments. As of 30 October 1985, Kamran Mashayekhi held only one violin and no other property in Los Angeles, California.

392. Based on the evidence presented, the Tribunal finds that Kamran Mashayekhi retained the four musical instruments and two bows in the United States in exercise of a lien on the items for the alleged non-payment of his salary and other monies claimed. Consequently, the musical instruments and bows were excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations.

393. As a result, the United States has breached its obligations under the General Declaration with respect to Iranian tangible properties, and its international responsibility is engaged. The United States' refusal to arrange for the transfer of the musical instruments and bows to Iran appears to have ultimately led to the sale of most of the instruments by Kamran Mashayekhi.

394. The Tribunal finds the United States in breach of its Paragraph 9 obligation from 26 February 1981, the date on which the United States Department of the Treasury issued Section 535.333 of the Unlawful Treasury Regulations.²⁹³

²⁹³ See *supra* para. 12.

(iv) Overall Conclusion

395. In view of the above, the Tribunal decides as follows:

- (i) Claim Supp. (2)-11 is dismissed to the extent that it has not already been withdrawn by Iran; and
- (ii) Claim Supp. (2)-12 is upheld with respect to the four Gagliano instruments and the two Hill and Dodd bows.

(5) Claim Supp. (1)-5 (Hamadan Glass Co./Henry F. Teichmann, Inc.)

(a) Introduction

396. In Claim Supp. (1)-5, Iran seeks a maximum of over EUR 277,000 and over USD 3.9 million in damages allegedly incurred as a result of the United States' alleged failure to arrange for the transfer of certain equipment that was to be shipped from Baltimore, Maryland, to Iran in connection with the construction of a glass factory. Iran also seeks interest on any awarded amounts from 19 January 1981.

(b) Factual Background

397. On 19 June 1977, Hamadan Glass Co. ("Hamadan"), an Iranian entity, and Henry F. Teichmann, Inc. ("Teichmann"), a United States corporation, entered into a contract for the supply of the necessary materials, equipment, and machinery for, and the construction of, a complete glass container plant in Hamadan, Iran ("Contract").²⁹⁴

398. Under the Contract, Teichmann was to supply "all necessary materials, equipment and machinery, for a complete glass container producing plant" and to deliver said items to the factory plant in Iran for a total price of USD 22,188,537.

399. In November 1977, Teichmann commenced the shipment of equipment and materials to Iran. By the fall of 1978, port congestion caused by the Islamic Revolution of 1979

²⁹⁴ See *Henry F. Teichmann, Inc. et al. and Hamadan Glass Co.*, Award No. 264-264-1, paras. 1, 4 (12 Nov. 1986), reprinted in 13 IRAN-U.S. C.T.R. 124, 124-25. On 19 June 1977, Hamadan also entered into a separate contract for the engineering work on the project with Carnegie Foundry and Machine Co. See *Henry F. Teichmann, Inc.*, Award No. 264-264-1, para. 5, 13 IRAN-U.S. C.T.R. at 126.

interfered with Teichmann's shipments to Iran. On 7 November 1978, Teichmann purported to terminate the Contract on the basis of its *force majeure* clause. During the first half of 1979, the parties held discussions in an effort to resolve the difficulties. Meanwhile, the last two shipments of equipment that Teichmann was able to make under the Contract were discharged at Sharjah Emirate and Ras al-Khaimah, Oman, respectively.

400. However, there were still equipment and materials stored in a warehouse in Baltimore that Teichmann had not delivered to Hamadan under earlier shipments ("Baltimore Materials"). The Baltimore Materials, which are the subject of Claim Supp. (1)-5, included the main furnace control panel for the plant, the motor control centers, and the furnace combustion system.

401. The shipment of the Baltimore Materials became impossible after the seizure of the United States embassy in Tehran on 4 November 1979.²⁹⁵ By telex of 15 November 1979, Teichmann advised Hamadan that it had encountered repeated ship cancellations and delays in its attempts to ship those items, and that therefore Teichmann was returning the items to the warehouse until normal shipping resumed.

402. By telex of 15 May 1980 to Hamadan, Teichmann terminated the Contract. Among the grounds for termination, Teichmann invoked the Islamic Revolution of 1979 and its "political ramifications," which had made completion of the project impossible, and Hamadan's failure to pay outstanding invoices totaling over USD 900,000.²⁹⁶

403. In a letter dated 18 August 1980 to Hamadan, Teichmann set out the details of "all of the charges" relating to the Contract. Teichmann advised that it had charged Hamadan a total of USD 19,124,891.05 under the Contract. Teichmann further advised that, for the materials and equipment (termed "Material and Ocean Freight") it had procured under the Contract, Teichmann had charged a total of USD 14,797,083, which Hamadan had paid in full. Moreover, Teichmann advised that it had charged Hamadan USD 1,042,373 for construction services. It also noted that "certain miscellaneous items remain[ed] unbilled," for example storage charges "for your material in Baltimore."

²⁹⁵ See *Henry F. Teichmann, Inc.*, Award No. 264-264-1, para. 10, 13 IRAN-U.S. C.T.R. at 127.

²⁹⁶ See *Henry F. Teichmann, Inc.*, Award No. 264-264-1, para. 12, 13 IRAN-U.S. C.T.R. at 128.

404. Following Teichmann's 18 August 1980 letter, there ensued an exchange of communications between the parties, in brief:

- (a) a telex of 2 September 1980 from Hamadan to Teichmann, requesting additional information and documents, including documentation relating to the Baltimore Materials;
- (b) a telex of 22 September 1980 from Teichmann to Hamadan, stating that Teichmann had already complied with Hamadan's requirements concerning documentation, and that Teichmann was continuing to pay storage charges for "your material";
- (c) a telex of 9 October 1980 from Teichmann to Hamadan, advising that, because the situation in Iran prevented Teichmann from further participating in the Contract in the foreseeable future, Teichmann was taking steps to sell the Baltimore Materials and would credit the sale proceeds against Hamadan's unpaid invoices;
- (d) a telex dated 11 October 1980 from Hamadan to Teichmann, stating that the Baltimore Materials were Hamadan's property, fully paid for but not delivered, and demanding that Teichmann refrain from taking any steps to sell "our property in Baltimore";
- (e) a telex dated 27 April 1981 from Teichmann to Hamadan, stating that Teichmann was "pleased to hear" that Hamadan had agreed in principle to "clearing up" the "material in Baltimore and your account balance" and advising that Teichmann was preparing pro forma invoices for the Baltimore Materials;
- (f) a telex of 17 May 1981 from Hamadan to Teichmann, objecting to Teichmann's preparing pro forma invoices for the Baltimore Materials, which, according to Hamadan, were, "legally and contractually," Hamadan's "property," and for which Hamadan had already paid; Hamadan stated that it was not prepared to purchase goods that were "ours."

405. On 14 January 1982, Teichmann and Carnegie Foundry and Machine Company ("Carnegie") presented a Statement of Claim against Hamadan before the Tribunal, seeking

payment of USD 1,739,435.05 allegedly due under the Contract.²⁹⁷ The claim was classified as Case No. 264. On 22 July 1982, Teichmann sold the Baltimore Materials at auction, which netted Teichmann USD 39,974.43. Teichmann made no claim before the Tribunal with respect to the Baltimore Materials. At the pre-Hearing conference, Teichmann explained its position in this respect as “being premised on the assumption that the goods had not in fact been invoiced or paid for; that title to them had never passed; and that Teichmann had retained, instead, the proceeds of the later resale at auction.”²⁹⁸ Hamadan, for its part, counterclaimed, seeking, among other things, a credit for the estimated value of the Baltimore Materials, allegedly USD 363,000, on the ground that it had paid for them and Teichmann had failed to deliver them.²⁹⁹ On 12 November 1986, the Tribunal issued its Award in Case No. 264 (“Award No. 264”).³⁰⁰ As a jurisdictional matter, it held that Hamadan was an entity controlled by the Government of Iran.³⁰¹

406. With respect to Hamadan’s counterclaim seeking a credit for the Baltimore Materials, after a lengthy analysis, the Tribunal concluded that, “without any determination being necessary as to whether Hamadan made a separate payment covering the Baltimore [Materials], the end result is that Teichmann will by the end of these proceedings have received a sum amounting to approximately the contract price This must be taken to have included an element attributable to the Baltimore [Materials].”³⁰² The Tribunal continued:

On this analysis, Hamadan had – at least notionally – paid for the goods and not received them; Teichmann had for its part manufactured or procured the goods and attempted to ship them to Iran. It was prevented from doing so by circumstances amounting to *force majeure*. This being so, the Tribunal applies the principle that, as between the parties, the loss must lie where it falls – in this case, with Hamadan. The later resale of the goods by Teichmann was justified once it became apparent that export was impossible, in an attempt to limit the losses suffered. Thus, there was no breach on the part of Teichmann which would require the reimbursement to Hamadan of \$363,000 representing the

²⁹⁷ See *Henry F. Teichmann, Inc.*, Award No. 264-264-1, para. 1, 13 IRAN-U.S. C.T.R. 124, 125.

²⁹⁸ *Henry F. Teichmann, Inc.*, Award No. 264-264-1, para. 60, 13 IRAN-U.S. C.T.R. at 140-41.

²⁹⁹ *Henry F. Teichmann, Inc.*, Award No. 264-264-1, para. 58, 13 IRAN-U.S. C.T.R. at 140.

³⁰⁰ *Henry F. Teichmann, Inc.*, Award No. 264-264-1, 13 IRAN-U.S. C.T.R. 124.

³⁰¹ Award No. 264, para. 25, 13 IRAN-U.S. C.T.R. at 132.

³⁰² Award No. 264, para. 62, 13 IRAN-U.S. C.T.R. at 141-42.

price of the goods. Hamadan is, however, entitled to the benefit of the resale proceeds realised by Teichmann, amounting to \$39,974.43³⁰³

The Tribunal thus credited the USD 39,974.43 against the total amount awarded Teichmann, namely, USD 1,660,179.05, leaving a net award to Teichmann of USD 1,620,204.62.³⁰⁴

(c) *The Parties' Contentions*

Iran's Contentions

407. Iran contends that the Baltimore Materials represent "Iranian properties" within the meaning of Paragraph 9 because, even though they were not delivered to Hamadan, the latter paid for them in full. In addition, Iran asserts that both Teichmann and Hamadan recognized that the Baltimore Materials were the property of Hamadan, as reflected, for example, in Teichmann's letter and telex to Hamadan of 18 August and 22 September 1980, respectively.³⁰⁵ Iran maintains that, in any event, by holding in Award No. 264 that the proceeds of the July 1982 sale of the Baltimore Materials belonged to Hamadan, the Tribunal recognized that Hamadan was the real owner of those items.

408. In the alternative, Iran argues that, if the Tribunal accepts that the Contract and its governing law are relevant in determining whether the Baltimore Materials are "Iranian properties," then, in making that determination, the Tribunal should also consider "changed circumstances," in accordance with Article V of the Claims Settlement Declaration. Those changed circumstances consist of the impact of the events associated with the Islamic Revolution of 1979 and the United States' response thereto (including the blocking of Iranian assets), which prevented shipment of the Baltimore Materials to Iran. Thus, according to Iran, in a case such as the present one, where Hamadan had fully paid for the properties at issue, if delivery would have been necessary for title to pass to Hamadan, and the only reason delivery did not occur were those changed circumstances, then, the Tribunal is not bound to apply the technical requirement of delivery. Accordingly, the Tribunal should hold that the Baltimore Materials represent "Iranian properties."

³⁰³ Award No. 264, para. 63, 13 IRAN-U.S. C.T.R. at 142.

³⁰⁴ Award No. 264, para. 63, 13 IRAN-U.S. C.T.R. at 142.

³⁰⁵ See *supra* paras. 403 & 404 (b).

409. In the alternative, Iran contends that Hamadan was the beneficial owner of the Baltimore Materials.

The United States' Contentions

410. The United States contends that Iran has failed to prove that it had uncontested, non-contingent title to the Baltimore Materials on 19 January 1981 such that they would fall within the scope of Paragraph 9.

411. According to the United States, the *lex rei sitae* governs the passage of title to the Baltimore Materials. Under the *lex rei sitae* rule, because the goods were located in Baltimore when Teichmann intended to invoice them and collect payment, Maryland law is applicable. The United States argues that, pursuant to Article 2-401 (2) UCC, which governs the Contract, title never passed to Hamadan because the Baltimore Materials were never delivered to it.

412. The United States further denies that Hamadan acquired beneficial ownership of the Baltimore Materials, or that changed circumstances have any relevance to this Claim.

(d) The Tribunal's Decision

413. There is no dispute, and the Tribunal has found in Award No. 264,³⁰⁶ that Hamadan falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration.

414. As a threshold question, the Tribunal must determine whether title to the Baltimore Materials had transferred to Iran as of 19 January 1981, in accordance with the *lex rei sitae*.³⁰⁷

415. It is undisputed that the Baltimore Materials were never shipped to Iran and were located in a warehouse in Baltimore, Maryland, on 19 January 1981 and at all relevant times prior to that date. Accordingly, in application of the *lex rei sitae*, the Tribunal determines that the law of the State of Maryland governs passage of title to the Baltimore Materials.

416. In order to determine the specific law of Maryland that governs passage of title to the Baltimore Materials, the Tribunal must first determine the legal nature of the Contract. In analyzing the Contract, which was signed by Teichmann and Hamadan on 19 June 1977, the

³⁰⁶ See *supra* para. 405.

³⁰⁷ See *supra* paras. 135-164.

Tribunal notes that it in fact consists of two documents. The first document is titled “Contract for Supply of Materials and Equipment for a 187 Metric Ton per Day Container Glass Plant for Hamadan Glass Company in Hamadan, Iran” and, on its face, represents a pure sales contract. The second document consists of Teichmann’s 76-page proposal to Hamadan, which was incorporated into the Contract. The proposal contains a “Turnkey Clause,” pursuant to which the parties agreed that “a turnkey project as outlined and described under this proposal shall be provided to” Hamadan. The parties understood this turnkey project “to mean an integrated and indivisible package including designing, purchasing, delivery, erection and commissioning of a complete glass container plant facility capable of producing 187 metric tons of container glass per twenty-four (24) hour day”; and that “[a]ll the elements of this turnkey contract are considered to be inseparable and indivisible.” The total price of the Contract was USD 22,188,537.

417. In Award No. 264, Chamber One described the Contract as one for “the supply of the necessary materials, equipment and machinery for, and the construction of, a complete glass container plant, in accordance with certain specifications,”³⁰⁸ and characterized it as a “*modified* turnkey contract”³⁰⁹ (emphasis added). The Tribunal understands this characterization by Chamber One as reflecting the fact that the sales portion was a central component of the Contract: of the approximately USD 19 million that Teichmann invoiced Hamadan under the Contract, USD 14,797,083 was for materials and ocean freight, while only USD 1,042,003 was for construction work in Iran.³¹⁰ In this connection, it should further be noted that engineering work on the glass plant project had been performed by Carnegie under a separate contract.³¹¹

418. Based on the foregoing, given that performance of the Contract by Teichmann mainly involved the procurement of goods, in establishing who had title to the Baltimore Materials, the Tribunal will look to the law of the State of Maryland that governs the sale of goods.

³⁰⁸ Award No. 264, para. 4, 13 IRAN-U.S. C.T.R. at 125.

³⁰⁹ Award No. 264, para. 4, 13 IRAN-U.S. C.T.R. at 126.

³¹⁰ See *supra* para. 403.

³¹¹ Award No. 264, para. 5, 13 IRAN-U.S. C.T.R. at 126. See *supra* note 294.

419. The UCC, as adopted in Title 2 of the Maryland Code, Commercial Law, governs the sale of goods in the State of Maryland. Section 2-401 of the Maryland Code, in particular, governs passing of title to goods sold and provides in pertinent part:

- (1) . . . [T]itle to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.
- (2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of security interest by the bill of lading
 - (a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but
 - (b) If the contract requires delivery at destination, title passes on tender there.³¹²

420. As an initial matter, there is no evidence that Teichmann and Hamadan ever agreed, or that Teichmann ever recognized, that Hamadan held title to the Baltimore Materials. For the following reasons, Iran's arguments to the contrary are not convincing.³¹³ First, that Teichmann, in its letter of 18 August 1980 and telex of 22 September 1980 to Hamadan, referred to the Baltimore Materials as "your material,"³¹⁴ without more, does not warrant the conclusion that Teichmann recognized Hamadan's title to those items. There is no indication that, by using those words, Teichmann meant anything other than materials purchased by Hamadan under the Contract.

421. Second, the Tribunal is not prepared to construe the apparent lack of immediate response by Teichmann to Hamadan's 11 October 1980 and 17 May 1981 telexes, asserting that the Baltimore Materials were Hamadan's "property,"³¹⁵ as an admission by Teichmann that Hamadan held title to the Baltimore Materials. Indeed, such a conclusion would be at odds with Teichmann's contemporaneous conduct. As noted, in its telex of 27 April 1981,

³¹² Md. Code, Com. Law § 2-401.

³¹³ See *supra* para. 407.

³¹⁴ See *supra* paras. 403 & 404 (b).

³¹⁵ See *supra* para. 404 (d) & (f).

Teichmann advised Hamadan that it was preparing pro forma invoices for the Baltimore Materials.³¹⁶ Teichmann evidently would not prepare pro forma invoices for items it believed were the property of Hamadan.

422. Teichmann and Hamadan did not otherwise agree, either in the Contract or elsewhere, on the “manner” in which, or the “conditions” on which, title to the goods procured by Teichmann would pass from Teichmann to Hamadan, pursuant to Section 2-401 (1) of the Maryland Code. The Contract required that Teichmann transport the procured “equipment, machinery and materials” to the “Factory Site in Hamadan, Iran”;³¹⁷ thus, it required “delivery at destination.”³¹⁸ Accordingly, the default rule under Section 2-401 (2) of the Maryland Code applies, pursuant to which title to goods sold “passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods.”³¹⁹ It is undisputed that the Baltimore Materials were never transported to the glass factory site in Hamadan. Hence, because the Baltimore Materials were never delivered to Hamadan, title thereto never passed to Hamadan.

423. Further, for the reasons set forth *supra*, in the General Issues section of this Partial Award, Iran’s arguments based on changed circumstances and beneficial ownership are dismissed.³²⁰

424. Likewise, the Tribunal dismisses Iran’s argument that, by crediting the proceeds of the July 1982 sale of the Baltimore Materials against the total amount awarded Teichmann,³²¹ the Tribunal, in Award No. 264, recognized that Hamadan was the real owner of those items.³²² By crediting that amount to Hamadan, the Tribunal took no decision, either explicit or implicit, as to who held title to the Baltimore Materials on 19 January 1981.

425. Based on the foregoing, the Tribunal rejects Claim Supp. (1)-5.

³¹⁶ *See id.*

³¹⁷ Article C of the Contract.

³¹⁸ Md. Code, Com. Law § 2-401 (2) (b).

³¹⁹ *See also id.* (“If the contract requires delivery at destination, title passes on tender there.”).

³²⁰ *See supra* paras. 133 & 159.

³²¹ *See supra* para. 406.

³²² *See supra* para. 407.

(6) Claims Involving the Iranian Ministry of Road and Transportation (MORT) (Claims G-7, G-8, and G-13)

(a) *General Introduction*

426. There are three claims involving the Iranian Ministry of Roads and Transportation (“MORT”).³²³ All of them are interrelated and concern road-building equipment and portable housing units purchased by MORT in the late 1970s and stored in the United States from mid-1979.

427. In the mid-1970s, MORT invited potential contractors to tender for a project to build a six-lane highway from Tehran to the Persian Gulf (“Project”). The winner of the tender was a consortium formed by Morrison-Knudsen Pacific Ltd. (“Morrison-Knudsen”), a United States company, and Cofraran S.A.R.L., a French company (collectively, the “Consortium”). The Consortium entered into three contracts with MORT in 1976 and 1977 (Contract No. 81 for engineering services for the design of the motorway; Contract No. 87 for procurement of equipment and facilities; and Contract No. 88 for mobilization and construction services).

428. Under Contract No. 87, the Consortium purchased road-building equipment on behalf of MORT in relation to the implementation of the Project. Furthermore, Morrison-Knudsen was to act as MORT’s freight forwarder in the United States.

429. In the context that will be explained below, on 5 March 1980, the Consortium terminated Contract No. 87 on 25 days’ notice. For various reasons, MORT’s properties at different locations in the United States were not shipped to Iran prior to 19 January 1981.

430. Consequently, several disputes arose between MORT and some of the United States companies that had been involved in the Project. Disputes also arose relating to unpaid storage charges for the items at issue in these Claims.

(b) *Factual Background Common to Claims G-7 and G-8*

431. In 1978, the Consortium contracted with various companies on behalf of MORT, as follows:

³²³ Also referred to as MRTR in contemporaneous documents.

- (a) in July 1978, the Consortium entered into a contract with Transworld Housing, Inc. (“Transworld”) for the purchase of portable housing units (“Transworld Housing Units”);
- (b) on 26 July 1978, the Consortium concluded a contract with Onan Middle East Ltd. for the purchase of electrical generators and projectors (“Lighting Plants”);
- (c) on 1 August 1978, the Consortium entered into a contract with Porta-Kamp Manufacturing Co. (“Porta-Kamp”) for the purchase of portable housing units (“Porta-Kamp Housing Units”); and
- (d) on 2 August 1978, the Consortium concluded a contract with Morgan Equipment Co. (“Morgan”) for the purchase of rock-crushing equipment (“Morgan Rock-Crushing Equipment”).

432. The Transworld Housing Units and a portion of the Morgan Rock-Crushing Equipment were delivered to the Port of Vancouver in Washington State in a series of shipments between October 1978 and February 1979. These items were packaged for immediate shipment and stored at the Port of Vancouver pending shipment. They are the subject of Claim G-7.

433. In 1979, Morrison-Knudsen contracted with Gulf Ports Crating Co. (“Gulf Ports”) to provide export-crating services to ship the remaining portion of the Morgan Rock-Crushing Equipment, the Porta-Kamp Housing Units, and the Lighting Plants to Iran. Thus, on 7 February 1979, the rock-crushing equipment and the Lighting Plants were delivered to Gulf Ports at storage premises in New Orleans, Louisiana, while the Porta-Kamp Housing Units were delivered to Gulf Ports at storage premises in Houston, Texas. Gulf Ports held those materials pending MORT’s instructions. The items that were in storage with Gulf Ports are the subject of Claim G-8.

434. As will be discussed below, for various reasons, neither MORT’s properties at the Port of Vancouver nor those at Gulf Ports in Houston and New Orleans were shipped to Iran prior to 19 January 1981. The former were ultimately shipped to Iran in late 1983, while the latter were shipped in February 1984.

435. On 11 May 1981, Morgan wrote a letter to OFAC, advising, among other things, as follows:

There is presently stored at the Port of Vancouver in Washington and Gulf Ports Crating Company in New Orleans crushing equipment manufactured for the Motorway by Morgan which was sold to MORT for approximately \$8.9 million. Approximately \$5.5 million of the equipment is stored at Vancouver and \$3.4 million stored in New Orleans.

In its letter, Morgan further advised that the Morgan Rock-Crushing Equipment located in Vancouver and New Orleans had “deteriorated substantially” due to its having been “stored outside for approximately two and one-half years.”

436. On 26 July 1981, MORT contacted by telex Howard Needles Tammen & Bergendoff-Iran Limited Liability Company (“HNTB-Iran”), with which MORT had contracted in 1976 to supervise and control the design and construction of the Qom to Bandar-E-Shahpur Motorway.³²⁴ In its telex, MORT requested that HNTB-Iran provide the contact details, including the addresses, of the “ware houses and storage areas” of the equipment and “prefabricated housing units” that the Consortium had purchased on MORT’s behalf in 1978. On 17 August 1981, HNTB-Iran informed MORT by telex, among other things, that: (i) 60 percent of the Morgan Rock-Crushing Equipment purchased on 2 August 1978³²⁵ and the Lighting Plants purchased on 26 July 1978³²⁶ were stored with Gulf Ports in New Orleans; (ii) the Porta-Kamp Housing Units purchased on 1 August 1978³²⁷ were stored with Gulf Ports in Houston; and (iii) the Transworld Housing Units purchased in July 1978³²⁸ and the remaining 40 percent of the Morgan Rock-Crushing Equipment were stored with the Port of Vancouver.

437. In late October or early/mid-November 1981, at MORT’s invitation, MORT and several United States companies and entities, including the Port of Vancouver and Gulf Ports, met in Vienna to negotiate a solution to their disputes.

³²⁴ See *Howard Needles Tammen & Bergendoff and Islamic Republic of Iran et al.*, Award No. 244-68-2, paras. 11-12 (8 Aug. 1986), reprinted in 11 IRAN-U.S. C.T.R. 302, 305.

³²⁵ See *supra* para. 431.

³²⁶ See *id.*

³²⁷ See *id.*

³²⁸ See *id.*

438. The negotiations led, among other things, to MORT concluding settlement agreements with the Port of Vancouver and Gulf Ports. These settlement agreements will be discussed below, to the extent required, in connection with the relevant Claims involving MORT (“MORT Claims”).

(c) *Claim G-7 (MORT/Port of Vancouver)*

(i) *Introduction*

439. In Claim G-7, Iran seeks a maximum of USD 13,103,689, plus interest, as damages resulting from the United States’ alleged failure to arrange for the transfer to Iran of the items purchased by MORT in 1978 that were in storage at the Port of Vancouver, Washington.

(ii) *Factual Background*

440. The items purchased by MORT in 1978 that are relevant to this Claim consisted of:

- (a) the Transworld Housing Units, consisting of 301 prefabricated housing units and associated furnishings, purchased on 26 July 1978 from Transworld for USD 9,469,850 under Purchase Order No. 88-231-50001-1,³²⁹
- (b) the Morgan Rock-Crushing Equipment, consisting of 683 components, purchased on 2 August 1978 from Morgan for USD 8,819,508 under Purchase Order No. 87-2101-1.³³⁰ The portion of Morgan Rock-Crushing Equipment claimed in Claim G-7 represents 40 percent of Purchase Order No. 87-2101-1 (USD 3,527,803 of the total purchase price of USD 8,819,508).

441. As noted,³³¹ the Transworld Housing Units and a portion of the Morgan Rock-Crushing Equipment (hereinafter also referred to, collectively, as the “G-7 Materials”) were delivered to the Port of Vancouver in Washington State in several shipments between 6 October 1978 and 27 February 1979.

³²⁹ See *supra* para. 431 (b).

³³⁰ See *supra* para. 431 (d).

³³¹ See *supra* para. 432.

442. Morrison-Knudsen paid, on behalf of MORT, storage charges to the Port of Vancouver until 31 January 1980 and ceased payments thereafter. As noted, on 5 March 1980, the Consortium terminated Contract No. 87.³³²

443. On 22 February 1979, Morgan brought a claim against MORT before the Superior Court of Clark County in Washington asserting that MORT had allegedly failed to make full payment under its Purchase Order No. 87-2101-1 with Morgan. In that contract, payment was to be made by means of 17 drafts. The first ten drafts had been paid between December 1978 and January 1979; drafts 11 and 12, however, were not received within the agreed period. When payment was received shortly after the commencement of the lawsuit in the Superior Court of Clark County, Morgan amended its claim requesting costs related to late payment.³³³ Morgan also sought an attachment as a security for a judgment by the Court.

444. In February 1979, the Superior Court of Clark County in Washington granted a writ of attachment on the property stored at Port of Vancouver, as requested by Morgan. The attachment took place in July 1979.³³⁴ MORT sought to have the attachment vacated but the court of Clark County dismissed the request in January 1980.³³⁵

445. Following the issuance of the Blocking Order on 14 November 1979, items remained at the Port of Vancouver. In 1980, the Clark County Assessor's Office imposed a personal property tax on the G-7 Materials stored at the Port. The Port, on its part, not having received payment of storage charges of USD 40,000 per month since 31 January 1980, asserted a warehouseman's lien. On 9 September 1980, the Port wrote to OFAC, requesting a license to sell the G-7 Materials, which had been left at the Port's premises for over a year, were accruing storage charges, depreciating, and suffering destruction.

446. In December 1980, at the request of MORT, the Department of Justice intervened in the Washington Court's proceedings and obtained a stay until 20 January 1981.

447. After the conclusion of the Algiers Declarations, on 27 February 1981, the United States Government filed a Statement of Interest in the Morgan litigation in the Washington

³³² See *supra* para. 429.

³³³ See *Morgan Equipment Co. and Islamic Republic of Iran*, Award No. 100-280-2 (27 Dec. 1983), reprinted in 4 IRAN-U.S. C.T.R. 272.

³³⁴ *Morgan Equipment Co.*, Award No. 100-280-2, 4 IRAN-U.S. C.T.R. at 277.

³³⁵ *Morgan Equipment Co.*, Award No. 100-280-2, 4 IRAN-U.S. C.T.R. at 277.

Court, requesting that the Court: (i) stay proceedings because the claim against MORT arguably fell within the Tribunal's jurisdiction; and (ii) vacate the attachments.

448. As noted, in late October or early/mid-November 1981, at the initiative of MORT, several United States entities, including the Port of Vancouver, entered into negotiations with MORT.³³⁶ In that context, on 9 October 1981, the attorney for the Port of Vancouver wrote to the General Counsel of Morgan, authorizing the latter to represent the Port of Vancouver in the negotiations with MORT “to reach an agreement regarding the shipment and/or sale of the crushing equipment and modular housing units which also will provide for recovery of the storage charges [on] behalf of the Port of Vancouver.”

449. On 18 November 1981, MORT and the Port of Vancouver signed a settlement agreement (“1981 Settlement Agreement”). The parties therein agreed that MORT would pay USD 1,000,000, “in full and final settlement of all storage charges for the equipment and housing units which have accrued to date and which will accrue through 31 March 1982, the date at which Iran intended to remove its property.” It was agreed that the settlement would be submitted to this Tribunal for payment from the Security Account established pursuant to Paragraph 7 of the General Declaration.

450. The 1981 Settlement Agreement further included a non-waiver clause, according to which the settlement was not intended to constitute a waiver by either MORT or the Port of any claims either may have against any third party with respect to the subject of the agreement. The 1981 Settlement Agreement, however, was never implemented.

451. On 18 December 1981, the United States Department of Treasury issued a sales license to Morgan and the Port of Vancouver, authorizing them to sell the G-7 Materials on the ground that the Port of Vancouver and Morgan had outstanding claims against Iran.

452. On 28 December 1981, the attorney acting for Iran wrote to the United States Department of Justice, requesting its assistance in preventing the sale of the properties held at the Port of Vancouver. On 30 December 1981, the attorney wrote to the United States Department of State, requesting that it intervene in the proceedings to prevent Clark County from imposing personal property tax on the items.³³⁷ The attorney had been informed that, as

³³⁶ See *supra* para. 437.

³³⁷ See *supra* para. 445.

of July 1981, Clark County had assessed USD 270,203.39 against the Transworld Housing Units and USD 159,720.09 against the Morgan Rock-Crushing Equipment.

453. Concerning events subsequent to the 1981 Settlement Agreement, Iran has offered affidavit testimonies of Messrs. Akbar Mosafer Rahmati and Mohammad Ali Lotfalian Saremi, who both acted as legal counsel for MORT at the times here relevant. Both persons also appeared as witnesses called by Iran at the Hearing. Both Mr. Rahmati and Mr. Saremi stated that, in December 1981, MORT's representatives traveled to the United States to inspect the G-7 Materials and to arrange for their shipment to Iran. Mr. Rahmati stated that MORT representatives then learned of the assessment of taxes by the Clark County's Assessor Office on MORT's Transworld Housing Units and Morgan Rock-Crushing Equipment stored at Port of Vancouver. In addition, Mr. Rahmati stated that MORT learned that Morgan and the Port of Vancouver had, on 18 December 1981, obtained from OFAC a license to sell the Transworld Housing Units and the Morgan Rock-Crushing Equipment stored at Port of Vancouver, on which Morgan and Port of Vancouver had liens. Mr. Saremi stated in his affidavit that all these circumstances led MORT to be "no longer optimistic about taking delivery of the properties and to be rather cautious."

454. Mr. Rahmati further testified at the Hearing that, after December 1981, he traveled to the United States (to Vancouver, Baltimore, Houston, and New Orleans) three times per year to physically see MORT's properties stored in these places and to prepare them for shipment. Mr. Rahmati stated that the last of those visits occurred in September or October 1983. Mr. Rahmati said that, when visiting the storage facilities in the Port of Vancouver, he spent a full half day looking at some housing units and rock-crushing equipment; he saw that "some houses were erected, and some of the houses were . . . packed in boxes." Mr. Rahmati admitted that he had not opened the boxes because the houses could be seen from the outside. According to Mr. Rahmati "[t]hey were covered with some cartons, and there was a lot of rain there." With regard to the rock-crushing equipment, Mr. Rahmati stated that it was kept in packages and had been put in one place in order to separate it from properties of others. He also claimed that he had taken notes and pictures only at his last inspection in 1983, because "the situation of the properties [was] really bad."

455. On 19 January 1982, MORT submitted a claim against the Port of Vancouver before the Tribunal. The claim was classified as Case No. B67. According to MORT's statement of claim in that case, the Port, not only had no right to claim warehousing charges, but also had

to bear the damages occurring in respect of loss of prospective profit, losses due to wear and tear and decay of the goods occurring in the warehouse, material and other losses. The damages claimed by MORT in Case No. B67 totaled USD 15,344,168.

456. On 30 June 1982, MORT submitted an application for the indication of provisional measures by the Tribunal to prevent the Port of Vancouver from selling the G-7 Materials.

457. On 25 October 1982, while Case No. B67 was still pending, Iran presented its statement of claim in Case No. A15. Therein, Iran listed the G-7 Materials held by the Port of Vancouver as Iranian properties that had not been transferred to Iran after the conclusion of the Algiers Declarations.

458. On 20 May 1983, MORT and the Port of Vancouver entered into a new settlement agreement (the "1983 Settlement Agreement"). In this agreement, MORT agreed to pay the Port of Vancouver USD 3,000,000, in storage costs, and both parties agreed to cooperate in removing the property from the Port for shipment to Iran. The parties agreed to dismiss promptly all litigation and claims against each other before any court, arbitration body, or judicial or non-judicial body and to immediately execute mutual releases in favor of each other, once the terms and conditions of the 1983 Settlement Agreement were fully discharged. Furthermore, the agreement stated that it should not be construed by anyone other than the Port and MORT as a waiver of any right of either party against a third party to that agreement.

459. On 18 August 1983, the parties complemented the 1983 Settlement Agreement by entering into a supplemental settlement agreement, requiring the Port of Vancouver to obtain export licenses or permits necessary to export the G-7 Materials to Iran, as well as to obtain a release from Clark County, Washington, of its lien for personal property taxes.

460. The Tribunal recorded the settlement agreement as an Award on Agreed Terms on 12 September 1983 and noted that it had received the legal documents releasing the attachment made by Morgan.³³⁸ All properties in question were eventually shipped to Iran in November and December 1983.

³³⁸ See *Ministry of Roads and Transportation and Port of Vancouver, Washington*, Award No. 79-B-67-2 (12 Sept. 1983), reprinted in 3 IRAN-U.S. C.T.R. 338.

(iii) *The Parties' Contentions*

Preliminary Issue: Effects of the 1983 Settlement Agreement

461. The United States argues that the Tribunal should dismiss Claim G-7 because the G-7 Materials were the subject of Case No. B67, which was settled by the parties through the 1983 Settlement Agreement. The Tribunal accepted the 1983 Settlement Agreement and recorded it as an Award on Agreed Terms in Case No. B67 on 12 September 1983.³³⁹ The United States contends that, by settling Case No. B67, Iran settled, and released the United States from, the very claims at issue in Claim G-7. According to the United States, because Claim G-7 and Case No. B67 involved the same property and the same legal obligation, Iran is now barred from bringing Claim G-7 within the framework of the present Cases.

462. The United States raises what it considers a matter of double recovery and notes that MORT sought the same kind of damages in Case No. B67 as it seeks in Claim G-7, namely, damages resulting from “defect, fault, wear and tear, decay, lamination, and . . . breakage . . . due to non-delivery of the . . . goods,” as well as lost profits and physical delivery of the items stored with the Port of Vancouver. The United States emphasizes that, in the 1983 Settlement Agreement in Case No. B67, the parties agreed to “dispense with all of their claims against each other, whether before the Tribunal, legal courts, or any other judicial or non-judicial authorities” and “immediately execute mutual releases in favor of each other.” Moreover, the United States asserts that, in its Award on Agreed Terms of 12 September 1983, the Tribunal indicated that it regarded Case No. B67 as a case against the United States, explaining that it had “satisfied itself that it [had] jurisdiction in this matter within the terms of the [Claims Settlement Declaration].”³⁴⁰

463. Iran concedes that the properties at issue in Case No. B67 and in Claim G-7 were identical but contests that the 1983 Settlement Agreement effectively prevents the Tribunal from considering Claim G-7. In particular, Iran disagrees as to the supposed identity of the parties and the legal obligation at issue in Case No. B67 and in Claim G-7. Furthermore, Iran notes there is no indication in the 1983 Settlement Agreement that the United States would be relieved of responsibility under Paragraph 9 in relation to claim G-7.

³³⁹ See *Ministry of Roads and Transportation*, Award No. 79-B67-2, 3 IRAN-U.S. C.T.R. 338.

³⁴⁰ *Ministry of Roads and Transportation*, Award No. 79-B67-2, 3 IRAN-U.S. C.T.R. 338.

464. Iran notes that the finding of the Tribunal, according to which the Port of Vancouver was an entity of the United States Government, was limited to the jurisdictional question whether the Port of Vancouver fell under the definition of the “United States” under Article VII, paragraph 4, of the Claims Settlement Declaration.

465. Iran further points out that the 1983 Settlement Agreement in Case No. B67 also settled storage charges that had accrued prior to 1981. According to Iran, this shows that, unlike Claim G-7, Case No. B67 was not a dispute relating to the interpretation and application of the Algiers Declarations pursuant to Paragraph 17 of the General Declaration; such disputes only relate to the States Parties’ obligations that arose after 19 January 1981. Rather, Case No. B67 was asserted as an official claim between Iran and the United States arising out of contractual arrangements for the purchase and sale of goods and services, pursuant to Article II, paragraph 2, of the Claims Settlement Declaration.³⁴¹ In this connection, Iran notes that, on the same date MORT submitted its claim in Case No. B67, it also submitted a claim in Case No. B62, in which it disputed any liability for storage charges claimed by the Port of Vancouver, Gulf Ports, and Shipside; in Case No. B62, MORT argued that those charges were being claimed in violation of the Algiers Declarations. Iran contends that, while Case No. B62 was subsequently reclassified by the Tribunal as a claim relating to the interpretation and application of the Algiers Declarations under Paragraph 17 of the General Declaration,³⁴² Case No. B67 remained an official claim pursuant to Article II, paragraph 2, of the Claims Settlement Declaration.

466. Finally, Iran asserts that, pursuant to the 1983 Settlement Agreement, MORT paid to the Port of Vancouver the storage charges that Iran now claims as losses in Claim G-7; hence, there is no conceivable issue of double recovery.

³⁴¹ Article II, paragraph 2, of the Claims Settlement Declaration provides in full:

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.

³⁴² Case No. B62 was reclassified as Case No. A31 by Order of 21 October 1998 in Case No. B62.

Remaining Issues: Iran's Contentions

467. Iran contends that the G-7 Materials, which are "Iranian properties," were all subject to liens asserted by the Port of Vancouver since the freight forwarder had stopped the payment of storage charges.

468. Hence, Iran argues that the redefinition of "Iranian properties" effected by Section 535.333 of the Unlawful Treasury Regulations, which excluded from the transfer directive in Section 535.215 contested properties and properties subject to liens,³⁴³ excluded the G-7 Materials from that directive and enabled the Port of Vancouver to retain the G-7 Materials until its contractual claim had been settled. Effectively, Iran argues, the Unlawful Treasury Regulations were the basis for the refusal by the Port of Vancouver to ship the properties to Iran; the retention of the goods was equally unlawful and, thus, the United States is to be held responsible to compensate MORT for losses suffered by the refusal to deliver.

469. According to Iran, the attachment order issued by the Superior Court of Clark County, which preceded the issuance of the Blocking Order of 14 November 1979, would not have prevented the United States from fulfilling its obligation to arrange for the transfer of the properties held by the Port of Vancouver. Iran asserts that the attachment could easily have been lifted after the settlement of the respective claims. Iran notes that it was rather the lien asserted by the Port of Vancouver and the taxes imposed by the local tax authorities that prevented shipment of the properties. Both these circumstances arose after 14 November 1979, and the United States did not take action when the attorney of Iran, in his letter of 30 December 1981, informed the State Department and requested its assistance in resolving the issue.³⁴⁴

Remaining Issues: The United States' Contentions

470. The United States contends that Iran has failed specifically to identify which components of the Morgan Rock-Crushing Equipment, ordered under Purchase Order 87-2101-1, were actually stored at the Port of Vancouver. According to the United States, there

³⁴³ See *supra* para. 12. See also Award No. 529, para. 53, 28 IRAN-U.S. C.T.R. at 131.

³⁴⁴ See *supra* para. 452.

is no conclusive evidence that any rock-crushing equipment was actually delivered to the Port of Vancouver.

471. Further, the United States asserts that the properties were subject to an attachment already before November 1979, namely, the attachment requested by Morgan and granted by the Superior Court of Clark County in July 1979. According to the United States, its obligation under General Principle B to nullify all attachments must be read as an obligation to lift attachments only to the extent necessary to restore Iran's financial position to that existing prior to 14 November 1979. Hence, the United States considers that attachments existing before that date did not fall under the scope of the General Declaration.

472. Further, the United States asserts that Iran failed to establish that there were any steps the United States could have reasonably been expected to take. The United States contends that it has taken all reasonable steps in filing a statement of interest in Morgan's breach of contract proceedings against MORT before the Washington court in order to stay the litigation and to lift any encumbrances restricting transfer obtained after November 1979.

473. The United States also alleges that, in any event, Iran has not demonstrated that the harm it allegedly suffered was actually caused by any breach by the United States of its obligation under Paragraph 9. In fact, the delay in the transfer of the Iranian property in question was due to a valid attachment in the Morgan litigation, preceding November 1979, and not the result of an application of the Unlawful Treasury Regulations.

474. The United States argues that Iran must prove that the Unlawful Treasury Regulations, rather than MORT's own conduct, were the actual cause of the delay in transfer to Iran of the G-7 Materials. According to the United States, the damage was caused, at least in part, by a lack of action by Iran – notably, MORT had made no shipping arrangements. The United States contends that it is not sufficient for Iran to establish that the Treasury Regulations contributed to the damage; rather, Iran must prove that the loss would not have been suffered had the Treasury Regulations not been applied.

(iv) *The Tribunal's Decision*

Preliminary Issue: Effects of the 1983 Settlement Agreement

475. As a preliminary matter, the Tribunal considers whether Claim G-7 should be dismissed because the Tribunal approved, by its Award on Agreed Terms of 12 September 1983, the settlement of the claims in Case No. B67 between the Port of Vancouver and MORT.³⁴⁵

476. The parties to the 1983 Settlement Agreement were the Port of Vancouver and MORT. The Tribunal stated in its Award on Agreed Terms that it had satisfied itself of its jurisdiction.³⁴⁶ It thereby implicitly considered the Port of Vancouver to be an “entity” of the United States for purposes of its jurisdiction under Article VII, paragraph 4, of the Claims Settlement Declaration. Such a finding concerning the Tribunal’s jurisdiction, however, is without prejudice to the question whether the 1983 Settlement Agreement also applies to, and disposes of, claims brought by Iran against the United States for alleged breaches of its treaty obligation under Paragraph 9 of the General Declaration.

477. In the preamble to the 1983 Settlement Agreement, the Port of Vancouver and MORT agreed to “dispense with all of their claims against each other” once the Port had delivered the G-7 Materials and the Tribunal had authorized all payments as provided by the 1983 Settlement Agreement, totaling USD 3,000,000. Furthermore, Article Eleven of the Settlement Agreement, in relevant part, provided that “in no event is this Settlement Agreement to be construed by anyone other than the Port and [MORT] as a waiver of any right of either party hereto against anyone who is not a signator[y] to this agreement.” A plain reading of these provisions strongly suggests that the parties did not agree to dispose of Iran’s Claim G-7 concerning the alleged treaty breach by the United States, which was not itself a party to the 1983 Settlement Agreement.

478. At this point, a distinction must be drawn between contractual obligations of the Port of Vancouver and the treaty obligations of the United States under Paragraph 9. The Tribunal notes that the 1983 Settlement Agreement between the Port of Vancouver and MORT did indeed settle all outstanding contractual claims between the Port of Vancouver and MORT. The Agreement did not, however, settle the claims arising from alleged violations of the United

³⁴⁵ See *supra* paras. 461-466.

³⁴⁶ See *supra* para. 462.

States' treaty obligation under Paragraph 9, namely, the alleged failure to direct the Port to transfer the G-7 Materials to Iran and the responsibility of the United States that any violation of Paragraph 9, if established, would entail.

479. The fact that MORT relied on Paragraph 9 in its Statement of Claim of Case No. B67, and that the preamble of the 1983 Settlement Agreement mentions that the claim asserted by MORT is based upon "points 2 and 3 paragraph 9 of the Algerian General Declaration" does not alter the Tribunal's conclusion to the effect that the 1983 Settlement Agreement is limited to the contractual relationship between MORT and the Port of Vancouver. Indeed, the dispute underlying the settlement agreement concerned contractual storage charges that gave the Port of Vancouver the right to assert a lien on the property.

480. Finally, the Tribunal recalls that, in Award No. 529, the Tribunal has held:

With respect to property that has not been transferred as required by the General Declaration because the United States has not fulfilled its obligations under the General Declaration, the withdrawal by Iran of a claim against the holder of that property or the settlement of such a claim between Iran and the holder of the property subsequent to 26 February 1981 does not *per se* relieve the United States from liability to Iran for losses caused by such non-transfer.³⁴⁷

481. In light of the above and in line with its holding in Award No. 529, the Tribunal concludes that, even if the Port of Vancouver was an entity controlled by the government of the United States for purposes of jurisdiction in Case No. B67, the 1983 Settlement Agreement did not dispose of Claim G-7 in the present Cases. The Tribunal therefore rejects the United States' argument based on the 1983 Settlement Agreement in Case No. B67.

"Iranian Properties"

482. There is no dispute that MORT falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration. Equally, there is no dispute that the G-7 Materials were located within the jurisdiction of the United States on 19 January 1981, and that they were solely owned by Iran on that date. Consequently, the G-7 Materials qualify as "Iranian properties" pursuant to Paragraph 9.

³⁴⁷ Award No. 529, para. 77 (h), 28 IRAN-U.S. C.T.R. at 141.

Identification of the Items in Dispute

483. The United States contends that Iran has failed to establish what components of the Morgan Rock-Crushing Equipment purchased by MORT under Purchase Order No. 87-2101-1³⁴⁸ actually were delivered to, and stored by, the Port of Vancouver.

484. There is no dispute that a portion of that equipment was delivered to Gulf Ports on 7 February 1979, and that a portion thereof was delivered to the Port of Vancouver between October 1978 and February 1979. The Parties, however, disagree about the apportionment of the equipment between the two locations. According to Iran, 60 percent of the Morgan Rock-Crushing Equipment was delivered to Gulf Ports and 40 percent to the Port of Vancouver. The evidence on record is conflicting on this point. HNTB-Iran's 17 August 1981 telex to MORT supports Iran's position.³⁴⁹ Conversely, Morgan's 11 May 1981 letter to OFAC seems to indicate that roughly 60 percent of the Morgan Rock-Crushing Equipment was stored at the Port of Vancouver, while roughly 40 percent thereof was stored with Gulf Ports in New Orleans.³⁵⁰ Given that the entirety of the Morgan Rock-Crushing Equipment covered by Purchase Order No. 87-2101-1 is the subject of claims by Iran in the present Cases, the Tribunal holds that the actual apportionment of that equipment between the Port of Vancouver in the State of Washington and Gulf Ports in New Orleans is immaterial. Accordingly, for the purposes of the present Claim, the Tribunal will assume that 40 percent of the Morgan Rock-Crushing Equipment covered by Purchase Order No. 87-2101-1 was delivered to the Port of Vancouver in late 1978/early 1979.

The Responsibility of the United States

485. The Tribunal now turns to the question whether the United States has satisfied its obligation under Paragraph 9 with respect to the G-7 Materials. In Award No. 529, the Tribunal held that United States Treasury Regulations that excluded from the transfer directive of Executive Order No. 12281 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, defenses, counterclaims, set-offs, or similar reasons were inconsistent with the obligations of

³⁴⁸ See *supra* para. 440 (b).

³⁴⁹ See *supra* para. 436.

³⁵⁰ See *supra* para. 435.

the United States under the General Declaration.³⁵¹ On the basis of the record that was before it when it rendered Award No. 529, the Tribunal was not in a position to determine the relevant facts with respect to any particular property. The Tribunal makes that determination now with respect to the G-7 Materials.

486. There is no serious dispute that the Port of Vancouver was unwilling to deliver the G-7 Materials to MORT until after MORT had paid the outstanding storage charges relating to these very materials. The following elements are of particular relevance in this context:

- (a) the letter of the attorney for the Port of Vancouver, dated 9 October 1981, to Morgan, authorizing the latter's General Counsel to represent the Port of Vancouver in negotiations with MORT "to reach an agreement regarding the shipment and/or sale of the crushing equipment and modular housing units which also will provide for recovery of the storage charges [on] behalf of the Port of Vancouver",³⁵²
- (b) in the Preamble of the 18 November 1981 Settlement Agreement,³⁵³ the Port of Vancouver and MORT noted that storage charges had accrued against the rock-crushing equipment and the modular housing units from February 1980 through October 1981 and continued to accrue; they further noted the parties' desire to compromise their claims and to provide for settlement and payment of those charges;
- (c) the OFAC sales license issued on 18 December 1981 for property on which the Port of Vancouver and Morgan had liens, authorizing them to sell the G-7 Materials because the Port of Vancouver and Morgan had outstanding claims against Iran;³⁵⁴
- (d) in the Preamble of the 20 May 1983 Settlement Agreement,³⁵⁵ the parties explicitly stated that pursuant to the laws of the State of Washington and

³⁵¹ See Award No. 529, para. 77 (d), 28 IRAN-U.S. C.T.R. at 140.

³⁵² See *supra* para. 448.

³⁵³ See *supra* para. 449.

³⁵⁴ See *supra* para. 451.

³⁵⁵ See *supra* para. 458.

regulations issued by the United States Department of the Treasury, the Port was holding equipment owned by MORT until such time as the Tribunal approved the settlement agreement and issued an award to the Port for storage and moving charges.

487. Based on the evidence presented, the Tribunal finds that the Port of Vancouver retained the G-7 Materials in the United States because of the existence of an unpaid debt, and, consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration with respect to Iranian tangible properties, and its international responsibility is engaged.

488. The Tribunal further finds 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.³⁵⁶

489. For the foregoing reasons, the Tribunal upholds Claim G-7.

(d) Claim G-8 (MORT/Gulf Ports Crating Co.)

(i) Introduction

490. In Claim G-8, Iran seeks a maximum of USD 15,273,656, plus interest, as damages resulting from the United States' alleged failure to arrange for the transfer to Iran of the properties purchased by MORT in 1978 that were in storage with Gulf Ports.

(ii) Factual Background

491. The properties purchased by MORT in 1978 that are relevant to this Claim consisted of:

- (a) Lighting Plants: portable lighting units, consisting of 129 electrical generators and projectors purchased on 26 July 1978 from Onan for USD 854,169 under Purchase Order No. 87-2105-1;

³⁵⁶ See *supra* para. 12.

- (b) Porta-Kamp Housing Units: prefabricated portable housing units purchased on 1 August 1978 from Porta-Kamp under Purchase Order No. 88-50212;³⁵⁷ and
- (c) Morgan Rock-Crushing Equipment: rock-crushing equipment, consisting of components required to assemble five rock-crushing plants, purchased on 2 August 1978 from Morgan for USD 8,819,508 under Purchase Order No. 87-2101-1.³⁵⁸

492. On 7 February 1979, a portion of the Morgan Rock-Crushing Equipment was delivered to Gulf Ports at storage premises in New Orleans;³⁵⁹ as noted, the balance of the Morgan Rock-Crushing Equipment was delivered to the Port of Vancouver in late 1978/early 1979.³⁶⁰ On 7 February 1979, the Lighting Plants were also delivered to Gulf Ports in New Orleans. On that date, the Porta-Kamp Housing Units were delivered to Gulf Ports at storage premises in Houston. The Morgan Rock-Crushing Equipment in storage with Gulf Ports in New Orleans, the Lighting Plants, and the Porta-Kamp Housing Units (hereinafter also referred to, collectively, as the “G-8 Materials”) are the subject of Claim G-8. As will be discussed below, the Parties disagree about what portion of the Morgan Rock-Crushing Equipment was delivered to, and stored by, Gulf Ports in New Orleans, and what portion was delivered to, and stored by, the Port of Vancouver.

493. Gulf Ports packed the G-8 Materials and held them for shipment pending MORT’s instructions for onward shipment. Due to their large size, the Porta-Kamp Housing Units were stored outdoors.

494. As a result of conditions in Iran, including overcrowding and closings of Iranian ports, no arrangements were made to ship the G-8 Materials prior to 14 November 1979, when the President of the United States issued the Blocking Order. As a result, the G-8 Materials remained in Gulf Ports’ custody on premises it leased in Houston and New Orleans. Gulf Ports hired custodial personnel to guard the G-8 Materials.

³⁵⁷ Iran contends that, while this purchase order was for 400 portable housing units for a total price of USD 11,906,245, after the “deletion of the 3rd Phase,” it was reduced to only 238 units, erect and knocked down, at a price of USD 7,309,995. Iran contends that it was unable to find the change order that reduced Purchase Order 88-50212 but knows that it did happen, and it is therefore claiming only in respect of 238 units.

³⁵⁸ See *supra* para. 431.

³⁵⁹ See *supra* para. 433.

³⁶⁰ See *supra* para. 432.

495. Morrison-Knudsen paid storage charges and security costs on the G-8 Materials on behalf of MORT until 1 February or May 1980 and ceased payments thereafter. As noted, on 5 March 1980, the Consortium terminated Contract No. 87.

496. On 22 February 1980, Gulf Ports sued MORT in the United States District Court for the Southern District of Texas, seeking unpaid storage and security charges relating to the Porta-Kamp Housing Units in storage in Houston and requesting a writ of attachment thereon. The District Court granted the writ of attachment on 29 February 1980. In September 1980, the United States filed a Suggestion of Interest in the case and requested a stay of the proceeding. On 2 February 1981, the United States filed a Statement of Interest and Motion for Stay Order, which the District Court granted. Ultimately, after further procedural events, on 7 July 1981, the District Court vacated Gulf Ports' writ of attachment on the Porta-Kamp Housing Units and extended indefinitely the stay of the proceedings, because Gulf Ports' claim against MORT arguably fell within the Tribunal's jurisdiction. Gulf Ports unsuccessfully appealed this decision by the District Court.

497. In its appellate brief, Gulf Ports, relying on Section 535.333(b) of the Unlawful Treasury Regulations, argued that the Porta-Kamp Housing Units were not "Iranian properties" or properties "owned by Iran" because "all necessary obligations, charges and fees relating to such properties" had not been paid.³⁶¹

498. Meanwhile, on 4 January 1981, Gulf Ports had sent to the Iranian Interest Section an invoice in the amount of USD 432,000 for "storage charges for the period January 4, 1981 through January 4, 1983." In this connection, Gulf Ports referred to a "letter of August 22, 1980" it had sent to the Iranian Interest Section, which is not in evidence. On 12 January 1981, Gulf Ports sent a further batch of invoices to the Iranian Interest Section, totaling USD 70,800, for storage and security services relating to the Porta-Kamp Housing Units stored in Houston, covering the period October-December 1980.

499. As noted, in late October or early November 1981, MORT and representatives of Gulf Ports met in Vienna to negotiate a solution to their dispute.³⁶²

³⁶¹ See *supra* para. 12.

³⁶² See *supra* para. 437.

500. On 12 November 1981, in response to a telex query from MORT, Gulf Ports advised MORT that: (i) as of 30 November 1981, MORT owed accumulated storage charges totaling USD 1,143,065.37; (ii) the monthly storage charge as of 30 November 1981 was USD 38,400; and (iii) the daily storage charge accruing from 1 December 1981 through 31 December 1981 was USD 1,262.47.

501. On 17 November 1981, Gulf Ports and MORT concluded a settlement agreement. In its Preamble, the parties noted that Gulf Ports had claimed a lien on the Porta-Kamp Housing Units and the Morgan Rock-Crushing Equipment, and that an action was pending in the United States District Court for the Southern District of Texas to foreclose on the lien to satisfy the unpaid charges.³⁶³

502. In the settlement agreement, Gulf Ports agreed to release its claims against MORT for storage and security expenses incurred between November 1978 until 31 March 1982 and put the Porta-Kamp Housing Units and the rock-crushing equipment at MORT's disposal in exchange for MORT's payment of USD 886,135 (of the USD 1,143,065 in storage costs that had accrued). After payment of that amount, MORT would be entitled to remove the Porta-Kamp Housing Units and rock-crushing equipment from Houston and New Orleans at its own cost. In the event those items were not removed from their locations by 31 March 1982, MORT was to pay Gulf Ports further storage and security charges.

503. Gulf Ports and MORT further stipulated that, if the settlement agreement needed to be approved by the Iran-United States Claims Tribunal, MORT would "undertake to prepare and submit such documents as are necessary to obtain the Tribunal's approval" of the settlement.

504. There is affidavit and hearing testimony concerning events subsequent to the 17 November 1981 settlement agreement from Messrs. Akbar Mosafer Rahmati and Mohammad Ali Lotfalian Saremi, who both acted as legal counsel for MORT at the times here relevant.³⁶⁴ Messrs. Rahmati and Saremi stated that, in December 1981, MORT's

³⁶³ See *supra* para. 496.

³⁶⁴ See *supra* para. 453.

representatives traveled to the United States to inspect the G-8 Materials (as well as MORT's properties at issue in Claims G-7 and G-13) and to arrange for their shipment to Iran.³⁶⁵

505. Mr. Rahmati further testified at the Hearing that, after December 1981, he traveled to the United States (to Vancouver, Baltimore, Houston, and New Orleans) three times yearly to physically see MORT's properties stored there and prepare them for shipment. Mr. Rahmati stated that the last of those visits occurred in September or October 1983.³⁶⁶

506. Mr. Rahmati said that, when visiting the Gulf Ports storage facilities in Houston in 1981, he saw that the Porta-Kamp Housing Units were stored "[i]n the open space . . . and there were no covers." Mr. Rahmati further said that he did not enter the erected housing units and did not know what was inside, but that, generally, from the outside, when looking at them, the "goods" were "all sound and intact" and "in good condition." Mr. Rahmati also testified, however, that, "because of the climatic conditions, very humid, warm conditions," some of the housing units, "which were erected and were packed . . . [,] were somehow inflated." He stated that he never tested the level of humidity present in the housing units, which he characterized as "inflated".

507. On 15 January 1982, Gulf Ports submitted a statement of claim against MORT before the Tribunal, seeking over USD 1.1 million in accrued storage and security costs relating to the Porta-Kamp Housing Units and the Morgan Rock-Crushing Equipment stored in Houston and New Orleans, respectively. The claim was classified as Case No. 307.

508. After the filing of the statement of claim in Case No. 307, MORT asked that Gulf Ports grant it a three-month extension of the 31 March 1982 deadline for paying the settlement amount foreseen in the 17 November 1981 settlement agreement.³⁶⁷ Accordingly, Gulf Ports extended that deadline to 30 June 1982.

509. On 30 April 1982, Gulf Ports, by telex, requested that MORT execute the settlement agreement and effect the stipulated payment.

³⁶⁵ *See id.*

³⁶⁶ *See supra* para. 454.

³⁶⁷ *See supra* para. 502.

510. On 5 May 1982, Gulf Ports wrote to the Chairman of Chamber Three of the Tribunal, informing him that MORT had not yet executed the 17 November 1981 settlement agreement.

511. In June 1982, MORT advised Gulf Ports that it could not execute the settlement agreement by 30 June as a result of disputes with the United States and, accordingly, requested a further extension until 31 December 1982 to effect the payment. Gulf Ports rejected the request.

512. On 30 September 1982, Gulf Ports, relying on Section 535.540 of the Treasury Regulations and claiming a warehouseman's lien, applied to OFAC for a sale license to dispose of the Porta-Kamp Housing Units stored in Houston and the Morgan Rock-Crushing Equipment stored in New Orleans. In its application, Gulf Ports asserted that MORT owed it over USD 2 million in unpaid charges. On 21 January 1983, OFAC issued the sale license.

513. On 11 October 1982, MORT submitted its statement of defense and counterclaim against Gulf Ports in Case No. 307. On its counterclaim, MORT sought, among other things, delivery of the G-8 Materials stored by Gulf Ports, USD 3,363,966 in damages resulting from deterioration, and USD 1,946,086 in lost profits.

514. By letter to MORT dated 18 February 1983, filed with the Tribunal on 28 February 1983, Gulf Ports notified MORT that it held warehouseman's liens on the G-8 Materials stored in New Orleans (identified as "conveyor systems, lights and electrical generators for five (5) rock crushing plants") and in Houston (identified as "living quarters, furniture, bedding, linen and utensils") and demanded, *inter alia*, payment of storage costs for those items totaling USD 257,400 and USD 1,245,642, respectively. Gulf Ports further notified MORT that, unless MORT paid by 6 March 1983, the G-8 Materials would be sold by public auctions to be held on 28 March 1983.

515. On 24 February 1983, Gulf Ports and MORT concluded a new settlement agreement, in which they released their claims against each other. The Tribunal recorded the settlement agreement as an Award on Agreed Terms on 9 March 1983.³⁶⁸

516. Under the new settlement agreement, MORT agreed to pay Gulf Ports USD 1,600,000 in two instalments, of USD 600,000 and USD 1,000,000, respectively. Gulf Ports, for its part,

³⁶⁸ See *Gulf Ports Crating Co. and Ministry of Roads and Transportation et al.*, Award No. 28-307-3 (9 Mar. 1983), reprinted in 2 IRAN-U.S. C.T.R. 126.

undertook to deliver all of the G-8 Materials to MORT and cooperate with the shipping company MORT designated; the G-8 Materials were to be removed from storage in New Orleans and Houston not later than 30 June 1983. Gulf Ports further agreed to obtain the required export licenses.

517. Gulf Ports was paid the USD 600,000 directly out of the Security Account and received the remaining USD 1,000,000 under the settlement agreement on 1 July 1983, through a letter of credit funded by a payment out of the Security Account. Immediately after Gulf Ports received the USD 1,000,000 payment, its managers declared Gulf Ports insolvent and dismissed all personnel who were charged with maintaining and guarding the G-8 Materials. Gulf Ports assigned that payment to one of its creditors and ceased business operations without declaring bankruptcy.

518. Hence, after 1 July 1983, the G-8 Materials were abandoned by Gulf Ports and left unattended in the warehouses. A number of those items at one of the three locations in Houston were stolen on 14 July 1983.

519. In late July 1983, when the United States learned of the situation, the Deputy Agent of the United States to the Tribunal notified the Agent of Iran. The Deputy Agent expressed the United States' willingness to inform Iran's attorney in Washington, D.C., of the situation so that Iran could act to protect its interests. The United States subsequently gave Iran's attorney the contact details of the company then holding the G-8 Materials and of a company willing to take over Gulf Ports' packing responsibilities.

520. MORT retained United States counsel on 23 August 1983. In late September or in October 1983, MORT officials traveled to Houston and New Orleans to inspect the G-8 Materials and to arrange for their packing and shipment to Iran.

521. On 5 October 1983, in order to gain possession of a portion of the G-8 Materials located in Houston, MORT concluded an agreement with the lessor from whom Gulf Ports had leased the storage premises there. Pursuant to that agreement, the lessor granted MORT the right to remove the Porta-Kamp Housing Units from the premises by 31 October 1983 against payment of USD 30,500. MORT also paid outstanding rent, and extended lease agreements, for the storage of the G-8 Materials at their locations. Further, it concluded contracts for the provision of security services to protect them.

522. In late October 1983, MORT representatives visited Porta-Kamp, the manufacturer of the housing units, in Houston to inquire about the refurbishing and reconditioning of the units that had been stored with Gulf Ports. In a follow-up letter of 1 November 1983, Porta-Kamp advised MORT that the “cost of reconditioning units of this type often may approach the cost of new units because of the amount of labor required” and indicated that the cost of reconditioning the housing units purchased by MORT could be as much as 60 to 75 percent of their original cost. Porta-Kamp further advised that the original cost of those housing units was “approximately \$11,000.00 per module (that is per individual module, not for example a complete house, which was made up of from two to four modules).” Porta-Kamp proposed a “more economical approach,” that is, it offered to sell MORT “current production models.”

523. In December 1983, MORT contracted with Shipline Crating Co. for the re-crating, shipping to the port, and loading on ship of the G-8 Materials.

524. On 7 December 1983, the Agent of Iran to the Tribunal wrote to the Agent of the United States, requesting that the United States “take prompt action for the proper implementation” of the Award on Agreed Terms that the Tribunal had rendered on 9 March 1983 in Case No. 307.³⁶⁹ The United States Agent, in his reply letter of 19 January 1984, advised that the United States was not in a position to perform the 24 February 1983 settlement agreement, which had been recorded in that Award on Agreed Terms, or guarantee its performance by either party. Further, the United States Agent recounted the assistance the United States had already provided Iran in late July 1983, so that Iran could protect its interests in the G-8 Materials,³⁷⁰ and noted that “many of the materials stored by Gulf Ports” would be shipped to Iran by the end of January 1984 “on a ship called the *Onno*.” The United States Agent stated that “there is no further action that we can properly take in this matter.”

525. In January 1984, MORT contracted with Shipline Crating Co. for the disposal of unsalvageable Porta-Kamp Housing Units.

526. The G-8 Materials were finally shipped to Iran in February 1984.

³⁶⁹ See *supra* para. 515.

³⁷⁰ See *supra* para. 519.

(iii) *The Parties' Contentions*

Preliminary Issue: Effects of the 24 February 1983 Settlement Agreement

527. The United States argues, as a preliminary matter, that it should not bear any responsibility under Paragraph 9 for this Claim, “where the Tribunal itself was seized of the possessory contest between Iran and Gulf Ports and entered an award resolving it.” The United States contends that it should not be responsible for damages allegedly incurred as a result of the shipping delay because the Tribunal approved, by its Award on Agreed Terms in Case No. 307,³⁷¹ the settlement that ultimately effected the transfer of the G-8 Materials to Iran. Accordingly, the United States concludes that Claim G-8 should be dismissed.

528. In response, Iran disputes that the 24 February 1983 settlement agreement between Gulf Ports and MORT precludes Claim G-8. According to Iran, while that agreement settled Gulf Ports’ contractual claims and allowed the release of the G-8 Materials to Iran, it did not settle or limit Iran’s treaty claims against the United States for the breach of its Paragraph 9 obligation. Iran argues that the settlement agreement was an element of the damage incurred by MORT as a result of the United States’ failure to comply with that obligation. The settlement agreement, Iran concludes, should not have been necessary in order for MORT to recover its G-8 Materials, and MORT was under no obligation to settle the claims of private contractors in order to do so.

Remaining Issues: Iran’s Contentions

529. Iran contends that the G-8 Materials, which were “Iranian properties,” were all subject to liens exercised by Gulf Ports starting in early 1980 and through 19 January 1981. More specifically, Iran contends, Gulf Ports held a lien on the G-8 Materials from the moment that Morrison-Knudsen stopped paying storage charges for them in early 1980.

530. Hence, Iran argues that the redefinition of “Iranian properties” effected by Section 535.333 of the Unlawful Treasury Regulations, which excluded from the transfer directive of

³⁷¹ *Gulf Ports Crating Co. and Ministry of Roads and Transportation et al.*, Award No. 28-307-3 (9 Mar. 1983), reprinted in 2 IRAN-U.S. C.T.R. 126. See *supra* para. 515.

Section 535.215 contested properties and properties subject to liens,³⁷² excluded the G-8 Materials from that directive. Thus, the G-8 Materials remained blocked under Section 535.201 of the Regulations.³⁷³ Iran asserts that, therefore, no transaction, movement, or any dealing in the G-8 Materials could be exercised without a license from the United States.

531. Consequently, Iran concludes that, by issuing Section 535.333 of the Unlawful Treasury Regulations, the United States has violated two of its principal obligations under the Algiers Declarations with respect to the G-8 Materials: first, the obligation to remove all restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 on the mobility and free transfer of Iranian tangible properties; and, second, the obligation to direct persons holding any Iranian properties who were subject to the jurisdiction of the United States to transfer them to Iran as directed by the Government of Iran.

Remaining Issues: The United States' Contentions

532. The United States contends that Iran has failed to identify specifically the properties that are the subject of Claim G-8. According to the United States, Iran has never established which components of the Morgan Rock-Crushing Equipment ordered under Purchase Order No. 87-2101-1³⁷⁴ or which Porta-Kamp Housing Units ordered under Purchase Order No. 88-50212³⁷⁵ were delivered to, and stored by, Gulf Ports.

533. The United States does not dispute that the G-8 Materials were subject to a warehouseman's lien in favor of Gulf Ports. The United States urges, however, that there can be no presumption, as Iran suggests, that a lien prevents shipment of Iranian properties to Iran just because the Tribunal has found, in Award No. 529, that Section 535.333 of the Unlawful Treasury Regulations is inconsistent with the United States' Paragraph 9 obligation. The United States maintains that it was for a holder to decide both what constituted "necessary obligations, charges and fees relating to such properties," within the meaning of Section 535.333(b) of the Unlawful Treasury Regulations, and when a lien would be discharged. Thus, according to the United States, (i) properties would be excluded from the transfer directive in Section 535.215 of the Regulations only when the property holders asserted their private rights

³⁷² See *supra* para. 12. See also Award No. 529, para. 53, 28 IRAN-U.S. C.T.R. at 131.

³⁷³ See *supra* para. 9.

³⁷⁴ See *supra* para. 491.

³⁷⁵ See *id.*

to possession, and (ii) those properties would be subject to that transfer directive as soon as the property holders ceased asserting those rights. The United States contends that, once holders ceased doing so, they were, not only completely free to ship the properties to Iran without any license or other intervention by the United States, but were in fact directed and compelled to do so by Section 535.215 of the Treasury Regulations. The United States asserts that no policy or order of the United States Government was necessary to unblock those properties.

(iv) The Tribunal's Decision

Preliminary Issue: Effects of the 24 February 1983 Settlement Agreement

534. As a preliminary matter, the Tribunal addresses the United States' argument that this Claim should be dismissed because the Tribunal approved, by Award on Agreed Terms, the settlement of the claims in Case No. 307 between Gulf Ports and MORT. In Award No. 529, the Tribunal has held:

With respect to property that has not been transferred as required by the General Declaration because the United States has not fulfilled its obligations under the General Declaration, the withdrawal by Iran of a claim against the holder of that property or the settlement of such a claim between Iran and the holder of the property subsequent to 26 February 1981 does not *per se* relieve the United States from liability to Iran for losses caused by such non-transfer.³⁷⁶

Accordingly, in line with its holding in Award No. 529, the Tribunal rejects the United States' argument based on the settlement agreement in Case No. 307 between Gulf Ports and MORT.

"Iranian Properties"

535. There is no dispute that MORT falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration. Equally, there is no dispute that the G-8 Materials were located within the jurisdiction of the United States on 19 January 1981, and that they were solely owned by Iran on that date. Consequently, the G-8 Materials qualify as "Iranian properties" pursuant to Paragraph 9.

³⁷⁶ Award No. 529, para. 77 (h), 28 IRAN-U.S. C.T.R. at 141.

Identification of the Items in Dispute

536. The United States contends that Iran has failed: (i) to identify specifically all Porta-Kamp Housing Units that are the subject of Claim G-8 and (ii) to establish what components of the Morgan Rock-Crushing Equipment purchased by MORT under Purchase Order No. 87-2101-1³⁷⁷ were delivered to, and stored by, Gulf Ports in New Orleans. The Tribunal addresses these two questions in turn.

Porta-Kamp Housing Units

537. It is undisputed, and HNTB-Iran has confirmed in its telex to MORT of 17 August 1981,³⁷⁸ that the Porta-Kamp Housing Units purchased by MORT under Purchase Order No. 88-50212 (“PO No. 88-50212”)³⁷⁹ had been delivered to Gulf Ports in Houston. Likewise, the Parties appear to agree that the original Purchase Order No. 88-50212 covered some 400 such housing units. Whatever the number of units sold, according to “Change Order No. 1” to PO No. 88-50212, dated 13 November 1978, the units were purchased for a total price of USD 11,906,245. Iran asserts that, as a result of the subsequent deletion of the “third phase” of the order, that Purchase Order was reduced to 238 Porta-Kamp Housing Units at a price of USD 7,309,995. Iran maintains that it was unable to locate the change order that reduced the original Purchase Order.³⁸⁰

538. It is undisputed that Porta-Kamp Housing Units were delivered to Gulf Ports in February 1979. Thus, the Tribunal must attempt to ascertain both the number of Porta-Kamp Housing Units delivered to Gulf Ports and their purchase price, making the best possible use of the available evidence.

539. The contemporaneous documents in evidence are inconclusive as to either the exact number of Porta-Kamp Housing Units delivered or their purchase price.³⁸¹ The most recent of

³⁷⁷ See *supra* para. 491.

³⁷⁸ See *supra* para. 436.

³⁷⁹ See *supra* para. 491.

³⁸⁰ See *supra* note 357.

³⁸¹ This evidence includes: (a) a letter dated 19 September 1980 from MORT’s Houston attorneys to the law firm of Abourezk, Shack & Mendenhall, Iran’s general counsel in the United States at the time; referring to the Porta-Kamp Housing Units stored in Houston with Gulf Ports, MORT’s Houston attorneys advised that “we do know that there are sixty (60) buildings which are being stored along with all the accoutrements”; (b) the brief of appellant Gulf Ports dated 16 September 1981, submitted to the United States Court of Appeals for the 5th Circuit,

those documents, Porta-Kamp's letter to MORT dated 1 November 1983,³⁸² is neither a purchase order nor an invoice, does not specify any quantities of houses, units, or modules, and is geared at encouraging MORT, not to refurbish, but rather to buy a new product at more advantageous conditions. This letter highlights an additional problem the Tribunal is faced with in this Claim, namely, the varying terminology: the letter mentions "units," "houses," "components," and "modules," leaving them, however, unexplained except for the statement that a "complete house" was "made-up of from two to four modules."

540. While it is possible to work with hypotheticals in explaining the various divergent figures and combining those figures with a view to reconciling them with the figure of 238 Porta-Kamp Housing Units claimed by Iran, it is not for the Tribunal to do so. It was for the Claimant to provide the Tribunal with a complete, clear, and self-explanatory record.

541. All attempts to reconcile the figures claimed with the record in its entirety remain necessarily speculative. In light of the state of the record, and given Iran's contention that the "third phase" of the original purchase order was deleted,³⁸³ the Tribunal cannot exclude – another, equally speculative, hypothesis – that other changes were made to that order that are no longer traceable. In these circumstances, the Tribunal is justified in relying on the most conservative of the figures reflected in the available contemporaneous evidence. Accordingly, on that basis, the Tribunal finds that 60 Porta-Kamp Housing Units were delivered to Gulf Ports in Houston in February 1979, as stated by the 19 September 1980 letter from MORT's own attorneys in Houston to Iran's general counsel in the United States.³⁸⁴

stating that "[t]he Portakamps were originally delivered to Gulf Ports on February 7, 1979" and adding that "[t]he properties consist of 635 crates," without, however, indicating any details as to the contents of each crate; (c) the preamble of the Settlement Agreement between MORT and Gulf Ports dated 24 February 1983, referring to "633 pieces . . . which are located at the facility [singular] of Gulf Ports in Houston," without, however, giving any details as to the nature of those pieces; on the contrary, the same clause goes on to state that "Gulf Ports has received the above items in boxes according to the packing list from Morrison-Knudsen Pacific, Ltd., the representative of the MRTR in 1977 [*i.e.*, before the date of Change Order No. 1 to PO No. 88-50212, *see supra* para. 537], but Gulf Ports does not have knowledge of the contents thereof and does not make any representations thereto"; (d) a letter dated 26 October 1983 from Morris Export Crating Company to MORT, submitting an offer for export packing and delivery to the docks of the Porta-Kamp Housing Units and attaching a memorandum dated 19 April 1983, referring to "113 boxes and 4 skids," "293 Knockdown Units" [of unidentified contents and nature], "150 Erect Buildings," and, further, "74 Erect Buildings"; (e) a letter from Porta-Kamp to MORT dated 1 November 1983, concerning "Refurbishing and Reconditioning of Housing Facilities"; this letter is discussed *supra* in para. 539.

³⁸² *See supra* para. 522.

³⁸³ *See supra* note 357.

³⁸⁴ *See supra* note 381.

542. The Tribunal must now establish the original purchase price of those 60 Porta-Kamp Housing Units. On balance, the Tribunal finds that the letter that Porta-Kamp, the manufacturer of the housing units, sent to MORT on 1 November 1983 represents the best available evidence of such purchase price.³⁸⁵ In that letter, Porta-Kamp advised that the original cost of the housing units purchased by MORT was “approximately \$11,000.00 per module (that is per individual module, not for example a complete house, which was made up of from two to four modules).” Lacking more detailed information, the Tribunal finds it reasonable to assume that, on average, a complete housing unit consisted of three modules, for a price of USD 33,000 per housing unit. Accordingly, on that basis, the Tribunal concludes that the original purchase price of 60 Porta-Kamp Housing Units was USD 1,980,000.

Morgan Rock-Crushing Equipment

543. Further, for the reasons stated *supra*, in connection with Claim G-7,³⁸⁶ for the purposes of Claim G-8, the Tribunal will assume that 60 percent of the Morgan Rock-Crushing Equipment covered by Purchase Order No. 87-2101-1 was delivered to Gulf Ports in New Orleans on 7 February 1979.

The Responsibility of the United States

544. The Tribunal now turns to the question whether the United States has satisfied its obligation under Paragraph 9 with respect to the G-8 Materials. In Award No. 529, the Tribunal held that United States Treasury Regulations that excluded from the transfer direction of Executive Order No. 12281 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, defenses, counterclaims, set-offs, or similar reasons were inconsistent with the obligations of the United States under the General Declaration.³⁸⁷ On the record that was before it when it rendered Award No. 529, the Tribunal was not in a position to determine the relevant facts with respect to any particular property. The Tribunal makes that determination now with respect to the G-8 Materials.

³⁸⁵ See *supra* para. 522.

³⁸⁶ See *supra* para. 484.

³⁸⁷ See Award No. 529, para. 77 (d), 28 IRAN-U.S. C.T.R. at 140.

545. There is no serious dispute, and the evidence bears out, that Gulf Ports was unwilling to deliver the G-8 Materials to MORT until after MORT had paid the outstanding storage and security costs relating to those items. Among others, the following circumstances are of particular relevance in this context:

- (a) in its brief appealing the 7 July 1981 decision of the United States District Court for the Southern District of Texas, Gulf Ports, relying on Treasury Regulations Section 535.333(b), argued that the Porta-Kamp Housing Units were not “Iranian properties” or properties “owned by Iran” because “all necessary obligations, charges and fees relating to such properties” had not been paid;³⁸⁸
- (b) in the Preamble to their 17 November 1981 settlement agreement, Gulf Ports and MORT noted that Gulf Ports had claimed a lien on the Porta-Kamp Housing Units and the Morgan Rock-Crushing Equipment, and that an action was pending in the United States District Court for the Southern District of Texas to foreclose on the lien to satisfy the unpaid charges;³⁸⁹
- (c) on 30 September 1982, Gulf Ports, claiming a warehouseman’s lien, applied to OFAC for a sale license to dispose of the Porta-Kamp Housing Units stored in Houston and the Morgan Rock-Crushing Equipment stored in New Orleans;³⁹⁰ and,
- (d) by letter of 18 February 1983, Gulf Ports notified MORT that: (i) it held warehouseman’s liens on the Morgan Rock-Crushing Equipment and Lighting Plants stored in New Orleans and the Porta-Kamp Housing Units stored in Houston; and (ii), unless MORT paid by 6 March 1983 the storage costs for the G-8 Materials, they would be sold by public auctions to be held on 28 March 1983.³⁹¹

546. Based on the evidence presented, the Tribunal finds that Gulf Ports retained the G-8 Materials in the United States because of the existence of an unpaid debt, and that,

³⁸⁸ See *supra* paras. 496-497.

³⁸⁹ See *supra* para. 501.

³⁹⁰ See *supra* para. 512.

³⁹¹ See *supra* para. 514.

consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration with respect to Iranian tangible properties, and its international responsibility is engaged.

547. The Tribunal further finds 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.³⁹²

548. In view of the foregoing, the Tribunal upholds Claim G-8.

(e) Claim G-13 (MORT/Shipside Packing Co.)

(i) Introduction

549. In Claim G-13, Iran seeks a maximum of USD 1,511,933, plus interest, as damages resulting from the United States' alleged failure to arrange for the transfer to Iran of the properties purchased by MORT in 1978 that were in storage with Shipside Packing Co. ("Shipside"), a company rendering warehousing and packing services to Morrison-Knudsen.

(ii) Factual Background

550. As summarized by Iran at the Hearing, the properties purchased by MORT throughout 1978 that are relevant to this Claim consisted of:

- (a) one dragline crane purchased from Northwest Engineering for USD 530,000 under Purchase Order No. 87-2108-1;
- (b) three hydraulic cranes purchased from Grove Manufacturing Co. for USD 173,397 under Purchase Order No. 87-2110-1;
- (c) two caterpillar graders purchased from Afiwa, S.A. for USD 301,236 under Purchase Order No. 87-2112-1;
- (d) six compactors purchased from Raygo, Inc. for USD 253,650 under Purchase Order No. 87-2120-1;

³⁹² See *supra* para. 12.

(e) a printing set and surveying equipment purchased for USD 376,047.

551. The above-mentioned items (jointly, “G-13 Materials”) were allegedly sent to Shipside in Baltimore, Maryland, throughout the second half of 1978. The evidence in the record shows that at least part of the G-13 Materials were delivered to Shipside’s facilities in Baltimore in 1978. Some of the items delivered were stored indoors, and some were stored outdoors.

552. The record contains no evidence showing any arrangements for the transfer of the G-13 Materials to Iran upon delivery at Shipside’s premises prior to 14 November 1979. The Parties disagree as to the reasons as to why no such arrangements were made.³⁹³

553. Morrison-Knudsen paid, on behalf of MORT, storage charges to Shipside for the G-13 Materials until the end of April 1980 and ceased payments thereafter. As noted,³⁹⁴ on 5 March 1980, the Consortium terminated Contract No. 87.

554. The attorney of Shipside’s parent company, Mr. William C. Miller, stated in his affidavit that Shipside tried to contact MORT and Iranian representatives in Washington, D.C., regarding the accruing storage charges, but that Shipside received no response until October 1981. Furthermore, Mr. Miller explained that Shipside started up the machinery periodically to mitigate its deterioration, assessing a start-up fee of USD 475 per month.

555. Following a request for information from MORT, by telex dated 17 August 1981,³⁹⁵ HNTB-Iran informed MORT that the materials MORT had purchased under Purchase Orders Nos. 87-2108-1, 87-2110-1, 87-2112-1, and 87-2120-1 were located at Shipside’s premises in Baltimore.

556. On 17 and 18 November 1981, representatives of MORT and Shipside met in Vienna with the goal of settling the amounts MORT owed Shipside in storage fees and negotiating the prompt transfer of the G-13 Materials to Iran. However, the parties did not reach an agreement. According to Mr. Saremi,³⁹⁶ the failure to reach an agreement was due to the fact that “the

³⁹³ The United States, referring to Morrison-Knudsen’s statement of defense to counterclaim in Case No. 127, maintains that this was “because by late 1978 MORT had halted procurement and mobilization efforts for the highway project in Iran.” Iran, for its part, argues that “before the said machinery could be shipped to Iran however, the crisis between United States and Iran caused the freeze of Iranian assets in the United States.”

³⁹⁴ See *supra* para. 429.

³⁹⁵ See *supra* para. 436.

³⁹⁶ See *supra* para. 453.

amounts claimed by [Shipside] appeared to be unfair.” Mr. Miller, for his part, explained in his affidavit that the negotiations were unsuccessful because MORT was unwilling to pay the charges that Shipside had assessed for storing the G-13 Materials from May 1980 to November 1981. There is no clear indication on record of the amounts claimed by Shipside. However, a telex sent by Shipside to MORT on 30 November 1981, shortly after the failed negotiations, referred to USD 84,000 for storage costs, USD 9,500 for starting up the machinery, USD 4,500 for moving costs, USD 1,625 for legal costs, and USD 10,000 for travel expenses to Vienna, for a total amount of USD 109,625.

557. On 29 December 1981, the parties held another meeting in Baltimore, where they reached a tentative agreement.³⁹⁷

558. On 19 January 1982, the United States submitted to the Tribunal a claim against MORT on behalf of Shipside, seeking USD 106,361.95. The claim was classified as Case No. 11875.

559. Throughout 1982 and 1983, MORT and Shipside continued to attempt to reach a settlement. The record shows that MORT repeatedly failed to respond in a timely manner to Shipside’s communications, thereby allowing the deadlines initially included in the draft settlement agreement to expire.

560. According to Mr. Miller’s affidavit, in September 1982, Shipside requested a sale license from OFAC, which was eventually granted. Mr. Miller further stated that Shipside never sold the G-13 Materials.

561. In April 1983, MORT allegedly resumed communications with Shipside, and the parties held a meeting in Baltimore in May 1983. In a communication to MORT of 1 July 1983, Shipside summarized the status of the G-13 Materials and the development of the negotiations. Shipside also informed MORT that it had requested a sale license from OFAC, and that it would not hesitate to use it if a settlement was not concluded.

³⁹⁷ According to Mr. Rahmati’s testimony, during this trip, he inspected the equipment at Baltimore during “less than an hour,” since “it was a small place and they were fenced, and there was a guard over there. Therefore, we had a general inspection, we just made sure that the items were there.”

562. On 6 January 1984, MORT and Shipperside concluded a settlement agreement, which the Tribunal recorded as an Award on Agreed Terms on 12 January 1984.³⁹⁸ In relevant part, the preamble of the settlement provides:

. . . Whereas, Shipperside claims that it is entitled to receive storage, and related costs regarding the property under the laws of the State of Maryland and Shipperside claims that it is intending to sell the property to satisfy such costs, and
 Whereas, pursuant to the laws of the State of Maryland and regulations issued by the U.S. Department of the Treasury, Shipperside is holding “the property” until such time as the Iran-United States Claims Tribunal approves the settlement agreement and issues an award to Shipperside for storage and related charges due

563. In the settlement agreement, MORT agreed to pay Shipperside USD 168,000 “for storage and related charges through December 31, 1983.” The first payment for an amount of USD 67,200 was to be made immediately after executing the settlement. The remaining USD 100,800 was to be paid once Shipperside provided the Tribunal with confirmation of the delivery of the G-13 Materials to MORT. Furthermore, the parties agreed that the equipment was to be removed from Shipperside’s premises as soon as possible.

564. On 1 February 1984, MORT and Shipperside certified to the Tribunal that the G-13 Materials had been fully shipped to Iran and that Shipperside’s obligations under the settlement agreement had been performed.

(iii) *The Parties’ Contentions*

Preliminary Issue: Effects of the 6 January 1984 Settlement Agreement

565. The United States argues, as a preliminary matter, that this Claim should have been withdrawn by Iran following the Award on Agreed Terms in Case No. 11875. The United States contends that it should not bear responsibility under Paragraph 9 in this Claim “where the Tribunal itself was seized of the possessory contest between Iran and Shipperside and entered an award resolving it.” The Tribunal in Case No. 11875 ordered Shipperside to refrain from selling the G-13 Materials to satisfy its lien but never concluded that Shipperside’s retention of the G-13 Materials was inappropriate, nor did it order Shipperside to transfer the G-13 Materials to

³⁹⁸ See *Shipperside Packing Company Inc. and Ministry of Roads and Transportation et al.*, Award No. 102-11875-1 (12 Jan. 1984), reprinted in 5 IRAN-U.S. C.T.R. 80.

Iran. Instead, the United States continues, the Tribunal approved the settlement agreement, pursuant to which Shipperside delivered the equipment to Iran and Iran paid the agreed portion of the storage charges, fully resolving all their disputes. The United States argues that, under these circumstances, it would be anomalous for the Tribunal now to conclude that Shipperside should have transferred the equipment immediately, and that the parties should never have pursued the negotiated settlement.

566. In response, Iran argues that the settlement agreement reached with Shipperside in Case No. 11875 settled Shipperside's contractual claims but clearly did not settle or limit Iran's treaty claim against the United States. Therefore, MORT's private settlement with Shipperside does not preclude Iran's claim against the United States for a breach of the Algiers Declarations. Iran contends that the settlement agreement was an element of the damage incurred by MORT as a result of the United States' failure to comply with its obligations under the Algiers Declarations. According to Iran, the settlement agreement should not have been necessary in order for MORT to recover the G-13 Materials, and MORT was under no obligation to settle the claims of private contractors in order to do so.

Remaining Issues: Iran's Contentions

567. Iran's arguments are virtually identical to those put forward with regard to Claims G-7 and G-8. Iran first argues that the documents on file in this Claim, as well as the documents proffered in Cases Nos. B62, B67, 307, and 11875 before Chamber One, show that the items in question existed within the jurisdiction of the United States and were unconditionally owned by Iran on 19 January 1981.

568. Second, Iran contends that the G-13 Materials were subject to liens exercised by Shipperside starting in early 1980 and through to 19 January 1981. More specifically, Shipperside held a lien on the G-13 Materials since the time Morrison-Knudsen stopped paying storage charges for them in April 1980.

569. Iran argues that the redefinition of "Iranian properties" effected by Section 535.333 of the Unlawful Treasury Regulations, which excluded from the transfer directive of Section 535.215 contested properties and properties subject to liens,³⁹⁹ excluded the G-13 Materials

³⁹⁹ See *supra* para. 12. See also Award No. 529, para. 53, 28 IRAN-U.S. C.T.R. at 131.

from that directive. Thus, the G-13 Materials remained blocked under Section 535.201 of the Regulations.⁴⁰⁰ Iran concludes that, by issuing Section 535.333 of the Unlawful Treasury Regulations, the United States has violated two of its principal obligations under the Algiers Declarations with respect to the G-13 Materials: first, the obligation to remove all restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 on the mobility and free transfer of Iranian tangible properties; and, second, the obligation to direct persons holding any Iranian properties who were subject to the jurisdiction of the United States to transfer them to Iran as directed by the Government of Iran.

Remaining Issues: The United States' Contentions

570. The United States does not dispute that the G-13 Materials were subject to a lien in favor of Shipperside. The United States argues, however, that there can be no presumption, as suggested by Iran, that a lien prevents shipment of Iranian properties to Iran just because the Tribunal has found, in Award No. 529, that Section 535.333 of the Unlawful Treasury Regulations is inconsistent with the United States' Paragraph 9 obligation.

571. The United States maintains that it was for a holder to decide both what constituted "necessary obligations, charges and fees relating to such properties," within the meaning of Section 535.333(b) of the Unlawful Treasury Regulations, and when a lien would be discharged. Thus, according to the United States, (i) properties would be excluded from the transfer directive in Section 535.215 of the Regulations only when the property holders asserted their private rights to possession, and (ii) those properties would be subject to that transfer directive as soon as the property holders ceased asserting those rights. The United States contends that, once holders ceased doing so, they were not only completely free to ship the properties to Iran without any license or other intervention by the United States, but were in fact directed and compelled to do so by Section 535.215 of the Treasury Regulations. The United States asserts that no policy or order of the United States Government was necessary to unblock those properties.

572. The United States further contends that Iran has failed to show that it took the steps necessary to make performance by the United States of its Paragraph 9 obligation possible, since Iran waited months before notifying Shipperside that it still wanted the items, and before

⁴⁰⁰ See *supra* para. 9.

indicating to the United States that it needed the United States' assistance in obtaining the transfer of the G-13 Materials. In addition, the United States contends that Iran has failed to prove that there were any further steps that the United States should reasonably have taken to arrange for the transfer of the items during the period in which the parties were negotiating directly.

(iv) *The Tribunal's Decision*

573. As a preliminary matter, the Tribunal addresses the United States' argument that Claim G-13 should be dismissed because the Tribunal approved, by Award on Agreed Terms, the settlement of the claim in Case No. 11875 between Shipline and MORT. As discussed in connection with Claim G-8,⁴⁰¹ in line with the Tribunal's holding in Paragraph 77 (h) of Award No. 529,⁴⁰² the Tribunal rejects the United States' argument based on the settlement agreement in Case No. 11875 between Shipline and MORT.

574. There is no dispute that MORT falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration. Equally, there is no dispute that the G-13 Materials were located within the jurisdiction of the United States on 19 January 1981, and that they were solely owned by Iran on that date. Consequently, the G-13 Materials qualify as "Iranian properties" pursuant to Paragraph 9.

575. The Tribunal now turns to the question whether the United States has satisfied its obligation under Paragraph 9 with respect to the G-13 Materials. There is no serious dispute, and the evidence bears out, that Shipline was unwilling to deliver the G-13 Materials to MORT until after MORT had paid the outstanding storage and start-up costs relating thereto. Among others, the following circumstances are of particular relevance in this context:

- (a) in a communication sent by Shipline to MORT on 1 July 1983, Mr. Miller stated that "the only reason [MORT] has not received your property is your refusal to pay the charges directly to us." Mr. Miller added that "[Shipline] had applied for and received a license to sell the goods from our government. If a settlement is not reached soon, we will sell the goods";

⁴⁰¹ See *supra* para. 534.

⁴⁰² Award No. 529, para. 77 (h), 28 IRAN-U.S. C.T.R. at 141.

- (b) in the Preamble to their 6 January 1984 settlement agreement, Shipperside and MORT noted that Shipperside had claimed: (i) “that it was entitled to receive storage charges, and related costs regarding the [G-13 Materials],” and (ii) that it intended to sell the G-13 Materials to satisfy such costs;⁴⁰³
- (c) on 11 January 1984, the Agent for the United States submitted a letter in Case No. 11875 explaining that the G-13 Materials were “subject to a statutory warehouseman’s lien under Maryland law as well as under the terms of the warehouse receipts issued by Shipperside.”

576. Based on the evidence presented, the Tribunal finds that Shipperside retained the G-13 Materials in the United States because of the existence of an unpaid debt, and that, consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration with respect to Iranian tangible properties, and its international responsibility is engaged. The Tribunal further finds 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.⁴⁰⁴

577. In view of the foregoing, the Tribunal upholds Claim G-13.

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

(a) *Introduction*

578. In Claim G-11 & Supp. (2)-67, Iran seeks a maximum of USD 79,591, plus interest, as damages resulting from the United States’ alleged failure to arrange for the transfer of 17 aircraft parts sent to the United States by Iran Air for repair. Two of those aircraft parts, namely, a fuel flow power supply and a valve, were on loan to Iran Air from Trans World Airlines (“TWA”) and Pan American World Airways (“PanAm”), respectively.

⁴⁰³ See *supra* para. 562.

⁴⁰⁴ See *supra* para. 12.

(b) *Factual Background*

579. Between October and November 1979, Iran Air sent the 17 aircraft parts to the United States for repair. Following the issuance of the Blocking Order on 14 November 1979, United States Customs withheld the 17 parts upon their arrival at John F. Kennedy Airport in New York.

580. In accordance with United States regulations in force at that time, the items were put in storage in two warehouses in New York. From that point, storage charges started accruing.

581. In late 1981 or early 1982, Mr. Thomas Shack, Iran's general counsel in the United States, contacted OFAC, requesting that it order United States Customs to waive storage charges for the 17 items at issue.

582. On 26 February 1982, OFAC informed Mr. Shack that, on the basis of Treasury Regulation Section 535.333(b), the 17 items could not be released. The relevant part of the letter reads:

Since Customs has been storing these assets and preventing their release in accordance with Foreign Assets Control regulations, we contacted the Chief Counsel of Foreign Assets Control for their views. They directed our attention to 31 CFR 535.215 which authorizes the release of certain Iranian property which had been blocked since November 1979. . . . Moreover, 31 CFR 535.333 defines "properties" for the purposes of section 535.215. Subsection (b) of section 535.333 provides that nothing may be construed as Iranian properties within the meaning of section 215 "unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties . . . are discharged."

OFAC further stated that the storage charges incurred by Iran Air had to be paid first in order to enable the United States Customs to transfer the items to Iran. Moreover, OFAC informed Mr. Shack that it was the policy of the Foreign Assets Control not to waive such charges.

583. In its report to the Tribunal of 13 November 1987 on Iranian tangible properties in the United States, Iran stated that the aircraft parts at issue had been "sold by U.S. customs."

(c) *The Parties' Contentions*

584. It is common ground between the Parties that 15 of the 17 aircraft parts at issue constituted "Iranian properties" within the meaning of Paragraph 9, and that those 15 items had

been withheld by United States Customs and ultimately sold at auction on the basis of the Unlawful Treasury Regulations. Accordingly, the United States concedes responsibility for breach of its Paragraph 9 obligation in this Claim with regard to those 15 items.

585. With regard to two of the 17 items, however – namely, those on loan from PanAm and TWA – the United States denies any responsibility. The United States argues that these two items did not fall within the meaning of “Iranian properties” under Paragraph 9, and that their non-transfer cannot be regarded as a breach thereof.

Iran’s Contentions

586. Iran submits that the Tribunal should regard the two items on loan from PanAm and TWA as “Iranian properties” for the purposes of Paragraph 9 because Iran Air was responsible for them and would have had to pay TWA and PanAm for their loss. In support, Iran relies on the hearing testimony of Mr. Ali Baksh Ahmadi, who was an Iran Air employee at the times here relevant. Mr. Ahmadi explained that Iran Air’s payment to TWA and PanAm would have been effected through the International Air Transport Association (“IATA”), which has its own system for clearing claims between its members. In case of a loss, Mr. Ahmadi stated, TWA and PanAm would have submitted a claim for the value of the two items to the IATA Clearing House. If IATA decided that the claim was justified, the amounts due would have been directly debited from the IATA account of Iran Air.

587. Iran further argues that the United States has also treated the two items on loan as “Iranian properties” within the meaning of Paragraph 9, as the following circumstances show: (i) United States Customs withheld all 17 items, including those on loan, because it considered them Iranian properties under the Blocking Order of 14 November 1979; and (ii) after 19 January 1981, United States Customs withheld the two items pursuant to Section 535.333 of the Unlawful Treasury Regulations as Iranian properties subject to charges.

588. Accordingly, Iran concludes that the two items on loan should be considered “Iranian properties” for the purposes of Paragraph 9.

The United States' Contentions

589. As noted above,⁴⁰⁵ the United States concedes that 15 of the 17 aircraft parts at issue were “Iranian properties” and were subject to the United States’ Paragraph 9 obligation to arrange for the transfer of such properties to Iran, as interpreted by Award No. 529.⁴⁰⁶

590. With regard to the two items on loan from TWA and PanAm, however, the United States submits that, because they were actually owned by those two companies, they did not constitute Iranian property on 19 January 1981, and, as a result, they were not subject to Paragraph 9.

591. According to the United States, Iran concedes that it was not the owner of these two items, and that Iran’s argument is limited to the contention that it was under an obligation to return the items to TWA and PanAm. The United States maintains, however, that, under Paragraph 9, the United States was only required to arrange for the transfer to Iran of “Iranian properties”; given that these two items were not “Iranian properties,” the United States was not obliged to arrange for their transfer.

592. Moreover, the United States submits that Iran has not shown that it actually incurred any consequential losses with respect to the two items on loan, for instance, by having had to reimburse TWA or PanAm.

593. The United States considers the lack of evidence as to any consequential losses to be irrelevant in any event. For the United States, reimbursement, if it had occurred, would not have caused title of these two items to pass to Iran.

(d) The Tribunal’s Decision

594. There is no dispute, and the evidence bears out, that Iran Air falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

595. The Tribunal is unable to subscribe to Iran’s line of argument with respect to the two items on loan. As the Tribunal has held, the term “Iranian properties” under Paragraph 9 means tangible properties “solely owned by Iran,” and title is indicative of properties being “solely

⁴⁰⁵ See *supra* para. 584.

⁴⁰⁶ Award No. 529, para. 77 (a), 28 IRAN-U.S. C.T.R. at 140.

owned by Iran.”⁴⁰⁷ Processing through the IATA system, even assuming that the two items had been processed through that system, could not have caused title to the two items to pass to Iran Air. Nor can the treatment of those items by United States Customs justify a deviation by the Tribunal from the interpretation of the term “Iranian properties” as set out above. The Tribunal therefore holds that the two items on loan from TWA and PanAm, identified as a fuel flow power supply and a valve, do not represent “Iranian properties” within the meaning of Paragraph 9.

596. The Parties agree that the remaining 15 items were “Iranian properties” within the meaning of Paragraph 9. Further, it is undisputed that the aircraft parts had been withheld by United States Customs on the basis of the Unlawful Treasury Regulations and later sold.

597. Based on the above, the Tribunal finds that United States Customs retained the items at issue in Claims G-11 & Supp. (2)-67 because of the existence of unpaid storage charges, and that, consequently, those items were excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration with respect to Iranian tangible properties, and its international responsibility is engaged.

598. The Tribunal further finds 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.⁴⁰⁸

599. In light of the foregoing, the Tribunal upholds Claims G-11 & Supp. (2)-67, with the exception of the two items on loan.

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

(a) *Introduction*

600. In Claim G-131, Iran seeks a maximum of USD 162,776, plus interest, as damages resulting from the United States’ alleged failure to arrange for the transfer of 148 aircraft parts,

⁴⁰⁷ See *supra* paras. 98 & 134.

⁴⁰⁸ See *supra* para. 12.

which Air Taxi Co. (“Air Taxi”), Air Service Co. (“Air Service”), and Pars Air had sent for repair to Piedmont Aviation, Inc. (“Piedmont”),⁴⁰⁹ before 14 November 1979 (“G-131 Items”).

(b) *Factual Background*

601. Piedmont regularly repaired aircraft components for airlines in Iran during the 1970s, including, among others, Air Taxi, then a privately-owned company. Piedmont had extended an open account to Air Taxi for several years but did not have open accounts with Air Service and Pars Air (then also privately owned companies), which sent items through Air Taxi to Piedmont for repair.

602. In 1978 and 1979, Piedmont repaired certain aircraft parts for Air Taxi, Air Service, and Pars Air. Piedmont requested payment for these aircraft parts before they were shipped back and, having received no payment, kept them at its warehouse in Winston-Salem, North Carolina. The Parties agree that Piedmont had 148 aircraft parts in its possession as a result.

603. On 26 April 1980, Piedmont received a telex from the supply manager of Air Taxi, stating that Air Taxi was “not [a] government organization but owned by Bonyad-E-Mostazafan.” In a letter dated 6 March 1981 to OFAC, Mr. Alan Schneider, Piedmont’s Corporate Attorney, stated that this telex confirmed a prior oral statement made by Air Taxi’s supply manager to Mr. Schneider that Air Taxi was privately owned. In his letter, Mr. Schneider also noted, however, that, on several occasions, OFAC officials had “said that [OFAC had] information that one of the companies [involved] may be [an] Iranian entit[y].”

604. On 26 June 1980, the Revolutionary Council of the Islamic Republic of Iran passed a Legal Bill (the “26 June 1980 Bill”), which nationalized several private airlines and merged them into a new company called Sherkat Khadamati Havayi Keshvar, or Aseman Airlines (“Aseman”). Article I of the 26 June 1980 Bill provides:

For the purpose of rendering aircraft services to the Council of Ministers, Ministries, governmental, military and non-military institutions and companies, transportation of cargo and passengers and chartering aircraft in scheduled and non-scheduled routes, effective the date of passing [of] this Legal Bill, the following institutions are declared as nationalized

1. Air Taxi Airline Company;
2. Pars Air Airline Company;

⁴⁰⁹ Piedmont was purchased in 1987 by a company called USAir.

3. Air Service Airline Company;
4. Hoor [Aseman] Airline Company;
5. Helicopter Iran Airline Company;
6. Helicopter Service Airline Company.

The said Companies shall be merged with all their properties, assets and liabilities; and Sherkat Khadamat Havayi Keshvar “[Aseman]” shall be established.

605. Article II indicated that Aseman “will be managed as a governmental company; its equity capital shall belong to the Government.” Article IV provided for the transfer to Aseman, among other things, of all aircraft, equipment, and spare parts belonging to the nationalized companies.

606. At the Hearing, Iran’s witness, Mr. Alireza Seraj Shirazi, who was the Deputy Director General for Financial Affairs of Air Taxi at the time, testified that

before the Revolution, Air Taxi, Air Service, Hoor Aseman and Pars Air, they were all private companies but they were controlled by certain individuals that had close relations with the Royal Family before the Revolution, but after the Revolution, for a short period of time, they went under the control of Mostazafan Foundation but within the very short period when the Islamic government was established, by issuing a directive, all these companies went under the control of the Government. Ministry of Roads & Transportation, Ministry of Social Welfare and Ministry of Finance and Economic Affairs became the shareholders of these companies.

607. Mr. Shirazi further testified, at the Hearing and in his affidavit, that all companies that had been doing business with the nationalized airlines were immediately informed by circular telex of the nationalization of the airlines and their merger into Aseman. Mr. Shirazi stated that the circular telex was also sent to Piedmont (this telex is not on record). The record does contain a telex sent to another company, Air Governor, on 3 November 1980, informing Air Governor of the merger of Air Taxi, Air Service, Pars Air, and Hoor Aseman Co. and the establishment of Aseman; this telex, however, does not mention their nationalization, or that Aseman was a government-controlled entity. Iran also produced in Claims G-133 and G-147 circulars sent by Aseman to Jetcraft Supply Corporation and XL Avionics, Inc., dated 18 and 19 July 1981, respectively, indicating that

the merge process of our four Sister companies, Air Taxi Co., Air Service, Pars Air and Hoor [Aseman], forming a new consolidated company, named “Iran

[Aseman] Airlines,” is finalised. Iran [Aseman] Airlines will be under the complete patronage of Iranian Government.

The new management, the Board of Directors are directly assigned by Iran Islamic Republic Government

608. In his 6 March 1981 letter to OFAC,⁴¹⁰ Mr. Schneider stated that Air Taxi owed Piedmont USD 395,500 for work performed in 1978 and 1979. Mr. Schneider also stated that, during a phone conversation on 15 April 1980, Air Taxi’s supply manager had indicated Air Taxi’s willingness to pay the outstanding amount within two weeks, but, Mr. Schneider stated, Air Taxi did not do so. Mr. Schneider further stated that, in June 1980, Piedmont offered to purchase the aircraft parts at issue and credit Air Taxi’s account to partially resolve the matter, but that Air Taxi rejected that offer in mid-July 1980.

609. Mr. Schneider went on to state that, subsequently, in November 1980, Piedmont filed a complaint against Air Taxi, Air Service, and Pars Air in North Carolina court.

610. In his 6 March 1981 letter to OFAC, Mr. Schneider further stated:

Please give us your concurrence that it is not necessary for Piedmont to obtain a license in order to execute on a judgment against Air Taxi, Air Service and PARS Air. In my opinion the [United States Treasury] regulations regarding Iranian assets do not apply, and Piedmont is not required to obtain a license prior to execution because the companies are not Iranian entities. Piedmont proposes to execute on the judgment by a public sale of parts in its possession.

611. On 27 March 1981, Piedmont obtained a judgment in North Carolina court against Air Taxi, Air Service, and Pars Air for USD 420,052.58, the alleged amount of the unpaid invoices for the repair work it had performed. On the same date, the Sheriff’s Office of Forsyth County, Winston-Salem, North Carolina, issued an “Execution Payment Request,” which was intended to notify Air Taxi, Air Service, and Pars Air, among other things, that: (i) the Sheriff’s Office “holds an execution for the collection of a money judgement against you . . . in the amount of \$420,052.58”; and (ii) proceedings had been started to sell the personal property of the defendant, “located at Piedmont Aviation[’]s Warehouse,” on 14 April 1981. Accordingly, on 27 March 1981, the Sheriff’s Office also issued a “Notice of Sale of Personal Property” to Air

⁴¹⁰ See *supra* para. 603.

Taxi, Air Service, and Pars Air, stating that the Sheriff would offer the aircraft parts “for sale to the highest bidder for cash” on 14 April 1981 to satisfy the execution.

612. By letter to Piedmont dated 12 April 1981, Aseman acknowledged receipt of the cable from the Office of the Sheriff of Forsyth County, informing it of the upcoming public sale of the G-131 Items. In its letter, Aseman advised that Air Taxi, Air Service, Pars Air, and Hoor Aseman had “been taken over by the government and merged by creating a new company,” namely, Aseman. Aseman went on to acknowledge that, according to its records, it owed Piedmont USD 273,077.10 and requested additional time “to settle all Piedmont matters.” According to Mr. Shirazi’s testimony at the Hearing, Aseman also phoned Piedmont and sent it a telex, requesting that the properties not be sold. This telex is not on record.

613. In a letter to OFAC dated 10 September 1990, Mr. Schneider stated that, on the eve of the sale, he received a telephone call from a man in Iran who introduced himself as the attorney for the airlines and requested that the sale be postponed, so that payment of the amounts owed Piedmont could be arranged. According to Mr. Schneider, he replied that this offer of payment was too indefinite and uncertain, that the sale would proceed, and that he would provide the attorney with names of persons who could act as the attorney’s agents to bid at the sale.

614. The record shows that the sale of the G-131 Items took place as scheduled. By letter dated 2 June 1989 to the State Department, Mr. Schneider advised that, although the auction had been publicized and the Iranian companies had been notified, Piedmont was the only bidder, and the G-131 Items were placed into Piedmont’s inventory after the auction.

615. By letter dated 10 September 1990, Mr. Schneider informed OFAC that “a determination was recently made that the property was not government owned at the time that it was sold to satisfy mechanics liens.”

616. On 17 September 1984, the United States submitted its report on Iranian tangible properties to the Tribunal, indicating that the G-131 Items were “subject to statutory artisan and other liens.” This was reiterated in its 30 October 1985 report on Iranian tangible properties. In its 5 July 1990 report on Iranian tangible properties, the United States stated that “[Piedmont] ultimately executed on its workmen’s liens, and held a public sale early in 1981.”

(c) *The Parties' Contentions*

Iran's Contentions

617. Iran contends that, on 19 January 1981, the G-131 Items were within the jurisdiction of the United States. Iran further argues that, starting on 26 June 1980, Aseman became the uncontested owner of the G-131 Items through the nationalization and merger of Air Taxi, Air Service, Pars Air, and Hoor Aseman.

618. Iran submits that the nationalization of these four companies and the establishment of Aseman on 26 June 1980 were contemporaneously communicated via telex to all foreign contractual partners, including Piedmont. Iran relies on the letter dated 6 March 1981 from Piedmont to OFAC to show that both Piedmont and the United States were contemporaneously aware of this fact.

619. Iran also notes that, while the United States does not dispute that, on 19 January 1981, Aseman was a government-controlled entity, it argues that Piedmont did not know that it was. Iran submits that this is irrelevant for purposes of the United States' obligation under Paragraph 9. In any event, according to Iran, the evidence suggests that both Piedmont and the United States knew on 19 January 1981 that Aseman was a government-controlled entity. Iran relies on Mr. Shirazi's affidavit, in which he indicated that all companies doing business with Air Taxi, Air Service, and Pars Air were notified of the merger by a circular telex prior to 19 January 1981. Iran also relies on the telex sent to Air Governor on 3 November 1980. Furthermore, Iran points out that Piedmont was concerned that Air Taxi was a government-controlled entity, and that it shared this concern with OFAC, as evidenced by its letter dated 6 March 1981.

620. Iran further argues that the G-131 Items were not transferred to Iran because they were contested and/or subject to a lien, as evidenced, among others, by the United States' 1984 and 1985 reports on Iranian tangible properties.⁴¹¹

The United States' Contentions

621. The United States argues that Iran has failed to prove that any Iranian government-controlled entity owned the G-131 Items. Moreover, the United States contends that Iran has

⁴¹¹ See *supra* para. 616.

failed to prove that Aseman: (i) provided Piedmont or the United States with timely notice of the fact that it was a government-controlled entity; (ii) gave adequate instructions to Piedmont regarding the transfer of the G-131 Items to Iran; or (iii) provided the funds necessary to effect the transfer. As a result, the United States submits that it was not in a position to arrange for the transfer of the G-131 Items prior to their auction on 14 April 1981, and that after the auction, it became impossible to effect the transfer.

622. The United States also disputes that Aseman was controlled by Iran on 19 January 1981. The United States questions Iran's reliance on the letter sent to Aircraft Governor in November 1980 to show that Aseman informed Piedmont of the nationalization and merger, since there is no evidence showing that such a communication was ever sent to Piedmont. The United States argues that Iran did not inform Piedmont of Aseman's government-controlled status until the letter of 12 April 1981, which was probably received by Piedmont after the 14 April 1981 auction. The United States also notes that Piedmont received assurances in April and July 1980 that Air Taxi and Air Service were still private companies. Therefore, according to the United States, there is no evidence that Iran informed Piedmont that the G-131 Items at issue were "Iranian properties" for the purposes of Paragraph 9.

623. Assuming, *arguendo*, that the Tribunal concludes that the G-131 Items were owned by Iran on 19 January 1981, and that Piedmont was aware of Air Taxi's nationalization and Aseman's government-controlled status, the United States argues that none of the evidence in the record shows that Aseman directed Piedmont to transfer the G-131 Items to Iran or provided sufficient funds to direct that transfer. Without such instructions, the United States submits, there was no obligation on the part of the property holder to transfer the property, or on the part of the United States to arrange for the transfer.

624. According to the United States, Iran has failed to show that it notified the United States of any problems relating to the G-131 Items being held by Piedmont until 31 August 1983, when Iran submitted this Claim to the Tribunal, more than two years after the auction of the parts had taken place. The United States considers that, given the lack of instructions from Iran, neither Piedmont nor the United States had a basis either to treat these items as government-owned, or to arrange for their transfer to Iran.

(d) *The Tribunal's Decision*

625. There is no dispute that the G-131 Items were located within the jurisdiction of the United States on 19 January 1981.

626. The first issue for the Tribunal to decide is whether Air Taxi, Air Service, and Pars Air, all of which were merged into Aseman in June 1980, fall within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration. In light of the evidence presented and, in particular, the 26 June 1980 Bill, the Tribunal is convinced that, on that date, Air Taxi, Air Service, and Pars Air were nationalized by Iran and merged into Aseman, a government-controlled entity. Therefore, Aseman falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

627. Based on the foregoing, the Tribunal concludes that the G-131 Items were solely owned by Iran on 19 January 1981. Consequently, the G-131 Items qualify as “Iranian properties” within the scope of Paragraph 9.

628. The United States has argued that Iran failed to inform Piedmont and the United States of Aseman’s government-controlled status prior to the date of the auction of the G-131 Items. Upon analysis, the Tribunal holds that, on balance, the evidence weighs more heavily in favor of finding that, following the merger of the Iranian entities into Aseman, Piedmont was informed of this occurrence, or at least had reason to believe that this merger had occurred prior to the date of the auction. In reaching this conclusion, the Tribunal takes into account the following factors. First, Mr. Shirazi testified that all companies doing business with the Iranian entities nationalized and merged into Aseman were immediately informed of the merger upon the passage of the 26 June 1980 Bill.⁴¹² Second, the record contains communications sent to other United States business partners of Air Taxi, informing them of the nationalization and merger; this strongly suggests that Piedmont would also have received a similar communication.⁴¹³ Third, and critically, the letter sent by Piedmont to OFAC dated 6 March 1981 shows that Piedmont had been told by OFAC officials that “one of the companies may be [an] Iranian entit[y],” and that Piedmont had concerns regarding the auction of the G-131 Items.⁴¹⁴ In light of the above, to the extent that it is even relevant to the decision

⁴¹² See *supra* para. 607.

⁴¹³ See *id.*

⁴¹⁴ See *supra* para. 603.

of the present Claim, the Tribunal concludes that Piedmont was aware that Aseman was government-controlled prior to the auction of those items.

629. The Tribunal now turns to the question of whether the United States has satisfied its obligation under Paragraph 9 with respect to the G-131 Items. In Award No. 529, the Tribunal has held that United States Treasury Regulations that excluded from the transfer direction of Executive Order No. 12281 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, defenses, counterclaims, set-offs, or similar reasons were inconsistent with the obligations of the United States under the General Declaration.⁴¹⁵ On the record that was before it when it rendered Award No. 529, the Tribunal was not in a position to determine the relevant facts with respect to any particular property. The Tribunal makes that determination now with respect to the G-131 Items.

630. There is no serious dispute, and the evidence bears out such conclusion, that Piedmont was unwilling to deliver the G-131 Items to Air Taxi/Aseman until after the latter had paid the outstanding storage and security costs relating to the G-131 Items. Among others, the following circumstances are of particular relevance in this context:

- (a) the 6 March 1981 letter sent by Piedmont to OFAC makes clear that the reason why Piedmont retained the G-131 Items was because Air Taxi, Air Service, and Pars Air allegedly owed Piedmont USD 395,500;⁴¹⁶
- (b) in the 10 September 1990 letter that Piedmont sent to OFAC, Piedmont expressly stated that the G-131 Items had been sold "to satisfy mechanics liens";⁴¹⁷
- (c) furthermore, the United States, in its 1984 and 1985 reports on Iranian tangible properties to the Tribunal, considered the G-131 Items to be contested property "subject to statutory artisan and other liens."⁴¹⁸

⁴¹⁵ See Award No. 529, para. 77 (d), 28 IRAN-U.S. C.T.R. at 140.

⁴¹⁶ See *supra* paras. 608-610.

⁴¹⁷ See *supra* para. 615.

⁴¹⁸ See *supra* para. 616.

631. Based on the evidence presented, the Tribunal finds that Piedmont retained the G-131 Items in the United States, and subsequently sold them at auction, because of an unpaid debt, and that, consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States breached its obligations under the General Declaration with respect to Iranian tangible properties, and its international responsibility is engaged.

632. The Tribunal further finds 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.⁴¹⁹

(9) Claim G-146 (Aseman Airlines/Aircraft Governor Inc.)

(a) *Introduction*

633. In Claim G-146, Iran seeks a maximum of USD 155,519, plus interest, as direct damages allegedly incurred as a result of the United States' failure to arrange for the transfer of certain aircraft parts that had been sent to the United States for repair. Iran also claims USD 50,000 in consequential damages for loss of use.

(b) *Factual Background*

634. At issue in this Claim are six airplane parts, namely, five propeller assemblies and one fuel pressure transmitter ("G-146 Items"), which Iran asserts were sent for repair by Air Taxi, then a private company acting as agent of Air Service, to Aircraft Governor Inc. ("Aircraft Governor"), a United States company.

635. In the late 1970s, Air Taxi sent various aircraft parts to Aircraft Governor for repair.

636. On 10 March 1978, Aircraft Governor sent a telex to Air Taxi, indicating, *inter alia*, that shipments of parts were being made and requesting that Air Taxi transfer USD 20,000 to cover shipment costs.

637. By telex dated 22 May 1978, Air Taxi requested that Aircraft Governor follow-up on certain overhaul orders and "do all possible to ship items immediately."

⁴¹⁹ See *supra* para. 12.

638. On 10 January 1979, Aircraft Governor sent an invoice to Air Taxi for USD 184.03, indicating that the fuel pressure transmitter had been “repaired and tested.” In the field “date shipped,” Air Governor’s invoice specifies 10 January 1979. The record also contains a shipping document dated 10 January 1979, titled “Shipper’s Letter of Instructions,” issued by the shipping company Inter-Continental Custom Brokers, Inc. (“ICCB”), covering “1 carton [of] aircraft parts,” which specifies that: (i) the “declared value” of the items for customs was USD 184.03; (ii) Aircraft Governor was the shipper; and (iii) Air Taxi was the ultimate consignee.

639. At some point in 1979, Air Taxi fell behind on its payments to Aircraft Governor. By telex dated 1 August 1979, Aircraft Governor sent a formal notice to Air Taxi, advising that, due to Air Taxi’s inability to settle Aircraft Governor’s charges in “excess of [almost] one year,” Aircraft Governor would take possession of all of Air Taxi’s materials located at Aircraft Governor’s facilities in order to recoup its charges.

640. By telex dated 26 September 1979, Air Taxi advised Aircraft Governor that arrangements were being made to settle the all pending accounts with Aircraft Governor “in the very near future.”

641. As noted above,⁴²⁰ on 26 June 1980, Air Taxi, together with other airline companies, was nationalized by the Revolutionary Council of the Islamic Republic of Iran through the 26 June 1980 Bill and merged into Aseman.

642. At the Hearing, as noted, Mr. Shirazi, who was the Deputy Director General for Financial Affairs of Air Taxi at the time, testified that the Iranian Ministries of Roads and Transportation, of Social Welfare, and of Finance and Economic Affairs became the shareholders of the nationalized airline companies, including Air Taxi.⁴²¹

643. Mr. Shirazi further testified, at the Hearing and in his affidavit, that all companies that had been doing business with the nationalized airlines were immediately informed by circular telex of the nationalization of the airlines and their merger into Aseman.⁴²²

⁴²⁰ See *supra* para. 604.

⁴²¹ See *supra* para. 606.

⁴²² See *supra* para. 607.

644. By telex dated 3 November 1980, Aseman informed Aircraft Governor of the merger of Air Taxi, Pars Air, Air Service and Hoor Aseman Co. into Aseman Aviation Services. Aseman further stated that it would settle all outstanding debts due to Aircraft Governor as soon as the situation generated by the then ongoing war between Iran and Iraq came under control.

645. There is no evidence indicating that, between the end of 1980 and 1986, Aircraft Governor and Aseman communicated with each other regarding the G-146 Items or the outstanding payments. An internal State Department note dated 24 September 1985 in evidence, reporting on a telephone conversation with Aircraft Governor, indicates that: (i) Aircraft Governor had difficulties locating some of the documentation regarding the G-146 Items; (ii) Aircraft Governor no longer had an overhauling division; (iii) the items at issue had been given “to other people” for overhaul; (iv) Aircraft Governor had moved the items in storage to different locations numerous times; and (v) Iran had outstanding invoices with Aircraft Governor totaling USD 20,000-USD 30,000.

646. In a telex dated 23 October 1986 to Aircraft Governor, Aseman advised that former Air Taxi’s records indicated that “some parts which were sent to [Aircraft Governor] for [repair and overhaul] in 1977-1978 still remained with [Aircraft Governor].” Aseman requested that Aircraft Governor investigate and advise. On 2 December 1986, Aseman sent a further telex to Aircraft Governor, reiterating its request for an update on the status of the parts.

647. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States indicated that it needed more information concerning the G-146 Items. In its 30 October 1985 report on Iranian tangible properties, the United States indicated that Aseman owed Aircraft Governor USD 20,000-USD 30,000 on unpaid invoices. In its 5 July 1990 report on Iranian tangible properties, the United States stated that Aircraft Governor had shipped some spare parts to Iran in 1978, cancelled some orders, and scrapped other parts to mitigate losses caused by Iran’s non-payment of workmen’s liens in the amount of approximately USD 24,000.

648. In the early 1990s, Aircraft Governor went out of business.

(c) *The Parties' Contentions*

Iran's Contentions

649. Iran maintains that Aseman, a government-owned company, was established on 26 June 1980, following the merger of several Iranian airlines, including Air Taxi. Iran contends that the nationalization of the airlines was communicated contemporaneously to all foreign contractual partners, including Aircraft Governor. According to Iran, it is irrelevant whether Aircraft Governor had knowledge of the nationalization, since it is the United States' responsibility under Paragraph 9 that is to be assessed in this Claim, and the United States knew, and is not denying, that Aseman was a government-owned company for the purposes of the Algiers Declarations.

650. Iran argues that it met its burden of proving that the G-146 Items were in existence and still held by Aircraft Governor on 19 January 1981.

651. According to Iran, in its reports to the Tribunal on Iranian tangible properties, the United States did not contest the existence of the items within its jurisdiction on that date, but rather only noted that payments by Aseman to Aircraft Governor were outstanding.

652. With regard to the fuel pressure transmitter, Iran states that Aircraft Governor's invoice dated 10 January 1979 does not constitute sufficient evidence that the item was actually shipped to Air Taxi.

653. With regard to the propeller assemblies, Iran states that it is evident from other documents on record that Air Taxi always sent a receipt to Aircraft Governor upon receipt of an item. Since no such receipt could be found for the propeller assemblies, Iran asserts, it is established that they have never been returned.

654. For Iran, the reason why the G-146 Items were not transferred was because they were subject to a lien in favor of Aircraft Governor.

655. Iran denies that it had any obligation to facilitate the performance by the United States of its Paragraph 9 obligation. Iran notes that, in any event, Aseman consistently required and directed Aircraft Governor to return the items. In support, Iran relies on various communications both prior to and after 19 January 1981, requesting that Aircraft Governor return the items and showing its willingness to settle outstanding debts.

656. In light of the above, Iran contends that the United States breached its Paragraph 9 obligation to arrange for the transfer of the G-146 Items to Iran.

The United States' Contentions

657. The United States argues that Aseman failed to notify Aircraft Governor in a timely manner that Air Taxi had been merged into an Iranian government entity.

658. Further, the United States regards as established that the fuel pressure transmitter had been returned to Iran before the conclusion of the Algiers Declaration, as shown by Aircraft Governor's 10 October 1979 invoice.

659. Concerning two of the five propeller assemblies, the United States asserts, there is no evidence establishing that they were ever shipped to Aircraft Governor.

660. Finally, relying on the 1 August 1979 telex from Aircraft Governor,⁴²³ the United States asserts that three of the five propeller assemblies were sold before 14 November 1979 in order to settle Air Taxi's debt to Aircraft Governor.

661. The United States emphasizes that Aircraft Governor had acted in accordance with California law, and that no further steps could be expected from the United States in the absence of proper direction and indication from Iran.

662. In light of the circumstances described above, the United States asserts, the Unlawful Treasury Regulations could not have been the cause of any non-transfer of the G-146 Items to Iran and are irrelevant to this Claim.

663. According to the United States, the fact that its 30 October 1985 report to the Tribunal on Iranian tangible properties mentioned that Aseman owed Aircraft Governor USD 20,000-USD 30,000 on unpaid invoices does not show, contrary to Iran's arguments, that the G-146 Items were still held by Aircraft Governor on 19 January 1981. The United States reiterates in this connection that its reports on Iranian tangible properties are not definitive legal statements, which, it asserts, is clear here, because, in its report of 5 July 1990, the United States observed:

⁴²³ See *supra* para. 639.

“Company shipped some spare parts to Iran in 1978, cancelled other orders and sold remaining parts to mitigate losses caused by Iran’s nonpayment Entities not GOI-controlled at time.”

(d) *The Tribunal’s Decision*

664. As noted,⁴²⁴ Aseman falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

665. The Tribunal turns to the question whether the G-146 Items existed within the jurisdiction of the United States on 19 January 1981.

666. Concerning the fuel pressure transmitter, the Tribunal notes that the 10 January 1979 invoice from Aircraft Governor for USD 184.03 indicates that the fuel pressure transmitter had been repaired and tested by 10 January 1979.⁴²⁵ The invoice also establishes that the transmitter was ready to be sent to Iran on or around 10 January 1979, the date of the invoice. Further, the shipping document issued by ICCB strongly suggests that the fuel pressure transmitter was ready for shipment to Air Taxi in Iran by 10 January 1979.⁴²⁶

667. In light of these documents, the Tribunal concludes that it is more than likely than not that the fuel pressure transmitter had been returned to Iran long before 19 January 1981. Accordingly, the Tribunal holds that this item was not within the jurisdiction of the United States on that date.

668. Concerning the five propeller assemblies, given the paucity of the evidence on record, the Tribunal is not in a position to determine with certainty whether they were within the jurisdiction of the United States on 19 January 1981. The evidence only establishes that they were with Aircraft Governor on 1 August 1979, the date of Aircraft Governor’s telex to Air Taxi, advising that, due to Air Taxi’s inability to settle Aircraft Governor’s charges, Aircraft Governor was taking possession of all of Air Taxi’s materials with Aircraft Governor to recoup Aircraft Governor’s charges.⁴²⁷ That the propeller assemblies were in Air Governor’s possession on 1 August 1979, however, does not necessarily mean that they were still within the jurisdiction of the United States on 19 January 1981, and the Tribunal, on the present record,

⁴²⁴ See *supra* para. 626.

⁴²⁵ See *supra* para. 638.

⁴²⁶ See *id.*

⁴²⁷ See *supra* para. 639.

is not prepared to presume that they were. It is more likely that Air Governor sold the propeller assemblies long before that date to recoup the unpaid charges owed by Air Taxi.

669. In view of its holdings, *supra*, the Tribunal need not address the question whether Air Governor had been made aware that Aseman was a government-controlled entity on 19 January 1981.

670. In light of the foregoing, the Tribunal rejects Claim G-146.

(10) Claim Supp. (1)-3 (Ministry of Agriculture of Iran/
EROS/ERIM)

(a) *Introduction*

671. In Claim Supp. (1)-3, Iran seeks USD 2,080, plus interest, for damages allegedly incurred as a result of the United States' failure to arrange for the transfer of 12 magnetic tapes containing satellite images of fields in northern Iran, purchased by the Mechanical Services Bureau of the Ministry of Agriculture of Iran ("Ministry") in 1978 from EROS Data Center, United States Geological Survey ("EROS"), which is part of the United States Department of the Interior.

(b) *Factual Background*

672. On 31 August 1978, the Ministry ordered 20 magnetic tapes "(Tapes)" from EROS that contained satellite images of fields in northern Iran. The Ministry paid USD 4,000 for these Tapes (*i.e.*, USD 200 per tape) by check No. 51367 dated 7 September 1978.

673. On 19 August 1978, *i.e.*, shortly before placing the order for the 20 Tapes, the Ministry had entered into a separate contract with another United States company, the Environmental Research Institute of Michigan ("ERIM"), for an analysis of the images on the Tapes for the purpose of increasing rice production in the Caspian Sea Region. The contract apparently provided that ERIM was to perform its work between 19 August and 30 December 1978.

674. When placing its 31 August 1978 order for the 20 Tapes, the Ministry requested that EROS urgently deliver five of the Tapes to ERIM, who would then hand-carry the Tapes to Tehran.

675. According to the statement of claim submitted by the United States on behalf of ERIM in Case No. 10009,⁴²⁸ ERIM had performed the first phase of its contract with the Ministry by October 1978 and issued an invoice. However, ERIM stated that the Ministry never paid this invoice. In November 1978, ERIM stopped work as a result.

676. By letter dated 1 February 1979, EROS informed the Ministry that one of the Tapes could not be processed into digital format. EROS offered to issue substitute images and indicated that, if the Ministry did not respond, EROS would provide a refund. The record contains no evidence of a response from the Ministry.

677. Two warehouse receipts from the Ministry dated 20 March 1979 and 23 March 1980, respectively, show that eight of the Tapes were received from EROS. Iran contends that only those eight Tapes were ever received by the Ministry in Iran, whereas the United States contends that a total of 13 Tapes were received (*i.e.*, the eight Tapes for which receipt is established by the warehouse receipts and the five Tapes that the Ministry requested be transported by ERIM).

678. By letter dated 16 October 1979, EROS informed the Ministry that its account had been inactive for more than 90 days and had a credit balance of USD 1,400. EROS asked the Ministry to confirm within 60 days if it wanted the account to remain open and stated that the account would be closed and the balance refunded if no response was received. The record contains no evidence of a reply to this letter.

679. On 19 January 1982, the United States presented a statement of claim on behalf of ERIM in Case No. 10009, alleging that the Ministry had breached the contract between ERIM and the Ministry by failing to pay ERIM.

680. On 27 September 1983, Iran added Claim Supp. (1)-3 to the present Cases and identified “Geological Survey, Eros Data Center, Sioux Falls, South Dakota,” as the “possessor/vendor” of “12 computer tapes” in the United States.

681. Following the filing of these Claims with the Tribunal, the United States exchanged correspondence with ERIM concerning, *inter alia*, evidence that the five Tapes described

⁴²⁸ See *infra* para. 679.

above had been shipped to Iran. Case No. 10009 was settled through the Small Claims Settlement Agreement concluded between Iran and the United States in June 1990.

(c) *The Parties' Contentions*

Preliminary Issue: The Small Claims Settlement Agreement

682. The United States argues, as preliminary grounds for dismissal, that Claim Supp. (1)-3 must be dismissed because it falls within the scope of the Small Claims Settlement Agreement.⁴²⁹ According to the United States, under Article VI of the Small Claims Settlement Agreement, Iran “agreed to release an extremely broad universe of claims or potential claims against the United States.” The United States also submits that the release was not limited to counterclaims that could have been brought in small claims proceedings, as Iran argues, but encompassed disputes connected or related to claims that have been raised, could have been raised, or might be raised in the future. Thus, the United States argues that because Claim Supp. (1)-3 is closely related to Case No. 10009, the Small Claims Settlement Agreement bars this Claim.

683. The United States also contends that ERIM was heavily involved in EROS’ transaction, satisfying the “related to” requirement found in the Small Claims Settlement Agreement. According to the United States, the transactions between the Ministry and EROS and ERIM were intimately connected, so the Ministry’s contract with EROS must be considered as a matter “relating to” ERIM’s settled small claim.

684. The United States contends that Iran’s argument that Iran could not have brought the claim against EROS as a counterclaim in Case No. 10009 is irrelevant because Iran agreed to release the United States not only from counterclaims but from a much broader range of “disputes, differences, claims . . . and matters . . . related to” the settled claims. The United States’ position is that, on the basis of the Tribunal’s jurisprudence, Claim Supp. (1)-3 could have been brought as a counterclaim in Case No. 10009 because the dispute, even if it did not arise from the same contract, arose from the same “transaction or occurrence.”

685. In response to Iran’s argument that this Claim is not barred by the Small Claims Settlement Agreement because the seller of the Tapes was EROS, while Case No. 10009 was

⁴²⁹ See *supra* para. 360.

brought on behalf of ERIM, the United States submits that the Small Claims Settlement Agreement does not require the parties to be identical, as long as the matters are related. Moreover, the United States points out that Iran itself claims that ERIM possesses certain of the Tapes, making it a relevant party to the transaction. In response to Iran's argument that the subject matter of the transactions with EROS and ERIM is different, the United States contends that both transactions concern the Tapes and that the two transactions are closely intertwined.

686. In response to Iran's argument that the Small Claims Settlement Agreement settled only the claims listed in the agreement (*i.e.*, not A claims), the United States submits that the list of settled claims did not circumscribe Article VI thereof. The United States also notes that Iran's concession that five of the Tapes seem to have been delivered by EROS to ERIM is further evidence that this Claim is within the scope of the Small Claims Settlement Agreement.

687. Iran for its part argues that there is no relationship between the Small Claims Settlement Agreement, which settled Case No. 10009, and Claim Supp. (1)-3, and that both claims were filed separately and followed their own proceedings. According to Iran, for a claim to be related, for the purpose of the Small Claims Settlement Agreement, there has to be a unity of Respondent, Claimant, subject matter, and the origin of the claim. However, in this case, the parties to each claim are different; Case No. 10009 was filed on behalf of ERIM, while Claim Supp. (1)-3 relates to Tapes purchased from EROS. In addition, Iran notes that while Claim Supp. (1)-3 arose from the United States' failure to arrange for the transfer of the Tapes to Iran, Case No. 10009 arose from a contract that was entered into between ERIM and the Ministry for different services. Thus, according to Iran, the purchase of the 20 Tapes from EROS cannot be considered to be the same transaction as the services contract signed with ERIM.

688. Iran also argues that, by signing the Small Claims Settlement Agreement, the Parties did not intend to settle any of the existing disputes between the two Governments concerning the interpretation and application of the Algiers Declarations. Notwithstanding the wording in Article VI of the Small Claims Settlement Agreement, the Parties included a list of all the pending cases to be settled. According to Iran, no mention was made in that list to any aspect of the present Cases.

Remaining Issues: Iran's Contentions

689. Iran concedes that: (i) five of the Tapes were delivered to ERIM; and (ii) the remaining seven Tapes could not be delivered, and, thus, EROS owed the Ministry a refund. However,

Iran maintains its claim for damages because the Ministry did not receive the five Tapes that were delivered to ERIM and did not receive the USD 1,400 refund from EROS.

690. Iran argues that, upon delivery of the five Tapes to ERIM, title thereto passed to Iran. Therefore, Iran submits that, as the United States has acknowledged delivery of the five Tapes to ERIM, the question of title to those Tapes is not at issue. In response to the United States' argument that Iran has failed to prove that it did not receive the five Tapes from ERIM, Iran argues that it should not be asked to prove a negative and, if delivery had in fact taken place, the United States should have been able to produce evidence thereof.

691. As regards the remaining seven Tapes, Iran argues that there is no evidence that EROS refunded the cost of those Tapes to the Ministry. Iran contends that the letter sent by EROS on 16 October 1979, mentioning the possibility of a refund, does not prove that the refund was made.

692. Iran further argues that it must be presumed that the 12 Tapes were not transferred due to the Unlawful Treasury Regulations, because they were contested and/or subject to a lien.

Remaining Issues: The United States' Contentions

693. The United States argues that Iran has not shown that the Tapes were within the jurisdiction of the United States on 19 January 1981. In particular, the United States contends on the basis of the letter dated 31 August 1978 described above that the five Tapes that ERIM was instructed to hand-deliver to Iran were delivered to Iran. The United States submits that Iran has failed to prove that this delivery did not occur, or that any contemporaneous objections were made concerning non-delivery. With regards to the remaining seven Tapes, the United States contends that Iran received a full refund and, thus, has no claim against EROS or the United States. The United States maintains that the evidence shows that those Tapes could not be produced, that the Ministry was offered a refund of USD 1,400, and that there is no contemporaneous evidence suggesting that the refund was not made.

694. Even if the Tribunal finds that the Tapes were within the jurisdiction of the United States on 19 January 1981, the United States argues that Iran has failed to prove that the Ministry held title to the Tapes on that date. According to the United States, in the absence of a contractual provision regulating transfer of title, the Tribunal should look to the law of Michigan to decide the issue of title as the place where ERIM, the alleged holder of the five

Tapes, was based. Since Iran alleges that delivery never occurred, title would not have passed to the Ministry and, thus, the five Tapes would not be “Iranian properties” for the purpose of Paragraph 9.

695. Furthermore, the United States argues that, in any event, Iran has failed to show that, following the Algiers Declarations, it directed EROS and/or ERIM to transfer the Tapes. According to the United States, Iran has further failed to show that it notified the United States of its need for assistance in transferring the Tapes prior to its submission of 31 August 1983 in the present Cases.

696. The United States also argues that Iran has not shown what additional steps the United States should reasonably have taken to arrange for the transfer of the Tapes. The United States notes that, once it was given notice of the present Claim, it promptly contacted ERIM to inquire about five of the Tapes and continued to correspond with ERIM in 1989 to ensure that the United States had done everything possible to arrange for their transfer.

(d) *The Tribunal’s Decision*

697. In light of Iran’s latest position at the Hearing, there are two separate sets of items regarding which the Tribunal must make a determination, namely: (i) the five Tapes admittedly delivered to ERIM; and (ii) the advance payment made by the Ministry for the seven remaining Tapes.

Preliminary Issue: The Small Claims Settlement Agreement and Iran’s Claim for Damages for the Non-Delivery to Iran of the Five Tapes

698. The Tribunal first considers whether Iran’s Claim Supp. (1)-3 is barred by the Small Claims Settlement Agreement.

699. As noted earlier,⁴³⁰ according to its Article II (i), the scope and subject matter of the Small Claims Settlement Agreement was to

settle, dismiss, and terminate definitively, forever and with prejudice all the disputes, differences, claims, counterclaims and matters directly or indirectly raised or capable of arising out of the relationships, contracts, transactions,

⁴³⁰ See *supra* para. 372.

occurrences, obligations, rights and interests contained in, arising out of, or related to the Claims of less than \$250,000, Case No. 86 and Case No. B38.⁴³¹

700. Furthermore, the Tribunal recalls the release agreement contained in Article VI(ii) of the Small Claims Settlement Agreement, by which Iran agreed to release the United States from

any and all claims, causes of action, rights, interests and demands . . . past, present or future, which have been raised, may in the future be raised, or could have been raised in connection with disputes, differences, claims, counterclaims and matters stated in, related to, arising, or capable or arising from the Claims of less than \$250,000 . . .⁴³²

701. In light of the above, the threshold issue before the Tribunal is whether Claim Supp. (1)-3, insofar as it concerns the five Tapes delivered to ERIM, could have arisen, or was capable of arising, out of the “relationships, contracts, transactions, occurrences, obligations, rights and interests contained in, arising out of, or related to” Case No. 10009. If answered in the affirmative, the Small Claims Settlement Agreement would bar Iran’s claim insofar as it concerns the five Tapes.

702. On the one hand, Case No. 10009 related to an alleged breach by the Ministry of its contract with ERIM. As noted,⁴³³ the contract provided for ERIM to analyze images stored on the Tapes acquired by the Ministry from EROS under a separate contract. On the other hand, the subject matter of Claim Supp. (1)-3 concerns: (i) five of the Tapes, which, due to the instructions provided by the Ministry in its communication of 31 August 1978,⁴³⁴ were delivered to ERIM in Michigan, who in turn was tasked with delivering them to the Ministry; and (ii) a refund of USD 1,400 for the seven Tapes that were admittedly not produced.

703. The Tribunal acknowledges that the Ministry had two separate contracts with EROS and ERIM, respectively, for the purchase of the Tapes and for the analysis of the images stored on the Tapes. However, the two disputes (Case No. 10009 and Claim Supp. (1)-3) are closely connected and certainly refer to the same transaction or occurrence. This is particularly the

⁴³¹ *United States of America and Islamic Republic of Iran*, Award No. 483-Claims of Less than US \$250,000/86/B38/B76/B77-FT, “Settlement Agreement in Claims of Less than \$250,000, Case No. 86 and Case No. B38,” art. II (i) (22 June 1990), *reprinted* in 25 IRAN-U.S. C.T.R. 327, 333.

⁴³² *See supra* para. 373.

⁴³³ *See supra* para. 673.

⁴³⁴ *See supra* para. 674,

case with regard to the five Tapes delivered to ERIM per the instructions of the Ministry. By providing instructions to EROS to deliver the five Tapes to ERIM for their delivery to Iran, and since those five Tapes were in fact, as acknowledged by Iran, delivered to ERIM, the Ministry created a greater connection between the two contracts. Not only did both contracts relate to the same Tapes (one for their purchase and another one for their analysis), but, in accordance with the Ministry's instructions, five Tapes were delivered by EROS to ERIM to be hand-carried to Iran. Therefore, Iran could have chosen to raise its claim for the five Tapes within the context of Case No. 10009.

704. The Small Claims Settlement Agreement was concluded in 1990 in order to settle definitively, forever and with prejudice all disputes, differences, claims, counterclaims and matters outstanding or capable of arising in relation to the Claims of less than \$250,000, Case No. 86, and Case No. B38.⁴³⁵ To that end, the Small Claims Settlement Agreement contains provisions requiring both Iran and the United States to release each other "from any and all claims, causes of action, rights, interests and demands" that are related to a settled small claim and Cases Nos. 86 and B38.⁴³⁶

705. For the foregoing reasons, the Tribunal finds that, in accordance with Articles II and VI of the Small Claims Settlement Agreement, Iran agreed to release and waive any action in relation to the five Tapes admittedly delivered to ERIM, since they were capable of arising in relation to Case No. 10009. Therefore, the Tribunal finds that Iran's claim for the five Tapes is barred by the Small Claims Settlement Agreement.

Claim for the Advance Payment

706. At the Hearing, Iran agreed that the remaining seven Tapes could not be delivered and therefore asserted that it is entitled to a refund of USD 1,400.

707. As noted above, the Tribunal, in Award No. 529, held that the scope of "Iranian properties" in Paragraph 9 was restricted exclusively to tangible properties that can be "solely

⁴³⁵ See *United States of America and Islamic Republic of Iran*, Award No. 483-Claims of Less than US \$250,000/86/B38/B76/B77-FT, "Settlement Agreement in Claims of Less than \$250,000, Case No. 86 and Case No. B38," art. II (i) (22 June 1990), reprinted in 25 IRAN-U.S. C.T.R. 327, 333.

⁴³⁶ *United States of America*, Award No. 483-Claims of Less than US \$250,000/86/B38/B76/B77-FT, "Settlement Agreement in Claims of Less than \$250,000, Case No. 86 and Case No. B38," art. VI (i)-(ii), 25 IRAN-U.S. C.T.R. at 335-36.

owned.”⁴³⁷ A liability due to Iran clearly does not represent a tangible item of property but, at most, an interest in property. As such, it does not fall within the scope of “Iranian properties” in accordance with Paragraph 9. Consequently, the Tribunal dismisses Iran’s claim for the return of the advance payment based on Paragraph 9.

708. For the reasons stated earlier in this Partial Award, the Tribunal likewise dismisses Iran’s alternative claims for the return of the advance payment based on Paragraph 8 and General Principle A.⁴³⁸

Overall Conclusion

709. In view of the above, the Tribunal dismisses Claim Supp. (1)-3 in its entirety.

(11) Claims Supp. (2)-44 and (2)-56 (Iran Air/Airesearch Manufacturing Co.)

(a) Introduction

710. In Claim Supp. (2)-44, Iran seeks a maximum of USD 38,056 as direct damages resulting from the United States’ alleged failure to arrange for the transfer to Iran of four heat exchangers, four water separators, eight thermal switches, and 300 O-rings purchased by Iran Air from Airesearch Manufacturing Company (“Airesearch”); Iran also seeks USD 3,655.72 for legal fees and expenses incurred by Iran Air. In the alternative, if the Tribunal concludes that the properties at issue were not within the jurisdiction of the United States or were not Iranian properties on 19 January 1981, Iran seeks reimbursement of USD 30,982.30 in advance payments that Iran Air allegedly made to Airesearch. Iran claims interest on all amounts sought.

711. In Claim Supp. (2)-56, Iran seeks a maximum of USD 46,729 as direct damages resulting from the United States’ alleged failure to arrange for the transfer of a rotary actuator and two fan assemblies sent by Iran Air to Airesearch for repair. Iran also seeks USD 3,686.30 for legal fees and expenses incurred by Iran Air. Iran claims interest on all amounts sought.

⁴³⁷ See *supra* para. 99.

⁴³⁸ See *supra* paras. 223-232 & 247.

(b) *Factual Background*

712. Claim Supp. (2)-44 relates to certain aircraft parts that Iran Air ordered from Airesearch, a now-defunct company, under Purchase Orders Nos. 54666, 56093, and 57640.

713. On 13 September 1978, Airesearch issued the first of these purchase orders, Purchase Order No. 54666, for four heat exchangers and four water separators. On 27 September 1979, Airesearch issued a corresponding invoice in the amount of USD 25,480. On 17 October 1979, Iran Air issued a check to Airesearch for this amount; this check refers to "PO 24658."

714. On 15 February 1979, Airesearch issued Purchase Order No. 57640 covering "packing" for a total price of USD 285. No corresponding invoice or evidence of payment relating to this purchase order is on record.

715. On 12 August 1979, Iran Air issued check No. 9582 payable to Airesearch in the amount of USD 5,127.30. No corresponding purchase order or invoice for this amount is on record.

716. Claim Supp. (2)-56 relates to certain aircraft parts that Iran Air sent to Airesearch for repair between 1 February and 5 September 1978. Specifically, Iran Air sent: two rotary actuators on 1 February 1978 under Repair Order No. 25057; parts of an air conditioning system (which appears to be a fan assembly) on 31 July 1978 under Repair Order No. 30923; and another fan assembly on 5 September 1978 under Repair Order No. 29087. The total value of the items sent to Airesearch for repair, as stated on the corresponding shipping documentation, was USD 1,700.

717. The record contains a telex dated 3 May 1980, referencing Purchase Order No. 54666, stating that Airesearch had confirmed that it had received a payment of USD 25,480 from Air Research but that "due to current situation they [will] not [ship] this PO." The sender and the addressee of this telex cannot be readily discerned from its text.

718. On 11 July 1983, Iran Air (or Aseman) wrote a letter to Airesearch, stating, in relevant part:

- 1- PO 54666 was issued to you for 4 . . . heat exchangers and 4 . . . Water Separators and an amount of USD 25480.00 was paid to you . . . which

you have confirmed as having been received by you, but the items were not sent to us Please expedite the items now.

- 2- PO 56093 was issued to you for 10 each P/N 927214-1-1, on which . . . you supplied us only 2 of the item[s,] 8 each of which are still due [P]lease supply we paid you USD 5217.30 . . . and the balance still remains.
- 3- On PO 57640, we ordered 300 each P/N S9413-555 packing which we have also not received though paid to you by check [for] USD 285.00.

We await these consignments now.

719. On 14 October 1983, Iran submitted its second supplement to its Reply to the United States' Statement of Defense in the present Cases. In this submission, Iran listed two items in relation to Airesearch: "spare parts purchased," with a value of USD 251.52, and "[s]pare parts sent for repair," with a value of USD 6,930.

720. On 27 January 1984, in its response to a Tribunal order granting a request by the United States for more information on Iranian properties in the United States, Iran described the property at issue in Claim Supp. (2)-44 as "spare parts purchased and paid for as per attached letter to the supplier" and stated that the value of the property remained "to be determined." In its 14 October 1983 submission, Iran reiterated that the value of the "[s]pare parts sent for repair" at issue in Claim Supp. (2)-56 was USD 6,930.

721. On 16 July 1984, Garrett Turbine Engine Company ("Garrett"), the successor company to Airesearch, wrote to the State Department, advising that Garrett was owed USD 21,207.59 by certain Iranian entities, including Iran Air.

722. On 15 October 1985, Iran Air filed suit against Garrett in the United States District Court for the Eastern District of New York (Docket No. CV-85-3764). Iran Air demanded judgment against Garrett in the amount of USD 30,982.30, which corresponded to the total of the purchase prices of Purchase Orders Nos. 54666, 56093, and 57640.

723. On 27 October 1986, the United States District Court for the Eastern District of New York dismissed Case No. CV-85-3764 on the ground that it had "been reported to the Court that the . . . action ha[d] been settled."

724. In March 1987, Iran Air and Garrett entered into a settlement agreement, pursuant to which Iran Air waived "any rights to parts, money or interest alleged to be owed" to it from Garrett for Purchase Orders Nos. 54666, 56093, and 57640 and Repair Orders Nos. 25057,

29087, and 30923. In exchange, Garrett agreed to pay Iran Air USD 5,000 and waived any rights to money and interest claimed to be owed by Iran Air.

(c) The Parties' Contentions

Preliminary Issue – The Settlement Agreement Between Iran Air and Garrett

725. The United States argues that Claim Supp. (2)-44 and Claim Supp. (2)-56 should be dismissed because Iran has already been compensated through the settlement agreement between Iran Air and Garrett. The United States notes in this regard that the six purchase and repair orders listed on the first page of the settlement agreement between Iran Air and Garrett correspond to the six purchase and repair orders at issue in Claims Supp. (2)-44 and Supp. (2)-56. The United States argues that, through the broad waiver of all claims in the settlement agreement, Iran waived any right it may have had to the properties at issue in these Claims.

726. Iran argues that the March 1987 settlement agreement between Iran Air and Garrett does not relieve the United States of its obligation under Paragraph 9 because the parties in the case before the United States District Court for the Eastern District of New York (Docket No. CV-85-3764) are different from the Parties in the present Cases before the Tribunal. Iran also argues that “[a]ny amounts that Iran Air may have received from Airesearch in a settlement based on a contractual claim has no bearing or relation to the losses to which Iran is entitled” in the present Cases.

Iran's Contentions

727. Iran bases Claim Supp. (2)-44 on Paragraph 9 and, alternatively, on Paragraph 8 and General Principle A. Iran's primary position is that the properties at issue are the aircraft parts; in the alternative, Iran seeks the return of the advance payments that Iran Air made, which, it argues, fall within the definition of “Iranian properties” in Paragraph 9. Iran argues, further, that the properties need not be Iranian-titled to fall within the scope of “Iranian properties” in Paragraph 9. According to Iran, the fact that Iran Air paid in full for the properties gave it, and therefore Iran, a beneficial ownership interest in those properties sufficient to bring them within the scope of Paragraph 9.

728. Iran submits that the United States breached its Paragraph 9 obligation by failing to arrange for the transfer of the properties at issue in Claims Supp. (2)-44 and Supp. (2)-56 to Iran. Iran contends that Airesearch (later, Garrett) contested Iran Air's right to possession of those properties due to outstanding unpaid invoices; hence, argues Iran, those properties were not transferred to Iran because of Section 535.333 of the Unlawful Treasury Regulations, in violation of the United States' obligations under the Algiers Declarations.

729. Iran submits, moreover, that it is evident that the United States did not direct the holder to transfer the disputed properties to Iran, despite being in "regular contact" with Airesearch and Garrett. Iran refers here to the 16 July 1984 letter from Garrett to the State Department as evidence of such contact.

730. Iran disputes the United States' contention that Iran has failed to prove that the properties at issue were within the United States' jurisdiction on 19 January 1981. In this context, concerning Claim Supp. (2)-44, Iran relies on the purchase orders dated between 1978 and early 1979, which, it submits, "suggest that the properties must indeed have been in existence, and most likely ready for shipment." Iran also contends that, since it provided evidence establishing on a *prima facie* basis that the properties had not been received, it is the United States' burden to prove the contrary, which the United States has failed to do.

731. Concerning Claim Supp. (2)-56, Iran submits that the above-mentioned United States contention is contradicted by the United States' statement, in its 30 October 1985 report to the Tribunal on Iranian tangible properties, that "U.S. company contests [Iran Air's] right to possession due to outstanding unpaid invoices of Iran Aircraft Industries, Iran Helicopter Support, and Iranian Air Force."

The United States' Contentions

732. Concerning Claim Supp. (2)-44, the United States submits that Iran has failed to establish that Iran Air had uncontested, non-contingent title to the properties at issue on 19 January 1981. The United States argues that the documents submitted by Iran are insufficient to prove title. The United States also asserts that the properties at issue were in fact shipped to Iran and notes that Iran Air never complained contemporaneously that the items had been short-shipped or had not been received. The United States also observes that, if Iran's non-delivery contention were correct, then, none of the parts in Claim Supp. (2)-44 were "Iranian properties" within the meaning of Paragraph 9; this is because, under the *lex rei sitae*

approach, the laws of the State of Arizona, where Airesearch was located, would apply, requiring delivery for the passage of title.

733. The United States also argues that Iran has failed to prove that the Unlawful Treasury Regulations were the reason why the properties at issue remained in the United States.

734. Concerning Claim Supp. (2)-56, the United States argues, similarly, that Iran has failed to prove that the properties at issue were within the jurisdiction of the United States on or after 19 January 1981 and therefore subject to the United States' obligation under Paragraph 9. The United States submits that the air waybills and shipping invoices proffered by Iran, which were issued in early to mid-1978, do not prove that the properties were not returned to Iran before November 1979. The United States also notes that Iran has submitted no evidence that Iran Air made contemporaneous complaints about Airesearch's failure to return the parts after they had been repaired.

735. With respect to both Claim Supp. (2)-44 and Claim Supp. (2)-56, the United States argues that Iran has failed to demonstrate that it ever indicated to the United States that it needed its assistance to ensure the transfer of the properties, or that it took the steps required to make United States performance possible, such as providing shipping instructions to Airesearch (and, later, to Garrett) or arranging to pay for the costs of shipping the properties. Further, according to the United States, after 1987, the non-transfer of the properties at issue in both Claim Supp. (2)-56 and Claim Supp. (2)-44 was due to Iran's relinquishment of title and possession under the March 1987 settlement agreement with Garrett.

736. Concerning Iran's beneficial ownership argument in Claim Supp. (2)-44,⁴³⁹ the United States submits that Iran has misstated the law of beneficial ownership. In addition, the United States argues, the evidence does not establish that Iran actually paid for the properties at issue since the checks in evidence might very well relate to other transactions between Iran Air and Airesearch and not have any connection to the properties at issue in Claim Supp. (2)-44.

737. Finally, the United States contests that Iran is entitled to the advance payments made by Iran Air. According to the United States, the phrase "Iranian properties" in Paragraph 9 only covers tangible property; further, and in any event, Iran does not own the advance payments. In response to Iran's argument based on General Principle A, the United States

⁴³⁹ See *supra* para. 727.

contends that Iran's financial position in respect of all intangible rights was restored to the extent possible when the United States lifted the Blocking Order on 19 January 1981.

(d) *The Tribunal's Decision*

(i) *Preliminary Issue: The Settlement Agreement Between Iran Air and Garrett*

738. As a preliminary matter, the Tribunal addresses the United States' argument that Claims Supp. (2)-44 and (2)-56 should be dismissed because Iran Air and Garrett settled their respective claims through the March 1987 settlement agreement. In Award No. 529, the Tribunal held:

With respect to property that has not been transferred as required by the General Declaration because the United States has not fulfilled its obligations under the General Declaration, the withdrawal by Iran of a claim against the holder of that property or the settlement of such a claim between Iran and the holder of the property subsequent to 26 February 1981 does not *per se* relieve the United States from liability to Iran for losses caused by such non-transfer.⁴⁴⁰

739. Accordingly, in line with its holding in Award No. 529, the Tribunal rejects the United States' argument based on the March 1987 settlement agreement between Iran Air and Garrett.

(ii) *Claim Supp. (2)-44: Purchased Items*

740. As noted,⁴⁴¹ Aseman, into which Iran Air was merged in June 1980, falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration.

741. The threshold question in this Claim is whether the properties at issue in Claim Supp. (2)-44 fall within the meaning of "Iranian properties" pursuant to Paragraph 9. Since the Parties do not agree about who owned those properties on 19 January 1981, the Tribunal must determine the applicable *lex rei sitae* governing passage of title to the properties.⁴⁴²

742. The evidence persuades the Tribunal that Airesearch never delivered to Iran Air any of the properties at issue in Claim Supp. (2)-44. This evidence consists, in particular, of: (i) the 3 May 1980 telex, advising that Airesearch would not ship Purchase Order No. 54666 "due to

⁴⁴⁰ Award No. 529, para. 77 (h), 28 IRAN-U.S. C.T.R. 112 at 141.

⁴⁴¹ See *supra* para. 626.

⁴⁴² See *supra* paras. 135-164.

current situation”; and (ii) Iran Air’s (or Aseman’s) letter of 11 July 1983 to Airesearch, advising that the disputed properties, which were covered by Purchase Orders Nos. 54666, 56093, and 57640, had not been delivered. The Tribunal concludes, therefore, that those properties remained at Airesearch’s facilities in Arizona. Accordingly, in application of the *lex rei sitae*, the Tribunal determines that the law of the State of Arizona governs passage of title to the properties at issue. These properties were the object of sales contracts between Airesearch and Iran Air. Consequently, the Tribunal will look to the law of the State of Arizona that governs the sale of goods, which, being the *lex rei sitae*, governs the question whether title passed from Airesearch to Iran Air as a consequence of the sales contracts.

743. UCC Title 47, as adopted in Arizona, governs the sale of goods. UCC Section 47-2401, in particular, governs passing of title to goods and provides, in relevant part:

1. . . . [T]itle to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

2. Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place . . .

. . .⁴⁴³

744. There is no evidence showing that Iran Air and Airesearch explicitly agreed on the “manner” in which, and the “conditions” on which, title to the properties sold would pass from Airesearch to Iran Air. Accordingly, the default rule under UCC Section 47-2401(2), as adopted in the State of Arizona, applies, pursuant to which title to goods sold “passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods.” Hence, because the properties at issue in Claim Supp. (2)-44 were never delivered to Iran Air, title thereto never passed to it. The Tribunal thus finds that those properties do not fall within the scope of “Iranian properties” under Paragraph 9.

745. With respect to Iran’s claim for the return of the advance payments made by Iran Air, the Tribunal notes that, in Award No. 529, the Tribunal held that the scope of “Iranian properties” in Paragraph 9 was restricted exclusively to tangible properties that can be “solely owned.”⁴⁴⁴ A liability due to Iran clearly does not represent a tangible item of property but, at

⁴⁴³ ARIZ. STAT. tit. 47, § 47-2401.

⁴⁴⁴ See *supra* para. 99.

most, an interest in property. As such, it does not fall within the scope of “Iranian properties” in accordance with Paragraph 9. Consequently, the Tribunal dismisses Iran’s claim for the return of the advance payments based on Paragraph 9.

746. For the reasons stated earlier in this Partial Award,⁴⁴⁵ the Tribunal likewise dismisses Iran’s alternative claims for the return of the advance payments based on Paragraph 8 and General Principle A.

747. Further, for the reasons stated earlier in this Partial Award,⁴⁴⁶ the Tribunal rejects Iran’s argument based on beneficial ownership.

748. In view of the foregoing, the Tribunal dismisses Claim Supp. (2)-44.

(iii) Claim Supp. (2)-56: Repair Items

749. There is no dispute that, on 19 January 1981, the rotary actuator and the fan assemblies at issue in Claim Supp. (2)-56 were solely owned by Iran Air, which had sent them to Airesearch for repair. Thus, on that date, those items represented “Iranian properties” within the scope of Paragraph 9. Under Paragraph 9, the United States was therefore obliged to arrange for their transfer to Iran. In concluding the settlement agreement with Garrett in March 1987, Iran Air waived all rights to the properties at issue in Claim Supp. (2)-56. Accordingly, these properties ceased to be “Iranian properties” as of that date. The Tribunal therefore holds that any breach of Paragraph 9 by the United States with respect to properties at issue in Claim Supp. (2)-56 would have ceased as of March 1987.

750. The Tribunal turns to the question whether the United States has satisfied its obligations under Paragraph 9 with respect to the properties at issue.

751. In Award No. 529, the Tribunal has held that United States Treasury Regulations that excluded from the transfer direction of Executive Order No. 12281 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, defenses, counterclaims, set-offs, or similar reasons were inconsistent with the obligations of the United States under the General Declaration.⁴⁴⁷

⁴⁴⁵ See *supra* paras. 223-232.

⁴⁴⁶ See *supra* para. 133.

⁴⁴⁷ See Award No. 529, para. 77 (d), 28 IRAN-U.S. C.T.R. at 140.

On the record that was before it when it rendered Award No. 529, the Tribunal was not in a position to determine the relevant facts with respect to any particular property. The Tribunal makes that determination now with respect to the properties at issue in Claim Supp. (2)-56.

752. At the Hearing, the United States asserted that “there is no evidence in the record that Airesearch held any Iranian properties, never mind that it held properties under a lien or otherwise in order to secure a debt.” The Tribunal disagrees. The Tribunal notes that, in its 17 September 1984 and 30 October 1985 reports to the Tribunal on Iranian tangible properties in the United States, the United States stated that Garrett was contesting Iran Air’s “right to possession [of the properties at issue in Claim Supp. (2)-56] due to outstanding unpaid invoices” issued to certain Iranian government entities distinct from Iran Air.⁴⁴⁸ This statement by the United States in its reports to the Tribunal strongly suggests that Airesearch/Garrett was refusing to transfer those properties and holding them as security for unpaid debts, albeit of Iranian government entities different from Iran Air.

753. Accordingly, based on the record before it, the Tribunal finds that Airesearch/Garrett retained the properties at issue in Claim Supp. (2)-56 because of an unpaid debt, and that, consequently, those properties were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States breached its obligations under the General Declaration with respect to Iranian tangible properties, and its international responsibility is engaged. The Tribunal further finds 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 Regulations⁴⁴⁹ and, for the reason stated above, ceased as of March 1987.

(iv) Overall Conclusion

754. For the foregoing reasons, the Tribunal determines as follows:

- (i) Claim Supp. (2)-44 is dismissed;
- (ii) Claim Supp. (2)-56 is upheld.

⁴⁴⁸ See also *supra* para. 731.

⁴⁴⁹ See *supra* para. 12.

(12) Claim Supp. (2)-49 (Iran Air/Midway Electronics Inc.)

(a) *Introduction*

755. In Claim Supp. (2)-49, Iran seeks a maximum of USD 15,797, plus interest, as damages resulting from the United States' alleged failure to arrange for the transfer to Iran of certain aircraft parts purchased by Iran Air from Midway Electronics Inc. ("Midway").

(b) *Factual Background*

756. On 1 May 1983, Iran Air sent a letter to Midway, asserting that it had not received aircraft parts purchased under Purchase Orders Nos. 57649, 56857, 57465, 50598, 49757, 53642, 57592, 56433, 56791, 55437, 56783, and 57055. The total purchase price that Iran Air claims to have paid Midway is USD 11,028.30. No purchase orders or other documentation have been submitted by Iran.

757. By telegram of 16 June 1983 to Iran Air, Midway promised that it would "respond and adjust" the issue to the satisfaction of all parties involved upon the return of its Chairman from a meeting abroad. Iran Air received the telegram on 28 June 1983.

758. On 14 October 1983, Iran submitted Claim Supp. (2)-49 to the Tribunal, asserting that the United States had breached its Paragraph 9 obligation with respect to the aircraft parts Iran Air had purchased from Midway. On 27 January 1984, in response to a United States request for additional information, Iran submitted the Iran Air letter and the Midway telegram mentioned above.

759. On 21 April 1984, Iran Air sent a letter to Midway, requesting a refund of USD 11,954.20 for the items referenced in its 1 May 1983 letter and for additional items. Iran Air stated that it did not wish to have the items delivered, and that it had meanwhile purchased items elsewhere. Midway subsequently notified the United States that Iran had not paid in full for the properties at issue, asserting that Iran Air owed Midway USD 4,311.45.

760. Iran Air and Midway began negotiations to resolve the matter but were unable to reach a settlement.

761. On 7 April 1989, Midway filed for bankruptcy. The State Department was informed of Midway's bankruptcy on 8 August 1989.

(c) *The Parties' Contentions*

Iran's Contentions

762. Iran submits that it had fully paid for the items at issue in Claim Supp. (2)-49, and that therefore the items constituted "Iranian properties" within the meaning of Paragraph 9. Iran maintains that it is not for the United States to question Iran Air's ownership of the property when Midway had, in contemporaneous communications, admitted that Iran Air was the owner of the property, and had not contested title. In support, Iran points to the telex dated 17 June 1983, in which Midway did not contest Iran Air's title, but instead promised to attend to the issue to the full satisfaction of Iran Air. Iran contends that Midway was supported by the silence and inaction of the United States and later was declared bankrupt. Therefore, Iran contends, Iran Air suffered damages due to the United States' failure to fulfill its Paragraph 9 obligation.

763. Moreover, Iran contends that the disputed items were within the jurisdiction of the United States on 19 January 1981, noting that there is documentary evidence, not only that the properties in question existed through 1983, but also that there was no claim that Iran Air was not their owner. Further, according to Iran, as of 1 May 1983, Iran Air's records showed that the items had not been received. Iran submits that, had the properties been delivered to Iran Air, the United States should have been able to provide evidence that this was the case, since it was in contact with Midway.

764. Iran submits moreover that, for the purposes of Paragraph 9, title need not have been transferred to Iran Air in order for the items to fall within the scope of "Iranian properties." According to Iran, the term "Iranian properties" must be understood more broadly than merely encompassing properties to which Iran had title.

765. Iran additionally avers that Iran Air had paid in full the purchase price of the items at issue claimed in Claim Supp. (2)-49, and that the full payment gave Iran a beneficial interest that brought the items within the scope of Paragraph 9.

766. Iran also seeks the return of the advance payment that Iran asserts Iran Air made to Midway. Iran bases the present Claim on Paragraph 9 and, alternatively, on Paragraph 8 and General Principle A. With specific regard to Paragraph 9, Iran argues that the phrase "Iranian properties" in that provision also covers liabilities due to Iran, including cash sums and debts.

According to Iran, Iran Air's advance payment to Midway represents such a liability. In Iran's view, the United States itself understood that its Paragraph 9 obligation also covered debts and liabilities, including cash sums, by issuing Sections 535.215 and 535.333 of the Treasury Regulations, which directed persons subject to the jurisdiction of the United States to transfer to Iran all "liabilities" and property interests of Iran, including "debts."

767. Iran argues that Iran Air purchased aircraft parts amounting to a value of USD 11,954 prior to November 1979. Iran notes that the United States has argued that one of the reasons for the United States' inaction in arranging for the transfer of the items was that Iran Air owed Midway USD 4,311.45. Relying on Award No. 529, Iran argues that Section 535.333 of the Unlawful Treasury Regulations violates the United States' obligation under the Algiers Declarations. Iran submits that one of the United States' obligations was to direct persons holding the properties in question, who were subject to the jurisdiction of the United States, to transfer the properties as directed by Iran. Therefore, Iran maintains that the Unlawful Treasury Regulations, which excluded from the transfer direction properties as to which Iran's right of possession was contested on the basis of liens or similar reasons, were inconsistent with the United States obligation under the General Declaration.

768. Iran denies that it failed to identify the items at issue in this Claim. Iran argues that it had no information as to the precise nature of the parts at issue, but that the United States had the relevant information or could have simply asked Midway for the information based on the list of Purchase Order numbers that Iran had submitted. The United States' failure to do so, according to Iran, is through no fault of Iran's.

The United States' Contentions

769. The United States argues that Iran has not stated a claim nor established that specified goods existed within the jurisdiction of the United States on the date of the Algiers Declarations. According to the United States, Iran has not proven that the items were actually paid for, manufactured, and located within the United States on the relevant date. Nor, according to the United States, has Iran met the minimum standard for pleading this Claim by identifying the items at issue. According to the United States, the Tribunal has held that, properly to state a claim, a claimant must at a minimum specify the property it is claiming.⁴⁵⁰

⁴⁵⁰ In this context, the United States cites *Esahak Saboonchian and Islamic Republic of Iran*, Award No. 524-313-2, para. 20 (15 Nov. 1991), 27 IRAN-U.S. C.T.R. 248, 254-55.

For the United States, Iran has not provided a description of what it believes may be at issue, instead claiming for “spare parts or aircraft parts,” and has not discharged its responsibility for stating its own claim.

770. The United States contends that Iran has failed to prove that the property at issue existed on 19 January 1981, or that it was subject to the jurisdiction of the United States on that date. It also submits that Iran has failed to prove that Iran Air had title to the property in question on 19 January 1981, and that, even if Iran could establish an agreement to purchase property from Midway, that fact in itself would not be sufficient to establish title.

771. The United States contends that Iran never became the owner of the disputed parts because title to thereto would only have passed upon delivery and, since delivery did not take place, under the *lex rei sitae* (which would be New York law, the jurisdiction where Midway was located), title had not passed to Iran; the law of the State of New York incorporates UCC Section 2-401(2), providing that, unless otherwise agreed, the ownership of the goods transfers on delivery.

772. According to the United States, none of the evidence on record establishes that the aircraft parts were ever paid for by Iran Air, or that the parts were actually ever manufactured by Midway in the first place. Therefore, Iran does not have beneficial ownership over the properties in question, even if, *arguendo*, such beneficial ownership were relevant to this Claim. The United States further argues that Iran Air was not without recourse for the overpayment, had that been the case, since Iran would have had a right to demand performance under the contract, or could have brought a contract claim in United States courts demanding the applicable remedies, as Iran did in other claims in the present Cases.

773. The United States reiterates that, to establish United States responsibility on the basis of the Unlawful Treasury Regulations, Iran must demonstrate that the Regulations caused the harm it is complaining about (*i.e.*, the non-transfer of Iranian properties within the scope of Paragraph 9). According to the United States, Iran has failed to demonstrate that an unpaid debt caused any non-transfer in this Claim, because there is no suggestion on record that Iran Air owed any debt to Midway at all until after Iran Air had specifically told Midway that it did not want delivery of the properties.

774. The United States submits that Iran has not provided the direction to Midway and the indication to the United States that the Tribunal held were necessary in Award No. 529. The

United States argues that there is neither any evidence that Iran ever directed Midway to transfer the claimed properties, nor any evidence that Iran provided any indication to the United States of the need for additional steps to ensure the transfer of the properties. Moreover, the United States emphasizes that Iran did not make any arrangements to pay for the costs of shipping the properties claimed. Therefore, the United States did not breach any obligation to take reasonable steps with respect to those properties.

775. The United States submits that, rather than giving direction to the property holder to transfer the properties claimed in Claim Supp. (2)-49, Iran specifically told Midway in 1984 not to send the parts to Iran, asking for a refund instead.

(d) *The Tribunal's Decision*

776. As noted, Aseman, into which Iran Air was merged in June 1980, falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration.⁴⁵¹

777. The threshold question in this Claim is whether the properties claimed in Claim Supp. (2)-49 fall within the meaning of "Iranian properties" pursuant to Paragraph 9. Since the Parties to the Algiers Declarations do not agree about who owned the properties that are the subject of Claim Supp. (2)-49 on 19 January 1981, the Tribunal must determine the applicable *lex rei sitae* governing passage of title to that item.⁴⁵²

778. It is undisputed that Midway never delivered any of the aircraft parts that are the subject of Claim Supp. (2)-49. Indeed, Iran has consistently asserted that it has provided evidence that those properties were never received, an assertion that is borne out by the evidence. In fact, on 21 April 1984, Iran Air wrote to Midway, seeking a refund of the monies paid. The properties remained, therefore, at Midway's facilities in the State of New York. Accordingly, in application of the *lex rei sitae*, the Tribunal determines that the law of the State of New York governs passage of title to the properties. These properties were the object of sales contracts between Midway and Iran Air. Consequently, the Tribunal will look to the law of the State of New York that governs the sale of goods, which, being the *lex rei sitae*, governs the question whether title passed from Midway to Iran Air as a consequence of the sales contracts.

⁴⁵¹ See *supra* para. 626.

⁴⁵² See *supra* paras. 135-164.

779. Section 2-401 of the UCC, as adopted in the State of New York, provides, in relevant part:

(1) . . . [T]itle to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place . . .⁴⁵³

780. There is no evidence showing that Iran Air and Midway explicitly agreed on the “manner” in which, and the “conditions” on which, title to the properties sold would pass from Midway to Iran Air. Accordingly, the default rule under Section 2-401 of the UCC, as adopted in the State of New York, applies, pursuant to which title to goods sold “passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods.” Hence, because the properties at issue in Claim Supp. (2)-49 were never delivered to Iran Air, title thereto never passed to it. The Tribunal thus finds that those properties do not fall within the scope of “Iranian properties” under Paragraph 9.

781. With respect to Iran’s claim for the return of the advance payment made by Iran Air, the Tribunal notes that, in Award No. 529, the Tribunal held that the scope of “Iranian properties” in Paragraph 9 was restricted exclusively to tangible properties that can be “solely owned.”⁴⁵⁴ A liability due to Iran clearly does not represent a tangible item of property but, at most, an interest in property. As such, it does not fall within the scope of “Iranian properties” in accordance with Paragraph 9. Consequently, the Tribunal dismisses Iran’s claim for the return of the advance payment based on Paragraph 9.

782. For the reasons stated earlier in this Partial Award,⁴⁵⁵ the Tribunal likewise dismisses Iran’s alternative claims for the return of the advance payment based on Paragraph 8 and General Principle A.

⁴⁵³ NY, Uniform Commercial Code, §2-401.

⁴⁵⁴ See *supra* para. 99.

⁴⁵⁵ See *supra* paras. 223-232.

783. Further, for the reasons stated earlier in this Partial Award,⁴⁵⁶ the Tribunal rejects Iran's argument based on beneficial ownership.

784. In view of the above, the Tribunal dismisses Claim Supp. (2)-49.

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

(a) *Introduction*

785. In Claim Supp. (2)-55, Iran seeks a maximum of USD 66,797, plus interest, for damages incurred as a result of the United States' alleged failure to arrange for the transfer of certain equipment that Iran Air had sent for repair to a United States company, Plessey Dynamics Corporation ("Plessey"), before 14 November 1979.

(b) *Factual Background*

786. Plessey was an aircraft parts repair company that contracted with various Iranian entities, including Iran Air and Iran Aircraft Industries, during the years prior to the start of the crisis in relations between Iran and the United States on 4 November 1979. At the times here relevant, Iran Air was a government-owned commercial airline, while Iran Aircraft Industries conducted maintenance and overhaul repair work on military planes as a subsidiary of the military Industrial Organization of Iran.

787. Prior to 14 November 1979, Plessey returned certain repaired materials to Iran Aircraft Industries, which received the shipment but did not pay Plessey for the repairs made. The total value of the orders shipped was USD 19,879.

788. While Plessey was servicing Iran Aircraft Industries' materials, Plessey had also contracted with Iran Air for the repair of three fuel conditioning actuators.⁴⁵⁷ Those items, which were the property of Iran Air, arrived in the United States prior to 4 November 1979 and were affected by the Blocking Order of 14 November 1979.

789. On 9 September 1982, Plessey informed Iran Air that, because Iran Air and Iran Aircraft Industries were both agencies of the Iranian Government, Plessey would retain Iran Air's three

⁴⁵⁶ See *supra* para. 133.

⁴⁵⁷ These were Actuator R1549-1 (serial number 61227); Actuator R4101-1 (serial number 750903); and Actuator R4101-1 (serial number 731007).

actuators as security for the USD 19,879 owed by Iran Aircraft Industries until the Iranian Government paid that amount to Plessey.

790. By telex of 1 March 1983 to Iran Air, Plessey confirmed that it held the three actuators and advised that, while one of the actuators had been repaired and was awaiting shipment, two actuators still needed to be repaired. Plessey indicated the repair costs for each of the three actuators, which totaled USD 9,893.45. Plessey further indicated that, of that amount, USD 8,338.95 related to the two unrepaired actuators.

791. By letters of 11 January and 20 June 1988, Plessey confirmed to the State Department that it was holding the three actuators as security for the USD 19,879 owed by Iran Aircraft Industries.

792. Subsequently, by letter of 1 June 1989, Plessey informed the State Department that, in the exercise of its right to limit its damages, it had sold the three actuators “in a commercially reasonable manner” for USD 9,111.

(c) The Parties’ Contentions

793. The United States accepts in its pleadings that the 1 June 1989 letter from Plessey to the State Department, advising that Plessey had sold the three actuators to recoup part of USD 19,879 it was owed,⁴⁵⁸ represents “probative evidence” that the three actuators “were in fact excluded from the transfer directive [of Executive Order No. 12281] because of the existence of an unpaid debt.” Accordingly, the United States concedes that Iran has proven that the United States has breached its Paragraph 9 obligation in this Claim, and that such breach is the cause of Iran’s damages.

(d) The Tribunal’s Decision

794. As noted, Aseman, into which Iran Air was merged in June 1980, falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration. Further, there is no dispute that the three actuators were located within the jurisdiction of the United States on 19 January 1981, or that they were solely owned by Iran on that date. Accordingly, they qualify as “Iranian properties” pursuant to Paragraph 9.

⁴⁵⁸ See *supra* para. 792.

795. Based on the evidence presented, the Tribunal finds that Plessey retained the three actuators in the United States because of the existence of an unpaid debt, and that, consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration, and its international responsibility is engaged. The United States has accepted responsibility for Claim Supp. (2)-55.⁴⁵⁹ The United States has also accepted that its breach of its obligations under the Algiers Declaration has caused damages to Iran.⁴⁶⁰

796. The Tribunal further finds 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.⁴⁶¹

797. Based on the foregoing, the Tribunal upholds Claim Supp. (2)-55.

(14) Claim Supp. (2)-64 (Iran Air/Scott Aviation)

(a) *Introduction*

798. In Claim Supp. (2)-64, Iran seeks a maximum of USD 74,577.23, plus interest, for damages incurred as a result of the United States' alleged failure to arrange for the transfer of certain equipment that Iran Air had sent for repair to a United States company, Scott Aviation ("Scott"), before 14 November 1979.

(b) *Factual Background*

799. In 1978 and 1979, Iran Air sent a number of supplemental oxygen system parts ("Parts") to Scott for refurbishment and repair.

800. Subsequently, in compliance with the Blocking Order of 14 November 1979, Scott ceased transactions with Iran Air and separated Iran Air products from other stock.

801. Between November 1979 and April 1983, Scott and Iran Air had no contact. In or around April 1983, Iran Air advised Scott that 81 Parts previously sent to Scott had not been

⁴⁵⁹ See *supra* para. 793.

⁴⁶⁰ See *id.*

⁴⁶¹ See *supra* para. 12.

returned. On 13 April 1983, Scott sent Iran Air a list indicating that 43 Parts were in Scott's stock awaiting overhaul and repair. Five of the 43 Parts were listed as "Prepaid" by Iran Air.

802. In June 1983, Iran Air responded by telex, stating that it had originally shipped, not 43, but, rather, 81 Parts, to Scott and inquired about the missing Parts.

803. By letter to Iran Air dated 28 September 1983, Scott suggested a way to solve the matter. In brief, Scott proposed to repair all items listed in its 13 April 1983 letter on a cash-advance basis, at a total cost of USD 7,511.73. Scott indicated that Iran Air had made an advance payment of USD 1,665.23 in respect of the repairs. Scott further proposed to "ship to the destination of [Iran Air's] choice any and all components or assemblies for which paperwork is lost or missing" in one bulk shipment, "as all records for this equipment [are] gone."

804. On 14 October 1983, Iran added Claim Supp. (2)-64 to the present Cases, seeking USD 34,228 for "spare parts sent for repair."

805. On 31 October 1983, Iran Air sent a telegram to Scott, reiterating that Scott had 81 Parts in its possession, not just 43, and asking that Scott advise about the status of the remaining Parts. Moreover, Iran Air accepted Scott's proposal for the resolution of the matter, "subject to clearance and clarification of [the] remaining units."

806. By telex of 2 November 1983, Scott reiterated that it had only 43 "complete units" in its possession, and that "other hardware are only components of complete units." According to Scott, that hardware represented a "portion of [the] missing units." Scott pointed out that "some paperwork [had] undoubtedly [been] misplaced or lost," and that, in the intervening three years, equipment at Scott had been moved many times, possibly resulting in the loss of some units. Scott stated that it "seem[ed] impossible to resolve missing units" and suggested that Iran Air accept Scott's proposal for resolution of the matter.

807. By telegram in reply, sent on or about 7 November 1983, Iran Air informed Scott that the "outstanding" Parts numbered in fact 79, because two Parts had not been delivered to Scott but, rather, had been held at customs in New York City. Hence, according to Iran Air, taking into account the 43 Parts that Scott had confirmed were in its possession, 36 Parts were "missing." Iran Air added that it had already received pro forma invoices from Scott for 21 out of the 36 missing Parts.

808. In a letter dated 13 February 1984, Scott repeated that, due to the “age of this problem” and frequent shifting of material, the paperwork, as well as the hardware, had been lost. Scott reiterated its proposal for the resolution of the matter.⁴⁶² Further, it suggested that the only other alternative would be to ship all material in its possession, unrepaired, to a destination of Iran Air’s choice. Scott explicitly requested Iran Air’s “concurrence and direction.”

809. On 2 May 1984, Scott sent a further letter to Iran Air, with copy to the State Department, which simply referred to Scott’s previous letters of 13 February 1984, 28 February 1983, and 13 April 1983.

810. On 18 April 1985, Scott again wrote to Iran Air, stating:

For the past several years we have attempted through much administrative effort to determine quantities, costs, etc., in order to straighten out this problem. . . . There has been, in every communication from Iran Air, a constant reference to the “missing” units at Scott. We have stated in our letter of February 13, 1984, that due to the age of this problem, repeated shifting of material, etc., paperwork and hardware are missing and/or lost. We also stated that due to the conditions leading up to this problem, Scott will not be held responsible for losses incurred.

We, therefore, must insist that Iran Air immediately provide Scott with an address and shipping authorization for the material remaining at Scott. We will then ship this material, as is, to a destination of your choice, freight collect.

We believe it is hopeless to endeavor to sort out the obvious administrative disarray associated with the problem in any other manner.

We look forward to your early response.

Scott forwarded a copy of this letter to the State Department.

811. On 25 October 2000, the State Department wrote to Scott, inquiring about the matter. Scott replied by letter of 11 December 2000, enclosing an affidavit from Mr. James A. Rash, Scott’s contract and sales manager at the times here relevant. According to Mr. Rash, after the State Department’s inquiry, Scott searched its storage inventory for any remaining Iran Air items but could not locate any.

⁴⁶² See *supra* para. 803.

(c) *The Parties' Contentions*

Iran's Contentions

812. Iran asserts that Scott received all 79 Parts claimed, which, according to Iran, were therefore in existence within the jurisdiction of the United States on 19 January 1981. In support, Iran relies on: (i) the correspondence Scott and Iran Air exchanged in 1983 and 1984, described above; (ii) a number of pro forma invoices issued by Scott for certain missing Parts; and (iii) the fact that Scott never denied having received all 79 Parts.

813. Further, Iran contends that, because Scott did not contact Iran Air itself after 19 January 1981 to point out it was holding the Parts, did not ask for shipping directions prior to 1983, and did not take any steps to transfer the Parts, the presumption must be that it regarded them as contested and/or subject to a lien pursuant to Section 535.333 of the Unlawful Treasury Regulations. As a general matter, Iran argues that, where United States companies retained Iranian properties from 19 January 1981, it should be presumed that the properties were being withheld as being subject to liens, attachments, or otherwise contested because such retention, under United States law, could only have been possible if the properties were so treated. Accordingly, Iran contends that the United States has breached its obligation under Paragraph 9. Iran denies that Iran Air failed to give shipping directions to Scott, as asserted by the United States.

814. As part of its claim, Iran also seeks the return of the advance payment of USD 1,665.23 that Iran Air made to Scott for the repair of the Parts. Iran bases this claim on Paragraph 9 and, alternatively, on Paragraph 8 and General Principle A. With specific regard to Paragraph 9, Iran argues that the phrase "Iranian properties" in that provision also covers liabilities due to Iran, including cash sums and debts. According to Iran, Iran Air's advance payment to Scott represents such a liability. In Iran's view, the United States itself understood that its Paragraph 9 obligation also covered debts and liabilities, including cash sums, by issuing Sections 535.215 and 535.333 of the Unlawful Treasury Regulations, which directed persons subject to the jurisdiction of the United States to transfer to Iran all "liabilities" and property interests of Iran, including "debts."⁴⁶³

⁴⁶³ See *supra* para. 12.

The United States' Contentions

815. In its 5 July 1990 report to the Tribunal on Iranian tangible properties in the United States, the United States indicated that, in 1979, Scott, following a request by the United States, identified three additional Parts belonging to Iran Air; hence, rather than just 43, Scott in fact held 46 Parts on 19 January 1981.

816. According to the United States, however, Iran has not proven that the additional 33 Parts it claims in fact had been sent to Scott or were in the United States on 19 January 1981 ("33 Missing Parts"). The United States contends that, even assuming, *arguendo*, that the 33 Missing Parts were in the United States on that date, the United States' Paragraph 9 obligation to "take steps, upon indication from Iran, to ensure that the holders . . . would transfer [Iranian properties] to Iran,"⁴⁶⁴ as delineated in Award No. 529, never arose with respect to the 33 Missing Parts. This is because, by the time Iran Air contacted Scott and the United States in 1983, there were no steps the United States could have taken to ensure transfer, given that Scott had lost the 33 Missing Parts.

817. Further, the United States denies that the 46 Parts that were in Scott's possession were contested properties pursuant to Section 535.333 of the Unlawful Treasury Regulations. The United States asserts that Iran has not proven that Scott retained those 46 Parts due to a debt or a lien; Iran's argument that the Tribunal should just presume that Scott did so, is unsustainable. The United States maintains that, with respect to those 46 Parts, the United States has complied with its Paragraph 9 obligation by issuing the transfer directive in Executive Order No. 12281. In the United States' view, it could have had an obligation to take steps to ensure transfer of the 46 Parts to Iran only if Iran had provided direction for transfer to Scott, and if it had indicated to the United States that additional help was required. According to the United States, Iran has done neither.

818. Finally, the United States contends that the phrase "Iranian properties" in Paragraph 9 only covers tangible property and does not include intangible rights in property and advance payments. Accordingly, Iran's Paragraph 9 claim for the return of Iran Air's advance payment to Scott is outside the scope of the present Cases. Concerning Iran's alternative argument based on General Principle A, the United States contends that Iran's financial position in respect of

⁴⁶⁴ See *supra* paras. 27 & 169.

all intangible rights was restored to the extent possible when the United States lifted all blocking orders on 19 January 1981. After that date, Iran was restored to its contract rights and all intangible rights that had been frozen on 14 November 1979 through the Blocking Order.

(d) *The Tribunal's Decision*

(i) *Claim for Damages for the Non-Return of Parts*

819. As an initial matter, based on the evidence presented, the Tribunal finds that Scott received all the 79 Parts claimed by Iran prior to the issuance of the Blocking Order on 14 November 1979. While Scott, in its communications with Iran Air and the State Department, advised that it could no longer retrieve many of those Parts, it never denied having received all 79 Parts in the first place.⁴⁶⁵ Accordingly, in the absence of evidence to the contrary, the Tribunal concludes that the 79 Parts claimed by Iran were within the jurisdiction of the United States on 19 January 1981.

820. Further, the Tribunal has found that Aseman, into which Iran Air was merged in June 1980, falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration. Moreover, there is no dispute that the 79 Parts claimed were solely owned by Iran on 19 January 1981. Accordingly, they qualified as “Iranian properties” pursuant to Paragraph 9.

46 Parts in Scott's Possession

821. As noted, in 1989, Scott admitted that 46 Parts were in its possession on 19 January 1981.⁴⁶⁶

822. In September 1983, Scott had offered to repair and return to Iran Air the Parts in its possession (which it then stated to be 43).⁴⁶⁷ On 31 October 1983, Iran Air accepted Scott's proposal subject to “clarification” of the status of the 33 Missing Parts.⁴⁶⁸ In subsequent communications to Iran Air, Scott reiterated (i) its offer to repair and return to Iran Air the Parts

⁴⁶⁵ See *supra* paras. 803-811.

⁴⁶⁶ See *supra* para. 815.

⁴⁶⁷ See *supra* para. 803.

⁴⁶⁸ See *supra* para. 805.

in its possession, and (ii) that the 33 Missing Parts were irremediably lost.⁴⁶⁹ In addition, on 13 February 1984, Scott advised that, if Iran Air so desired, Scott would return the Parts in its possession, unrepaired; accordingly, it requested that Iran Air provide “concurrence and direction.”⁴⁷⁰ Through letters of 2 May 1984 and 18 April 1985 to Iran Air, copied to the State Department, Scott again requested shipping directions and Iran Air’s authorization.⁴⁷¹ Iran Air, however, never provided either.

823. Thus, while Scott expressed its willingness to transfer the 46 Parts in its possession to Iran Air, Iran Air did not respond by supplying the information and authorization Scott required in order to be able to effect that transfer. Hence, Scott’s inability to transfer the 46 Parts was due to Iran Air’s failure to provide Scott with the necessary direction, rather than due to any action or omission on the part of the United States. In these circumstances, the Tribunal finds that there was nothing more the United States reasonably could have done to satisfy its Paragraph 9 obligation to take steps to ensure that Scott transferred the 46 Parts to Iran Air.⁴⁷² Accordingly, the United States cannot be held to have breached its obligation under Paragraph 9 with respect to those 46 Parts.

824. In reaching this conclusion, the Tribunal also rejects Iran’s contention that Scott regarded the 46 Parts in its possession as being contested and/or subject to a lien pursuant to Section 535.333 of the Unlawful Treasury Regulations, for the following reasons. First, Iran Air owed no debt to Scott. Second, and in any event, Scott never asserted either a claim against Iran Air or a lien on the Parts. Indeed, it never refused to transfer the Parts: when it became clear that Iran Air would not accept its proposal, Scott offered to return the Parts unrepaired. Hence, Scott’s contention, in its 18 April 1985 letter, that it could “not be held responsible for losses incurred” has no bearing on the question of whether the 46 Parts were contested properties pursuant to the Unlawful Treasury Regulations.

33 Missing Parts

825. The evidence shows that, due to logistical disarray, Scott was unable to retrieve the 33 Missing Parts. For all practical purposes, those Parts were lost, as Scott repeatedly

⁴⁶⁹ See *supra* paras. 806 & 808.

⁴⁷⁰ See *supra* para. 808.

⁴⁷¹ See *supra* paras. 809 & 810.

⁴⁷² See *supra* paras. 169 & 211.

communicated to Iran Air in 1983, 1984, and 1985. The evidence further indicates that, after Iran submitted Claim Supp. (2)-64 to the Tribunal on 14 October 1983, the United States contacted Scott about this Claim and began monitoring the exchanges between the parties.

826. In these circumstances, the Tribunal finds that there was nothing more the United States reasonably could have done to satisfy its Paragraph 9 obligation to take steps to ensure that Scott transferred the 33 Missing Parts to Iran Air.⁴⁷³ Scott's inability to retrieve those Parts was due to administrative disarray within the company itself. It was not due to any action or omission on the part of the United States. Accordingly, the United States cannot be held to have breached its obligation under Paragraph 9 with respect to the 33 Missing Parts.

Conclusion

827. In light of the foregoing, Iran's claim for damages incurred as a result of the non-return of the 79 Parts is dismissed.

(ii) Claim for the Advance Payment

828. As noted above, the Tribunal, in Award No. 529, held that the scope of "Iranian properties" in Paragraph 9 was restricted exclusively to "tangible properties" that can be "solely owned."⁴⁷⁴ A liability due to Iran clearly does not represent a tangible item of property but, at most, an interest in property. As such, it does not fall within the scope of "Iranian properties" in accordance with Paragraph 9. Consequently, the Tribunal dismisses Iran's claim for the return of the advance payment based on Paragraph 9.⁴⁷⁵

829. For the reasons stated earlier in this Partial Award, the Tribunal likewise dismisses Iran's alternative claims for the return of the advance payment based on Paragraph 8 and General Principle A.⁴⁷⁶

⁴⁷³ See *supra* paras. 169 & 211.

⁴⁷⁴ See *supra* para. 99.

⁴⁷⁵ The Tribunal would reach the same conclusion even if, *arguendo*, it were to agree, which it does not, that Paragraph 9 can be interpreted through the prism of Sections 535.215 and 535.333 of the Treasury Regulations, as Iran argues. As noted, according to Iran, those Regulations represent evidence of the United States' understanding of its Paragraph 9 obligation. See *supra* paras. 68-69 & 814. On 19 January 1981, Iran Air already possessed a legal claim against Scott for the return of the advance payment. Thus, any such claim could not conceivably have been transferred to Iran Air by Scott.

⁴⁷⁶ See *supra* paras. 223-232 & 247.

(iii) *Overall Conclusion*

830. In view of the above, the Tribunal dismisses Claim Supp. (2)-64 in its entirety.

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

(a) *Introduction*

831. In Claim G-105, Iran seeks a maximum of USD 29,063.90, plus interest, for damages incurred as a result of the United States' alleged failure to arrange for the transfer of certain items that the Khuzestan Water and Power Authority ("KWPA"), later renamed Khuzestan Water and Electricity Organization ("KWEO"), ordered from ESB Inc. ("ESB"), later renamed Exide Corporation ("Exide"). The items at issue in this Claim are 325 dry-charged batteries, six battery chargers, and 26 drums of electrolyte ("G-105 Items").

(b) *Factual Background*

832. On 13 November 1977, KWPA placed the order for the purchase of the G-105 Items with ESB. On 12 December 1978, ESB issued an invoice to KWPA, billing KWPA USD 29,063.93 for the G-105 Items. ESB's invoice referenced KWPA's order No. 41969-F and recorded, in the field "date shipped," 27 December 1978. The invoice further contained, in the field "shipped via," the notation: "'Trein Maersk' – B/L # PHL D001."

833. In late 1978 and early 1979, Iranian ports were affected by strikes, delays, and congestion.

834. By telex of 8 February 1979, ESB informed Iran Generator (later renamed Iran Gencomap), which apparently acted as the intermediary for the transaction, that the G-105 Items were "on board ship in Khorramshahr, vessel unable [to] discharge cargo." ESB further advised: "Being offered two options by Steamship Co.[:] 1) to off load in Abudabi[;] 2) to return equipment to U.S. Please advise [immediately] recommended action."

835. On 15 March 1979, ESB again sent a telex to Iran Generator, advising that the G-105 Items were being returned to the United States. ESB further stated: "We can resh[i]p to Iran but Maersk will only offload in Abu Dhabi. Will customer accept and arrange to transfer the equipment from Abu Dhabi to Iran themselves?"

836. By 1 April 1980, the G-105 Items had arrived in Philadelphia in the United States. A “cargo receipt” in evidence, stamped “received” on 1 April 1980, issued by Quaker Packaging Co., Inc. (“Quaker Packaging”), which had received the goods for ESB, indicates that this shipment had been received “wet & damaged” and that “this is shipment returning from pier.”

837. The expert witness called by Iran at the Hearing, Dr. Michael McDonagh, stated that dry-charged batteries were usually transported without acid, and that they are only assembled at their destination, in order to ensure that the storage time would not affect the condition of the batteries. The packaging for shipment would usually also prevent damage from occurring during the transport. In his view, the batteries at issue would have been in very good condition on 1 April 1980, the date of the cargo receipt, and even in January 1981.

838. On 5 January 1982, KWEO (formerly KWPA) wrote to Iran Gencomap, requesting that it get in touch with ESB speedily, and that it take action for shipment and delivery of the G-105 Items as soon as possible. On 6 January 1982, KWEO/KWPA wrote a telex to ESB, advising as follows:

Following our letter dated 22 Sept 1980 re our 41969-F regarding consignments shipped per Tr[ei]n M[a]ersk B/L D001 dated 27 Dec 1980 since long we have received the original documents but no sign of materials. It would be appreciated if you will kindly investigate the matter and advise us of the status
⁴⁷⁷

839. On 31 August 1983, in its Reply to the United States’ Statement of Defense, Iran added Claim G-105 to the present Cases.

840. On 13 April 1984, Mr. Anthony Rossi, Legal Officer at Exide, wrote to the State Department, which had inquired about the location of the G-105 Items, stating:

It is my understanding, that the goods sold were delivered for shipment per the terms of the sale; we received \$29,063.90 payment against this sale; the goods were shipped to Iran; but because of the then existing situation were not off-loaded and were returned to the U.S.; we subsequently retrieved the goods; and then disposed of them.

We also have another item relating to Iran; namely our LX-2-2-2149, which was

⁴⁷⁷ KWEO’s letter of 22 September 1980 to ESB, referenced in KWEO’s 6 January 1982 telex, is not in evidence. Moreover, the Tribunal notes that the 6 January 1982 telex contains a typographical error: the date of shipment of the G-105 Items via the vessel Trein Maersk was, not 27 December 1980, as is erroneously mentioned in the telex, but rather 27 December 1978, as stated in ESB’s invoice to KWPA of 12 November 1978 (*see supra* para. 832). In this connection, the Tribunal further notes that both the telex and the invoice refer to order 41969-F and bill of lading (B/L) No. D001.

a sale to the Imperial Iranian Air Force in the amount of \$32,272.00. Attached for your reference is a copy of our invoice number LX-2-2149; the Purchase Order of the Imperial Iranian A.F., No. 77 0380 HQ; and our Order of Acknowledgment. We delivered the goods but have not been paid the \$32,272.00. We believe we have a legitimate offset against the asserted claim of the Iranian Government; and in fact, they owe us the difference, with interest in these two orders.

841. Mr. Rossi appeared at the Hearing as a witness called by the United States. Mr. Rossi stated that he “believe[d] that the Iranian Government abandoned” the G-105 Items, adding: “They owned the product. They didn’t help us in offloading the product in Abu Dhabi so that they [could] pick them up.” Concerning ownership of the G-105 Items, Mr. Rossi stated: “[The terms of the contract between Exide and KWPA included] FOB factory, freight on board, or free on board. My understanding is that when we delivered the product – we delivered it to the shipping company at the factory, that’s when title changed and legal title was now in the Iranian Government.” Mr. Rossi was asked about his letter of 13 April 1984 and the disposition of the goods. He stated that he could “only speculate or guess that [the goods] were disposed of by being scrapped, because they were probably not good.” Mr. Rossi further acknowledged that, while he had no first-hand knowledge of this, a colleague had told him that the goods had been disposed of. He also stated that there was little likelihood that the goods would have been sold to another seller, since they were damaged. According to his testimony, the damaged goods would have been sent to the smelter shortly after having arrived at Exide.

(c) *The Parties’ Contentions*

Iran’s Contentions

842. Iran contends that the Parties agree that KWPA obtained title to the G-105 Items prior to 19 January 1981. In this connection, Iran asserts that, according to Mr. Rossi, this occurred when the G-105 Items were delivered to the freight company at ESB’s factory for shipment in 1978. Iran further points out that the G-105 Items were actually loaded on the vessel *Trein Maersk* and shipped to Iran, and that KWPA received the original bill of lading, as stated in the 6 January 1982 KWEO/KWPA telex to ESB.

843. As a general matter, concerning the burden of proof, Iran argues that it would be impracticable to require it to prove the continuing existence, on 19 January 1981, of properties that were subject to the Blocking Order of 14 November 1979. According to Iran, goods that existed on 1 April 1980 – such as the G-105 Items, which had arrived in the United States on

that date – were most likely to continue to exist until 19 January 1981 “unless something or someone interfere[d] with them.” Accordingly, Iran continues, because the United States has asserted as a positive defense that the G-105 Items had been destroyed before 19 January 1981, the United States must prove this asserted fact.

844. Hence, Iran contends, it would be for the United States to submit evidence that the G-105 Items had been scrapped. Iran notes that, in its 17 September 1984 report to the Tribunal on Iranian tangible properties, with respect to the G-105 Items, the United States stated: “Goods returned to inventory.” This statement, Iran asserts, represents the United States’ position just five months after receiving Exide’s 13 April 1984 letter and is completely contrary to the account given by Mr. Rossi at the Hearing, who speculated that the G-105 Items would have been scrapped shortly after 1 April 1980.⁴⁷⁸

845. Iran contends that the United States has breached Paragraph 9 because the Unlawful Treasury Regulations, which excluded from the transfer directive of Section 535.215 contested properties and properties in respect of which the holder claimed a right to set-off, allowed Exide to resist the return of the G-105 Items. Alternatively, Iran argues, if the G-105 Items had been disposed of prior to 19 January 1981, the United States was in breach because the Unlawful Treasury Regulations allowed Exide to resist the return of the purchase price KWPA had paid by claiming a right to set-off.

846. In Iran’s view, the above conclusion is supported, *inter alia*: by the 13 April 1984 letter from Mr. Rossi, who claimed that Exide had “a legitimate offset” against Iran’s “asserted” claim relating to the G-105 Items; and by the United States’ statement, in its 17 September 1984 report to the Tribunal, that “Iran’s entitlement to return of payment [for the G-105 Items] contested by U.S. company due to outstanding unpaid invoices of Iranian Air Force.”

847. Iran further argues that it had no obligation to give any directions to Exide or any indication to the United States by informing them that Iran needed the G-105 Items. This is because Exide already had the necessary shipping instructions and was required to transfer the items to Iran pursuant to the directive contained in Executive Order No. 12281. Iran argues that it would have been futile for it to give any such directions or indication because the G-105 Items were in any event excluded from the transfer obligation by Unlawful Treasury

⁴⁷⁸ See *supra* para. 841.

Regulations.⁴⁷⁹

848. At any rate, according to Iran, KWPA's 5 January 1982 letter to Iran Gencomap, Exide's agent, instructing it to arrange for the transfer of the G-105 Items speedily, "is as clear an instruction as Iran could have given."

The United States' Contentions

849. The United States does not dispute that title to the G-105 Items passed to KWPA upon shipment in 1978. The United States argues, however, that "it is likely that when Iran effectively refused delivery, title would have reverted in Exide by operation of law," namely, Section 2-401 (4) of the UCC, as adopted in the State of Pennsylvania, which provides: "A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, . . . reverts title to the goods in the seller. . . ." According to the United States, Pennsylvania law is the *lex rei sitae*, Pennsylvania being where those items were located at the time of their disposal.

850. According to the United States, further, Iran has not demonstrated that the G-105 Items still existed within the jurisdiction of the United States on 19 January 1981. The United States contests Iran's argument that the Tribunal should simply presume that any property that Iran can demonstrate existed in the United States in 1979 was still in existence and within the jurisdiction of the United States on 19 January 1981.

851. The United States contends that, in light of the evidence in this Claim – in particular, Mr. Rossi's 13 April 1984 letter to the State Department and his testimony at the Hearing – which suggests that the items had been disposed of well before 19 January 1981, Iran must present more than inferences to carry its burden. In the United States' view, the most likely scenario is that the G-105 Items "were promptly scrapped upon retrieval from the port, which was in April 1980." The United States concludes, in light of the foregoing, that Iran has failed to show that the G-105 Items fell within the scope of Paragraph 9.

852. The United States contends that, even if Iran were able to make that showing, Iran has nevertheless not shown that the United States breached any obligation under Paragraph 9 with respect to the G-105 Items. As an initial matter, the United States contends that there is nothing

⁴⁷⁹ See also *supra* para. 202.

in the record to show that Exide retained the G-105 Items based on the Unlawful Treasury Regulations. According to the United States, in particular, “there is no improper debt or lien” at issue in this Claim.

853. The United States contends, further, that at no point after 19 January 1981 did Iran contact Exide to provide directions concerning the transfer the G-105 Items, nor did it provide Exide with shipping instructions.

854. According to the United States, it was first informed of this Claim in Iran’s reply of 31 August 1983 to the United States statement of defense, when Iran added Claim G-105 to the present Cases. The United States asserts that Iran, however, failed to provide any indication to the United States of the need for additional steps, beyond issuing Executive Order No. 12281, to ensure the transfer of the G-105 Items to Iran. Because of this failure by Iran, the United States argues, no breach by the United States of its Paragraph 9 obligation with respect to those properties could have occurred.

855. According to the United States, there was at any rate nothing the United States reasonably could have done to facilitate the transfer of the G-105 Items to Iran because, by the time Iran had notified the United States of this Claim in August 1983, those items had already been disposed of.

856. Finally, the United States contests Iran’s argument that, in any event, Iran is entitled under the Algiers Declarations to the return of the purchase price that KWPA paid Exide for the G-105 Items.

(d) The Tribunal’s Decision

857. There is no dispute that KWPA falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

858. Further, there is no dispute, and the evidence bears out, that title to the G-105 Items passed to KWPA in late 1978 or early 1979, when the G-105 Items were first shipped to Iran and KWPA obtained the original bill of lading relating to those items.⁴⁸⁰ According to the United States, however, title likely reverted to Exide by operation of Section 2-401 (4) of the

⁴⁸⁰ See *supra* paras. 838 & 841.

UCC, as adopted in the State of Pennsylvania “when Iran effectively refused delivery” of the G-105 Items.⁴⁸¹ The Tribunal cannot agree. Even assuming that Section 2-401 (4) UCC were applicable, there is no evidence that KWPA refused to receive the G-105 Items when the vessel *Trein Maersk* docked at Khorramshahr in February 1979. ESB’s 8 February 1979 telex to Iran Generator does not mention any such refusal by KWPA; rather, it merely states that the “vessel” in Khorramshahr – evidently the *Trein Maersk* – had been “unable [to] discharge” the G-105 Items. Equally, neither ESB’s 15 March 1979 telex to Iran Generator nor Mr. Rossi’s 13 April 1984 letter to the State Department mentions any refusal by KWPA to receive the G-105 Items. The evidence suggests to the Tribunal, rather, that the vessel’s inability to unload those items was attributable to the turmoil and civil strife affecting Iranian ports, including that of Khorramshahr, at the time.

859. Further, there is no evidentiary support for Mr. Rossi’s opinion, put forward in his testimony at the Hearing, that “the Iranian Government abandoned” the G-105 Items. In this connection, the Tribunal notes that, on 5 January 1982, KWEO (formerly KWPA) wrote to Iran Gencomap (formerly Iran Generator), requesting that it get in touch with ESB speedily, and that it take action for shipment and delivery of the G-105 Items as soon as possible. This action by KWEO is inconsistent with the abandonment theory put forward by Mr. Rossi.

860. The threshold question in this Claim thus becomes whether the G-105 Items still existed within the jurisdiction of the United States on 19 January 1981. The Tribunal notes that the G-105 Items were returned to the United States only in April 1980, after the failed attempt at delivery at the port of Khorramshahr in February 1979.

861. According to Exide’s 13 April 1984 letter to the State Department, the G-105 Items had been retrieved and subsequently “disposed of.” The exact date of such “disposal,” however, is not mentioned in Exide’s letter. It is further unclear whether the “disposal” of the G-105 Items meant that they had been destroyed, scrapped, resold, or otherwise dealt with. The Tribunal notes Mr. Rossi’s testimony at the Hearing, according to which he could “only speculate or guess” that the items had been scrapped because they were “probably not good.” Mr. Rossi acknowledged that he had no first-hand knowledge that the G-105 Items had been scrapped, and that a colleague had told him this. There is otherwise no evidence indicating that those

⁴⁸¹ See *supra* para. 849.

items had been scrapped.

862. By contrast, expert witness Dr. McDonagh, called by Iran, gave persuasive evidence before the Tribunal to the effect that dry-charged batteries would have been in “very good condition” even on 1 April 1980, when the G-105 Items were returned to the United States.

863. Moreover, the United States’ 17 September 1984 report to the Tribunal on Iranian tangible properties indicates that the “[g]oods” had been “returned to inventory,” which seems to contradict the assumption made by Mr. Rossi that the items had been “scrapped.”

864. In view of the paucity of evidence in this Claim, the Tribunal is, once more, required to make a determination on the basis of a balance of probabilities. There is no conclusive documentary evidence on record showing that the G-105 Items were not reusable at the time of their return to the United States or even a year thereafter. The mere mention on Quaker Packaging’s 1 April 1980 “cargo receipt” that the “shipment” had been received “wet & damaged” on arrival,⁴⁸² without more, does not allow the Tribunal to draw any definitive conclusions as to the actual state of the batteries and the other equipment included in the shipment.

865. Finally, as shown in Exide’s 13 April 1984 letter to the State Department, Exide was of the view, at that time, that the Iranian Air Force owed Exide over USD 30,000, an amount close to the original value of the G-105 Items.

866. In these circumstances, the Tribunal is not persuaded that it would have been in Exide’s interest to destroy the G-105 Items that had been returned to the United States in April 1980.

867. In view of the above, the Tribunal, on balance, accepts that the G-105 Items still existed within the jurisdiction of the United States on 19 January 1981.

868. The Tribunal now turns to the issue of the responsibility of the United States. The United States first learned about the G-105 Items on 31 August 1983, when Iran added this Claim to the present Cases in its Reply to the United States Statement of Defense.⁴⁸³ The relevant question becomes whether, after that date, the United States did everything it

⁴⁸² See *supra* para. 836.

⁴⁸³ See *supra* para. 839.

reasonably could have done to satisfy its Paragraph 9 obligation to take steps to ensure that the G-105 Items would be transferred to Iran.⁴⁸⁴

869. After the filing of Iran's reply of 31 August 1983, the State Department inquired of Exide about the location of the G-105 Items.⁴⁸⁵ By letter of 13 April 1984, Exide informed the State Department that Exide had "disposed of" those items after they had been returned to the United States.⁴⁸⁶ As noted, however, this language in Exide's 13 April 1984 letter does not allow one to discern precisely what had happened to the G-105 Items; in particular, it does not allow one to conclude with certainty that they had been destroyed by that date.⁴⁸⁷ Hence, after receiving Exide's letter, the State Department could have been reasonably expected to follow up on the matter with Exide and inquire further about the fate of the G-105 Items. There is no evidence, however, that the State Department did so. As noted, in its report on Iranian tangible properties of 17 September 1984, the United States simply indicated that the G-105 Items had been "returned to inventory."⁴⁸⁸

870. Considering the above circumstances, the Tribunal finds that the United States failed to take all reasonable steps to ensure that Exide transferred the G-105 Items to Iran and therefore breached its obligation under Paragraph 9. The Tribunal holds that the date of the breach is 31 August 1983, when the United States learned about Iran's claim for the G-105 Items.

871. In light of the foregoing, the Tribunal upholds Claim G-105.

(16) Claim G-109 (Red Crescent/Schueler & Co., Inc.)

(a) *Introduction*

872. In Claim G-109, Iran seeks USD 12,665.10, plus interest, for damages incurred as a result of the United States' alleged failure to arrange for the transfer of part of an order of orthopedic bandages purchased in 1978 by Red Crescent Society of the Islamic Republic of Iran ("Red Crescent") from Schueler & Company, Inc. ("Schueler"), a United States company.

⁴⁸⁴ See *supra* paras. 169 & 211.

⁴⁸⁵ See *supra* para. 840.

⁴⁸⁶ See *id.*

⁴⁸⁷ See *supra* paras. 861 & 864.

⁴⁸⁸ See *supra* para. 863.

(b) *Factual Background*

873. On 6 October 1978, Red Crescent – then the Red Lion & Sun Society of Iran – placed an order with Schueler, a subsidiary of Schuco International Corp. (“Schuco”), for the purchase of certain elastic orthopedic bandages for a total price of USD 29,390. The order required Red Crescent to open an irrevocable letter of credit payable at first sight, confirmed by a New York Bank, in favor of Schuco.

874. On 9 October 1979, due to production problems, Schueler made a partial shipment of the order (approximately 53 percent thereof). On 13 November 1979, Schueler sent a letter to the League of Red Cross Societies in Geneva, informing it of the partial shipment and stating that, since the letter of credit did not allow partial shipments, Schueler had collected its full value. Schueler also stated that the manufacturer of the bandages had experienced “serious production delays”; consequently, it estimated that the balance of the order could be shipped by the end of January or early February 1980. Schueler further indicated that it had instructed the manufacturer to continue production of the balance of the order (“Missing Bandages”). Schueler requested Red Crescent’s approval of the delay but suggested, as an alternative, that Red Crescent cancel the balance of the order, and that Schueler issue to Red Crescent a check for the difference.

875. The Parties agree that Red Crescent never replied to this letter.

876. Following a letter from Red Crescent, inquiring about the Missing Bandages, on 30 July 1980, Schueler sent a letter to the League of Red Cross Societies in Geneva, explaining again why it had been necessary to invoice the full order and informing the League that, due to the lack of instructions from Red Crescent, the order had been cancelled. In its letter, Schueler stated that enclosed therewith was a credit memorandum in the amount of USD 12,665.10 in favor of Red Crescent, covering the Missing Bandages, which had been invoiced but not shipped. This credit memorandum is not on record. Furthermore, Schueler stated that United States regulations in force at the time prohibited it from transferring any funds to Iran, and that it would send a check for USD 12,665.10 as soon as the political situation stabilized.

877. The record shows that, between 1980 and 1982, Red Crescent and Schueler exchanged correspondence, with Red Crescent requesting that the Missing Bandages, or otherwise the balance it was owed, be delivered notwithstanding the political situation between Iran and the United States. Red Crescent requested delivery in Geneva, arguing that Red Crescent and Red

Cross Societies are “charities and non-for-profit institutes” and would “maintain their full impartial position in the political debates and challenges in compliance with the World Union of Red Cross Societies.” Red Crescent further added that it expected Schueler to deliver the Missing Bandages, or otherwise the balance it was owed, “without any regard to political relations of the countries.”

878. On 20 December 1983, Chamber 13 of the Public Court of Iran rendered a default judgment in favor of Red Crescent against “Shoko International Corporation”⁴⁸⁹ (meaning, very likely, Schuco), ordering the latter to pay Red Crescent the amount of USD 12,665.10, representing the excess payment made under the letter of credit for the Missing Bandages.

879. Between 1984 and 1986, Red Crescent submitted several requests to Schueler for reimbursement of that excess payment. According to a memorandum dated 24 September 1985, documenting a conversation between the State Department and the President of Schueler, not all of those reimbursement requests were received by Schueler.

(c) *The Parties’ Contentions*

Iran’s Contentions

880. Iran asserts that Red Crescent is a government-controlled entity for purposes of the Algiers Declarations. Iran argues that, in 1979, the Iranian Ministry of Health took control over Red Crescent and ownership of its properties. In support, Iran also relies on Red Crescent’s statutes.

881. In response to the United States’ argument that the Missing Bandages were not in existence on 19 January 1981, Iran maintains that, in its letter dated 13 November 1979, Schueler informed Red Crescent that it had instructed the manufacturer to produce the Missing Bandages, and that they would be ready during the first months of 1980. Since the Missing Bandages were allegedly in the process of being produced in late 1979/early 1980, Iran asserts, they should be presumed to have existed on 19 January 1981.

882. Furthermore, Iran contends that Red Crescent had title to the Missing Bandages from the moment in which they were produced and identified to the contract (*i.e.*, set aside for supply

⁴⁸⁹ Neither Iran nor the United States has explained the relationship between Schuco and Schueler. This relationship, however, is immaterial to the present Claim.

to Red Crescent). According to Iran, even if New York law were applicable to the issue of passage of title, as argued by the United States, Red Crescent would have a special property interest under Section 2-501 UCC. In addition, Iran contends that Red Crescent was the beneficial owner of the Missing Bandages.

883. Assuming, *arguendo*, that the Missing Bandages were never produced following the cancellation of the order by Schueler, Iran contends that, nevertheless, the credit memorandum issued by Schueler is a form of property falling within the scope of Paragraph 9, which, Iran maintains, covers debts and advance payments. In addition, Iran argues that Paragraph 8 covers financial assets and, thus, would cover the “the money paid by [Red Crescent] which should now be returned.” Moreover, Iran maintains that Paragraphs 8 and 9 must be read to give effect to the aim of restoring Iran’s financial position under General Principle A. Unless the credit memorandum is recognized to constitute a form of property under Paragraph 9, or a financial asset under Paragraph 8, Iran would suffer a loss to its pre-November 1979 financial position in the amount paid by Red Crescent for the Missing Bandages.

The United States’ Contentions

884. The United States argues that Iran has failed to prove that Red Crescent was a government-controlled entity on 19 January 1980. If Red Crescent were a government-controlled entity, the United States argues, this would be a violation of the principles of impartiality, neutrality, and independence of the International Federation of Red Cross and Red Crescent Societies. In any event, the United States contends that Red Crescent’s statutes do not show that the Iranian Government exercised any control over Red Crescent.

885. The United States also argues that for the Missing Bandages to fall within the scope of Paragraph 9, they must have been in existence on 19 January 1981. In the United States’ view, however, Iran has failed to show that the Missing Bandages were ever produced. The United States contends that, because the Missing Bandages never came into existence, Iran never acquired title to them. According to the United States, moreover, New York law applies to passage of title. The United States asserts that the UCC, as adopted in New York, provides that goods must be both existing and identified, before any interest in them can pass;⁴⁹⁰ thus, since the Missing Bandages were never produced, Iran never acquired title thereto.

⁴⁹⁰ N.Y. UCC LAW, § 2-105(2).

886. With regard to Iran's contention that the advance payment made by Red Crescent to Schueler for the Missing Bandages falls within the scope of Paragraph 9, the United States argues that a claim for the return of a payment is outside the scope of the present Cases, which only deal with tangible properties. The United States contends that cash payments do not represent tangible properties within the meaning of Paragraph 9. In any event, the United States argues, Iran did not own the advance payment.

887. The United States also contests Iran's Paragraph 8 claim on the basis that advance payments are not financial assets, whether in the ordinary meaning of the term or in the context of Paragraph 8.

(d) The Tribunal's Decision

888. In light of Iran's latest submissions at the Hearing, the Tribunal understands that, in Claim G-109, Iran seeks the return of the advance payment of USD 12,665.10 that Red Crescent made to Schueler for the Missing Bandages that were ordered but never delivered. Iran bases this Claim on Paragraph 9 and, alternatively, on Paragraph 8 and General Principle A.

889. As noted above, the Tribunal, in Award No. 529, held that the scope of "Iranian properties" in Paragraph 9 was restricted exclusively to tangible properties that can be "solely owned."⁴⁹¹ A liability due to Iran clearly does not represent a tangible item of property but, at most, an interest in property. As such, it does not fall within the scope of "Iranian properties" within the meaning of Paragraph 9. Consequently, the Tribunal dismisses Iran's claim for the return of the advance payment based on Paragraph 9.

890. For the reasons stated earlier in this Partial Award, the Tribunal likewise dismisses Iran's alternative claims for the return of the advance payment based on Paragraph 8 and General Principle A.⁴⁹²

891. In view of the above holdings, the Tribunal need not address other arguments put forward by the Parties with regard to this Claim. In light of the foregoing, the Tribunal dismisses Claim G-109.

⁴⁹¹ See *supra* para. 99.

⁴⁹² See *supra* paras. 223-232 & 247.

(17) Claim G-111 (Tehran Urban & Suburban Railway Co./Zokor International Ltd.)

(a) *Introduction*

892. Claim G-111 involves a claim for machinery and equipment purchased by Tehran Urban & Suburban Railway Co. (“Tehran Metro”) from Zokor International Limited (“Zokor”). The items at issue in this Claim comprise one tunneling machine (referred to as “PW3”) and three mine car trains (referred to as “MC1,” “MC2,” and “MC3”). Iran does not dispute that these items were ultimately delivered to Tehran Metro but claims damages in the amount of either USD 6,495,309 or between USD 3,220,470 and USD 6,656,482, plus interest, for losses caused by the United States’ alleged breach of its obligation under Paragraph 9 between 19 January 1981 (*i.e.*, the date that it argues the United States breached the General Declaration) and July 1985 (*i.e.*, the average of the dates on which the properties were transferred to Iran).

(b) *Factual Background*

893. Tehran Metro concluded a contract with Zokor on 20 March 1978 for the manufacturing and delivery of tunneling machines, conveyor belts, and spare parts, and the provision of certain management services and technical assistance. Tehran Metro intended to use this machinery and equipment to build subways in Tehran and its suburbs. The contract was to be performed in four stages. Zokor was required to manufacture the machinery and equipment and deliver it to Tehran and to deposit letters of guarantee for each stage, which would also be released upon provisional delivery of the corresponding machinery and equipment. Tehran Metro was required to pay 25 percent of each order in advance and open a letter of credit in favor of Zokor for the remaining 75 percent, which was to be drawn upon in accordance with milestones set out in the contract (*e.g.*, submission of shipping documents, provisional acceptance).

894. An addendum to the contract was concluded on 1 July 1978 providing for the manufacturing and delivery of six mine car trains and additional spare parts, as well as for the provision of technical assistance and training. The mine car trains, including MC1, MC2, and MC3, were to be delivered to Tehran and assembled between 15 May and 30 September 1979.

895. In early December 1978, Zokor wrote to Tehran Metro, noting that the 25 percent progress payment for stage 3 of the contract, due on 1 November 1978, had not been received.

896. By letter dated 9 January 1979, Zokor petitioned Tehran Metro for a postponement of the delivery dates on account of Tehran Metro's failure to make timely payment in 1978.

897. By letter dated 6 February 1979, R.A.T.P. Sofretu, the "Supervisory Body" designated by Tehran Metro under the contract, advised Tehran Metro to accept Zokor's petition for a postponement of the delivery dates.

898. Between June and November 1979, Zokor delivered two of three tunneling machines that Tehran Metro had ordered.

899. On 25 September 1979, Zokor's lawyer wrote to Tehran Metro, stating that manufacturing of the remaining machinery and equipment was continuing at "full speed," and that Zokor would "use its utmost diligence to ship the . . . machinery in due time."

900. On 6 October 1979, Tehran Metro extended the letters of credit provided by Bank Markazi for the remaining machinery and equipment.

901. By letter dated 10 December 1979, Zokor informed Tehran Metro that "due to prevailing circumstances and regulations" it had been unable to collect payment and would be unable to arrange for shipment of the remaining machinery and equipment to Iran. Zokor also proposed alternative payment and shipping arrangements and noted its concern that the letters of credit for the remaining machinery and equipment would soon expire.

902. In early 1980, Tehran Metro and Zokor began negotiations concerning completion of the contract and, on 15 January 1980, Zokor proposed a further addendum to the contract.

903. On 24 January 1980, Tehran Metro instructed Bank Markazi to transfer the letters of credit to Credit Lyonnais in Paris.

904. By telegram on 9 February 1980, Bank Markazi confirmed that letters of credit had been opened at Credit Lyonnais in Paris in favor of Zokor. These letters of credit were extended several times, most recently on 19 August 1980 to 30 November 1980.

905. By letter dated 6 March 1980, Zokor terminated the contract (and its addendum), citing breaches of various obligations by Tehran Metro.

906. On 14 January 1982, Zokor brought a claim against Iran before this Tribunal, seeking USD 9,861,863 in damages, plus interest. Zokor's claim was registered as Case No. 254.

Tehran Metro filed its statement of defense and counterclaim in Case No. 254 on 17 May 1983, requesting USD 75,124,712 for the amounts paid under the contract, losses incurred as a result of being unable to complete the subway project, and the cost of replacing the equipment.

907. On 31 August 1983, Iran included Claim G-111 on its “Amended Schedule of Untransferred Iranian Properties,” resulting in the addition of this Claim to Case No. A15 (II:A).

908. In 1984, Zokor entered into a special form of insolvency proceedings (“Assignment for the Benefit of Creditors”). In connection with these proceedings, on 4 September 1984, Zokor assigned all of its assets to Keevan D. Morgan, who was acting as “Trustee and Assignee for the Benefit of the Creditors of [Zokor]” (the “Assignee”).

909. On 26 October 1984, the Assignee informed Tehran Metro that Zokor had assigned its interests in Case No. 254 to him and proposed terms for a settlement.

910. On 21 December 1984, Tehran Metro and the Assignee concluded a settlement agreement (the “21 December 1984 Settlement Agreement”).

911. On 5 March 1985, the 21 December 1984 Settlement Agreement was submitted to the Tribunal and, on 13 March 1985, the 21 December 1984 Settlement Agreement was approved by the Tribunal in Award No. 168-254-3 in Case No. 254.⁴⁹³

912. On 17 July 1985, the Assignee notified the Tribunal that, pursuant to the 21 December 1984 Settlement Agreement, MC1, MC2, and certain spare parts had been shipped to Iran and provided evidence that this machinery and equipment had left the territorial waters of the United States on 1 July 1985.

913. By Order dated 19 July 1985 in Case No. 254, the Tribunal stated that it was satisfied that the delivery of MC1, MC2, and certain spare parts had taken place and declared the corresponding letters of credit and letters of guarantee to be cancelled, in accordance with the 21 December 1984 Settlement Agreement.

914. On 17 October 1985, the Assignee notified the Tribunal that, in completion of its performance under the 21 December 1984 Settlement Agreement, MC3, PW3, and certain

⁴⁹³ *Keevan D. Morgan, Assignee for the Benefit of Creditors of Zokor International, Ltd. and Islamic Republic of Iran et al.*, Award No. 168-254-3 (13 Mar. 1985), reprinted in 8 IRAN-U.S. C.T.R. 72.

other spare parts had been shipped to Iran and provided evidence that this machinery and equipment had left the territorial waters of the United States on 14 October 1985.

915. Finally, by Order dated 18 October 1985 in Case No. 254, the Tribunal stated that it was satisfied that the delivery of MC3, PW3, and certain other spare parts had taken place and, as stated above, declared the corresponding letters of credit and letters of guarantee to be cancelled, in accordance with the 21 December 1984 Settlement Agreement.

(c) The Parties' Contentions

Preliminary Issues: (1) Alleged Withdrawal or Abandonment of Claim G-111; (2) Effects of the 21 December 1984 Settlement Agreement

The United States' Contentions

916. The United States argues that Claim G-111 is barred on two preliminary grounds: first, Iran's abandonment of its claim by withdrawing it in 1990; and, second, the waiver of claims found in paragraph 12 of the 21 December 1984 Settlement Agreement.

917. In relation to the first ground, the United States submits that Iran had previously abandoned the claim by withdrawing it in 1990. The United States also submits that, consistent with its alleged withdrawal, Iran did not submit a brief for this Claim in 1995 or 1996. The United States also contends that it would be prejudicial for the Tribunal to consider the brief Iran submitted in 2006, *i.e.*, 16 years after it had withdrawn this Claim and 21 years after the United States contends that matter was settled before the Tribunal in Case No. 254. The United States notes that in Case No. B61, the Tribunal found that an attempt to reintroduce claims only three years after all briefs and evidence were to be submitted would result in impermissible prejudice to the United States and was inconsistent with the conduct of fair and orderly proceedings. In the same vein, the United States argues that Iran's attempt to revive Claim G-111 is inconsistent with Article 20 of the Tribunal Rules.

918. The United States also submits that, while Iran was required to file its brief and evidence concerning all remaining issues to be decided in the present Cases in 1995, it made only a partial submission that did not include this Claim. The United States notes that by its Order dated 15 November 1995, the Tribunal denied Iran's request that it order the United States to respond to Iran's partial submission and set a deadline for Iran to submit the remainder of its

submission – while this deadline was extended several times, the United States submits that the Tribunal “effectively den[ied] Iran’s request to delay briefing any of its A15(II:A) claims beyond 1996.” On this basis, the United States argues that the Tribunal should dismiss any claims not included in Iran’s submissions in 1995 and 1996. For the United States, the dismissal of claims Iran chose not to brief in 1995 and 1996 would also be consistent with the Tribunal’s precedent in Case No. B61.

919. The United States further rejects Iran’s reliance, described below,⁴⁹⁴ on a statement in the United States’ 1985 report as preserving Iran’s ability to supplement its claims. The United States submits that, in fact, it expressly objected to Iran’s efforts to supplement its claims.

920. Additionally, the United States argues that the doctrine of extinctive prescription extinguishes Iran’s right of action in respect of this Claim. According to the United States, the doctrine of extinctive prescription is applicable where there has been undue delay in pursuing the claim and reliance by the defending state. The United States argues that these criteria are met in respect of this Claim.

921. As noted above, the United States also contends that Claim G-111 is barred by the 21 December 1984 Settlement Agreement, which it notes was approved by the Tribunal in its Award No. 168-254-3 in Case No. 254.⁴⁹⁵ The United States argues that the broad waiver and release of claims under paragraph 12 of that agreement is a general one and not limited to claims against a particular entity, such that it operates to bar claims against the United States. The United States also submits that there are no extenuating circumstances, such as duress, that would invalidate the settlement agreement.

Iran’s Contentions

922. Iran rejects the United States’ preliminary objections and submits that: (i) it did not withdraw Claim G-111 in 1990; (ii) it did not abandon Claim G-111 by failing to brief it in 1995 or 1996; and (iii) the 21 December 1984 Settlement Agreement does not exempt the United States from its obligation to compensate Iran for damages incurred due to its breach of Paragraph 9.

⁴⁹⁴ See *infra* para. 923.

⁴⁹⁵ Keevan D. Morgan, *Assignee for the Benefit of Creditors of Zokor International, Ltd. and Islamic Republic of Iran et al.*, Award No. 168-254-3 (13 Mar. 1985), reprinted in 8 IRAN-U.S. C.T.R. 72.

923. First, Iran submits that it has not withdrawn Claim G-111. It notes that the comment “claim withdrawn” in volume 2 of Iran’s 1990 report to the Tribunal appears in brackets after the comment “Iranian entity is considering the case,” and is therefore “far from an unequivocal indication by Iran of a decision to withdraw Claim G-111.” Moreover, Iran points out that it had included a statement in volume 1 of that report that it believed that the withdrawal of certain claims did not negate the recovery of damages from the United States and, indeed, had reserved its right to file further arguments and evidence. Iran also notes that this Claim was not included in the list of withdrawn claims that it provided with its 26 December 1996 submission to the Tribunal. Furthermore, according to Iran, contemporaneous statements by the United States, such as in its 1985 report, showed that it understood that Claim G-111 was still active and had not been withdrawn.

924. Second, Iran submits that it did not abandon Claim G-111 as a result of the delay between its 1990 report and its 2006 submission for this Claim. Iran submits it was unable to complete its brief for the present Cases in 1996 due to time constraints, the number of entities that it had to coordinate with, and the number of claims that had to be processed. Iran also notes that, at that time, it expressly reserved its right to provide a brief at a later stage, and that the United States did not object to this reservation. For Iran, the Tribunal’s awards in *Combustion Engineering v. Iran*⁴⁹⁶ and *Component Builders v. Iran*⁴⁹⁷ set out the grounds on which a claim could be considered abandoned. Iran argues that these grounds have not been met in respect of this Claim.

925. Third, Iran argues that the 21 December 1984 Settlement Agreement does not exempt the United States from its obligation to compensate Iran. Iran represents that Tehran Metro concluded the 21 December 1984 Settlement Agreement because of its urgent need for the machinery and equipment caused by the United States’ failure to perform its Paragraph 9 obligation and the need to avoid Zokor’s creditors selling its property before resolution of Case No. 254 or Case No. A15. For Iran, paragraph 12 of the 21 December 1984 Settlement Agreement does not exempt the United States from responsibility since the latter is not a party to that agreement. In Iran’s view, Article VII, paragraph 4, of the Claims Settlement Declaration does not transform any agency, instrumentality, or controlled entity into Iran itself.

⁴⁹⁶ *Combustion Engineering, Inc. et al. and Islamic Republic of Iran et al.*, Award No. 506-308-2 (18 Feb. 1991), reprinted in 26 IRAN-U.S. C.T.R. 60.

⁴⁹⁷ *Component Builders, Inc. et al. and Islamic Republic of Iran et al.*, Interim/Interlocutory Award No. ITM/ITL 51-395-3 (27 May 1985), reprinted in 8 IRAN-U.S. C.T.R. 216.

Thus, any waiver of claims by Tehran Metro in the 21 December 1984 Settlement Agreement cannot have affected the claims made by Iran in the present Cases.

926. Finally, assuming *arguendo* that Iran could have been deemed to be substituted for Tehran Metro in relation to the 21 December 1984 Settlement Agreement, Iran contends that paragraph 12 of that agreement would not meet the requirements for an effective unilateral waiver under international law. For Iran, paragraph 12 is “plainly limited to Tehran Metro’s contractual claims against Zokor.”

Remaining Issues: Iran’s Contentions

927. Iran submits that Tehran Metro was controlled by the Government of Iran as of 19 January 1981 and, indeed, prior to that date. Iran notes that Zokor considered Tehran Metro to be “a governmental company” when it brought its claim in Case No. 254, and that Tehran Metro’s status was confirmed in the Tribunal’s Award No. 168-254-3. Thus, Iran submits that Tehran Metro can be considered an entity of the Government of Iran for the purposes of the General Declaration.

928. Iran also submits that the properties at issue in this Claim existed as of 19 January 1981. Iran rejects the United States’ argument that the machinery and equipment did not exist as of that date because their manufacture had been suspended. First, Iran submits that even partially manufactured equipment would be within the scope of Paragraph 9, such that if that partially manufactured equipment was owned by Tehran Metro, the United States was obliged to arrange for its transfer. Second, Iran submits that “the equipment is likely to have been finalized and was ready for shipment long before [19 January 1981].”

929. Iran further submits that the properties were within the jurisdiction of the United States on 19 January 1981. Iran notes in this regard that Zokor had described the machinery and equipment as complete and ready for shipment in its letter dated 6 March 1980, described above.⁴⁹⁸ Iran explains that, due to the Blocking Order of 14 November 1979, the items could not be shipped to Iran but, as the properties were finally delivered from the United States to Tehran Metro in 1985 through the Assignee, Iran concludes that the machinery existed and was situated in the jurisdiction of the United States on 19 January 1981.

⁴⁹⁸ See *supra* para. 905.

930. As to ownership of the properties, Iran refers to Article 45 of the General Conditions of the Contract, incorporated by reference into the contract and the addendum, which states that the laws of Iran apply in the case of disputes between Zokor and Tehran Metro. Iran also submits that the General Conditions of the Contract are an integral part of both the 20 March 1978 contract and the 1 July 1978 addendum. On this basis, Iran argues that the ownership of PW3, MC1, MC2, and MC3 should be governed by Iranian law.

931. As to the content of Iranian law, Iran refers to Article 339 of the Iranian Civil Code, which provides:

After mutual agreement between the seller and the buyer in respect of the subject-matter of the sale and its price, the contract of sale is concluded by offer and acceptance. A sale may also be effected by mutual exchange.⁴⁹⁹

932. According to Iran, under Iranian law, ownership passes from the seller to the buyer when the contract is concluded, which in the case of the sales contract is when the order is placed by the buyer or when the object of the sale has been manufactured. In this regard, Iran relies on Article 362 (1) of the Iranian Civil Code, which provides as follows:

The consequences of a regularly conducted sale are as follows:

1 – As soon as a sale is effected, the purchaser becomes the owner of the subject-matter of the sale and the seller becomes the owner of its price.⁵⁰⁰

933. In response to the United States' argument that, under Iranian law, title to goods that have yet to be manufactured passes only at the point of delivery, Iran submits that this situation only arises in relation to unidentified goods. However, for Iran, "[e]quipment which is to be manufactured specifically for a particular buyer pursuant to the terms of a contract is not an unidentified good." Thus, Iran contends that title to the properties at issue in this Claim passed "as [they were] being manufactured."

934. Iran also argues that, even if title to the properties claimed had not passed to Tehran Metro, they would still have been "Iranian properties" falling within the scope of Paragraph 9. For Iran, interpreting Paragraph 9 in the light of the context and purpose of the treaty makes it clear that "the United States' obligation to transfer Iranian properties to Iran is not limited to Iranian titled properties. Rather, particularly in light of General Principle A, Iranian properties

⁴⁹⁹ Civil Code of Iran, art. 339 (M.A.R. Taleghany trans., Fred B. Rothman & Co. 1995).

⁵⁰⁰ Civil Code of Iran, art. 362 (1) (M.A.R. Taleghany trans., Fred B. Rothman & Co. 1995).

must be understood as encompassing all properties in which Iran has an ownership interest.” This is, according to Iran, confirmed by the Tribunal’s treatment of the United States’ Paragraph 9 obligation in Award No. 529 in Case No. A15 (II:A) and Award No. 601 in Case No. B61. Iran argues that, because Tehran Metro had fulfilled all its obligations under the contracts by September 1979 (*i.e.*, that it had paid 50 percent of the contract price, and that the remaining 50 percent was available to Zokor through the letters of credit established by Tehran Metro, which could be drawn upon once the equipment had been shipped), Tehran Metro had a right to possess the equipment and it was therefore Iranian property falling within the scope of Paragraph 9.

935. Even if, *arguendo*, Illinois law applied, Iran submits that Tehran Metro would have “held a special property right in the tunneling machines since they were identified to the contract” in accordance with Section 2-401 (2) of the UCC, as adopted in Illinois.

936. Iran further argues that, according to “international commercial practice,” Tehran Metro owned the properties because it had “put at disposal of the seller all purchase value of the contract.”

937. Iran also rejects any suggestion that paragraph 7 of the 21 December 1984 Settlement Agreement, which states that title relating to PW3, MC1, MC2, and MC3 would pass from the Assignee to Tehran Metro when the equipment leaves the territorial waters of the United States en route to Iran, has an impact on the fact that title to those items had already passed, under Iranian law, to Tehran Metro under the original contracts.

938. Finally, in relation to the actions taken in relation to the items at issue in this Claim, Iran submits that, pursuant to the Tribunal’s findings in Award No. 529 and the obligation of the United States under Paragraph 9, Tehran Metro had no obligation to take any action, but nevertheless attempted several times to recover its property from Zokor, including by extending the letters of credit and negotiating a settlement. In the same vein, Iran refers to the Tribunal statement in Award No. 529 that alleged actions or inactions by Iran are issues between Iran and the private United States companies it contracted with and have no bearing on the obligations that Iran and the United States assumed in the Algiers Declarations. Therefore, according to Iran, the contractual dispute that arose between Zokor and Tehran Metro in 1980 does not relieve the United States of responsibility, since the machinery did not “cease[] to be Iranian property because of Tehran Metro’s purported contractual defaults.” Iran also points

out that Article II(1) of the Claims Settlement Declaration provided an alternative legal avenue for private United States companies to bring, *inter alia*, claims for breach of contract, and that Zokor did so in Case No. 254.

939. As to the actions of the United States, Iran notes that Section 535.333(c) of the Unlawful Treasury Regulations has been found to be in violation of the Algiers Declarations by the Tribunal in Award No. 529. Further, Iran contends that, after the Algiers Declarations, Zokor no longer had the right to retain the properties of Iran. Therefore, in Iran's opinion, the United States was under an obligation to take steps to arrange for the transfer of the relevant property and, in particular, to direct the possessors of Iranian properties to return those properties. As the United States took no action after 19 January 1981 in respect of the items at issue in this Claim, Iran argues that the United States is in breach of its Paragraph 9 obligation. Iran also argues that the fact that settlement negotiations were ongoing between the Assignee and Tehran Metro does not relieve the United States of its obligation to take steps to arrange for the transfer of the relevant property.

940. On the basis of the above, Iran requests that the Tribunal find the United States in breach of its Paragraph 9 obligation in respect of the items at issue in this Claim.

Remaining Issues: The United States' Contentions

941. Assuming, *arguendo*, that the Tribunal does not bar Claim G-111 on the basis of the preliminary objections described above, the United States argues that Iran bears the burden of proof as Claimant but has failed to discharge that burden.

942. The United States also argues that Iran has not shown that the items that are the subject of its claim were completely manufactured, or that they were within the jurisdiction of the United States on 19 January 1981.

943. The United States further argues that, as Tehran Metro did not own the items at issue on 19 January 1981, they did not constitute "Iranian properties" for the purposes of Paragraph 9.

944. In this regard, the United States argues that Illinois law is the law governing the question of title. The United States considers that the *lex rei sitae*, or the law where the property is located, is what governs ownership of the items. For the United States, the *lex rei sitae* is the

law of Illinois because the partially manufactured items were located at Zokor's facilities in Illinois. The United States notes that Illinois law incorporates UCC Section 2-401(2), which in turn states that the parties may explicitly agree as to when title will pass and, if they do not do so, that title will pass at the time and place that the seller delivers the goods.

945. The United States also argues that its conclusion that Tehran Metro did not own the items at issue on 19 January 1981 is correct, regardless of whether Illinois or Iranian law applies. According to the United States, Iranian law "also provides for passage of title upon delivery, the same as Illinois law." For the United States, Iranian law distinguishes between goods identified in the contract and non-identified goods (including future goods and goods that have not yet been manufactured). The United States submits that for the latter, title would pass upon delivery under Iranian law such that Tehran Metro did not own the items in question until 1985 when delivery took place.

946. As to the law of the contract, the United States takes the position that Iranian law is not the law of the contract. The United States notes the choice of Iranian law at Article 45 of the General Conditions of the Contract (Settlement of Disputes) but argues that it concerns only the law applicable to contractual disputes between Zokor and Tehran Metro.

947. Also in relation to the question of ownership, the United States contends that the original contract provided that title to the items would transfer to Tehran Metro upon delivery and that delivery of the items at issue did not take place until 1985. The United States also submits that Tehran Metro itself contemporaneously recognized that it did not own the items by the terms of the 21 December 1984 Settlement Agreement. In particular, the United States refers to paragraph 7 of that agreement, which states that title to the items would pass to Tehran Metro when those items left the territorial waters of the United States. For the United States, "[i]ncluding such a provision . . . only makes sense if Zokor, not Tehran Metro, had title," and it establishes that title to the items did not transfer to Iran until 1985.

948. The United States also maintains that it did not breach any obligation to take reasonable steps with respect to the claimed items. The United States argues that, as the Tribunal held in Award No. 529, its only obligation, beyond the removal of barriers to the transfer of Iranian properties and the direction to persons subject to United States jurisdiction to affect such transfer, was to take steps to ensure that this directive would be complied with. The United States contends that, once it was notified of the items claimed as a result of the filing of Claim

G-111, it duly investigated the claim. However, upon investigation, the United States found that negotiations were well underway to resolve the dispute, and therefore submits that it acted reasonably in allowing the parties to the underlying contract to continue their negotiations.

949. The United States also disputes Iran's suggestion that Zokor did not transfer the items at issue due to the Unlawful Treasury Regulations; for the United States, Zokor did not transfer the items because Zokor still owned the items. In this regard, the United States also notes that, after the settlement agreement was signed, the items were shipped to Iran without the Unlawful Treasury Regulations providing any impediment.

950. The United States contends that, even if a Paragraph 9 obligation had existed, Iran never provided any indication that it needed help to arrange for the transfer of the items, as had been required by Award No. 529, until Iran submitted Claim G-111 on 1 August 1983. For the United States, this means that the earliest date on which the United States could be considered to have breached its obligation is six months after Iran submitted this Claim. The United States considers six months to be an appropriate period of time because it is the minimum amount of time necessary for the United States to have met its obligations, such as by attempting to contact the property holder, analyzing the facts, and taking whatever steps were determined to be necessary to arrange for the transfer of the properties.

951. Finally, the United States argues that Iran has failed to establish that the harm allegedly suffered by Iran was "actually and proximately caused by a breach by the United States of its obligations under the Algiers [Declarations]."

(d) The Tribunal's Decision

(i) Preliminary Issues: (1) Alleged Withdrawal or Abandonment of Claim G-111; (2) Effects of the 21 December 1984 Settlement Agreement

952. The Tribunal must consider two preliminary issues before deciding on the merits of Claim G-111: first, whether the claim had been withdrawn or otherwise abandoned by Iran; and, second, whether the 21 December 1984 Settlement Agreement barred Claim G-111.

953. In relation to the first issue, the primary considerations of the Tribunal are whether Iran could have been said to have withdrawn or abandoned Claim G-111 and, if that were the case,

whether allowing the claim to proceed would be prejudicial to the fair and orderly conduct of the proceedings, as the United States has argued.

954. The Tribunal considers that the withdrawal or abandonment of a claim entails the unilateral waiver and extinguishment of certain rights by the withdrawing or abandoning party. The extinguishment of those rights is occasioned solely by that party's intent and leads to a substantial modification in the pre-existing legal situation. As such, under international law, any such withdrawal or abandonment of a claim should be explicit, specific, and categorical, since it would be improper for the Tribunal to deduce such unilateral waiver from unclear actions and expressions, or dubious evidence. Many arbitral tribunals, deciding on whether claims before them had been withdrawn, waived or abandoned, have followed the same reasoning. For instance, in *Chevron v. Ecuador*, the tribunal held that the doctrine of waiver is "subject to a high threshold."⁵⁰¹ Similarly, in *Waste Management v. Mexico*, it was held that "any waiver must be clear, explicit and categorical, it being improper to deduce same from expressions the meaning of which is at all dubious."⁵⁰²

955. In this respect, several facts in this Claim draw the Tribunal's attention. The Tribunal finds it noteworthy that the issue of withdrawal was first mentioned by the United States, and not by Iran, in the United States' 1985 report to the Tribunal, where the United States stated that Claim G-111 was based on the same transaction that was settled in Case No. 254 and "should be withdrawn here." Iran's subsequently submitted two reports to the Tribunal, in 1987 and 1990, in which Iran commented that, in relation to Claim G-111, the "Iranian entity is considering the case (Claim withdrawn)." It was the United States again, and not Iran, that re-classified Claim G-111 under the category "Claim Withdrawn," and the heading "Claims Withdrawn by Iran" in Appendix H of its 1990 report. This re-classification was affirmed by

⁵⁰¹ *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 34877, Interim Award, 1 Dec. 2008, paras. 143 and 148, citing to Case concerning Oil Platforms (Iran/U.S.), Judgment, 2006 I.C.J. 225 (6 Nov.).

⁵⁰² *Waste Management v. Mexico*, Award (ICSID Case No. ARB(AF)/98/2), para. 18 (26 May 2000), holding that, the

act of waiver per se is a unilateral act, since its effect in terms of extinguishment is occasioned solely by the intent underlying same. The requirement of a waiver in any context implies a voluntary abdication of rights, inasmuch as this act generally leads to a substantial modification of the pre-existing legal situation, namely, the forfeiting or extinguishment of the right. Waiver thus entails exercise of the power of disposal by the holder thereof in order to bring about this legal effect.

Whatever the case, any waiver must be clear, explicit and categorical, it being improper to deduce same from expressions the meaning of which is at all dubious.

the United States, and not Iran, in the United States' 1991 report, in which the United States commented that Claim G-111 was "Withdrawn." In none of these reports is it clear to the Tribunal that Iran, the Party alleged to have withdrawn its Claim, expressed any explicit, specific, and categorical intent to do so. The two comments by Iran that the "Iranian entity is considering the case (Claim withdrawn)" appear to the Tribunal only to indicate that Iran was considering the matter as to whether the Claim should be withdrawn, rather than actually withdrawing it. Indeed, the fact that Claim G-111 was not considered withdrawn by Iran is confirmed by Iran's brief and evidence of 26 December 1996, where Iran sets out a list of claims that it withdrew. Claim G-111 is not included in that list. Claim G-111 was also extensively addressed by Iran in its 2006 rebuttal brief and at the Hearing in the present Cases. The Tribunal therefore finds that Iran has not withdrawn Claim G-111.

956. The Tribunal turns to consider whether Iran had, as the United States argues, abandoned Claim G-111 through not having pursued it for a sufficiently long period of time. In this respect, the Tribunal notes that the United States is correct in stating that no argument for Claim G-111 was made by Iran in its brief and evidence of 26 December 1996 or the earlier related submissions. However, in its 26 December 1996 submission, Iran did indicate that, as to claims for which no brief and evidence had been submitted at that stage, Iran relied on its prior submissions and reserved the right to submit further arguments and evidence with respect to such claims. Moreover, Iran submitted its brief and evidence in rebuttal in Claim G-111 on 17 May 2006, indicating that it had not abandoned the Claim, as the United States suggests. The Tribunal recalls its earlier decisions in *Combustion Engineering v. Iran*,⁵⁰³ and *Component Builders v. Iran*,⁵⁰⁴ where it deemed claims and counterclaims to have been abandoned only when, as of the close of the proceedings, they had not been referred to since the first time they were raised.⁵⁰⁵ The Tribunal concludes, therefore, that Iran cannot have been said to have abandoned Claim G-111 simply because it had not made arguments in support of that Claim in its 1995 and 1996 filings.

957. The Tribunal considers it necessary to emphasize here that, in coming to this conclusion, it analyzed in depth the issue of whether Iran's failure to brief Claim G-111 in its

⁵⁰³ *Combustion Engineering, Inc. et al. and Islamic Republic of Iran et al.*, Award No. 506-308-2 (18 Feb. 1991), reprinted in 26 IRAN-U.S. C.T.R. 60.

⁵⁰⁴ *Component Builders, Inc. et al. and Islamic Republic of Iran et al.*, Interim/Interlocutory Award No. ITM/ITL 51-395-3 (27 May 1985), reprinted in 8 IRAN-U.S. C.T.R. 216.

⁵⁰⁵ See also Award No. 529, para. 26, 28 IRAN-U.S. C.T.R. at 122.

1996 filings caused prejudice to the United States. The Tribunal notes that, with the exception of one valuation report that was submitted in 2006, all of the documents that Iran submitted with its brief and evidence in rebuttal in 2006 had also been submitted in Case No. 254, either by Tehran Metro or by Zokor. The United States, therefore, had access to these documents from 1982. The Tribunal therefore finds that it could not be said that the United States had been prejudiced by Iran's failure to submit further documents in evidence with its 1996 brief. Moreover, the Tribunal notes that the United States filed a long rebuttal brief in 2011, with an expert evaluation report and a witness statement from Zokor's lawyer at the time. To the Tribunal, this indicates that the United States was fully able to respond to Iran's arguments, and the fact that Iran had not addressed Claim G-111 in its brief and evidence of 26 December 1996 did not impact the fair and orderly conduct of these proceedings.

958. The Tribunal next turns to the second preliminary issue, as to whether Claim G-111 is barred by reason of the 21 December 1984 Settlement Agreement. In Award No. 529, the Tribunal has held:

With respect to property that has not been transferred as required by the General Declaration because the United States has not fulfilled its obligations under the General Declaration, the withdrawal by Iran of a claim against the holder of that property or the settlement of such a claim between Iran and the holder of the property subsequent to 26 February 1981 does not *per se* relieve the United States from liability to Iran for losses caused by such non-transfer.⁵⁰⁶

Accordingly, in line with its holding in Award No. 529, the Tribunal rejects the United States' argument that Claim G-111 should be dismissed as a consequence of 21 December 1984 Settlement Agreement.

959. The Tribunal therefore finds that Claim G-111 is not barred either by any alleged withdrawal or abandonment by Iran of the Claim or by the 21 December 1984 Settlement Agreement.

(ii) *"Iranian Properties" Within the Jurisdiction of the United States*

960. Having found that Claim G-111 is not barred from proceeding, the Tribunal next turns to consider whether the items at issue in this Claim fall within the scope of Paragraph 9.

⁵⁰⁶ Award No. 529, para. 77 (h), 28 IRAN-U.S. C.T.R. at 141.

961. The Tribunal notes that there is no dispute between the Parties that Tehran Metro falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

962. The decision of whether PW3, MC1, MC2, and MC3 fell within the meaning of the term “Iranian properties” for the purposes of Paragraph 9 turns on two crucial questions: first, whether the items were manufactured and existed on 19 January 1981; and, second, whether Iran was the sole owner of the items as of that date.

963. The evidence submitted in this Claim shows that the manufacture of the items ceased approximately around January 1979, according to the 9 January 1979 letter from the President of Zokor to Tehran Metro. However, after Tehran Metro paid the second instalment in August 1979, work on PW3, MC1, MC2, and MC3 recommenced, as indicated by the 25 September 1979 letter from Zokor’s lawyer to Tehran Metro. Most tellingly, in its 6 March 1980 termination notice to Tehran Metro, Zokor announced that it had performed all of its obligations under the contract to the fullest extent possible. Indeed, in that termination notice, Zokor stated that one of the grounds for termination was Tehran Metro’s “[r]efusal to take the necessary steps to permit us to ship *completed goods, i.e., PW-3, MC-1, 2 and 3*, and obtain payment therefor upon shipment.” (Emphasis added.)

964. Additionally, the communication dated 26 October 1984 from the Assignee to Tehran Metro indicated that, pursuant to the terms of the settlement it was proposing, “[a]ll of the machinery in the United States ([PW3, MC1, MC2, and MC3]) would be repaired, refurbished, prepared for shipment and shipped to Metro.”

965. The Tribunal thus concludes from the evidence that, by 6 March 1980, the items were manufactured and were awaiting shipment to Tehran. It follows that PW3, MC1, MC2, and MC3 were manufactured before 19 January 1981 and were in the United States from then until at least 26 October 1984, the date of the communication described above. Therefore, the Tribunal finds that those items existed and were within the jurisdiction of the United States on 19 January 1981.

966. The Tribunal now considers the question of whether PW3, MC1, MC2, and MC3 would constitute “Iranian properties” for the purposes of Paragraph 9. Since the Parties disagree as to whether the items at issue in Claim G-111 constitute “Iranian properties,” the Tribunal must

determine whether title to the items of property claimed had been transferred to Iran as of 19 January 1981.

967. As noted earlier in this Partial Award, under the general principles of private international law, the *lex rei sitae* governs the passing of title in movable property.⁵⁰⁷ Not infrequently in trans-border transactions, the *lex rei sitae* of movable property is different from the *lex contractus*, in particular where, according to the *lex contractus*, as a general rule, rather than by delivery, title to already existing goods is passed by the conclusion of a sales contract, and title to goods to be manufactured is passed when they are manufactured.⁵⁰⁸

968. Claim G-111 concerns precisely a case where, under the default rule of the *lex rei sitae*, property is passed by delivery, and where, under the default rule of the *lex contractus* – here arguably Iranian law – title is already passed by the conclusion of the sales contract or as soon as the goods are manufactured.

969. In Claim G-111, PW3, MC1, MC2, and MC3 were manufactured by, and in the possession of, Zokor, which was situated in the State of Illinois, United States. The applicable *lex rei sitae* is therefore the law of Illinois.

970. Section 2-401 (2) of the UCC, as adopted in Illinois, provides as follows:

Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time and place;⁵⁰⁹ (Emphasis added.)

Thus, according to the applicable *lex rei sitae*, the parties, in derogation of the default rule under that law, may explicitly agree, for example, that title to goods sold passes, not upon their delivery, but rather upon conclusion of the sales contract.

971. On the other hand, the *lex contractus* that governs the 1978 agreement between Tehran Metro and Zokor is probably Iranian law. A “contract specimen” between Tehran Metro and Zokor for, *inter alia*, the principal works (including PW3) and an “addendum” to that specimen

⁵⁰⁷ See *supra* paras. 135-164.

⁵⁰⁸ See *supra* para. 152.

⁵⁰⁹ II. UCC, 810 ILCS 5, § 2-401(2).

contract for, *inter alia*, the mine car trains (including MC1, MC2, and MC3), neither of which are signed, have been entered into evidence.⁵¹⁰ They do not include a choice-of-law clause, *i.e.*, a clause determining the *lex contractus*, nor any other agreement according to which the default rule on passage of title was replaced. As mentioned above,⁵¹¹ Article 2 of the specimen contract and Article 2 of the addendum both incorporate by reference General Conditions of the Contract.⁵¹²

972. The General Conditions of the Contract, in turn, provide in their Article 45 on the settlement of disputes:

Disputes between the employer and the manufacturer, whether involving the execution of the contract or related to interpretation and construction of the Articles of the contract, the General Conditions or the supporting documents, should be settled through negotiation. If negotiations are not successful, the disputes should be settled *according to the Iranian laws* by recourse to the competent judicial authorities, unless agreements and regulations pertinent to such a case exist between the Imperial government of Iran and the government of the manufacturer's country. (Emphasis added.)

973. The Tribunal accepts that Article 45 may be construed as a fully-fledged choice-of-law clause that determined the law governing the two contracts. It follows that, where a dispute related to the contract arose, the parties agreed that all matters involving the execution of the contract would be settled according to Iranian law.

974. However, the *situs* was and remained, during all relevant points in time, Illinois. Consequently, according to the general principle of private international law, as identified earlier in this Partial Award,⁵¹³ it was for Section 2-401(2) UCC in connection with other contract law of the *situs* to determine whether the parties had agreed to derogate from the fall-back rule. No such explicit agreement establishing the time for the passage of title prior to 21

⁵¹⁰ Both documents are described as having been concluded in Farsi, but the Farsi versions submitted by Iran are not signed. In Case No. 254, Zokor and Tehran Metro submitted different English translations of all four contractual documents – the contract specimen dated 20 March 1978, the addendum dated 1 July 1978, and the two sets of General Conditions of the Contract. Only the translations submitted by Zokor in Case No. 254 bear any indication that signed originals were available to the translator, because the text “Sgd.” appears above the signature lines in both the contract specimen dated 20 March 1978 and the addendum dated 1 July 1978.

⁵¹¹ *See supra* para. 930.

⁵¹² The General Conditions of the Contract for the contract specimen and the addendum are stated to be identical but for the provisions dealing with provisional delivery, the performance guarantee, payment conditions, and testing.

⁵¹³ *See supra* paras. 135-164.

December 1984 is reflected in the record. Although the Tribunal can accept that the law governing the *contract* was Iranian law, such choice would not meet the criterion established by Section 2-401(2) of the UCC, as adopted in Illinois, which requires that the point in time, or the event, upon which *title passes* to the buyer be *explicitly* agreed.⁵¹⁴

975. Article 7 of the 21 December 1984 Settlement Agreement between Tehran Metro and the Assignee provides:

The *title* to the remaining equipments . . . shipped by the Claimant to the Iranian ports . . . *shall pass* to METRO *when* such equipments . . . *leave the territorial waters of the United States* en route to Iran (Emphasis added.)

Had the equipment and the spare parts left the territorial waters of the United States en route to Iran, according to the *lex rei sitae*, title would, as agreed between the Parties and pursuant to Section 2-401(2), have passed to Iran at that point in time. Yet, they did not do so before 14 January 1982, when Zokor submitted its claim in Case No. 254.

976. The Assignee, an insolvency administrator in charge of Zokor’s estate in an out-of-court and non-statutory insolvency administration,⁵¹⁵ was “standing in the shoes of the insolvent” where he acted as authorized by the relevant insolvency-law provisions, or assignment. The contract between Zokor and Tehran Metro was an “executory contract” in the sense that there were aspects of remaining performance on both sides of the contract, and the assignment vested the Assignee with wide-ranging powers. The ultimate beneficiaries of the administrator or assignee’s power to minimize the burden of unfavorable contracts and to

⁵¹⁴ The Tribunal notes that, significantly, this is also the position of Swiss law, Articles 104, 116 (2) Swiss Federal Act on Private International Law, as construed by the Federal Supreme Court. *See supra* para. 161 & note 189.

⁵¹⁵ An illustrative case for the Assignee for the Benefit of Creditor’s position and his powers is *Illinois Bell Tel. Co. v. Wolf Furniture H., Inc.*, 509 N.E. 2d 1289, 1291-92 (Ill. App. Ct. 1987). As regards specifically the case at hand, the record of Case No. 254 shows that the Assignee had the power to enter into a settlement agreement: Memorial in Support of Claimant’s Motion to Amend Statement of Claim by naming Keevan D. Morgan, Assignee for the Benefit of Creditors of Zokor International, Ltd., as Claimant; Assignment dated 4 September 1984; and Affidavit of Keevan D. Morgan, Assignee for the Benefit of Creditors of Zokor International, Ltd., dated 28 January 1985. As for the Tribunal, it confirmed that the Assignee was now the claimant in its Order dated 7 February 1985 in Case No. 254. It also accepted that, as the claimant, the Assignee was able to enter into the Settlement Agreement; *see* Award on Agreed Terms dated 13 March 1985. For the functionally wide scope of these concepts in the context of European law, see Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), 2015 O.J. (L 141), recital 20, art. 2(5), and Annex B (Ireland and United Kingdom).

maximize the advantages of favorable contracts are the creditors and, where applicable, the debtor's other constituencies.

977. The Tribunal has explained earlier in this Partial Award why, basing its decision in relation to the acquisition of title in movables on general principles of private international law, it cannot adhere to the French and Belgian doctrine of distinguishing between effects of a sale *inter partes* and *erga omnes*.⁵¹⁶ Specifically for purposes of Claim G-111 and *ex abundanti integritas*, the Tribunal recalls that, according to the most authoritative writers, the rule giving prevalence to the *lex contractus* as regards the *inter partes* relationship does not apply where the *lex rei sitae* for its part does not make that distinction.⁵¹⁷ Illinois law does not. Second, the rule that the *lex contractus* may also govern the passage of title in the goods sold does not apply where certain categories of third party may have an interest in being able to readily verify the legal position based on appearance. Insolvency administrators are one of those categories.⁵¹⁸ Finally, the Tribunal notes that, as recognized in international insolvency law generally, also according to French authority the *loi de la source* (of the passage of title, *i.e.*, Iranian contract law) did not affect the powers of the Assignee, which were governed by the *lex concursus*, *i.e.*, the law of the State of Illinois.⁵¹⁹

978. Based on the foregoing analysis, the Tribunal therefore finds that PW3, MC1, MC2, and MC3 did not constitute "Iranian properties" on 19 January 1981.

(18) Claim G-128 (Mazandaran Wood and Paper Industries/Stadler Hurter Ltd.)

(a) *Introduction*

979. In Claim G-128, Iran seeks a maximum of USD 2,843,000 in damages incurred as a result of the United States' alleged failure to arrange for the transfer to Iran of a power boiler and auxiliary equipment that had been manufactured in the United States. Iran also seeks interest on any awarded amount from 19 January 1981.

⁵¹⁶ See *supra* paras. 161-162.

⁵¹⁷ PIERRE MAYER & VINCENT HEUZÉ, DROIT INTERNATIONAL PRIVÉ ¶ 677 (11th ed. 2014).

⁵¹⁸ *Id.* ¶¶ 670, 675-76.

⁵¹⁹ BERNARD AUDIT & LOUIS D'AVOUT, DROIT INTERNATIONAL PRIVÉ ¶ 845 (7th ed. 2013).

(b) Factual Background

980. On 21 December 1974, the Industrial Development and Renovation Organization (“IDRO”), an agency of Iran, and Stadler Hurter Limited (“SHL”), a Canadian corporation, entered into a contract for the design and construction of a paper mill in the Iranian province of Mazandaran (“Mazandaran Contract” or “Contract”). In its preamble, the Mazandaran Contract stated that IDRO, as the “buyer,” desired that SHL, as the “seller,” supply certain equipment and materials. To implement the Mazandaran Contract, IDRO created Mazandaran Wood and Paper Industries (“MWPI”), a wholly-owned subsidiary. IDRO subsequently assigned its rights and obligations under the Mazandaran Contract to MWPI.

981. Under the Contract, SHL, as the seller, undertook, among other things, to furnish all major items of equipment and the technical services required for the paper mill. IDRO/MWPI, as the buyer, in return, undertook to pay a total of USD 142 million in installments as progress payments.

982. The Mazandaran Contract contained, in Article 28, a specific provision governing the passage of title to the equipment, stating, in relevant part:

28.0 OWNERSHIP

28.1 Title and right of possession shall vest in BUYER at the times set forth below for the respective categories:

- a) MATERIALS⁵²⁰ – as from the moment of ACCEPTANCE of WORKS as defined in Article 15.0 . . . or [r]eceipt of final payment by the SELLER, whichever occurs later

In a nutshell, “acceptance of works” pursuant to Article 15.0 of the Contract entailed SHL setting up the equipment in Iran and conducting a “performance trial” to ensure that the equipment subject to the trial was functioning properly; thereafter, an engineer retained by MWPI would issue an “acceptance certificate” for the item subject to the performance trial.

983. On 19 October 1976, SHL ordered the asset at the heart of this Claim, a “Combustion Engineering Power Boiler VU60 and Auxiliary Equipment” (collectively, “Power Boiler”), from Machine Sazi Arak (“MSA”), an Iranian company. As envisioned by the parties to the

⁵²⁰ Article 1.23 of the Contract defines “materials” as “all machinery, equipment, materials and other items forming part of the PROJECT other than SPARE PARTS, RAW MATERIALS, OPERATING SUPPLIES and CONSUMABLE MATERIALS.”

Mazandaran Contract, IDRO/MWPI and SHL, the Power Boiler would be procured as follows: SHL was to order the Power Boiler from MSA, which, in turn, would order it from Combustion Engineering (“CE”), a United States-based company; CE was next to deliver the Power Boiler in several shipments to a freight forwarder in Charleston, South Carolina, and receive full and final payment from MSA; MSA would then receive full and final payment from SHL (or MWPI, on behalf of SHL), and SHL would subsequently arrange for the shipment of the Power Boiler to Iran.

984. The Mazandaran Contract specifically provided that the Power Boiler was to be subjected to a performance trial pursuant to Article 15.0 of the Contract.

985. SHL issued to MSA the purchase order for the Power Boiler on 19 October 1976. The purchase order reflected a total purchase price of USD 1,917,890, and its terms of payment provided for “10% with order acknowledgement,” “20% with drawings approval,” and “70% balance with each shipment value on receipt of Invoice and Freight Forwarder’s Receiving Report.”

986. Notably, the purchase order provided that MSA would seek payment for the Power Boiler, not from SHL but, rather, from MWPI. Specifically, the purchase order stated:

NOTE

Terms of Payment accepted as agreed for 20% M.S.A. look to MWPI for satisfaction of Stadler Hurter Ltd. payment obligation, and not with approval of drawings as mentioned in this proposal.

The following paragraph is an integral part of the afore[-] mentioned Terms of Payment.

A) M.S.A. acknowledges that MWPI has agreed to satisfy Stadler Hurter Limited’s payment obligations under this purchase order and therefore M.S.A. hereby agrees to accept MWPI’s obligation in lieu of Stadler Hurter Limited’s hereunder[,] accordingly, M.S.A. hereby waives any and all rights of compensation it may have under this purchase order against Stadler Hurter Limited and shall look only to MWPI for satisfaction of the payment obligations hereunder.

987. MSA, in turn, ordered the Power Boiler from CE. Under the agreement between MSA and CE, CE would ship the equipment F.O.B. to a freight forwarder’s warehouse in Charleston, South Carolina, and be paid through a letter of credit established by MSA.

988. On 5 September 1976, MSA issued an invoice to SHL for the 10 percent down payment under the terms of the purchase order, or USD 191,789. On 6 January 1977, SHL paid this amount to MSA, even though the payment terms of the purchase order provided that MSA would seek payment from MWPI.

989. On 27 February 1977, MSA notified SHL that 20 percent of the total value of the purchase order had become due and requested that SHL arrange for payment. On 28 January 1977, SHL authorized MWPI to pay MSA that amount on behalf of SHL, which MWPI subsequently did.

990. On 22 December 1977, CE delivered to a warehouse owned by International Forwarder's, Inc. ("IF"), Charleston, South Carolina, the first set of shipments under its agreement with MSA for the supply of the Power Boiler. On the same date, IF issued a freight forwarder's warehouse receipt for the goods, which stated in relevant part: "received in good order . . . for the disposal of [MSA], c/o Stadler Hurter World Wide, Ltd., c/o South Carolina State Ports Authority's Columbus Street Terminal from [CE]." CE invoiced MSA USD 289,188 for these shipments.

991. Four further shipments arrived at IF's warehouse on 29 December 1977 and on 6, 13, and 27 January 1978, for all of which IF issued freight forwarder's warehouse receipts and CE billed MSA. Originals of the freight forwarder's warehouse receipts were to be presented by CE to the bank in order to receive payment under the letter of credit established by MSA. The original freight forwarder's warehouse receipts would then reach MSA through banking channels. As stated in an internal SHL telex dated 14 April 1978, the original freight forwarder's warehouse receipts were subsequently to be sent on by MSA to SHL, who needed those receipts to authorize MWPI to pay MSA's invoices for reimbursement of the amounts MSA had paid to CE. Further, according to the telex, the "last payment will require a certificate of inspection."⁵²¹

⁵²¹ SHL's 14 April 1978 telex further stated:

What is needed for us [SHL] to approve payment is the following:

- A) The CE-MSA L.O.C. must be extended
- B) The original FCR's must clear through the banks and get to MSA
- C) MSA must send the FCR's (originals) and an invoice to SHL

992. By early 1978, CE had delivered to IF's warehouse some 75 percent of the Power Boiler shipments pursuant to the agreement with MSA. Meanwhile, MSA's letter of credit had expired, and CE refused to make further shipments until the letter of credit had been extended.

993. On 23 April 1978, MSA submitted to SHL an invoice for 70 percent of the total amount of SHL's purchase order to MSA, enclosing "copies of the Buyer[']s freight forwarder[']s warehouse receipt[s] dated [13 and 17 January 1978]." In its letter, MSA expressed the hope that SHL would "instruct MWPI to facilitate payment of the amount due."

994. On 3 May 1978, SHL replied to MSA's letter in the following terms:

We do not understand . . . why you have invoiced for a value greater than the value of the goods shipped to date. W[e] also do not understand why you have included copies of freight forwarders warehouse receipts for 110,842 lbs. of goods when, according to the information we have received from the fr[e]ight forwarder, 850,000 lbs. have been shipped.

[I]n order to approve payment for any portion of the outstanding amount due on this purchase order, [SHL] should have:

- 1) the original of the freight forwarders receipt for the goods shipped and
- 2) an invoice for the value of the goods shipped, less 30 percent of the prior payments.

Although we do not have the correct documentation to approve a payment, as outlined above, as we know that approximately 75 percent of the Combustion Engineering contract has been shipped to a freight forwarder's warehouse by Combustion Engineering, we are willing to recommend to our client, MWPI, that an advance payment of 750,000 U.S. dollars be made against what is now due for the goods shipped to date. The balance of the value of the order would then be approved upon receipt of the correct documentation for the goods shipped and the goods yet to be shipped.

995. In its reply telex to SHL, MSA agreed to accept payment from MWPI and stated, further, that: (i) it had received "the rest of freight forwarders ware[h]ouse receipts through banking channels," copies of which "are mailed to [SHL] today"; and (ii) the originals of those receipts were needed for customs clearance purposes and that "all the originals shall ultimately be submitted to your client [MWPI]."

D) SHL will review and approve[] the invoice and will submit the invoice to MWPI for payment. . . .

If it is absolutely vital that MSA be paid immediately we could simply approve an invoice from MSA and ask MWPI to pay However, [an SHL representative] does not recommend this as MSA would be paid for goods which they still would legally have ownership of. . . .

996. On 30 May 1978, MWPI notified SHL that, on that day, MWPI had paid USD 750,000 to MSA “on behalf of” SHL, according to the latter’s instructions.

997. On 27 July and 25 August 1978, respectively, CE made two further shipments to the IF warehouse in Charleston under its agreement with MSA.

998. On 30 October 1978, SHL inquired of CE whether it had been paid in full by MSA, “in order for [SHL] to proceed with payment to [MSA].” CE responded that it had been paid for “all billings rendered to date,” but that CE still had to make, and bill for, an additional shipment with a value of approximately USD 3,000. CE has since maintained that it completed shipment of all materials relating to the Power Boiler to IF’s warehouse in Charleston in August 1978, and that MSA paid CE in full.

999. By early 1978, SHL was experiencing problems in receiving payments from MWPI. Between January and February 1979, SHL’s work on the Mazandaran project effectively ceased. Due to conditions prevailing in Iran, in late 1978, SHL began evacuating its personnel. By 5 January 1979 most of its employees had left the country. Work on the Mazandaran project never resumed.

1000. As a result of financial difficulties,⁵²² on 31 October 1979, SHL sold its trade name and all its corporate assets other than those arising out of the Iranian paper mill contracts to a German company. SHL subsequently changed its name to Kedzep Limited (“Kedzep”).

1001. Kedzep thereupon filed a Proposal in Bankruptcy in the Montreal Superior Court, appointing a Trustee for the Kedzep estate (“Trustee”). This Proposal, as amended on 9 January 1980 (“Amended Proposal”), provided:

[Kedzep] does hereby pledge, cede, transfer, assign and convey to the Trustee in trust for and on behalf of the creditors all its property wherever situated . . . together with such powers in or over or in respect of property as might have been exercised by it for its own benefit

Concerning payment of the claims of Kedzep’s “ordinary creditors,” the Amended Proposal further provided that the Trustee would “proceed to an orderly liquidation of [Kedzep’s] assets and to the distribution . . . of the net proceeds therefrom. . . .”

⁵²² SHL’s business operations at the time consisted almost entirely of the two paper mill contracts, so, as a result of the loss of this business, SHL became unable to pay its creditors.

1002. On 14 December 1979, the President of Kedzep wrote to the Trustee and the estate's attorney about the Power Boiler, *inter alia*, (i) noting that "the vendor" had been "paid in full," and that therefore the full amount of SHL's purchase order to MSA was "available as potential recovery opportunity"; and (ii) stating that the estate's attorney should "initiate a study of all of the documents and contractual conditions" relating to the purchase of the Power Boiler "to clearly establish that we have full title to it."

1003. On 8 October 1980, the Canadian attorney acting for the Trustee submitted a legal opinion to CE, who had inquired about the title to the Power Boiler – and who, according to the President of Kedzep, was "extremely cautious" regarding Kedzep's title to the Boiler. In his opinion, the attorney wrote:

The [Power Boiler] purchased from Combustion Engineering Inc. having been delivered to International Forwarders Inc. and the original freight forwarders warehouse receipts having been delivered to Stadler Hurter Limited by Machine Sazi Arak, we consider that title has passed from Machine Sazi Arak.

It had been Kedzep representatives, the attorney explained, that had informed him that "[a]ll payments due to [MSA] [had] been made"; and that, "[i]n order to obtain payment from [SHL], Machine Sazi Arak ha[d] remitted to [SHL] the original freight forwarders warehouse receipts dated December 22nd and 29th 1977, January 6th, 13th and 27th 1978, July 27th and August 25th 1978."⁵²³

1004. According to the affidavit testimony of Mr. Norman Yudin, who worked for SHL in various positions from 1974 until the end of 1979,⁵²⁴ once MSA had been paid in full, MSA was to give the freight forwarding warehouse receipts to SHL, and title to the Power Boiler would pass to SHL. He further stated that, in fact, MSA was "paid in full by MWPI, on behalf of SHL," and that, "[s]hortly after the final shipment of boiler parts in August 1978, [MSA] forwarded to SHL the original copies of the freight forwarding receipts and thus transferred possession and control of the boiler to SHL." According to Mr. Yudin, "when SHL declared

⁵²³ The attorney explained, further, that Kedzep representatives had also informed him that "[a]ll payments due to Machine Sazi Arak have been made and all payments due to Combustion Engineering Inc. also made."

⁵²⁴ Mr. Yudin states that, during his tenure at SHL, his most important functions were connected with the preparation, submission, and approval of billings for work performed, among other things, on the Mazandaran Contract. In May 1976, he became Supervisor of Cost Control on the Contract; in this capacity, his responsibilities extended to billing and budgeting forecasts; he also became involved in a special project to obtain billing approvals and payment from the Iranian clients. In 1978, he became Systems Development Manager, Finance, and then Manager, Financial Planning & Control; his new duties included total responsibility for the accounting function on the Mazandaran Contract.

bankruptcy in Canada on October 31, 1979, the boiler, which was still sitting on the dock in Charleston, South Carolina, remained an asset of SHL and therefore became an asset of the SHL/Kedzep estate.”

1005. On 15 January 1981, the President of Kedzep submitted to the Trustee a report on the court-approved orderly sale of the equipment purchased by SHL under the Mazandaran Contract. In his report, he stated that Kedzep’s international announcement of the equipment sale “included all of the equipment purchased by [SHL] as buyer (vs agent as in the case of equipment ordered from five German suppliers),” and excluded “the German equipment which was purchased by [SHL] acting as an ‘agent.’”⁵²⁵

1006. In or around March 1982, the Kedzep estate moved the Power Boiler off the dock at the port to a warehouse in Charleston.

1007. On 29 June 1987, the Kedzep estate sold the Power Boiler at auction (in absentia) for CAD 45,000 to an Illinois-based firm. The auction was conducted in Lachine, Quebec.

(c) *The Parties’ Contentions*

Iran’s Contentions

1008. Iran asserts that, because CE sold the Power Boiler to MSA, title thereto passed from CE to MSA prior to 14 November 1979 and remained with MSA; thus, MSA owned the Power Boiler on 19 January 1981. As a result, the item was subject to the United States’ Paragraph 9 obligation. According to Iran, while it is undisputed that title to the Power Boiler passed from CE to MSA, there is no adequate evidence showing that title subsequently passed to SHL. Indeed, Iran contends, it is not clear that title was ever intended to so pass. In Iran’s view, a proper analysis shows, rather, that either SHL was acting as agent of MPWI, or that, even under the 19 October 1976 purchase order, relevant contractual steps had not been completed.

⁵²⁵ Indeed, in a December 1979 preliminary report to Kedzep’s creditors, the Trustee had written:

Following an agreement between the Iranian client ([MWPI]) and an organization of the German government, at an early stage of the contract with the Iranian client, it was decided that the client would pay the *German suppliers* directly. [SHL] acted therefore as an agent for the client. *The purchase orders issued to the German suppliers clearly state this fact.*

(Emphasis added.)

1009. According to Iran, if one relies on the intentions of MSA and SHL, as related by Mr. Yudin,⁵²⁶ under the purchase order title to the Power Boiler would have passed from MSA to SHL only if: (i) MSA had been paid in full and (ii) MSA had handed over to SHL the original freight forwarder's warehouse receipts. In connection with the latter, Iran notes that, as evidenced by SHL's 14 April 1978 internal telex,⁵²⁷ SHL understood that original freight forwarder's warehouse receipts were essential to the passage of title. Further, in order for final payment to be made to MSA, a certificate of inspection for the Power Boiler was required, as evidenced, in Iran's view, by the 14 April 1978 internal SHL telex⁵²⁸ and by a handwritten 8 November 1978 internal SHL memorandum.⁵²⁹ According to Iran, there is no documentary evidence that any of those steps were taken; in particular, there is no documentary evidence that MSA did not keep the original freight forwarder's warehouse receipts or send them on to MWPI, instead of forwarding them to SHL. Iran asserts that one should give no weight to the legal opinion that the Trustee's attorney submitted to CE on 8 October 1980, which concluded that title to the Power Boiler had passed from MSA to SHL.⁵³⁰ This is because the attorney, in preparing his opinion, relied exclusively on oral information he had received from Kedzep representatives, without having analyzed any documentary evidence.

1010. In the alternative, Iran contends that, assuming that title to the Power Boiler had passed from MSA to SHL, the Power Boiler fell within the definition of "Iranian properties" pursuant to Paragraph 9 because MWPI and/or MSA was its beneficial owner. Iran's reasons for this conclusion are, in brief: both MWPI and MSA were IDRO subsidiaries; MSA paid the full purchase price to CE; MWPI paid MSA at least for a part of the equipment, even if the final payment to MSA may not have been released; and the only party who paid nothing was SHL. Thus, Iran concludes that full beneficial ownership of the Power Boiler lay with the IDRO companies.

⁵²⁶ See *supra* para. 1004.

⁵²⁷ See *supra* para. 991 & note 521.

⁵²⁸ See *supra* para. 991.

⁵²⁹ This memorandum states:

We should not certify it for final payment until:

The final pay authorization is signed off by everyone. . . . A certificate of inspection/compliance is received. . . . We are positive that there is no need for a holdback or some other guarantee.

⁵³⁰ See *supra* para. 1003.

The United States' Contentions

1011. The United States asserts that Iran has not proven that it had uncontested, non-contingent title to the Power Boiler as of 19 January 1981, such that it was subject to Paragraph 9. According to the United States, the parties to the Power Boiler transaction, MSA and SHL, intended for ownership of the Power Boiler to pass three times. First, CE was to pass ownership of the Power Boiler to MSA. Second, MSA was to pass ownership to SHL. Third, and finally, SHL was to pass ownership to MWPI. The United States maintains that, in practice, the third event in the sequence never materialized.

1012. As an initial matter, the United States contends that MSA did not have title to the Power Boiler on 19 January 1981. The United States asserts that, when CE shipped the Power Boiler to the freight forwarder and provided the invoice and the original freight forwarder's warehouse receipts to MSA, title did pass to MSA. When MSA was paid in full and transferred those original freight forwarder's warehouse receipts to SHL in August 1978, however, title to the Power Boiler was transferred to SHL, such that further passage of title to MWPI became subject to Article 28 of the Mazandaran Contract.

1013. The United States maintains that, because the conditions under Article 28 of the Mazandaran Contract were never satisfied, MWPI never gained title to the Power Boiler. Therefore, title remained with SHL. According to that provision, the United States asserts, title to equipment procured by SHL would not pass to MWPI until both (i) full payment by MWPI and (ii) acceptance of the equipment by MWPI (contingent on a successful performance trial in Iran) had taken place, regardless of the order in which they occurred. Consequently, the United States argues that MWPI could never have owned the Power Boiler before it arrived and was installed in Iran, which events never occurred.

1014. Finally, the United States contends that, after title to the Power Boiler had passed to SHL in 1978, on 1 November 1979, it passed to the Trustee of the Kedzep estate along with the rest of SHL's assets, in the context of Canadian bankruptcy proceedings.

1015. The United States denies that there existed any agency relationship between SHL and IDRO/MWPI with respect to the purchase of the Power Boiler. The United States also denies that either MWPI or MSA acquired beneficial ownership of that item.

(d) *The Tribunal's Decision*

1016. There is no dispute, and the Tribunal has found, that MSA falls within the definition of “Iran” in accordance with Article VII, paragraph 3, of the Claims Settlement Declaration.⁵³¹

1017. The threshold question in this Claim is whether the Power Boiler falls within the meaning of “Iranian properties” pursuant to Paragraph 9. The Parties agree that title to the Power Boiler passed from CE to MSA sometime in 1978. The Parties disagree, however, about whether title thereto then passed from MSA to SHL prior to 19 January 1981.

Ownership of the Power Boiler

1018. Since the Parties to the Algiers Declarations do not agree about who owned the Power Boiler on 19 January 1981, the Tribunal must determine the applicable *lex rei sitae* governing passage of title to that item.⁵³²

1019. As an initial matter, in the Tribunal's view, the relationship of the contracts underlying the transactions at issue is best described so as to identify the Mazandaran Contract as a kind of framework contract, whereas the contracts between SHL (as buyer), MSA (seller), and CE (as manufacturer and ultimate seller) were the operative agreements that provided for the rights and obligations of all parties in the delivery chain from the manufacturer to the buyer, who, under the framework contract, had undertaken to sell on, and pass on possession and title to, the ultimate buyer IDRO/MPWI.

1020. It is undisputed that, by August 1978, CE had delivered all materials relating to the Power Boiler to IF's warehouse in Charleston, South Carolina. The alleged transfer of title from MSA to SHL occurred around that time, when, according to the United States, MSA was paid in full and transferred the original freight forwarder's warehouse receipts to SHL. Accordingly, in application of the *lex rei sitae*, the Tribunal determines that, the Power Boiler having left the original *situs* (that is, the premises of the manufacturer CE) and being located

⁵³¹ See *Harnischfeger Corp. and Ministry of Roads and Transportation et al.*, Award No. 144-180-3 (13 Jul. 1984), reprinted in 7 IRAN-U.S. C.T.R. 90, 97; *The Austin Co. and Machine Sazi Arak et al.*, Award No. 257-295-2, para. 12 (30 Sept. 1986), reprinted in 12 IRAN-U.S. C.T.R. 288, 291.

⁵³² See *supra* paras. 135-164.

in South Carolina at the relevant time, the law of the State of South Carolina governs passage of title to the Power Boiler.

1021. The Power Boiler was the object of a sales contract between SHL and MSA pursuant to the 19 October 1976 purchase order.⁵³³ Consequently, the Tribunal will look to the law of the State of South Carolina that governs the sale of goods, which, being the *lex rei sitae*, governs the question whether title passed from MSA to SHL as a consequence of the sales contract.

1022. The UCC, as adopted in Title 36 of the South Carolina Code of Laws, governs the sale of goods. Section 36-2-401 of the South Carolina Code, in particular, governs passing of title to goods sold and provides in pertinent part:

(1) . . . [T]itle to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of security interest by the bill of lading⁵³⁴

1023. Based on the evidence presented and the statements made by the Parties in this Claim,⁵³⁵ the Tribunal concludes that it was the intention of MSA and SHL, the parties to the sale, that title to the Power Boiler would pass from MSA to SHL once: (i) MSA had been paid in full; and (ii) MSA had handed over to SHL the original freight forwarder's warehouse receipts. Hence, MSA and SHL explicitly agreed on the "manner" in which, and the "conditions" on which, title to the Power Boiler would pass from MSA to SHL, in accordance with Section 36-2-401 (1) of the South Carolina Code. Further, there is no dispute that the freight forwarder's warehouse receipts issued by IF represent "document[s] of title" pursuant to Section 36-1-201 (16) of the South Carolina Code.⁵³⁶

⁵³³ See *supra* para. 985.

⁵³⁴ S.C. Code tit. 36, § 36-2-401.

⁵³⁵ See *supra* paras. 1004, 1009 & 1012. See also *supra* para. 991 & note 521.

⁵³⁶ Section 36-1-201 (16) of the South Carolina Code provides in relevant part:

"Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled

1024. In denying that title to the Power Boiler passed from MSA to SHL, Iran asserts that there is no adequate evidence showing that the steps required for title to pass were ever taken. In particular, Iran maintains that there is no evidence that MSA did not keep the original freight forwarder's warehouse receipts or send them on to MWPI, instead of forwarding them to SHL.

1025. The Tribunal disagrees. Concerning full payment of MSA, Mr. Yudin testified in his affidavit that MSA had been "paid in full by MWPI, on behalf of SHL" after CE had completed the shipment of the Power Boiler to the freight forwarder.⁵³⁷ This statement by Mr. Yudin is corroborated by the contemporaneous letter of 14 December 1979 from the President of Kedzep to the Trustee and the estate's attorney, advising that the vendor of the Power Boiler had been "paid in full."⁵³⁸ Iran has submitted no countervailing evidence. Accordingly, the Tribunal concludes that MSA was paid in full.

1026. The Tribunal now turns to the question of whether the original freight forwarder's warehouse receipts were delivered to SHL. In the Tribunal's view, the fact that, in a May 1978 telex to SHL, MSA stated that those documents would "ultimately be submitted to" MWPI⁵³⁹ does not prove that they were in fact submitted to MWPI, or that MSA kept them, as Iran suggests.⁵⁴⁰ According to the affidavit testimony of Mr. Yudin, rather, shortly after CE made the final shipment of boiler parts in August 1978, MSA forwarded to SHL the original freight forwarder's warehouse receipts.⁵⁴¹ Iran has submitted no countervailing evidence. Crucially, moreover, what convinces the Tribunal that those documents were indeed delivered to SHL in 1978 is that the Trustee of the Kedzep estate sold the Power Boiler at auction on 29 June 1987 in Lachine, Quebec.⁵⁴² The Trustee could have done so only if SHL had gained title to the

to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession that are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers.

⁵³⁷ See *supra* para. 1004.

⁵³⁸ See *supra* para. 1002.

⁵³⁹ See *supra* para. 995.

⁵⁴⁰ See *supra* para. 1009.

⁵⁴¹ See *supra* para. 1004.

⁵⁴² See *supra* para. 1007.

Power Boiler through receipt of the original freight forwarder's warehouse receipts. Indeed, that the freight forwarder released the Power Boiler to the Trustee in the first place, thereby facilitating its sale, indicates to the Tribunal that the Trustee had presented the original freight forwarder's warehouse receipts to the freight forwarder.

1027. Accordingly, the Tribunal concludes that title to the Power Boiler passed from MSA to SHL in the second part of 1978.

1028. Concerning the contractual relationship between SHL and MWPI, it is undisputed that the Power Boiler was never delivered to MWPI in Iran. Thus, the conditions for passage of title from SHL to MWPI under Article 28 of the Mazandaran Contract⁵⁴³ were never satisfied, and title remained with SHL.

1029. On 9 January 1980, at the latest, when the Trustee of the Kedzep estate was given legal ownership of all of Kedzep's property, wherever situated,⁵⁴⁴ title to the Power Boiler passed to the Trustee. There is no evidence of any further passage of title before the date of the Algiers Declarations.

SHL Did not Act as the Agent for IDRO/MWPI

1030. As noted, Iran argues that, in purchasing the Power Boiler, SHL acted as an agent for IDRO/MWPI. For the following reasons, the Tribunal finds that the evidence does not support Iran's argument. First, the Mazandaran Contract, in its preamble, explicitly identified IDRO/MWPI as the buyer, and SHL as the seller, of the equipment required for the project;⁵⁴⁵ it further stated that the buyer desired the seller "to supply certain equipment and materials."⁵⁴⁶ This language does not point to any agency relationship but, rather, is that of a typical sales contract.

⁵⁴³ See *supra* para. 982.

⁵⁴⁴ See *International Systems & Controls Corp. and Industrial Development and Renovation Organization of Iran et al.*, Award No. 256-439-2, paras. 56 & 79-80 (26 Sept. 1986), reprinted in 12 IRAN-U.S. C.T.R. 239, 251-52, 258-59. See also *supra* para. 1001.

⁵⁴⁵ See *supra* para. 980

⁵⁴⁶ *Id.*

1031. Second, contemporaneous communications by the Trustee and the President of Kedzep show that SHL acted as a buyer, and not as an agent of MWPI, in purchasing equipment under the Mazandaran Contract in the United States and Canada.⁵⁴⁷

1032. Third, pursuant to the Mazandaran Contract, prior to any acceptance by MWPI, the Power Boiler was to be set up by SHL in Iran and then subjected to a performance trial pursuant to Article 15.0 of the Contract to ensure that it was functioning properly.⁵⁴⁸ Thereafter, if the Power Boiler had successfully met the contractually stipulated performance guarantee⁵⁴⁹ and operated satisfactorily, an engineer retained by MWPI would issue an “acceptance certificate” for the Power Boiler. Conversely, if the Power Boiler had not met SHL’s performance guarantee, SHL would have been contractually obligated to make the necessary modifications, with “[a]ny changes or replacements of equipment” at its own cost.⁵⁵⁰ In the Tribunal’s view, the parties’ subjecting the Power Boiler to the above-described acceptance procedure, with the required performance trial, would only make sense if SHL was acting as the seller; such procedure would have been illogical, however, if MWPI was to purchase the Power Boiler from a third party, with SHL acting solely as MWPI’s agent.

Alleged Beneficial Ownership of MWPI and/or MSA

1033. For the reasons stated earlier in this Partial Award,⁵⁵¹ Iran’s argument based on beneficial ownership is dismissed.

The Tribunal’s Overall Conclusion

1034. Based on the evidence presented and the foregoing considerations, the Tribunal concludes that the Trustee of the Kedzep estate held title to the Power Boiler on 19 January 1981. Consequently, the Power Boiler does not fall within the scope of “Iranian properties” in accordance with Paragraph 9.

⁵⁴⁷ See *supra* para. 1005.

⁵⁴⁸ See *supra* para. 982.

⁵⁴⁹ SHL guaranteed under the Contract that the power boiler would “be capable of continuously generating [260,000] kg/hr of steam at [63] atmosphere gauge and [425°C], and acceptance a [25] percent load swing in [1] minute.” Contract, art. 16.1 (k).

⁵⁵⁰ Contract, art. 15.2.8.

⁵⁵¹ See *supra* para. 133.

1035. Accordingly, the Tribunal dismisses Claim G-128.

(19) Claim G-31 (Mazandaran University/Walter J. Johnson Inc.)

(a) *Introduction*

1036. In Claim G-31, Iran seeks USD 6,259.53 and EUR 7,833.80, plus interest, as damages incurred as a result of the United States' alleged failure to arrange for the transfer of certain academic publications ordered by the University of Mazandaran ("Mazandaran University") from the United States company Walter J. Johnson Inc. ("Walter Johnson") in 1978.

(b) *Factual Background*

1037. Between July and November 1978, Mazandaran University (formerly, Reza Shah Kabir University) placed orders with Walter Johnson for academic periodicals on different subjects ("Periodicals") and for a Houben Weyl chemistry encyclopedia ("Encyclopedia"). Between 24 August and 15 November 1978, Walter Johnson sent six invoices to Mazandaran University, covering its orders for the Periodicals. There is no invoice on record referring to the Encyclopedia.

1038. Of the six invoices mentioned, Invoices Nos. 95450, 98016, and 98274, specified that delivery of the goods was to occur "FOB⁵⁵² destination." Invoice No. 93932 contained the term "C&F⁵⁵³ Tehran." The remaining two invoices (Nos. 97225 and 98291) neither contained any explicit delivery terms, nor specified where delivery was to take place.

1039. The Parties agree that Mazandaran University paid Walter Johnson a total of USD 75,574,22 for the Periodicals and DM 15,321.60 for the Encyclopedia.

1040. Mazandaran University having received neither the Periodicals nor the Encyclopedia, on 31 August 1983, Iran added Claim G-31 to the present Cases, describing the items at issue simply as "books."

⁵⁵² Free on Board.

⁵⁵³ Cost and Freight.

The Periodicals

1041. Although the precise dates are unclear, Walter Johnson apparently sent all the Periodicals to Iran prior to 14 November 1979. The shipment, however, was apparently rejected at the Iranian border and returned to the United States. On 1 November 1983, Walter Johnson informed Mazandaran University that a replacement shipment was being sent via London, and that the invoices that were being sent with the replacement shipment were just for “customs and insurance purposes and not to be paid by [Mazandaran University] again.” The invoices attached thereto by Walter Johnson totaled USD 62,902.56.

1042. By letter dated 22 December 1983, Walter Johnson informed Mazandaran University that a shipment of 256 cartons had been sent to its London shipping agent. Walter Johnson further indicated that the shipment was being sent from London by truck to Mazandaran University. Walter Johnson added that further shipments would follow, and that it was sending Mazandaran University a full report on the outstanding items. In the letter, Walter Johnson also pointed out that another Iranian university, Jundi Shapur University, owed Walter Johnson USD 130,000.

1043. By letter dated 11 January 1984, Walter Johnson informed Mazandaran University that the 256 cartons had been received in London and were being sent by truck to Iran. Soon thereafter, part of the Periodicals was delivered to Iran.

1044. On 6 November 1985, Walter Johnson wrote to the State Department advising that it had the remaining Periodicals ready for shipment to Mazandaran University, which would have to pay for the cost of freight, as the material had previously been shipped to Iran and returned.

1045. There is no further evidence as to what happened with this additional shipment. Iran maintains that Walter Johnson did not deliver the remaining Periodicals. In a letter sent years later by Walter Johnson to the State Department, providing the latter with information concerning this Claim, Walter Johnson made no reference to the Periodicals that, in 1985, were allegedly ready for shipment once Mazandaran University had paid for the shipping costs.

The Encyclopedia

1046. On 14 December 1983, Mazandaran University inquired of Walter Johnson as to when it could expect to receive the Encyclopedia. In response to this letter, on 11 January 1984,

Walter Johnson informed Mazandaran University that it could not find the order for the Encyclopedia and requested the details thereof so that it could be shipped to Iran.

1047. On 15 February 1984, Walter Johnson reminded Mazandaran University that it was still awaiting information on the Encyclopedia.

1048. In a letter dated 23 October 1989 to the State Department, Walter Johnson acknowledged that it still owed Mazandaran University the Encyclopedia, and that the Encyclopedia had not yet been ordered from the German publisher. Walter Johnson explained that Jundi Shapur University owed Walter Johnson almost USD 130,000 for books delivered and not paid for. Walter Johnson also stated that it believed that it should receive payment from Jundi Shapur University before shipping anything else to Iran, noting that both Mazandaran University and Jundi Shapur University were government-owned. Nevertheless, he stated that Walter Johnson would order the Encyclopedia and ship it to Iran “in order to finish this matter.”

1049. Walter Johnson went out of business sometime after Mr. Walter Johnson’s death on 15 December 1996.

(c) *The Parties’ Contentions*

Iran’s Contentions

1050. Iran contends that the Periodicals fall within the definition of “Iranian properties” within the scope of Paragraph 9 because Mazandaran University made full payment of the purchase price. Iran argues that because, according to Walter Johnson, the Periodicals were shipped to Iran but turned back at the border and redelivery had been intended, title passed to Iran upon the first attempted delivery.

1051. Iran argues that, under Section 7-502 UCC, a bill of lading is proof of title. According to Iran, a bill of lading would presumably have been handed over to Mazandaran University with the original shipment, and its presentation would have been necessary for Iran’s bank to make the payment to Walter Johnson under the letter of credit. Therefore, according to Iran, payment under the letter of credit, which was contingent on the existence of the bill of lading, constitutes *prima facie* evidence that title had passed to Mazandaran University.

1052. Iran acknowledges that the Encyclopedia was never ordered by Walter Johnson from the German publisher, and, thus, all that was in existence in the United States on 19 January 1981 was the advance payment made by Mazandaran University to Walter Johnson for that item. As a result, Iran's claim relating to the Encyclopedia is for the return of that advance payment, which constitutes a liability due by Walter Johnson to Mazandaran University. Iran contends that this liability falls within the scope of "Iranian properties" under Paragraph 9 and, thus, should have been transferred to Iran on 19 January 1981.⁵⁵⁴ Accordingly, Iran contends that the United States has breached its Paragraph 9 obligation by failing to arrange for the return of the advance payment, and that Iran's damages are represented by the amount of that payment.

1053. Iran further contends that, even if advanced payments do not fall within the scope of Paragraph 9, they are still covered by General Principle A or Paragraph 8.

1054. Iran further argues that, from the correspondence on record, it is clear that Mazandaran University was directly in touch with Walter Johnson about its order for the Periodicals, and Walter Johnson knew exactly how and where to ship the items in question. Thus, for Iran, there can be no issue that Mazandaran University provided directions to the property holder.

1055. Iran contends that, although the United States became aware of the non-return of the Periodicals and the Encyclopedia to Iran, the United States took no action to compel Walter Johnson to transfer the items it was holding. According to Iran, there is no evidence of any follow-up by the United States in relation to the Periodicals or any proof that the United States followed up to verify whether Walter Johnson had returned the DM 15,000 prepayment it had received for the Encyclopedia. Iran also maintains that the United States would not have taken any steps to arrange for their transfer because the United States viewed these items as not falling within the scope of Paragraph 9.

The United States' Contentions

1056. The United States first argues that Iran has failed to properly identify the specific tangible property, other than the Encyclopedia, which allegedly remained in the United States.

⁵⁵⁴ See *supra* paras. 68-73.

Consequently, according to the United States, Iran is claiming for a refund of part of the money paid to Walter Johnson, which is not covered by Paragraph 9.

1057. Concerning the Encyclopedia, the United States maintains that Iran has failed to submit any evidence showing that the Encyclopedia was ever within the jurisdiction of the United States. Concerning Iran's claim for the advance payment made for the Encyclopedia, the United States argues that, regardless of whether the claim is considered under Paragraph 9, Paragraph 8, or General Principle A, it should be dismissed because Iran did not own the advance payment.

1058. According to the United States, the United States was only under the obligation to arrange for the transfer of properties owned by Iran. In the present Claim, the United States argues that title to the Periodicals never passed to Mazandaran University. With regard to Iran's argument based on Section 7-502 UCC, the United States maintains that no evidence has been provided that the bill of lading was received in Iran. According to the United States, a comprehensive reading of Sections 7-501 and 2-401 UCC shows that, under the UCC, "title passes at the time and place of delivery specified in the contract even though a document of title is to be delivered separately at another place and time."

1059. The United States argues that Iran has failed to show that, after the conclusion of the Algiers Declarations, Iran directed Walter Johnson to transfer the undelivered Periodicals to Iran. In particular, the United States contends that Iran has not produced any evidence showing that, after Mazandaran University received the 1983 reshipment of Periodicals, it ever directed Walter Johnson to ship additional Periodicals or advised that it would pay for the shipping costs. The United States further argues that Iran has failed to: (i) show that it provided an "indication" to the United States of the need for additional steps to ensure that the items at issue in Claim G-31 were transferred to Iran; and (ii) establish what additional steps the United States could reasonably have taken to ensure that those items were so transferred.

(d) The Tribunal's Decision

1060. There is no dispute that Mazandaran University falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration.

Claim for the Non-Delivery of the Periodicals

1061. The threshold question in this portion of Claim G-31 is whether the Periodicals fall within the meaning of “Iranian properties” pursuant to Paragraph 9. Since the Parties to the Algiers Declarations do not agree about who owned the properties that are the subject of Claim G-31 on 19 January 1981, the Tribunal must determine the applicable *lex rei sitae* governing passage of title to that item.⁵⁵⁵

1062. The evidence suggests that the Periodicals were shipped to Iran before or around 14 November 1979. However, the Periodicals were allegedly rejected at the Iranian border and returned to the United States, where they remained at Walter Johnson’s facilities in New Jersey. Accordingly, in application of the *lex rei sitae*, the Tribunal determines that the law of the State of New Jersey governs passage of title to those items. The Periodicals were the object of a sales contract between Walter Johnson and Mazandaran University. Consequently, the Tribunal will look to the law of the State of New Jersey that governs the sale of goods, which, being the *lex rei sitae*, governs the question whether title passed from Walter Johnson to Mazandaran University as a consequence of the sales contract.

1063. The UCC, as adopted in Title 12.A of the New Jersey Statutes, Commercial Transactions, governs the sale of goods in the State of New Jersey. Section 2-401 of the New Jersey Statutes, in particular, governs passing of title to goods sold and provides in pertinent part:

- (1) . . . [T]itle to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.
- (2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of security interest by the bill of lading.⁵⁵⁶

1064. The Tribunal finds no evidence showing that either Mazandaran University or Walter Johnson explicitly agreed that title to the items purchased was to pass at a point in time other

⁵⁵⁵ See *supra* paras. 135-164.

⁵⁵⁶ N.J. REV. STAT. §12A:2-401.

than with the physical delivery of the goods in Tehran. As is well established,⁵⁵⁷ the Incoterms, such as those found on the invoices issued by Walter Johnson to Mazandaran University, do not govern the passage of title.

1065. As noted, Iran argues that title to the Periodicals passed to Mazandaran University when the bill of lading relating to the first shipment was allegedly handed over to Mazandaran University.⁵⁵⁸ The Tribunal finds that the record contains no evidence whatsoever regarding the bill of lading for the alleged first shipment or the terms under which the bank was instructed to make the payment for the purchase of the Periodicals. The Tribunal therefore concludes that, since delivery of the Periodicals to Mazandaran University never took place, title thereto remained with Walter Johnson. Under the *lex rei sitae*, title to those items never passed to Mazandaran University. The Tribunal thus finds that the Periodicals do not fall within the scope of the term “Iranian properties” pursuant to Paragraph 9.

Claim for the Advance Payment for the Encyclopedia

1066. As noted above, the Tribunal, in Award No. 529, held that the scope of “Iranian properties” in Paragraph 9 was restricted exclusively to “tangible properties” that can be “solely owned.”⁵⁵⁹ A liability due to Iran clearly does not represent a tangible item of property but, at most, an interest in property. As such, it does not fall within the scope of “Iranian properties” in accordance with Paragraph 9. Consequently, the Tribunal dismisses Iran’s Paragraph 9 claim for the return of the advance payment that Mazandaran University made for the Encyclopedia.

1067. For the reasons stated earlier in this Partial Award, the Tribunal likewise dismisses Iran’s alternative claims for the return of the advance payment based on Paragraph 8 and General Principle A.⁵⁶⁰

The Tribunal’s Overall Conclusion on Claim G-31

1068. In view of the above, the Tribunal dismisses Claim G-31 in its entirety.

⁵⁵⁷ JAN RAMBERG, *ICC Guide to Incoterms 2010, Understanding and Practical Use*, ICC Publication No. 720E, 17-20 (2011).

⁵⁵⁸ *See supra* para. 1051.

⁵⁵⁹ *See supra* para. 99.

⁵⁶⁰ *See supra* paras. 223-232 & 247.

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

(a) *Introduction*

1069. In Claim G-32, Iran originally sought the return of certain archeological artifacts excavated from the Chogha Mish site (“Chogha Mish Artifacts”) and lent by Iran Bastan Museum (“Bastan Museum”) to the Oriental Institute of the University of Chicago (“Oriental Institute”). Alternatively, Iran sought compensation for the value of the Chogha Mish Artifacts as determined by a Tribunal-appointed expert. Iran also sought damages from 19 January 1981 to November 2014 for loss of use of the Chogha Mish Artifacts resulting from the United States’ alleged breach of Paragraph 9 in failing to arrange for their transfer to Iran.⁵⁶¹ Iran further sought compensation for legal fees and expenses incurred until October 2014 in actions defending the Chogha Mish Artifacts from judicial attachment by United States courts,⁵⁶² as a result of the United States’ alleged breach.⁵⁶³

1070. On 22 April 2015, the University of Chicago returned the items at issue in Claim G-32 to Iran. Iran’s remaining claims, therefore, are for: (i) losses of USD 1,608,571 as a result of the non-return of the items between 19 January 1981 and April 2015; and (ii) legal fees and expenses Iran incurred in proceedings before United States courts.

(b) *Factual Background*

1071. In Claim G-32, Iran alleges that the United States failed to arrange for the transfer to Iran of the Chogha Mish Artifacts, which were held by the Oriental Institute. Iran argues that the items belonged to the Bastan Museum, which is owned and controlled by Iran’s Ministry of Culture and Islamic Guidance through the Organization for Cultural Heritage.

⁵⁶¹ According to Iran, it sustained USD 1,608,571 in damages for loss of use from 19 January 1981 until November 2014. Iran reserved the right to claim for further loss of use from November 2014.

⁵⁶² *See infra*.

⁵⁶³ According to Iran, it incurred legal fees and expenses totaling USD 765,924.22 up to October 2014. Iran reserved the right to claim for any further legal fees and expenses incurred after October 2014.

(i) *Joint Excavation and the Loan of the Chogha Mish Artifacts*

1072. In 1962 and 1963, a joint Iran-United States excavation discovered a number of archeological artifacts at Chogha Mish, Khuzestan, Iran. Professors Pinhas Pierre Delougaz and Helen Kantor of the Oriental Institute had led the excavation. On 15 July 1963, Professor Delougaz requested the loan of the items for scientific study. On 18 July 1963, the Oriental Institute wrote to the Bastan Museum, requesting that the items be shipped on loan to the Institute for a maximum period of three years.

1073. On 4 August 1963, the Oriental Institute wrote again to the Bastan Museum, requesting information on the shipment of items as a loan, and also as to the status of the request for some other objects from Chogha Mish.

1074. On 12 January 1964, the Oriental Institute's request was put forward to the Council of Ministers of Iran, which approved the loan in its session of 3 February 1964. On 5 March 1964, the Council of Ministers of Iran and the Arts, the predecessor to the present Ministry of Culture and Islamic Guidance ("Ministry"), approved the loan of 264 artifacts for three years. The approval of the loan was communicated to Professor Delougaz on 1 April 1964 by the Ambassador of Iran in Washington, D.C. On 17 April 1964, Professor Delougaz wrote to the Director of the Bastan Museum, detailing the logistics for the shipping of the loaned items.

1075. On 1 March 1965, the Oriental Institute sent a telegram to the American Cultural Attaché at the United States Embassy in Tehran, asking for the Embassy's guarantee in relation to the loan. The next day, 2 March 1965, the First Secretary of the Iranian Embassy in Washington, D.C., wrote to Professor Delougaz, indicating that a certificate of guarantee from the American Embassy in Tehran was necessary for the loaned objects to be released. Confirmation that this letter of guarantee had been sent was given in a telegram from the State Department to the Oriental Institute on 8 March 1965.

1076. Between 11 March 1965 and 6 August 1965, numerous letters were sent by the Oriental Institute to various institutions in Iran and the United States, arranging for the loan of the Chogha Mish Artifacts.

1077. According to *procès-verbal* No. 14 of 25 May 1966, the Chogha Mish Artifacts were delivered to Professor Delougaz's representative that day.

1078. On 2 February 1967, Professor Delougaz wrote to the Bastan Museum, informing its Director that the items from the last and second season of excavation at Chogha Mish had “all arrived safely,” but noting that the loan of items from the third season had not yet reached the Oriental Institute.

(ii) *Return of Part of the Chogha Mish Artifacts*

1079. In 1970, the Oriental Institute returned what it believed was the entire set of the Chogha Mish Artifacts to Iran. The shipment was released from Iranian Customs only after the death of Professor Delougaz in 1975.

(iii) *Correspondence Relating to Alleged Non-Returned Chogha Mish Artifacts and Filing of Claim G-32*

1080. On 29 January 1974, the Oriental Institute replied to a letter from the Iranian Ministry of Culture and Arts dated 22 January 1974, expressing surprise that Iran was requesting the crate of loan objects and stating that it had been shipped to Iran in the fall of 1970.

1081. In December 1982, Iran wrote to the Oriental Institute, stating that the shipment was incomplete, and that 49 items had not been returned. On 16 February 1983, the Institute replied, indicating that all of the items had been shipped to Iran in 1970. The Institute also noted that items might still be in the custody of Iran Customs, but indicated that they would conduct another search of the Institute’s premises for the items allegedly unreturned.

1082. On 31 August 1983, Iran submitted Claim G-32 before the Tribunal, asserting that the Oriental Institute was holding a number of potsherds and specimens. In January 1984, Iran argued that it had been requesting the return of these items for twenty years.

1083. On 29 March 1984, the Oriental Institute, in reply to Iran’s letter, stated that no items were left in the Institute after the shipment was made in 1970. However, the Institute indicated that it was still searching its collections to see if any items had inadvertently not been returned. In reply, the Iranian Cultural Heritage Organization wrote to the Institute, in an undated letter, that the United States Government had claimed before this Tribunal that the objects were still with the Oriental Institute. Iran therefore requested the return of the objects.

1084. On 17 September 1984, the United States indicated to the Tribunal that it considered that the items in question were “not subject to [P]aragraph 9,” as they had already been shipped

to Iran prior to 14 November 1979. The same day, Iran noted that part of the Chogha Mish Artifacts had been returned, but that some unreturned items were still in the United States.

1085. In December 1984, Iran acknowledged that some of the items had been returned but alleged that some “fossils and artifacts” were still unreturned. In July 1985, Iran submitted three lists of 57 items, which it argued included the 49 missing items.

1086. The United States forwarded the three lists to the Oriental Institute. The Institute conducted a search of its facilities, by 10 October 1985 locating 30 items which it thought could belong to the missing 49 items. It offered to return them to Iran upon confirmation of the items’ identities. On 30 October 1985, the United States reiterated its submission to the Tribunal that the items in this Claim were “not subject to Paragraph 9,” on the ground that the Oriental Institute believed that the Chogha Mish Artifacts had been returned to Iran in 1970.

1087. On 1 July 1990, the United States informed Iran that the Oriental Institute had identified 30 items, and that it was awaiting instructions from Iran.

1088. On 15 May 1991, the Iranian Cultural Heritage Organization wrote to the Oriental Institute, seeking the return of the unreturned items.

1089. On 6 May 1992, the Oriental Institute replied to the Chairman of the Iranian Cultural Heritage Organization, indicating its willingness to have the items hand-carried to Iran if Iran so agreed.

1090. On 14 January 1997, the Director of the National Museum of Iran responded to the Oriental Institute, enclosing a complete list of the items on loan and requesting notification of the necessary legal procedure for the return of the items. On 27 July 1997, the Iranian Cultural Heritage Organization wrote to the Oriental Institute, referring to a letter of 7 July 1997 (13 Tir 1376) from the Oriental Institute in which the Institute, according to the Iranian Cultural Heritage Organization, acknowledged that fifty items had been found and were ready to be shipped. The Iranian Cultural Heritage Organization then expressed its hope that the Institute would soon give shipment orders for transfer to the Iranian National Museum and offered further detail on the remaining objects.

(iv) *Actions in Cooperation with State Department*

1091. On 7 September 2000, the State Department wrote to the Oriental Institute, inquiring as to the Chogha Mish Artifacts that had been and might still be in the possession of the Oriental Institute. On 12 September 2000, the Oriental Institute sent a fax message to the State Department, indicating that it had forwarded the 7 September 2000 request to the Director of the Oriental Institute, Mr. Gene Gragg.

1092. On 12 March 2001, the United States wrote to Iran, indicating the Oriental Institute's interest in making arrangements with Iran for the return of the items. On 16 June 2001, Iran wrote to the Oriental Institute in response to the United States' 12 March 2001 letter, indicating its interest in the return of the items and its willingness to fully cooperate in ensuring their return.

1093. On 7 June 2001, the Director of the Oriental Institute sent an email to the State Department, indicating that the Oriental Institute had found the 109 objects enumerated in Claim G-32 and would be prepared to transfer the items.

1094. On 11 July 2001, the United States informed Iran that the Oriental Institute had recently advised it that the Institute had located the remaining items on Iran's list, and that the United States was awaiting instructions from Iran as to their return.

1095. On 9 August 2001, the United States Agent wrote to Iran, proposing that the items be brought to The Hague for inspection by Iran, so that they could be returned once their identity as the items at issue in Claim G-32 was confirmed. On 15 August 2001, the Oriental Institute wrote to Iran, indicating that the items were being prepared for transport and return and would be inspected by an official of the State Department and an archaeological expert from another university. Iran accepted the proposal to inspect and, if appropriate, to take custody of the items in The Hague on 5 September 2001. On 5 September 2001, the State Department wrote to the Oriental Institute by email, indicating that Iran had agreed to the return of the items in The Hague.

1096. On 22 March 2002, the State Department sent an email to the Oriental Institute, inquiring as to the status of the packing of the items in question. The same day, the Oriental Institute replied, confirming that the paperwork was being handled and asking how it was to hand over the items. On 27 March 2002, the State Department answered that hand-carrying

the items would be sufficient, and that it would be important to have an officer from the Oriental Institute present when Iran was examining the items.

1097. On 17 May 2002, the Oriental Institute wrote to the State Department, via email, indicating that Mr. Gragg would be willing to represent the Institute and could be available in The Hague in order to return the items. The Oriental Institute proposed using the diplomatic pouch in order to transport the items, given the difficulties of shipping museum objects by air.

1098. On 12 July 2002, the State Department sent an email to the Oriental Institute, attaching a copy of the letter that would be sent to Iran in relation to the objects to be returned.

1099. On 17 September 2002, in response to an email of the same day from the State Department, the Oriental Institute wrote that, due to the appointment of a new director, shipment of the items in question had been delayed.

1100. On 19 November 2003, Masterpiece International, a fine art shipping company and customs broker, wrote an internal fax message to its Illinois branch, indicating that there were sanctions prohibiting any transaction involving Iranian goods and indicating that the Institute was seeking a license to export directly to Iran.

(v) *The Rubin Litigation*

1101. On 29 December 2003, before the United States District Court for the District of Illinois, the case concerning *Jenny Rubin et al v. Field Museum of Natural History, University of Chicago, Oriental Institute and Iran* (the “Rubin Litigation”) was initiated. The plaintiffs intended, *inter alia*, to attach the Chogha Mish Artifacts in the possession of the Oriental Institute in aid of execution of a United States court’s default judgment against Iran.

1102. In the meantime, on 19 March 2004, Masterpiece International wrote to the Oriental Institute, indicating that Masterpiece could provide pick-up, courier assistance, and export declaration assistance for the items at issue in Claim G-32.

1103. In June 2004, the Oriental Institute, supported by a statement of interest of the United States, moved to declare that the Chogha Mish Artifacts were immune from execution. On 16 June 2004, the Director of the Oriental Institute filed a sworn affidavit. In that affidavit, he described the Chogha Mish Artifacts and indicated that the Oriental Institute was aware that the materials were the subject of a Claim before this Tribunal, and were the subject of an

obligation on the United States to return them to Iran, which the State Department was to arrange. He also indicated that the Oriental Institute was holding the items until further instructions were received from the State Department.

1104. On 27 July 2004, the United States confirmed that the details of the transfer of the Chogha Mish Artifacts were pending, and that the attachment should be dissolved and the artifacts should be determined to be exempt from execution. However, in August 2005, the plaintiffs moved for partial summary judgment. The District Court ruled that only Iran could assert its immunity under the United States Foreign Sovereign Immunity Act, and that, therefore, unless Iran appeared in the case to assert immunity, the defense would be waived.

1105. Consequently, on 10 July 2006, Iran appeared before the District Court. On 22 September 2006, Iran moved to declare the Chogha Mish Artifacts in question immune from execution. The plaintiffs in the meantime served on Iran Requests for Protection of Documents and Notice of Deposition, demanding discovery relating to the artifacts, including any and all tangible and intangible Iranian assets, and non-commercial property belonging to Iran, wherever located in the United States. The Notice also demanded that Iran provide a deponent. Iran objected. On 4 December 2006, before the District Court, the Citation Respondents, which included the Oriental Institute, filed their memorandum in support of Iran's Motion to declare the property exempt. The District Court ruled in favor of the plaintiffs and required Iran to provide the documents and a witness relating to all its assets in the United States wherever located.

1106. Subsequently, Iran appealed to the United States Court of Appeals for the Seventh Circuit from the District Court's decision allowing general discovery. The University of Chicago intervened on appeal, and the United States appeared as *amicus* in support of Iran's position. The Court of Appeals reversed the District Court's holding, ruling that the District Court's order requiring Iran to appear to assert immunity and its approval of general asset discovery against a foreign state were flawed and could not be reconciled with the Foreign Sovereign Immunity Act.

1107. The plaintiffs then petitioned for a Writ of Certiorari to the United States Supreme Court. The United States filed an *amicus* brief in support of the Court of Appeals' ruling. On 25 June 2012, the Supreme Court denied the plaintiffs' petition and remanded the docket to the District Court for further proceedings.

1108. On 4-5 March 2013, an amended Notice of Deposition in the *Rubin* proceedings was filed before the District Court, seeking testimony, on oral examination, of Iran.

1109. On 8 October 2014, the United States Court of Appeals for the Seventh Circuit dismissed appeal number 14-2825 in *Rubin v. Islamic Republic of Iran*, pursuant to the joint stipulation of the parties in that case.

(vi) *Return of the Chogha Mish Artifacts to Iran*

1110. In January 2015, the University of Chicago informed the United States Court of Appeals for the Seventh Circuit that it intended to return the Chogha Mish Artifacts to Iran. On 22 April 2015, the University returned all the Chogha Mish Artifacts to Iran.

1111. On 11 May 2015, the Agent for the United States informed the Tribunal that all the items at issue in Claim G-32 had been returned to Iran.

(c) *The Parties' Contentions*

Iran's Contentions

1112. Iran submits that the Iranian Cultural Heritage Organization and the Bastan Museum are both governmental entities. Iran also notes that there is no dispute between the Parties as to whether the items at issue in Claim G-32 constituted "Iranian properties" for the purposes of Paragraph 9.

Identification of the Items

1113. Iran refutes the United States' claim that it had failed for many years to adequately identify the property it claimed. Iran submits that the archeological relics and potsherds had been lent to the Institute at the Institute's request, and that therefore the Oriental Institute should have duly preserved and returned the relics borrowed. According to Iran, the Museum's record-keeping and archive system were affected by the disturbances of the Islamic Revolution of 1979 and the war with Iraq. The same circumstances, however, had not applied to the Oriental Institute. It was therefore incredulous that the Institute did not have accurate record keeping of items loaned from other institutions.

1114. According to Iran, its argument is supported by the fact that, on 10 October 1985, the Oriental Institute wrote to the State Department, confirming that the Oriental Institute was

holding Iranian property and proposing a method of return and that, therefore, from that date, the United States was on notice as to the items claimed in Claim G-32. However, Iran continues, despite being aware that Iranian property was being held by the Oriental Institute, and that Iran had requested the return of the property, 20 days later, the United States, in its 30 October 1985 report to the Tribunal on Iranian tangible properties, asserted that the items had been returned to Iran in 1970.

Alleged Breach by the United States of its Paragraph 9 Obligation

1115. For Iran, the obligation in Paragraph 9 is an obligation of result; therefore, the *prima facie* breach of Paragraph 9 by the United States is shown by the non-transfer of the properties.

1116. Iran argues that the United States denied the existence of the property in the United States for years, classifying the property as “Not Subject to Paragraph 9” in its reports to the Tribunal on Iranian tangible properties because the property had allegedly been shipped to Iran prior to 14 November 1979.

1117. Iran argues that it provided ample direction to the property holder, the Oriental Institute, to the effect that the items at issue in Claim G-32 were to be transferred to Iran. Iran points to the correspondence between Iran (variously as the Bastan Museum, the Iranian National Museum, and the Iranian Cultural Heritage Organization) and the Oriental Institute. For Iran, this constituted sufficient direction to the property holder that Iran was requesting the transfer of the property, but the United States did not arrange for the transfer of the property as required under Paragraph 9. Moreover, Iran submits that it was obvious that the loaned items should have been sent to Bastan Museum or at least delivered to the Iranian Interest Section.

1118. Iran submits that the properties in Claim G-32 were considered “contested properties” by the United States and thus not transferred by the United States to Iran, in breach of the Tribunal’s holding in Award No. 529. For Iran, it is clear that the United States considered the items at issue in Claim G-32 as contested, since in its *amicus* brief before the District Court, the United States noted that the Oriental Institute believed it still had the right to retain the properties under the loan agreement, through which it originally received the Chogha Mish Artifacts, until study of the items was complete. Indeed, for Iran, it was also clear that the Illinois District Court believed the Chogha Mish Artifacts were contested. That was, according to Iran, the basis on which the District Court granted the discovery order.

1119. According to Iran, the United States breached its Paragraph 9 obligation because it did not direct the holder of the property in question to transfer the Chogha Mish Artifacts to Iran. In this regard, Iran points to the affidavit of the Oriental Institute's senior Curator, who stated that the State Department had previously advised the Oriental Institute that the Chogha Mish Artifacts were the subject of a Claim before this Tribunal, and that the United States was under an obligation to transfer the properties. However, the affidavit goes on to note that the Oriental Institute had received no instructions for the transfer of the properties, and that therefore the Institute had continued to hold them awaiting further direction from the State Department.

1120. Iran contends that, despite repeated requests to the United States for the return of the Chogha Mish Artifacts in its submissions before the Tribunal, the United States still did nothing to arrange for the transfer of the property. This was despite the Oriental Institute's writing to the State Department requesting instructions in relation to those properties. It was only on 7 September 2000 that the United States wrote to Oriental Institute but, rather than providing the approval to transfer sought by the Oriental Institute, it only asked the Institute for an update of its actions in the 17 years since its last correspondence.

1121. Iran further notes that, while it is true that in 2001, the United States appeared ready to return the properties, the United States clarified in a 7 August 2001 letter that any such return was dependent on Iran withdrawing Claim G-32. For Iran, this stance showed that the United States did not acknowledge the transfer obligation in Paragraph 9 and considered that it was only obliged to arrange for the transfer of the properties to the extent that Iran first agreed to withdraw a claim relating to its losses arising from the United States' delay in meeting its obligation. In Iran's view, there is no legal basis for such a position.

1122. According to Iran, this led to the situation in 2003, when the *Rubin* Litigation was filed. In December 2003, the *Rubin* plaintiffs sought an attachment of the Chogha Mish Artifacts, despite the fact that these were Iranian non-commercial properties and should have been immune from attachment. On 16 June 2004, the Oriental Institute moved to declare the properties' immunity. Iran was compelled to appear in the proceedings to assert its sovereign immunity by the Illinois District Court, resulting in extensive legal fees and expenses. Iran therefore submits that it is precisely the United States' failure to arrange for the transfer of the properties to Iran that led to the items being attached in the *Rubin* Litigation.

1123. Further, Iran points to the 16 April 2014 settlement agreement that the United States entered into with a number of creditors who secured default awards against Iran in United States courts, including the *Rubin* plaintiffs. In the agreement, the United States stated that it intended to seize certain properties owned by Iranian entities and divide those proceeds among the creditors. In return, the creditors agreed that they would waive any rights to attach Iranian property currently at issue before the Tribunal. However, the waiver expressly excluded the *Rubin* attachment proceedings. For Iran, this is evidence that the United States had an opportunity in April 2014 to arrange for the *Rubin* plaintiffs to withdraw their attachment proceedings against the Chogha Mish Artifacts, but did not do so.

The United States' Contentions

Identification of the Items

1124. According to the United States, Iran failed for many years to identify much of the property claimed. The United States argues that Iran never followed up with promised information, and its correspondence with the Oriental Institute was sporadic at best. The United States argues that Iran had repeatedly changed the number of items it claimed and then consistently failed to identify the specific items at issue. According to the United States, it was only 12 years after Claim G-32 was initially asserted that Iran identified the items at issue. Iran had also failed to provide the information necessary to confirm that the items found at the Institute belonged to it.

No Breach by the United States of its Paragraph 9 Obligation

1125. Moreover, the United States argues that Paragraph 9 does not create an obligation of result. Relying on Award No. 529, the United States points out that the Tribunal has rejected the argument that the obligation for the return of Iranian properties is an obligation of result. For the United States, the Paragraph 9 obligation could only be an obligation of means, because, in addition to any United States action being dependent on Iran's direction and indication, paragraph 40 of Award No. 529 defines its obligation under Paragraph 9 as simply taking steps.

1126. The United States' position is that it has not breached any Paragraph 9 obligation in Claim G-32, because Iran failed to provide direction and indication for the transfer of these items until 2001, and thereafter the United States took extensive steps to ensure the transfer of the Chogha Mish Artifacts to Iran. The United States submits that Iran has failed to show that

there were any additional reasonable steps the United States should have taken in the circumstances of Claim G-32 to ensure the transfer of the property that it did not take.

1127. The United States submits that, after Iran provided direction and indication, the United States fulfilled its obligation through taking steps to ensure the transfer of the property in question, including the period throughout the proceedings of the *Rubin* Litigation. The United States was in constant contact with the Oriental Institute, and with Iran, concerning the return of the properties claimed. The United States further argues that it forwarded the lists of items at issue provided (belatedly) by Iran and corresponded extensively with the Oriental Institute and with Iran. The United States also claims to have offered several times to facilitate the return of the items loaned, including a proposal to have the items delivered to the Tribunal's premises in The Hague for inspection.

1128. However, for the United States, just as the items were awaiting transfer in 2003, something unexpected happened: plaintiffs in the United States obtained a terrorism-related judgment in the *Rubin* litigation in September 2003 and, in May 2004, the plaintiffs sought to satisfy their judgment with attachments on various Iranian properties, including the items in question in Claim G-32. Therefore, as of 2004, the Oriental Institute would not transfer the Chogha Mish Artifacts until the litigation was concluded, or the court ruled otherwise. The United States' position is that it did all it could in the proceedings of the *Rubin* Litigation to have the properties in question declared immune, to refuse to order discovery into Iran's assets in the United States, and enter judgment in favor of Iran.

1129. The United States, citing to authorities in *Loewen v. The United States*⁵⁶⁴ and *Apotex v. The United States*,⁵⁶⁵ argues that it is a well-accepted rule of international law that an act of a domestic court that remains subject to appeal has not ripened into the type of final act that is sufficiently definite to implicate state responsibility unless such recourse is obviously futile. In that respect, the United States submits that this Tribunal's Award No. 586 in Case No. A27 is contrary to the weight of judicial precedent on this subject.⁵⁶⁶ Therefore, the rulings of the

⁵⁶⁴ *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, Award (ICSID Case No. ARB(AF)/98/3), para. 165 (26 Jun. 2003).

⁵⁶⁵ *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, Award, (ICSID Case No. ARB(AF)/12/1), (25 Aug. 2014).

⁵⁶⁶ *Islamic Republic of Iran and United States of America*, Award No. 586-A27-FT (5 Jun. 1998), reprinted in 34 IRAN-U.S. C.T.R. 39.

Illinois court, according to the United States, cannot be attributed to the United States so as to create State responsibility in this Claim.

1130. In any case, the United States submits that Iran has failed to prove that it took the steps necessary to make performance by the United States possible. The United States argues that, according to Award No. 529, direction to the Oriental Institute and indication to the United States were needed before the United States' obligation to take steps to ensure the transfer of the Chogha Mish Artifacts arose. However, according to the United States, it is clear that for almost the first 20 years of Claim G-32, Iran provided neither direction to the Oriental Institute, nor indication to the United States that it required assistance. Iran did not provide instructions to the Oriental Institute to return the items and did not respond to the Institute's proposals for modes of return. Iran also failed to provide the information necessary to confirm that the items found at the Oriental Institute belonged to it. Moreover, the United States argues that, prior to 2001, Iran failed to provide the United States with any indication whatsoever that it needed assistance with the return of the items.

1131. The United States also argues that Iran cannot hold it responsible for not arranging the transfer quickly enough to avoid the costs arising from the *Rubin* attachment, given that Iran itself waited two decades to engage the United States and the Oriental Institute in dialogue.

(d) *The Tribunal's Decision*

1132. There is no dispute between the Parties that the Bastan Museum falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration. There is also no dispute between the Parties that the items at issue in Claim G-32 are "Iranian properties" for the purposes of Paragraph 9, or that the items were within the jurisdiction of the United States on 19 January 1981. The Chogha Mish Artifacts, therefore, fall within the scope of Paragraph 9.

1133. The Tribunal now turns to the question whether the United States has satisfied its obligation under Paragraph 9 with respect to the Chogha Mish Artifacts. It is a fact that, from the evidence presented, Iran had directed the Oriental Institute to return the items at issue as early as 22 January 1974. However, between that date and 14 January 1997, there was confusion on the part of both the Oriental Institute and Iran as to which items were being directed for return. The Oriental Institute mistakenly believed that all items had been returned to Iran in 1970. However, in December 1982, Iran wrote to the Institute claiming that 49 items

had not been returned. Upon Iran's repeated insistence that the items had not all been returned, and after various searches of their premises, the Oriental Institute found artifacts that were still in its possession. In July 1985, Iran submitted three lists of 57 allegedly non-returned items, which included the 49 missing items earlier referred to. Extended correspondence ensued between Iran, the Oriental Institute, and the State Department. On 14 January 1997, a complete list of the items being sought for return was sent by Iran to the Oriental Institute.

1134. From these facts, the Tribunal concludes that Iran had given direction to the property holder to return the Chogha Mish Artifacts as early as 1974 and continued to do so repeatedly after the Algiers Declarations had entered into force. Moreover, Iran's July 1985 submission of the three lists of 57 allegedly missing items, while ultimately not the full list of non-returned items at issue in Claim G-32, made it, in the Tribunal's view, sufficiently clear to the Oriental Institute that Iran was giving directions that those items, at least, were to be transferred. Iran's revised list of 14 January 1997, in which Iran identified all of the items, again provided direction to the Oriental Institute with specificity sufficient for the Institute to identify which items were being sought for return. Therefore, the Tribunal finds that, as of July 1985, Iran gave proper direction to the property holder to transfer the items sought, as required in Award No. 529.

1135. The Tribunal moreover considers that the United States had been made aware that Iran expected the return of these properties from the Oriental Institute when Iran asserted Claim G-32 before this Tribunal on 31 August 1983. The United States was subsequently informed that, on 10 October 1985, the Oriental Institute had located 30 items that possibly constituted part of the items being sought by Iran in this Claim. Therefore, the Tribunal finds that, as of 10 October 1985, the United States was in a position to satisfy its obligation to take steps to ensure that the Oriental Institute would transfer the items to Iran.

1136. However, the arrangement for the transfer of the items was carried out by the United States in sporadic fits of activity, marked by long periods of inaction. The Tribunal notes in this context that the United States Paragraph 9 obligation included a duty to inquire periodically of the Oriental Institute to ascertain whether the transfer of the Chogha Mish Artifacts to Iran was underway, irrespective of whether Iran itself was being proactive. Between 10 October 1985 and 7 September 2000, however, despite the knowledge that 30 items at issue in Claim G-32 had been found by the Oriental Institute and were ready to be shipped, there is no evidence on record to show that the United States took any steps at all to arrange for the

transfer of the items to Iran. Only on 7 September 2000, some fifteen years later, did the United States finally write to the Oriental Institute to inquire as to the status of the Chogha Mish Artifacts.

1137. Between September 2000 and September 2002, the United States did take steps to arrange for the transfer of the Chogha Mish Artifacts to Iran. In March 2001, the State Department wrote to Iran to indicate that the Oriental Institute was interested in making arrangements for the return of the Chogha Mish Artifacts. By September 2001, an agreement was reached between Iran and the United States for the return of the Chogha Mish Artifacts, which was to take place in The Hague. However, for some reason not made known to the Tribunal, the transfer never took place. Moreover, another six-month delay ensued before the State Department wrote again to the Oriental Institute in March 2002 to inquire after the status of the Chogha Mish Artifacts. Correspondence took place between the State Department and the Oriental Institute between March and September 2002, in which arrangements were made for the transfer of the Chogha Mish Artifacts to Iran.

1138. On 17 September 2002, however, the Oriental Institute wrote to the State Department that, due to the appointment of a new director, shipment of the items at issue in this Claim had been delayed. The delay continued until 19 November 2003 when, according to the evidence on record, arrangements were being made to ship the Chogha Mish Artifacts directly to Iran through a fine art shipping broker.

1139. However, a month after those arrangements with the shipping broker had been made, the *Rubin* Litigation was initiated on 29 December 2003, attaching the Chogha Mish Artifacts in aid of execution of a United States court's default judgment against Iran.

1140. From the foregoing analysis of the evidence, the Tribunal finds that, once Iran gave the United States the three lists of items allegedly constituting the Chogha Mish Artifacts in July 1985, and the Oriental Institute located the 30 items on 10 October 1985, the United States was in a position to satisfy its Paragraph 9 obligation. From that moment, there followed three distinct periods. The first, from 10 October 1985 to 7 September 2000, was a period of inactivity, in which the United States took no steps to fulfill its obligation under Paragraph 9. The second period, from 7 September 2000 to 17 September 2002, showed that the United States was taking action to arrange for the transfer of the items from the Oriental Institute to Iran. Despite the fact that the arrangements in that period did not bring the transfer of the items

to fruition, the Tribunal finds that the United States did take all reasonable steps in the circumstances of the Claim to fulfill its Paragraph 9 obligation. However, that activity was then followed by the third period of inaction on the part of the United States, from 17 September 2002 to 19 November 2003, in part due to the appointment of a new director at the Oriental Institute. Once activity resumed to transfer the items to Iran, the *Rubin* Litigation had been initiated, resulting in the items being attached on 29 December 2003. In the Tribunal's view, therefore, between 10 October 1985 and 7 September 2000, and between 17 September 2002 and 19 November 2003, the United States did not take all reasonable steps to fulfill its Paragraph 9 obligation. The Tribunal finds that the United States was in breach of its Paragraph 9 obligation in these two periods of time. The Tribunal further finds that the delay in the transfer caused by the inactivity on the part of the United States led to the items still being within the jurisdiction of the United States on 29 December 2003, when the items were attached in the *Rubin* Litigation.

1141. The Tribunal is of the opinion that, while the Executive Branch of the United States Government took all steps that were reasonable during the *Rubin* Litigation in order to obtain their release for transfer to Iran, the United States Judiciary nonetheless attached the Chogha Mish Artifacts. Under international law, as expressed in Article 4 of the ILC Articles, the conduct of a State's judiciary is attributable to the State, since the judiciary is a branch of the State.⁵⁶⁷ The Tribunal therefore finds that the attachment of the Chogha Mish Artifacts in the *Rubin* Litigation is attributable to the United States.

1142. The attachment of the Chogha Mish Artifacts, therefore, was inconsistent with the obligation of the United States to remove restrictions on the mobility and free transfer of Iranian properties. Based on the evidence presented, the Tribunal finds that the Oriental Institute retained the Chogha Mish Artifacts in the United States after 29 December 2003 because of the judicial attachment on those items. Consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281. As a result, the United States has breached its obligation under the General Declaration with respect to Iranian tangible properties, and its international responsibility is engaged. This breach on the part of the United States continued until the attachment was lifted on the dismissal of the appeal in the *Rubin* Litigation on 8 October 2014.

⁵⁶⁷ See Rep. of the Int'l Law Comm'n, *supra*, note 89, cmt to art. 4.

1143. The Tribunal notes that, upon the termination of the *Rubin* Litigation, on 22 April 2015, the Chogha Mish Artifacts were finally returned to Iran.

1144. In light of the facts in their entirety, the Tribunal upholds Claim G-32 and finds the United States in breach of its Paragraph 9 obligation with regard to the items at issue in Claim G-32 in the following periods: (i) between 10 October 1985 and 7 September 2000; and (ii) between 17 September 2002 and 9 October 2014.

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

(a) *Introduction*

1145. In Claim G-115, Iran seeks damages resulting from the United States' alleged failure to arrange for the transfer to Iran of certain geological samples and fossils. The Museum of Natural History of Iran ("MMTT"⁵⁶⁸), a unit of the Department of the Environment of Iran, had entrusted those items to Dr. Douglas Lay, an Assistant Professor of Anatomy at the University of North Carolina, in late 1978 or early 1979. Iran does not specify the amount it seeks on this Claim. Rather, it requests that the Tribunal appoint an independent expert to assess the evidence and determine the value of the properties claimed.

(b) *Factual Background*

1146. In the mid-1970s, Dr. Lay undertook field expeditions in Iran in cooperation with, among others, the MMTT, to locate asphalt deposits in the Zagros mountain range in which prehistoric fossils might be preserved. In 1976, 1977, and 1978, Dr. Lay and MMTT staff members visited sites at Mordeh Fel and along the Mamatain River. There, they identified large outcroppings of asphalt deposits, from which they extracted several samples of the asphalt composite substance, known as "matrix," in which plant and animal fossils were embedded. In his affidavit, Dr. Lay described those matrices as irregularly shaped chunks, ranging from the size of a small rock to that of a loaf of bread. To extract the fossils trapped in the matrices, it was necessary to dissolve the asphalt composite substance. The technology for doing so, however, was not available in Iran.

⁵⁶⁸ Muzeh-ye Melli-ye Tarikh-e Tabi'i.

1147. Thus, Dr. Lay and the MMTT agreed that a subset of the matrix samples would be sent to him in the United States so he could extract the fossils and study them.

1148. Dr. Lay received the shipment of the matrix samples from the MMTT in late 1978 or early 1979. He estimated in his affidavit that there were three to four dozen samples in total, none weighing more than 15 pounds (and many much smaller).

1149. Due to the Islamic Revolution of 1979, communications between Dr. Lay and the MMTT officials at some point ceased.

1150. Dr. Lay stated in his affidavit that he dissolved portions of several matrix samples and extracted a number of small fossil bones, as well as some unusual seeds, none of which were significant. Dr. Lay asserted that he then decided to postpone further fossil extraction until the political situation in Iran had stabilized and he could re-establish a working relationship with the MMTT; he said he intended to complete the work at a later stage.

1151. The record contains a letter dated 14 March 1982 from the Iranian Ministry of Foreign Affairs to the Iranian Interest Section in Washington, D.C., advising that, in 1978, the Environment Conservation Organization had sent to Dr. Douglas Lay and the Los Angeles County Museum of Natural History, "on trust," a "number of fossils of vertebrates and glasses containing intestines of birds of National Park." The Ministry of Foreign Affairs further advised that, "[a]ccording to the contract signed between the two sides, the samples after identification and necessary studies were to be sent back" to the Environment Conservation Organization, but "no action has been taken in this connection." The Ministry asked that the Iranian Interest Section investigate the matter.

1152. On 27 May 1982, the Iranian Interest Section wrote to the Los Angeles County Museum of Natural History, but not to Dr. Lay, asking that the Los Angeles County Museum of Natural History return the following materials: (i) five containers with "[b]ituminous rock from Behbahan, Mamatain and Mordeh Pil," collected for the purpose of extracting possible fossils; and (ii) one container with "[v]ials of Ovil Pellete," prepared by Professor Randall E. Brown from specimens collected in the Kavir National Park.

1153. On 1 February 1983, the Iranian Interest Section telephoned Dr. Lay about the return of the matrix samples. In a letter he wrote the same day to the Iranian Interest Section, confirming the telephone conversation, Dr. Lay stated that the "fossils embedded in the asphalt

matrix ha[d] been extracted.” He further advised that he was writing an article for the *National Geographic Society* on the Mordeh Fel and Mamatain sites and the material collected there, emphasizing that he could “not complete the article without the material”; he promised he “would return the cleaned specimens” by 1 August 1983. In his affidavit, Dr. Lay stated that he did not want to send the samples back before he had had the opportunity to extract and study the fossils embedded inside. He also stated that, in his communications with the Iranian Interest Section, he “probably exaggerated” his description of how much work he had already completed on the samples and on the article; he knew at the time that the 1 August 1983 deadline for the return of the samples would be very difficult for him to meet. Dr. Lay further stated that, as he had anticipated, he was subsequently unable to finish either writing the article or dissolving the matrix samples by that date.

1154. On 31 August 1983, Iran added Claim G-115 to the present Cases, describing the properties in question simply as “fossils of prehistoric animals” located at “North Carolina University, Chapel Hill, N.C.,” without further details. In a later submission dated 27 January 1984, Iran clarified that the fossils were located at the Department of Anatomy of North Carolina University at Chapel Hill and had been “loaned” to Dr. Lay “for study and preparation of a report.”⁵⁶⁹ To its submission, Iran attached a copy of Dr. Lay’s 1 February 1983 letter to the Iranian Interest Section.

1155. The State Department subsequently contacted Dr. Lay. Sometime prior to 17 September 1984, the date the United States submitted to the Tribunal its first report on Iranian tangible properties, Dr. Lay informed the State Department, contrary to fact, that he had shipped the matrix samples to the Iranian Interest Section on or about 1 March 1984.

1156. On 17 September 1984, the United States submitted to the Tribunal its report on Iranian tangible properties in the United States. Relying on Dr. Lay’s representation, the United States reported therein: “Fossils shipped to Iranian Interest Section in Washington, D.C. on or about March 1, 1984.”

1157. Iran, for its part, in its report to the Tribunal on Iranian tangible properties in the United States of 17 December 1984, denied that the Iranian Interest Section had received those items.

⁵⁶⁹ See *supra* para. 1153.

1158. On 4 October 1985, the State Department wrote to Dr. Lay, advising that Iran was contending that the Iranian Interest Section did not have the matrices, and that the State Department was preparing a final status report on the claimed properties to be submitted to the Tribunal. Accordingly, it asked that Dr. Lay confirm that he had indeed shipped the fossils and, further, that he “immediately” forward to the State Department any documentation proving shipment. Dr. Lay did not provide any such documentation.

1159. Subsequently, in its 30 October 1985 report to the Tribunal, the United States reiterated that the “fossils” had been shipped to the Iranian Interest Section on 1 March 1984.

1160. In its report to the Tribunal of 13 November 1987, Iran reiterated that the Iranian Interest Section had not received the items.

1161. By letter of 13 June 1989, the State Department, pointing to Iran’s denial of receipt of the items, again asked Dr. Lay to provide proof that he had shipped the items to the Iranian Interest Section on 1 March 1984. Dr. Lay wrote back on 10 August 1989, stating:

The rock samples from southern Iran on loan from the National Museum of Natural History in Tehran are in my possession. We have kept these for study. The loan agreement which I have from the National Museum of Natural History was for an indefinite extended period. Thus, I have not felt compelled to return these samples until such time as we have finished our studies.

1162. The same day it received Dr. Lay’s letter, on 25 September 1989, the State Department wrote to Dr. Lay, asking that he forward a copy of his loan agreement with the MMTT “as soon as possible.” The State Department advised that it was preparing a legal memorial related to the matrix samples, and that it “must be on firm legal ground to resist Iran’s demand for transfer of the properties.” The State Department pointed out that, if it had “no firm legal grounds and the Tribunal rules against us . . . , the U.S. Government must look to the holder of the properties to satisfy the judgment.” The State Department requested that Dr. Lay respond “immediately.”

1163. Having received no answer from Dr. Lay, on 31 October 1989, the State Department wrote him once again, stating:

[We] have also enclosed a copy . . . of a letter written by you to the Iranian Interest Section in February 1983. Therein you stated that you *would* return the rock samples to Iran. . . . Unless we can produce a copy of the loan agreement you mentioned, you will be deemed to be wrongfully withholding property belonging to Iran. As [we] mentioned earlier, in such a case, the U.S.

Government must then look to the holder of the properties, in this case you, to satisfy any judgment.

Please note that [we] requested that you respond *immediately* to [our] earlier letter. [We] would appreciate it if you would get in touch with [us] immediately to let [us] know why you have not been able to respond to [our] request for a copy of the loan agreement.

. . . [W]e *must* have your *immediate* cooperation in order to complete our report for the Tribunal.⁵⁷⁰

1164. In its report to the Tribunal of 17 January 1990, Iran confirmed that the Iranian Interest Section had not received the items.

1165. On 26 June 1990, the State Department wrote to Dr. Lay, stating, among other things, that, “[a]lthough [the State Department had] tried to get some response from you with regard to your rights to the property at issue . . . , our records do not reflect any cooperation from you”

1166. The following day, Dr. Lay informed the State Department that he had shipped the matrix samples and extracted fossils to the Iranian Interest Section on 16 May 1990, and provided a copy of the shipping document as proof. The shipping document, titled “straight bill of lading,” indicates that, on 16 May 1990, “The Persian Carpet, Durham, North Carolina,” shipped to the “Iranian Interest Section, Algerian Embassy,” Washington, D.C., “3 wooden boxes containing fossils”; the shipment, including the boxes, weighed 270 pounds. “The Persian Carpet” is a business Dr. Lay and his wife own in Durham. Dr. Lay stated in his affidavit that the 16 May 1990 shipment included the matrix samples as well as the few fossils he had extracted, and that he believed those items were accompanied by “some type of packing list in the crates”; in any event, he stated, they were accompanied by “some type of cover letter identifying the materials.”

1167. In its 5 July 1990 report to the Tribunal, the United States informed Iran that Dr. Lay had shipped the “fossils” to the Iranian Interest Section on 16 May 1990 and proffered the related shipping document.

⁵⁷⁰ Emphasis in the original.

(c) *The Parties' Contentions*

Iran's Contentions

1168. Iran contends that Dr. Lay refused to return the matrix samples and the extracted fossils because he believed he had a right to retain them based on the alleged loan agreement he had with the MMTT. Thus, Iran argues, Dr. Lay had been contesting Iran's right to possession of its property since 19 January 1981. According to Iran, therefore, the United States was in breach of its Paragraph 9 obligation for the period during which Dr. Lay contested possession and refused to return the properties.

1169. Further, Iran contends that the United States remains in breach because Iran's property has never been returned, even after Dr. Lay ceased contesting possession. In these proceedings, Iran concedes that the Iranian Interest Section received three boxes from Dr. Lay in May 1990 but denies that those boxes contained the items Dr. Lay had originally received from the MMTT and the fossils he had extracted. It was on 6 October 1995, in its brief and evidence in the present Cases, that Iran maintained, for the first time, that that shipment contained, not the "fossils" that the MMTT had entrusted to Dr. Lay, but, rather, "three boxes of rocks . . . without any list of identification or information cards." Iran maintains that "it is totally unclear what was in this package" and insists that the "fossils" held by Dr. Lay were never received either by Iran or by the MMTT.

1170. At the Hearing, Iran presented as a witness Mr. Ali Adhami Mirhosseini, who, at the times here relevant, was serving as co-director of the MMTT and director of the Museum's research center. Mr. Adhami testified that neither he nor his experts had any detailed information about the "number and the situation of the fossils" at issue in Claim G-115. Specifically, he did not "see any document about the numbers and the quality and quantity" of what the MMTT had sent to Dr. Lay. Mr. Adhami stated that he saw "only one invoice," mentioning that five boxes containing the fossil specimens and one box including "laboratory glasses, containing the intestinal tract" of birds of the "central national park," had been sent to Dr. Lay. After many years, Mr. Adhami said, the MMTT received back "only three boxes which were torn" and contained "some sediments and some rocks with the shade of the fossils, but not any fossils, and not any information, and not any nomenclature"; the MMTT did not receive from Dr. Lay "any information about the fossils [or] about the intestinal specimens of the birds." In answer to questions from the bench, Mr. Adhami confirmed that he had never

personally seen the boxes of materials, including the intestines of birds, which he stated had been sent to Dr. Lay. As to the three boxes that the Iranian Interest Section received from Dr. Lay in 1990, he stated that he saw them in Iran, some one and one-half years later, when “we received [the three boxes] in not such a good condition.”

1171. Alternatively, Iran argues that, if the Tribunal finds that Dr. Lay did return the properties, the United States will have been in breach for the period during which Dr. Lay contested possession and refused to return the properties.

The United States' Contentions

1172. The United States denies any responsibility for this Claim. Among other things, the United States contends that any Paragraph 9 obligation of the United States could not have arisen before 27 January 1984, when Iran, in a submission before the Tribunal, advised the United States that it was Dr. Lay who held the matrix samples.⁵⁷¹ The United States asserts that, commencing shortly thereafter, based on the information provided by Iran, the United States took all reasonable steps to investigate Iran's claim and to arrange for the transfer to Iran of the matrix samples and extracted fossils. Indeed, the United States maintains, it was in response to the State Department's letters that Dr. Lay finally shipped the items to the Iranian Interest Section on 16 May 1990.

1173. The United States asserts that this shipment included all the items Dr. Lay had originally received from the MMTT, including the fossils he had extracted. According to the United States, Iran has not proven that the shipment did not contain all those materials. The United States points out that, in fact, Iran has not even submitted evidence documenting what items the MMTT had originally shipped to Dr. Lay.

1174. The United States concludes that any delay in the return to Iran of the matrix samples and extracted fossils would not be attributable to the United States but, rather, to actions taken privately by Dr. Lay, who had misinformed the United States about the whereabouts of the properties, facilitated by Iran's own failures.

⁵⁷¹ See *supra* para. 1154.

(d) *The Tribunal's Decision*

1175. It is undisputed that the MMTT falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

1176. Further, there is no dispute between the Parties that, in May 1990, the Iranian Interest Section received a shipment from Dr. Lay consisting of three boxes containing matrix samples, which Mr. Adhami, Iran’s witness, described as “some sediments and some rocks with the shade of fossils.”⁵⁷² The issue before the Tribunal is whether the shipment included the materials that the MMTT had originally sent to Dr. Lay, as well as the fossils he had extracted from the matrices.

1177. The Tribunal is confronted with a paucity of evidence as to precisely: (i) what items the MMTT sent to Dr. Lay in late 1978 or early 1979; and (ii) the quantity and type of fossils he had extracted. No documentary evidence identifying any of those materials has been produced. Dr. Lay estimated in his affidavit that the MMTT had originally shipped three to four dozen matrix samples in total, none weighing more than 15 pounds (and many much smaller).⁵⁷³ In his testimony at the Hearing, Dr. Lay stated that no intestines of birds were included in the MMTT’s shipment. Furthermore, he stated that, on 16 May 1990, he also returned to the Iranian Interest Section some 52 extracted fossils, consisting, more accurately, of 52 intact bones.

1178. Iran offered no evidence or specific data about the items that the MMTT originally shipped to Dr. Lay. Mr. Adhami, Iran’s witness, stated that he did not have any detailed information about the quality and quantity of those items, and that, indeed, he had never personally seen any of them.⁵⁷⁴ Moreover, as to the three boxes that Dr. Lay shipped to the Iranian Interest Section in May 1990, Mr. Adhami stated that he saw them for the first time one and one-half years later, in Iran. According to his testimony, the three boxes were torn and contained “some sediments and some rocks with the shade of the fossils” but not any fossils or “the intestinal specimens of the birds.”⁵⁷⁵

⁵⁷² See *supra* para. 1170.

⁵⁷³ See *supra* para. 1148.

⁵⁷⁴ See *supra* paras. 1170.

⁵⁷⁵ See *id.*

1179. As an initial matter, the Tribunal is not persuaded that any vials containing intestines of birds were ever sent to Dr. Lay. On the basis of the letter of 14 March 1982 from the Iranian Ministry of Foreign Affairs to the Iranian Interest Section,⁵⁷⁶ the Tribunal is convinced, rather, that vials of that kind had been sent to the Los Angeles County Museum of Natural History by the Iranian “Environment Conservation Organization” in 1978.⁵⁷⁷ Any such vials are unrelated to Claim G-115.

1180. Furthermore, upon analysis, the Tribunal holds that, on balance, the evidence weighs more heavily in favor of finding that, in May 1990, Dr. Lay shipped both the matrix samples and the extracted fossils in his possession to the Iranian Interest Section. In reaching this conclusion, the Tribunal takes into account the following factors. First, Dr. Lay’s affidavit and hearing testimony represent the only evidence on record describing both the items that the MMTT originally shipped to Dr. Lay and the items that Dr. Lay shipped to the Iranian Interest Section in May 1990. Dr. Lay had first-hand knowledge of the relevant facts. This evidence called for some evidence in response from Iran, which Iran was not able to provide. Mr. Adhami, Iran’s witness, admittedly has no personal knowledge of the contents of either the MMTT’s original shipment to Dr. Lay or Dr. Lay’s May 1990 shipment to the Iranian Interest Section. Further, the fact that the three boxes Mr. Adhami saw in Iran in 1992 or 1993 did not contain any extracted fossils, but, rather, only matrices, does not prove that the Iranian Interest Section had not received any such fossils in Washington, D.C., in May 1990. Mr. Adhami stated that the three boxes he saw were “torn.” Thus, it is possible that the fossils went missing during the transit from Washington, D.C., to Iran.

1181. Second, and critically, there is no evidence, and Iran did not assert, that the Iranian Interest Section, the MMTT, or Iran complained contemporaneously, either to Dr. Lay or the United States, that the May 1990 shipment from Dr. Lay did not contain all the matrix samples in Dr. Lay’s possession and the extracted fossils. It was only on 6 October 1995, in its brief and evidence in the present Cases, that Iran maintained, for the first time, that that shipment

⁵⁷⁶ See *supra* para. 1151.

⁵⁷⁷ See *supra* paras. 1151-1152.

did not contain the items in dispute. This failure to complain contemporaneously places a high burden of proof on Iran,⁵⁷⁸ which Iran has not been able to discharge.

1182. The Tribunal is troubled by the lack of truthfulness Dr. Lay displayed toward the Iranian Interest Section and the State Department. Nevertheless, in the circumstances, the Tribunal is convinced that, in May 1990, Dr. Lay did ship to the Iranian Interest Section all the matrices and extracted fossils in his possession. In reaching this conclusion, the Tribunal also considers the undeniably persuasive effect on Dr. Lay of the peremptory language, implying undesirable consequences, of the State Department's communications to him in late 1989.

1183. The Tribunal now turns to the issue of the responsibility of the United States. The United States first learned that the properties at issue in Claim G-115 were located at the Department of Anatomy of the University of North Carolina, Chapel Hill, and were held by Dr. Lay, on 27 January 1984, when Iran presented its response to a United States request for additional information.⁵⁷⁹ The relevant question thus becomes whether, from that time until 16 May 1990, when Dr. Lay finally shipped the properties, the United States did everything it reasonably could have done to satisfy 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.⁵⁸⁰

1184. After the United States learned from Iran, on 27 January 1984, that Dr. Lay was the holder of the claimed properties, the United States contacted Dr. Lay sometime during that year. As noted, Dr. Lay misled the United States, claiming that he had already returned those properties to Iran. Thus, the United States, in its report to the Tribunal of 17 September 1984, advised that Dr. Lay had shipped the properties to the Iranian Interest Section in March of that year.⁵⁸¹

⁵⁷⁸ By analogy, see the Tribunal's practice in contract cases (*Westinghouse Electric Corp. and Islamic Republic of Iran Air Force*, Award No. 579-389-2, paras. 141 & 271 (26 Mar. 1997), reprinted in 33 IRAN-U.S. C.T.R. 60, 105-6 & 139-40; *Richard D. Harza et al. and Islamic Republic of Iran et al.*, Award No. 232-97-2, para. 99 (2 May 1986), reprinted in 11 IRAN-U.S. C.T.R. 76, 114; *The Austin Co. and Machine Sazi Arak et al.*, Award No. 257-295-2, paras. 31-32 (30 Sept. 1986), reprinted in 12 IRAN-U.S. C.T.R. 288, 294-95).

⁵⁷⁹ See *supra* para. 1154.

⁵⁸⁰ See *supra* paras. 169 & 211.

⁵⁸¹ See *supra* paras. 1155-1156.

1185. Through its report to the Tribunal of 17 December 1984, Iran notified the United States that the Iranian Interest Section had not received the items and requested proof of shipment.⁵⁸² Yet, it was not until 4 October 1985 that the United States wrote to Dr. Lay, inquiring about the items and requesting that he “immediately” provide the United States with documentation of shipment.⁵⁸³ Dr. Lay, however, did not do so, and the United States did not follow up on the matter with him. Rather, in its 30 October 1985 report to the Tribunal, the United States reiterated that the items had been shipped to the Iranian Interest Section on 1 March 1984.⁵⁸⁴ In its report to the Tribunal of 13 November 1987, Iran, for its part, denied that the Iranian Interest Section had received them and, again, requested proof of shipment.⁵⁸⁵ The United States, though, delayed until 13 June 1989 before contacting Dr. Lay once more.⁵⁸⁶

1186. Beginning on that date, the United States exerted sustained pressure on Dr. Lay, causing him finally to ship the claimed properties to the Iranian Interest Section on 16 May 1990.⁵⁸⁷

1187. Considering the above circumstances, the Tribunal finds that, during the period between early 1985 and 13 June 1989, the United States failed to take all reasonable steps to ensure that Dr. Lay transferred the claimed properties to Iran. During that time, the United States could have been reasonably expected to follow up on the matter with Dr. Lay and, importantly, press him to provide the requested proof of shipment. This, however, the United States did not do.

1188. Accordingly, 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. This breach terminated on 13 June 1989, when the State Department wrote to Dr. Lay, reiterating its request for proof of shipment, and commenced actively and persistently to pursue the matter. The Tribunal holds that, as of that date, the United States did everything it reasonably could have done to satisfy its Paragraph 9 obligation to take steps to ensure that Dr. Lay transferred the items. He in fact did so on 16 May 1990.

⁵⁸² See *supra* para. 1157.

⁵⁸³ See *supra* para. 1158.

⁵⁸⁴ See *supra* para. 1159.

⁵⁸⁵ See *supra* para. 1160.

⁵⁸⁶ See *supra* para. 1161.

⁵⁸⁷ See *supra* paras. 1161-1166.

1189. Based on the foregoing, on Claim G-115, the Tribunal finds the United States in breach of Paragraph 9, as described, *supra*, in paras. 1187-1188.

(22) Claim G-162 (Bank Saderat Iran/Non-Ferrous Metal Exchange)

(a) *Introduction*

1190. In Claim G-162, Iran seeks the refund of a cash payment of USD 603,547.69 made by Reyam Company of Iran (“Reyam”), an Iranian private company, for the purchase of a shipment of copper wire rods from Non-Ferrous Metal Exchange (“NFME”), a United States company, sometime in July/August 1979. The payment was made through a letter of credit established by Reyam with Bank Saderat Iran (“Bank Saderat”) in favor of NFME.

(b) *Factual Background*

1191. By telex of 25 July 1979, NFME offered to sell Reyam 300 to 500 tons of copper wire rods at USD 2,012 per metric ton “CANDF” “full liner term K[h]or[r]amshahr and/or Bandar Shahpour . . . delivery September/October or earlier” at NFME’s option. Pursuant to NFME’s offer, Reyam was to pay the purchase price through a confirmed letter of credit upon first presentation of documents.

1192. On 7 August 1979, Reyam established a letter of credit for USD 603,600 in favor of NFME with Bank Saderat payable to NFME through Bank of America, Los Angeles (“Bank of America”). According to a letter dated 20 September 1979 from Bank of America to Bank Saderat, transmitting the stipulated original documents,⁵⁸⁸ the letter of credit covered the shipment of 300 metric tons of copper wire rods. Those items had been shipped to Iran via the vessel *Hellenic Ideal* on 10 September 1979 from St. John, New Brunswick, Canada.

1193. Bank of America paid USD 603,547.69 to NFME under the letter of credit and then reimbursed itself.

1194. Reyam and NFME subsequently agreed that the goods shipped be returned to NFME in the United States. Accordingly, they undid the transaction. In an undated telex to Reyam, sent before 16 October 1979, NFME wrote:

⁵⁸⁸ These documents consisted of eight commercial invoices, three certificates of origin, three forwarders receipts, and three packing lists.

Following our extensive negotiations . . . we have inevitably agreed to replace the shipment. However to avoid long delay we exceptionally agree to refund to Bank of America US Dollars 603,597.69 upon their submission of full set of shipping documents in scope of L/C

Thus, in a telex to Bank Saderat dated 16 October 1979, Bank of America stated:

Re your cable October 16 regarding documents under your letter of credit . . . US dollars 603,547.69 rejected by your customer. . . . We today received confirmation letter from beneficiary who have agreed to refund upon receipt of full set of all shipping documents.

1195. By letter of 20 October 1979, Bank Saderat returned the shipping documents to Bank of America and asked that Bank of America: (i) “reverse the amount of U.S.\$603,547.69 being documents funds to our account”; and (ii) cancel the letter of credit.

1196. By telex of 20 February 1980 to Bank Saderat, Bank of America confirmed that it had received the shipping documents on 13 November 1979. In its telex, Bank of America further advised that: (i) on 21 November 1979, it had requested NFME by letter to refund the USD 603,547.69 but Bank of America had not yet recovered the funds; and (ii) Bank of America was holding the shipping documents and awaiting instructions from Bank Saderat as to their disposition.

1197. On 11 March 1980, Reyam wrote to NFME, proposing a number of alternatives to resolve the matter. Reyam’s proposals involved NFME transferring the USD 603,547.69 to a bank in England.

1198. By telex of 24 March 1980 to Bank Saderat, Bank of America reiterated that it still held the shipping documents and asked that Bank Saderat clarify whether they should be returned to it if NFME was unable or unwilling to refund the USD 603,547.69.

1199. On 15 April 1980, NFME wrote to Reyam, advising, among other things, that NFME’s attorneys had been negotiating with Bank of America to find a way to transfer the funds to Bank Saderat and, at the same time, to prevent the United States Government from freezing the funds.

1200. By reply telex of 19 April 1980, Reyam advised NFME that Bank Saderat was “very anxious” to receive the funds, which Bank Saderat wished to see transferred to its London branch.

1201. Iran alleges in these proceedings that Reyam was dissolved sometime between March 1980 and 19 January 1981.

1202. There is no evidence of any further communications among the various entities involved until 14 April 1983, when Bank Saderat sent a telegram to Bank of America. Referring to the unblocking of Iranian assets by the United States Government, Bank Saderat requested that Bank of America refund to Bank Saderat's New York branch the USD 603,547.69 that had been paid to NFME under the letter of credit.

1203. On 21 April 1983, Bank of America attempted to contact NFME by registered letter to obtain the USD 603,547.69 refund for Bank Saderat. Bank of America's letter was returned by the United States Postal Service on 26 April 1983, with the notation "Attempted – Not Known."

1204. On 27 April 1983, Bank of America sent a telex to Bank Saderat, informing it of its unsuccessful attempt to contact NFME, and that there were no contact details for NFME. Bank of America further informed Bank Saderat that it would continue to hold the shipping documents at Bank Saderat's disposal, and that it would not further attempt to obtain reimbursement of the funds.

(c) The Parties' Contentions

Iran's Contentions

1205. Iran's position, as finally pleaded at the Hearing, is as follows. As an initial matter, Iran contends that, by having paid the amount of the letter of credit without having recovered the funds from Reyam, its client, Bank Saderat became the assignee of Reyam vis-à-vis NFME. Iran further contends that, after Reyam and NFME had undone their original sales agreement concerning the copper wire rods, Bank Saderat, the claimant in Claim G-162, and NFME concluded a new agreement. Pursuant to this new agreement, NFME undertook to refund to Bank Saderat the amount of the letter of credit in exchange for the original shipping documents. Iran asserts that, thenceforth, all parties recognized that, under the new "refund agreement," NFME owed Bank Saderat USD 603,547.69. According to Iran, this "refund agreement" stands separate from the original sales agreement between NFME and Reyam.

1206. Iran argues that the liability due by NFME to Bank Saderat represents Iranian property that should have been transferred to Iran on 19 January 1981. According to Iran, it constituted a liability within the meaning of Section 535.333(a) of the Treasury Regulations. Iran contends that the United States breached its Paragraph 9 obligation by failing to arrange for the transfer “of the payment due to Bank Saderat,” and that Iran’s damages equal the amount of that payment. Alternatively, Iran argues that the United States is obliged to refund to Iran the USD 603,547.69 paid by Bank Saderat under the letter of credit based on Paragraph 8 and General Principle A.

The United States’ Contentions

1207. The United States contends, among other things, that Bank Saderat does not own the payment it made under the letter of credit. The United States argues that, at most, Bank Saderat would possess a right to demand reimbursement from its alleged contractual partner, Reyam. As an intangible asset, however, such right would not fall within the scope of “Iranian properties” pursuant to Paragraph 9.

1208. The United States maintains that Iran’s claim for the return of the payment made by Bank Saderat cannot be sustained under Paragraph 8 or General Principle A, either.

(d) The Tribunal’s Decision

1209. As an initial matter, it is undisputed that Bank Saderat falls within the definition of “Iran” under Article VII, paragraph 3, of the Claims Settlement Declaration.

1210. In this Claim, Iran asserts that the United States has breached its Paragraph 9 obligation by failing to arrange for the transfer to Iran of the cash refund allegedly due by NFME to Bank Saderat. As noted above, however, the Tribunal, in Award No. 529, held that the scope of “Iranian properties” in Paragraph 9 was restricted exclusively to “tangible properties” that can be “solely owned.”⁵⁸⁹ Any liability owed by NFME to Bank Saderat would clearly not represent an item of tangible property. Thus, it would not fall within the scope of “Iranian properties” in accordance with Paragraph 9. Consequently, the Tribunal dismisses Iran’s claim for the refund of Bank Saderat’s cash payment based on Paragraph 9.⁵⁹⁰

⁵⁸⁹ See *supra* para. 99.

⁵⁹⁰ See also *supra* note 475.

1211. For the reasons stated earlier in this Partial Award, the Tribunal likewise dismisses Iran's alternative claims for the refund of that payment based on Paragraph 8 and General Principle A.⁵⁹¹

(23) Claims Involving Kharg Chemical Company

(a) *General Introduction*

1212. In Claims G-165 to G-190 and Claims 1996-A, 1996-B, 1996-C, 1996-D, and 1996-E/F, Iran seeks damages, plus interest, relating to purchases by Kharg Chemical Company from a number of United States vendors of items pertaining to the construction and operation of natural gas extraction and processing facilities on Kharg Island in the Persian Gulf.

(b) *Factual Background Common to All Claims Involving Kharg*

1213. On 12 July 1966, Amoco International S.A. and the National Petrochemical Company of Iran ("NPC") entered into a joint-venture agreement ("Khemco Agreement"). At the core of the Khemco Agreement was the establishment of an Iranian joint-stock company, Kharg Chemical Company (hereinafter, "Kharg"), for the purpose of building and operating a plant for the production and marketing of sulfur, natural gas liquids, and liquefied petroleum gas derived from natural gas; such gas was being generated as a by-product of nearby crude-oil production by NPC's affiliate, National Iranian Oil Company, and Amoco International S.A.'s affiliate, Amoco International Oil Company ("AIOC").⁵⁹² Kharg constructed the envisioned gas-processing plant on Kharg Island, the site of Iran's principal crude-oil shipping terminal, and the plant commenced commercial operations on 1 January 1970.⁵⁹³

1214. On 1 June 1970, Kharg entered into a purchasing service contract with AIOC ("Service Contract"). The Service Contract designated AIOC as Kharg's purchasing agent. Under the Service Contract, following written requests from Kharg, AIOC was to purchase, on behalf and in the name of Kharg, material, equipment, services, and supplies, and to contract for the transportation of the items to their destination in Iran. Kharg, for its part, agreed to pay AIOC a charge equal to two percent of the amounts invoiced Kharg by vendors and contractors for

⁵⁹¹ See *supra* paras. 223-232 & 247.

⁵⁹² *Amoco Int'l Finance Corp. and Islamic Republic of Iran et al.*, Award No. 310-56-3, paras. 1, 28-29 (14 July 1987) reprinted in 15 IRAN-U.S. C.T.R. 189, 193, 198-99 ("Award No. 310").

⁵⁹³ Award No. 310, para. 30, 15 IRAN-U.S. C.T.R. at 199.

those materials, equipment, services, and supplies. Under the Service Contract, Kharg bore sole responsibility for payment of any sums due under the purchase orders placed by AIOC and was to indemnify the latter against any loss, cost, damage, or liability that might arise against AIOC in relation to the purchase orders. The Service Contract was governed by the law of Illinois.

1215. In practice, AIOC ordered the goods from vendors throughout the United States and subsequently arranged for their shipment to Iran or their storage in warehouses at several locations. AIOC's designated freight forwarders were World Export Packing Company, Inc. ("WEPAC") and World Trade Forwarding Company ("World Trade"), both located in Houston. The vendors billed Kharg directly, and Kharg paid the vendors for the goods directly, sometimes paying for items in advance of shipment. The purchase orders placed by AIOC contained a standardized box to be filled in for "FOB City or Location."

1216. AIOC ordered a broad range of items on behalf of Kharg between 1970 and early 1980. Starting in late 1978, Kharg fell behind in paying vendor invoices. By telex of 22 April 1979, Kharg informed AIOC that its delay in paying vendor invoices was due to its inability to obtain approval from the Central Bank of Iran to transfer the required funds, and that Kharg was following up on the matter through NPC management. Kharg requested that, meanwhile, AIOC continue to process Kharg's orders.

1217. Accordingly, in an internal communication dated 24 April 1979, AIOC recommended that freight forwarders and suppliers be informed that: (i) AIOC, as Kharg's agent, was releasing the hold on shipments; (ii) Kharg had requested that the Central Bank of Iran authorize the transfer of funds to pay invoices and, until Kharg received such authorization, "delay in payment is anticipated"; and (iii) Kharg was solely responsible for payment of invoices.

1218. A further AIOC internal communication, dated 7 August 1979, advised that Kharg had "recently been permitted on at least two occasions to transfer dollar funds out of Iran," and that it was unknown "whether further difficulties in transferring funds . . . will be experienced."

1219. On 14 November 1979, the President of the United States issued the Blocking Order.⁵⁹⁴

⁵⁹⁴ See *supra* para. 8.

1220. By telex of 15 November 1979, Amoco Europe advised AIOC's Chicago and Houston offices that all movements of material to Kharg had been "frozen" effective as of that date.

1221. By internal letter of 20 March 1980, an AIOC official provided the following information:

Attached is a list of Kharg . . . purchase orders in numerical sequence indicating vendor and the FOB point. This list is for all of the receiving reports previously furnished to you on material presently at World Trade Forwarding in Houston. You will note that all the FOB points are within the continental United States.

I presume that this will permit you further handling of these items with regard to our possible plan to return material to vendor.

The list attached to this letter will be hereinafter referred to as the "March 1980 List."

1222. By AIOC internal letter dated 16 April 1980, a further list was circulated, described as follows:

Attached is a list of purchase order numbers showing invoice amounts, the total of which is approximately \$72,000.

You should understand, however, that this list covers only that material presently at the freight forwarder in Houston. It is very likely that there are other unpaid invoices. . . .

The list attached to the 16 April 1980 will be hereinafter referred to as the "April 1980 List."

1223. According to the affidavit of Mr. Arthur E. Piper, a former regional production manager of Amoco Production Company for the Denver region, which was originally proffered by the claimant in Case No. 56 (*Amoco International Finance Corp. and Islamic Republic of Iran et al.*) and produced by the United States in the present Cases, AIOC was presented with claims from vendors of materials and associated freight forwarders who had not been paid by Kharg. Mr. Piper stated that AIOC believed it might be found liable to the vendors and freight forwarders who had supplied the goods and services that Kharg had authorized AIOC to order; thus, beginning in June 1980 and throughout 1981, AIOC proceeded to settle the unpaid claims with those third parties, who, in return, released AIOC and its affiliates from any further claims and assigned their claims against Kharg to Amoco.

1224. According to Mr. Piper, a substantial amount of the materials that had been ordered by Kharg were still under AIOC's control when the Blocking Order was issued on

14 November 1979. Mr. Piper stated that AIOC was thereafter precluded from forwarding those materials to Iran; consequently, the materials remained in warehouses in London, Houston, and elsewhere, and with the freight forwarders. Mr. Piper stated that, in order to mitigate losses, some of these materials were sold at fair market value prices in arm's length transactions.

1225. Mr. Piper asserted, moreover, that, at the time of the Blocking Order, AIOC also had under its control various materials purchased for Kharg for which the vendors had already been paid by Kharg. Mr. Piper stated that AIOC sold those materials at fair market value prices in arm's-length transactions "to avoid wastage . . . during the period of blocking."

1226. According to Mr. Piper, the sums AIOC paid in satisfaction of vendor claims,⁵⁹⁵ less the sums AIOC received upon the disposition of materials in its possession that related to those claims, amounted to USD 56,361.81. With his affidavit, Mr. Piper offered an accounting tabulation of these transactions, titled "Settlement with Vendors and Disposition of Goods for Which Khemco Did Not Pay" (hereinafter referred to as the "Piper List One"). The Piper List One records, among other things, the amounts paid by AIOC in satisfaction of vendor claims, tying them to the relevant purchase orders, vendor names, items ordered, and vendor invoice numbers and dates.

1227. Mr. Piper further stated that the sum that AIOC received for the resale of materials for which Kharg had paid the vendors amounted to USD 31,634.48. With his affidavit, Mr. Piper offered an accounting tabulation of these sales, titled "Disposition of Goods for Which Kharg Chemical Company Had Paid" (hereinafter referred to as the "Piper List Two"). The Piper List Two records, among other things, the names of the companies to which AIOC had sold materials for which Kharg had paid the vendors, brief descriptions of such materials, and the amounts paid by those companies to AIOC, tying them, where possible, to the relevant purchase orders. Mr. Piper concluded that AIOC suffered a net loss of USD 24,727.33 in connection with Kharg materials, for which Amoco International S.A. had a valid claim.

1228. It is undisputed that, in carrying out the actions described in the foregoing paragraphs, AIOC sold materials to the original vendors or other Amoco affiliates.

⁵⁹⁵ See *supra* para. 1223.

(c) *Individual Claims Involving Kharg*(i) *Claim G-165 (Kharg/Gearench Manufacturing Co.)**Introduction*

1229. In Claim G-165, the maximum sought by Iran is USD 2,443.01 in damages for the United States' alleged failure to arrange for the transfer to Iran of wrenches ordered from Gearench Manufacturing Company ("Gearench").

Factual Background

1230. Claim G-165 relates to 40 wrenches ("G-165 Items") ordered, together with other material, under Purchase Order No. KC-780108. On 17 September 1979, the G-165 Items were received by AIOC. The receipt register indicates the price per unit as USD 18.40, totaling USD 736. On 24 October 1979, Kharg issued a check for USD 982.33.

1231. A handwritten annotation on an internal AIOC "Supplier Performance/Phone Expediting Record" for Purchase Order No. KC-780108 suggests that items 1 and 2 covered by that Purchase Order had been, or were to be, shipped through the *S.S. Concordia Star* with an estimated arrival in Iran on 5 December 1978.

1232. On 30 August 1979, Gearench shipped the G-165 Items to World Trade, the freight forwarder designated by AIOC, as Gearench advised in a letter dated 19 March 1984 to the State Department. To this letter, Gearench attached: a waybill dated 30 August 1979, evidencing shipment by Gearench to World Trade; export invoice No. 3524 dated 29 August 1979 for USD 982.33 issued by Gearench to AIOC in relation to the G-165 Items; and a Kharg statement of payment of USD 982.33, dated 2 October 1979, referencing Purchase Order No. KC-780108 and Gearench's invoice No. 3524.

1233. The March and April 1980 Lists⁵⁹⁶ include a reference to Purchase Order No. KC-780108. The April 1980 List, which, according to its own terms, "covers only that material presently at the freight forwarder in Houston,"⁵⁹⁷ indicates an invoice amount of USD 1,191 in relation to that Purchase Order.

⁵⁹⁶ See *supra* paras. 1221-1222.

⁵⁹⁷ See *supra* para. 1222.

1234. An internal AIOC “Supplier Performance/Phone Expediting Record” mentions that items 3, 4, 5, and 6 covered by Purchase Order No. KC-780108 had been sent to the Iran Pan American Oil Company’s (“IPAC”) scrap account on 24 November 1980, and that the balance of the order was never shipped from the vendor. This is confirmed by an internal AIOC “Material Transfer” form dated 21 November 1980, mentioning a transfer from AIOC to the IPAC scrap account of items 3, 4, 5, and 6 on Purchase Order No. KC-780108. The amount indicated on that document is USD 2,443.01.

1235. By letter dated 6 February 1983, Kharg wrote to Gearench indicating that it had not received the materials covered by Purchase Order No. KC-780108 and requesting that Gearench clarify the status of the order.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1236. In its 1990 report on Iranian tangible properties, the United States noted that in 1985 it had provided documents showing that “[v]alves and tools” had been sold to Amoco and shipped to Kharg via World Trade in 1979. According to the United States’ report, AIOC records established that some items had been shipped on the *S.S. Concordia Star* with an estimated arrival in Iran on 5 December 1978, and that other items had been transferred to the IPAC scrap account.⁵⁹⁸

The Parties’ Contentions

Iran’s Contentions

1237. According to Iran, the facts of this Claim are not disputed. However, Iran contends that the transfer of the G-165 Items to a scrap account in late November 1980 was unlawful and, therefore, without any legal effect because AIOC had no authority to effect such transfer. In any event, Iran maintains that from the evidence before the Tribunal it cannot be concluded that the G-165 Items were no longer in existence within the jurisdiction of the United States on 19 January 1981. According to Iran, it is possible that the G-165 Items were in fact taken out of the scrap account and resold to the vendor or transferred to other parties.

⁵⁹⁸ See *supra* para. 1234.

1238. Furthermore, Iran asserts that the United States is responsible for the non-transfer of the items to Iran because the non-transfer was a result of the Blocking Order. Finally, Iran contends that delivery to AIOC does not constitute delivery to Iran.

The United States' Contentions

1239. The United States contends that the G-165 Items do not fall within the scope of Paragraph 9 because they were sent to IPAC's scrap account prior to 19 January 1981. According to the United States, in sending the Kharg material to scrap, AIOC was acting within its authority as Kharg's agent because it had taken these actions to mitigate Kharg's losses from deterioration and incurring storage charges during the period of the freeze of Iranian assets in the United States. The United States also argues that the G-165 Items should be deemed to have been transferred to Iran, since they were delivered to the freight forwarder of Iran's agent in the United States on 30 August 1979.⁵⁹⁹

The Tribunal's Decision

1240. There is no dispute that Kharg falls within the definition of "Iran" under Article VII, paragraph 3, of the Claims Settlement Declaration.

1241. Equally, there is no dispute that, in 1979, Gearench delivered the G-165 Items to World Trade – the freight forwarder designated by AIOC, Kharg's agent – in Houston, Texas.⁶⁰⁰ The alleged transfer of title to the G-165 Items from Gearench to Kharg occurred at that point. Accordingly, in application of the *lex rei sitae*, the Tribunal determines that, the G-165 Items being located in Texas at the relevant time, the law of the State of Texas governs passage of title to the G-165 Items. The G-165 Items were the object of a sales contract between Gearench and Kharg pursuant to Purchase Order No. KC-780108. In the State of Texas, the sale of goods is governed by Section 2.401(b) of the UCC, as adopted in Title 2 of the Texas Uniform Commercial Code. That provision provides, in relevant part, that "[u]nless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods."⁶⁰¹ In this Claim, the seller, Gearench, completed its performance by delivering the G-165 Items to World Trade, the freight

⁵⁹⁹ See *supra* para. 1232.

⁶⁰⁰ See *id.*

⁶⁰¹ Texas Uniform Commercial Code, Section 2.401(b).

forwarder designated by AIOC, Kharg's agent, during the second half of 1979. Thus, in the absence of an explicit agreement between the parties specifying otherwise, title to those items passed to Kharg at that time.

1242. The Tribunal furthermore holds that delivery by the vendor to the freight forwarder designated by Iran's agent, while constituting the prerequisite for the passage of title under the applicable law, cannot, as such, be considered to constitute "transfer to Iran" in accordance with Paragraph 9. The United States' international obligation to arrange for the transfer of Iranian properties to Iran, pursuant to Paragraph 9, continued to exist with regard to all "Iranian properties" within the jurisdiction of the United States as of 19 January 1981, whether they were located at the agent's freight forwarder's premises or elsewhere within that jurisdiction.

1243. The question arises whether the G-165 Items were still in existence within the jurisdiction of the United States on 19 January 1981.

1244. In this regard, the Tribunal notes the evidence, provided by the United States with its Response of 26 September 2001 to Iran's brief and evidence, indicating that the G-165 Items had been sent to the IPAC scrap account on 24 November 1980.⁶⁰² This represents information that the United States had sought and obtained, at its request, likely from AIOC. The Tribunal finds, on balance, that the United States has adequately investigated this Claim and informed Iran accordingly in its submissions to the Tribunal.

1245. Although the indication that the G-165 Items had been sent to the IPAC scrap account does not necessarily imply that they had been physically destroyed prior to 19 January 1981, the Tribunal considers that it was not unreasonable for the United States to assume that those items no longer existed as of that date.

1246. Iran has not been able to establish with reliable evidence that the G-165 Items were still in existence within the jurisdiction of the United States on 19 January 1981, nor has it shown that it has given adequate direction to AIOC to effect the transfer of the G-165 Items to Iran.

1247. In light of all the above, the Tribunal concludes that, even assuming that the G-165 Items still existed within the jurisdiction of the United States on 19 January 1981, the United States did everything it could reasonably have been expected to do in the circumstances to

⁶⁰² See *supra* para. 1234.

satisfy its Paragraph 9 obligation to take steps to ensure that the G-165 Items were transferred to Iran.⁶⁰³

1248. In view of the above, Claim G-165 is dismissed.

(ii) *Claim G-166 (Kharg/Semler Industries)*

Introduction

1249. In Claim G-166, Iran seeks a maximum of USD 751.52 in damages for the United States' alleged failure to arrange for the transfer to Iran of a diaphragm pump purchased from Semler Industries ("Semler").

Factual background

1250. At issue in the present Claim is a diaphragm pump ("Pump") ordered by AIOC from Semler on 27 August 1979 under Purchase Order No. PC-780452. The price indicated in the Purchase Order was USD 730. According to documents on record, on 10 October 1979, Semler shipped the Pump to Kharg's freight forwarder in Houston, World Trade, which received the item on 15 October 1979.

1251. The April 1980 List⁶⁰⁴ indicates that the Pump was still located at World Trade's facilities in April 1980.

1252. By letter dated 3 September 1980, Semler informed AIOC that Semler would accept the return of the Pump, for which it would allow a credit of USD 578. Further, Semler noted that it had received payment for the Pump in November 1979.

1253. The Pump was shipped back to Semler on 22 September 1980.

1254. On 10 November 1980, Semler and AIOC (on behalf of Kharg) signed an agreement of sale, by which AIOC sold the Pump back to Semler for USD 578, which amount Semler paid to AIOC on 13 November 1980.

1255. By letter of 26 April 1983, Kharg informed Semler that Kharg had not received the Pump, for which it had paid USD 731 in October 1979, and requested that Semler clarify the

⁶⁰³ See *supra* paras. 169 & 211.

⁶⁰⁴ See *supra* para. 1222.

status of the order. Semler returned the letter to Kharg with an annotation stating that its records did “not go back this far.”

1256. By letter of 22 February 1984, Semler advised the State Department that, in 1979, it had received from AIOC the order for the Pump, and that it subsequently had the Pump shipped directly from the manufacturer to World Trade in Houston. With its letter, Semler enclosed back-up documentation. Semler also confirmed that it had been paid in full by AIOC for the Pump, and that it was not aware of holding “any other products or money” that belonged to Iran.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1257. With its 30 October 1985 report on Iranian tangible properties, the United States provided a copy of Semler’s letter of 22 February 1984, together with the enclosed back-up documentation.⁶⁰⁵ In its 5 July 1990 report on Iranian tangible properties, the United States noted, among other things, that the Pump had been “returned to the vendor,” Semler, and that Semler’s refund had been remitted to AIOC in 1980.

The Parties’ Contentions

Iran’s Contentions

1258. Iran maintains that delivery of the Pump to Iran’s freight forwarder did not constitute transfer to Iran in accordance with Paragraph 9, and that the United States is therefore still obligated to arrange for that transfer. Iran further contends that AIOC had no authority to sell the Pump on behalf of Kharg, so, the 10 November 1980 sale agreement between AIOC and Semler did not validly transfer ownership of the Pump to the latter. In any event, Iran asserts, the sale of the Pump to Semler was null and void under the United States Treasury Regulations in force at that time. Thus, Iran concludes, there is no evidence that the Pump was not Iranian property as of 19 January 1981.

The United States’ Contentions

1259. The United States argues that, because AIOC sold back the Pump to Semler on 10 November 1980, Iran held no title to that item on 19 January 1981. In any event, the United

⁶⁰⁵ See *supra* para. 1256.

States contends that the Pump should be deemed to have been transferred to Iran when it was delivered to the freight forwarder designated by AIOC, Iran's agent.

The Tribunal's Decision

1260. There is no disagreement between the Parties as to the facts in this Claim. In particular, it is undisputed, and has been established by documentary evidence, that the Pump was sold back to the vendor, on behalf of Kharg, in November 1980, *i.e.*, before the relevant date of 19 January 1981. The Tribunal notes that, in its 5 July 1990 report on Iranian tangible properties, the United States, after having inquired of Semler about the Pump, informed Iran that that item had been "returned to the vendor," Semler, and that Semler's refund had been remitted to AIOC in 1980.⁶⁰⁶ The Tribunal also notes that the United States had already contacted Semler about the Pump in 1983/1984, and that, in its 30 October 1985 report on Iranian tangible properties, the United States had informed Iran of its findings, including that Semler was not aware of holding any items that belonged to Iran.⁶⁰⁷

1261. In these circumstances, considering the information the United States was able to gather about the Pump, the Tribunal concludes that the United States did everything it could reasonably have been expected to do to satisfy its Paragraph 9 obligation to take steps to ensure that the Pump was transferred to Iran.⁶⁰⁸

1262. In light of the above conclusion, the Tribunal need not decide whether AIOC, as the purchasing agent of Kharg, had the authority to sell the Pump back to the vendor.

1263. In view of the above, Claim G-166 is dismissed.

(iii) Claim G-168 (Kharg/General Tire International Co.)

Introduction

1264. In Claim G-168, Iran seeks USD 29,265.60 in damages resulting from the United States' alleged failure to arrange for the transfer to Iran of dock bumpers and other items ordered from General Tire International Company ("General Tire").

⁶⁰⁶ See *supra* para. 1257.

⁶⁰⁷ See *id.*

⁶⁰⁸ See *supra* paras. 169 & 211.

Factual Background

1265. AIOC ordered dock bumpers and sets of bolts and nuts (“G-168 Items”) from General Tire under AIOC Purchase Order No. KC-780454 dated 20 September 1979. It is undisputed that Kharg paid for the G-168 Items in full.

1266. By letter dated 12 December 1979, General Tire informed AIOC that the G-168 Items had been shipped to World Trade in Houston. A freight services consignment note in evidence indicates that those items were shipped to World Trade on 7 December 1979.

1267. An internal AIOC “Material Transfer” form on record indicates that the G-168 Items were sent to the “IPAC surplus account” on 23 October 1980.

1268. By letter dated 6 April 1983, Kharg informed General Tire that Kharg had not received from General Tire either the G-168 Items or reimbursement of the monies it had paid for those items and requested that General Tire follow up on the matter.

1269. In its reply letter of 26 May 1983, General Tire informed Kharg that General Tire had shipped the G-168 Items to World Trade in Houston on 7 December 1979; General Tire went on to recommend that Kharg “direct [its] inquiries as to the whereabouts of the goods to [AIOC].”

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1270. In its 1990 report on Iranian tangible properties, the United States noted that the G-168 Items had been sold to AIOC and shipped to Kharg via World Trade in 1979, and that AIOC had indicated that the bumpers were “at Warehouse.” In connection with the latter, the United States provided a copy of Purchase Order No. KC-780454 bearing an undated handwritten annotation, reading “at Warehouse.”

*The Parties’ Contentions**Iran’s Contentions*

1271. Iran argues that the United States is responsible for the non-transfer of the G-168 Items to Iran because the non-transfer was a result of the Blocking Order. Iran further contends that delivery to AIOC did not constitute delivery to Iran within the meaning of Paragraph 9. Moreover, Iran asserts that the transfer of the G-168 Items to the surplus account in October

1980 does not as such establish that the items were no longer in existence within the jurisdiction of the United States on 19 January 1981. In this context, Iran points to the United States 1990 report on Iranian tangible properties, in which the United States noted that AIOC had indicated that the bumpers were “at Warehouse.” Consequently, Iran asserts that the most likely fate of the G-168 Items was that they were stored in a warehouse and had not been scrapped.

The United States’ Contentions

1272. The United States argues that, because the G-168 Items were sent to a scrap account on 23 October 1980, Iran could not have held title to them on 19 January 1981; thus, the G-168 Items are outside the scope of Paragraph 9.

1273. Moreover, the United States asserts that the indication in its 1990 report on Iranian tangible properties that the bumpers were “at Warehouse” was based on an undated handwritten annotation on an AIOC purchase order. According to the United States, all that this annotation proves is that the bumpers were found in the AIOC warehouse at some time; this, however, is insufficient to contradict the internal AIOC “Material Transfer” form showing that the bumpers had been sent to the surplus account on 23 October 1980.

The Tribunal’s Decision

1274. The evidence satisfies the Tribunal that the G-168 Items were delivered to Kharg’s freight forwarder in Houston prior to 19 January 1981, and, thus, that title thereto had been transferred to Kharg before that date.

1275. The threshold question in this Claim is whether the G-168 Items were still in existence within the jurisdiction of the United States on 19 January 1981.

1276. The evidence indicates that the G-168 Items were sent to the “IPAC surplus account” on 23 October 1980. Although this fact does not necessarily imply that those items had been physically destroyed prior to 19 January 1981, it was not unreasonable for the United States to assume that they no longer existed as of that date. Iran has not been able to establish with reliable evidence that the G-168 Items were still in existence within the jurisdiction of the United States on 19 January 1981, nor has it shown that it has given adequate direction to AIOC to effect the transfer of the G-168 Items to Iran. In the Tribunal’s view, the undated hand-

written annotation on a copy of Purchase Order No. KC-780454, reading “at Warehouse,”⁶⁰⁹ without more, is inadequate to establish that the bumpers covered by that purchase order were located at an AIOC warehouse on 19 January 1981.

1277. The Tribunal therefore concludes that, even assuming that the G-168 Items still existed within the jurisdiction of the United States on 19 January 1981, the United States did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the G-168 Items were transferred to Iran.⁶¹⁰

1278. In view of the above Claim G-168 is dismissed.

(iv) Claim G-169 (Kharg/Fisher Controls Co.)

Introduction

1279. In Claim G-169, Iran seeks USD 386.58 in damages for the United States’ alleged failure to arrange for the transfer to Iran of certain items purchased from Fisher Controls Company (“Fisher Controls”).

Factual Background

1280. AIOC ordered gaskets, relays, and relay assemblies (“G-169 Items”) from Fisher Controls under AIOC Purchase Order No. KC-780419 dated 11 December 1978. Fisher Controls billed Kharg USD 386.58 for the G-169 Items, which amount Kharg paid by check issued on 24 July 1979.

1281. The evidence contains a copy of Purchase Order No. KC-780419 bearing a handwritten annotation reading: “No shipments made – Cancelled [9 December 1980].”

1282. The record also includes an internal AIOC memorandum, dated 9 July 1981, enclosing a check issued by Fisher Controls on 29 June 1981 for USD 386.58, payable to AIOC. The memorandum indicates that the check covered the reimbursement by Fisher Controls of the USD 386.58 prepayment made by AIOC under Purchase Order No. KC-780419. Further, the

⁶⁰⁹ See *supra* para. 1270.

⁶¹⁰ See *supra* paras. 169 & 211.

memorandum states that, “[s]ince the material covered by this transaction did not leave the manufacturer’s facilities, completion of a Certificate of sale is not required.”

1283. An AIOC accounting record dated 10 July 1981 notes that Fisher Control’s check for USD 386.58 was to be deposited to the account of Kharg.

1284. On 29 July 1981, AIOC issued a revision to Purchase Order No. KC-780419, which noted the following:

This revision . . . is issued to cancel in its entirety our Purchase Order KC78 0419 of December 8, 1978, without any cancellation charges being incurred by this office.

Fisher Controls . . . check in amount of \$386.58 has been received to cancel prepayment made on this order.

1285. On 14 November 1982, Kharg wrote to Fisher Controls, requesting that Fisher Controls either deliver the G-169 Items or return the monies Kharg had paid for those items. There is no evidence on record of any reply from Fisher Controls to Kharg’s letter.

The Parties’ Contentions

Iran’s Contentions

1286. Iran asserts that the handwritten annotation on the copy of Purchase Order No. KC-780419 reading “No shipments made – Cancelled [9 December 1980]”⁶¹¹ lacks any probative value and, thus, is inadequate to show that the Purchase Order was cancelled in December 1980. According to Iran, the cancellation occurred only in July 1981, when AIOC issued the revision to Purchase Order No. KC-780419. In support, Iran also points to the date of issuance of Fisher Controls’ check returning Kharg’s prepayment for the G-169 Items, that is, 29 June 1981. Thus, Iran contends, there is no proof that Purchase Order No. KC-780419 was cancelled before 19 January 1981. Iran argues that, in any event, AIOC had no authority to agree to the cancellation of Purchase Order No. KC-780419.

1287. In addition, Iran contends that Kharg’s prepayment of USD 386.58 to Fisher Controls falls within the meaning of “Iranian properties” pursuant to Paragraph 9 and should therefore have been returned to Iran, rather than AIOC.

⁶¹¹ See *supra* para. 1281.

The United States' Contentions

1288. The United States maintains that the G-169 Items never left the facilities of the manufacturer, Fisher Controls, and that Purchase Order No. KC-780419 was cancelled on 9 December 1980. Hence, the United States concludes, Kharg never acquired title to those items.

The Tribunal's Decision

1289. The threshold question in this Claim is whether Kharg held title to the G-169 Items on 19 January 1981.

1290. There is no evidence that the G-169 Items were ever delivered to Kharg's freight forwarder. Rather, the evidence, which remains unrebutted, indicates that those items never left the facilities of the vendor, Fisher Controls, which were located in Marshalltown, in the State of Iowa. The evidence further indicates that Purchase Order No. KC-780419 was cancelled. In view of its holdings, *infra*, the Tribunal need not determine whether this cancellation occurred before or after 19 January 1981.

1291. Thus, the G-169 Items at all relevant times were located at Fisher Controls' facilities in Iowa. Accordingly, in application of the *lex rei sitae*, the Tribunal determines that the law of the State of Iowa governs passage of title to the G-169 Items. The G-169 Items were the object of a sales contract between Fisher Controls and Kharg pursuant to Purchase Order No. KC-780419. In the State of Iowa, Section 554-2401 of the UCC, as adopted in Title XIII-Commerce of the Iowa Code, governs the sale of goods. That provision provides in relevant part that "[u]nless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes the seller's performance with reference to the physical delivery of the goods."⁶¹²

1292. There is no evidence that Kharg and Fisher Controls agreed on the manner and the conditions pursuant to which title to the G-169 Items would pass to Kharg. Accordingly, under the default rule under Section 2-401 of the Illinois Commercial Code, title to the G-169 Items would have passed to Kharg upon their physical delivery to Kharg's freight forwarder. Because

⁶¹² Iowa Code § 554.2401 (2).

such physical delivery never occurred, the Tribunal holds that Kharg never acquired title to the G-169 Items.

1293. In view of the foregoing, the Tribunal concludes that the G-169 Items do not fall within the meaning of “Iranian properties” under Paragraph 9. Accordingly, Iran’s claim relating to the G-169 Items is dismissed.

1294. To the extent that Iran makes a claim, under Paragraph 9, Paragraph 8, or General Principle A, for the return of the USD 386.58 prepayment Kharg made to Fisher Controls,⁶¹³ any such claim must also be dismissed for the reasons set forth earlier in this Partial Award.⁶¹⁴

(v) *Claim G-170 (Kharg/Franklin Export Co.)*

Introduction

1295. In Claim G-170, Iran seeks USD 1,234.80 in damages for the United States’ alleged failure to arrange for the transfer to Iran of a certain number of cubic feet of 10-inch steel pipe ordered from Franklin Export Company (“Franklin”).

Factual Background

1296. Claim G-170 concerns item 1 listed on AIOC Purchase Order No. KC-780328, that is, 60 cubic feet of 10-inch steel pipe, which AIOC ordered from Franklin on 9 November 1978 (“G-170 Items”). On 23 February 1979, Franklin issued to AIOC an invoice, billing Kharg USD 1,234.80 for the G-170 Items. Kharg paid Franklin’s invoice by check dated 20 June 1979.

1297. The record contains a liner bill of lading dated 5 July 1979, indicating that, among others, items covered by Purchase Order No. KC-780328 were shipped aboard the vessel *S.S. Feax*, which departed Houston, Texas, on 5 July 1979 for Kharg Island, with an estimated time of arrival of 10 August 1979. Those items included “2 pieces-10” OD steel pipe,” amounting to “42” cubic feet. These 42 cubic feet of steel pipe are also listed in an invoice dated 12 July 1979 from WEPAC to AIOC “for charges in connection with receiving, checking,

⁶¹³ See *supra* para. 1287.

⁶¹⁴ See *supra* paras. 99, 223-232, 247, 828, 1210.

weighing, material receipts, export boxing, marking, packing lists” relating to the shipment aboard the *S.S. Feax* described above.

1298. On 12 July 1979, AIOC sent a telex to Kharg, advising that, among others, the materials covered by Purchase Order No. KC-780328 had been “shipped complete” aboard the *S.S. Feax*, with an estimated time of arrival of 10 August 1979 at Kharg Island.

1299. On 30 July 1979, in another telex, AIOC advised Kharg that, if it still needed “items 8, 13 and 19” of Purchase Order No. KC-780328,⁶¹⁵ it should reorder them under another purchase order. There is no information on record as to whether Kharg reordered those items.

1300. The United States proffered an internal Kharg “Report of Material Shipped and Received,” bearing the Persian date 4 Aban 1358 (corresponding to 26 October 1979), to support its assertion that all items under Purchase Order No. KC-780328 were shipped to, and in fact received by, Kharg. The Tribunal notes, however, that this document, which is partially illegible, does not seem to list the G-170 Items.

1301. By letter to Franklin dated 26 April 1983, following up on an earlier letter dated 11 February 1982, Kharg informed Franklin that, according to Kharg’s books, items under Purchase Order No. KC-780328, billed at USD 1,234.80 on Franklin’s invoice of 23 February 1979,⁶¹⁶ had not been received by Kharg’s “storehouse stock department”; Kharg requested that Franklin clarify the status of the order. There is no evidence that Franklin ever replied to Kharg’s letter.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1302. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, Iran stated that the G-170 Items “ha[d] not been received.”

1303. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States stated with respect to Claim G-170:

Goods shipped. Documents provided by Iran allege short shipment. Letter seeking information sent.

⁶¹⁵ Items 8, 13, and 19 of Purchase Order No. KC-780328 are not at issue in Claim G-170.

⁶¹⁶ See *supra* para. 1296.

1304. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States indicated that it had been unable to locate Franklin.

1305. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States noted that: (i) it had still been unable to locate Franklin; and (ii), according to AIOC records, the materials at issue in Claim G-170 had been shipped aboard the *S.S. Feax*, with an estimated arrival of 10 August 1979 at Kharg Island.

The Parties' Contentions

Iran's Contentions

1306. Iran contends that the G-170 Items were still located within the jurisdiction of United States on 19 January 1981. According to Iran, the evidence relied on by the United States to prove that the item had been shipped to Iran before that date is not conclusive. In particular, Iran asserts, AIOC's 12 July 1979 telex to Kharg, advising that Purchase Order No. KC-780328 had been "shipped complete,"⁶¹⁷ is inconsistent with AIOC's 30 July 1979 telex to Kharg, advising that Kharg should reorder "items 8, 13 and 19" of that same Purchase Order if it still needed them;⁶¹⁸ the 30 July 1979 telex confirms that at least these items had not been shipped, and that, therefore, the shipment of items on Purchase Order No. KC-780328 aboard the *S.S. Feax* could not have been complete.

1307. In Iran's view, further, the G-170 Items are not listed on the 5 July 1979 liner bill of lading in evidence.⁶¹⁹

1308. In sum, Iran contends that the United States has failed to prove that the G-170 Items were shipped to Iran.

The United States' Contentions

1309. The United States asserts that the evidence on record, taken together, establishes that the G-170 Items were shipped to Iran on 5 July 1979 and, thus, were not within the jurisdiction

⁶¹⁷ See *supra* para. 1298.

⁶¹⁸ See *supra* para. 1299.

⁶¹⁹ See *supra* para. 1297.

of the United States on 19 January 1981. The United States relies, in particular, on the 5 July 1979 liner bill of lading⁶²⁰ and AIOC's 12 July 1979 telex to Kharg.⁶²¹

The Tribunal's Decision

1310. The Tribunal is persuaded by the evidence presented that at least 42 out of the 60 cubic feet of 10-inch steel pipe detailed under item 1 on Purchase Order No. KC-780328 were shipped to Kharg Island aboard the *S.S. Feax* in July 1979. Specifically, this evidence consists of: (i) the liner bill of lading dated 5 July 1979, indicating that "2 pieces-10" OD steel pipe," amounting to "42" cubic feet, had been shipped aboard the *S.S. Feax* under Purchase Order No. KC-780328;⁶²² and (ii) the invoice dated 12 July 1979 from WEPAC, billing AIOC "for charges in connection with receiving, checking, weighing, material receipts, export boxing, marking, packing lists" in relation to, among other items, those 42 cubic feet of steel pipe.⁶²³

1311. The evidence, however, is inconclusive as to whether the balance of the G-170 Items, that is, 18 cubic feet of 10-inch steel pipe, was also shipped to Iran prior to 19 January 1981. The Tribunal does not regard AIOC's telex of 12 July 1979 to Kharg, advising that Purchase Order No. KC-780328 had been "shipped complete" aboard the *S.S. Feax*,⁶²⁴ as conclusive evidence of shipment of all items covered by that Purchase Order. This telex appears to be inconsistent with AIOC's telex of 30 July 1979 to Kharg, advising that Kharg should reorder "items 8, 13 and 19" of that same Purchase Order if it still needed them.⁶²⁵ The 30 July 1979 telex appears to suggest that at least these items had not been shipped, and that, therefore, the shipment of Purchase Order No. KC-780328 aboard the *S.S. Feax* was not complete. But the 30 July 1979 telex itself, in turn, seems to be inconsistent, at least partially, with Purchase Order No. KC-780328, which only listed 17 items and thus could not include an item "19."

1312. In any event, in view of its holdings, *infra*, the Tribunal need not establish definitively whether the balance of the G-170 Items was also shipped to Iran prior to 19 January 1981.

⁶²⁰ *See id.*

⁶²¹ *See supra* para. 1298.

⁶²² *See supra* para. 1297.

⁶²³ *See id.*

⁶²⁴ *See supra* para. 1298.

⁶²⁵ *See supra* para. 1299.

1313. The Tribunal notes that, on 17 September 1984, subsequent to the submission of Iran's 24 January 1984 report on Iranian tangible properties, the United States, through its own report, notified Iran and the Tribunal that it had written Franklin, seeking information about the G-170 Items.⁶²⁶ Subsequently, in its report of 30 October 1985, the United States advised that it had been unable to locate Franklin.⁶²⁷ Finally, in its report of 5 July 1990, the United States informed Iran and the Tribunal that it had still been unable to locate Franklin, and that, according to AIOC's records, the G-170 Items had been shipped to Iran aboard the *S.S. Feax* in 1979.⁶²⁸ In the Tribunal's view, the United States adequately investigated this Claim and informed Iran accordingly. Under the circumstances, the United States could not have reasonably been expected to do more.

1314. The Tribunal therefore concludes that, even assuming that the balance of the G-170 Items, that is, 18 cubic feet of 10-inch steel pipe,⁶²⁹ still existed within the jurisdiction of the United States on 19 January 1981, considering the information the United States possessed about the G-170 Items, the United States did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that those items were transferred to Iran.⁶³⁰

1315. In view of the above, Claim G-170 is dismissed.

(vi) *Claim G-171 (Kharg/C.S.C. Inc, later: Chicago Valve and Pipe Corp.)*

Introduction

1316. In Claim G-171, Iran seeks a maximum of USD 5,867.93 in damages for the United States' alleged failure to transfer certain items ordered from C.S.C. Inc., Chicago ("C.S.C.").

⁶²⁶ See *supra* para. 1303.

⁶²⁷ See *supra* para. 1304.

⁶²⁸ See *supra* para. 1305.

⁶²⁹ See *supra* paras. 1310-1311.

⁶³⁰ See *supra* paras. 169 & 211.

Factual Background

1317. Claim G-171 concerns various items of joints and pipe joints (“G-171 Items”) that AIOC ordered from C.S.C. under Purchase Order No. KC-790090 dated 22 June 1979.⁶³¹ C.S.C. issued six invoices covering the G-171 Items, billing Kharg a total of USD 5,867.93. Kharg paid USD 5,750.57 on those invoices by three checks issued on 14 August, 1 September, and 21 October 1979, respectively.

1318. Several “Material Receipt Registers” from WEPAC indicate that most of the items ordered under Purchase Order No. KC-790090 were received by WEPAC between July and August 1979.

1319. According to the March and April 1980 Lists,⁶³² in those months, items that had been received from C.S.C. under Purchase Order No. KC-790090 were stored in Houston at the warehouse of World Trade, AIOC’s freight forwarder.

1320. An AIOC “Return Goods Authorization” form dated 21 December 1979 indicates that certain items of Purchase Order No. KC-790090 were returned to the vendor, Chicago Valve and Pipe Corporation, the successor company to C.S.C.,⁶³³ via Yellow Transit Systems on 10 December 1980. According to a hand-written notation on that form, items 4 (15 units), 11, 12, 16-21, 23, 28, and 29 of Purchase Order No. KC-790090 were sent to “KC surplus.”

1321. The record further contains an internal AIOC “Material Transfer” form regarding Purchase Order No. KC790090 dated 9 December 1980, listing various items from Purchase Order No. KC-790090 that were returned to the vendor, Chicago Valve & Pipe Corporation.

1322. An AIOC internal “Supplier Performance/Phone Expediting Record” relating to Purchase Order No. KC-790090 confirms that “everything” was “[r]eturned to vendor” by

⁶³¹ Purchase Order No. KC-790090 was slightly revised on 24 July 1979, resulting in a price increase by some USD 100.

⁶³² See *supra* paras. 1221-1222.

⁶³³ The evidence indicates that Chicago Valve and Pipe Corporation was the successor company to C.S.C. The Tribunal notes in this connection that, while Purchase Order No. KC-790090 and the invoices sent to Kharg for the G-171 Items, all issued in 1979, identify C.S.C. as the vendor, all subsequent relevant documents on record, beginning with the 21 December 1979 AIOC “Return Goods Authorization” form, identify Chicago Valve and Pipe Corporation as the vendor.

Amoco Drilling Services (“ADS”) on 10 December 1980 except for items 4 (15 units), 11, 12, 16-21, 23, 28, and 29 of that Purchase Order, which went to “KC surplus.”⁶³⁴

1323. By letter addressed to C.S.C. dated 26 April 1983, following up on an earlier letter dated 15 November 1982, Kharg wrote that, according to its books, items under Purchase Order No. KC-790090 had not been received by Kharg’s “storehouse stock department.” Kharg requested that C.S.C. clarify the status of the order. There is no evidence of any reply to Kharg’s letter.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1324. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States indicated that it needed more information regarding Claim G-171 because it had been unable to locate C.S.C., the vendor of the G-171 Items; the United States had found a company named “C.S.C.” in Chicago, but it was a real estate firm. The United States further indicated that it had sent a letter “seeking information.”

1325. In its 17 December 1984 report to the Tribunal on Iranian tangible properties, Iran stated: C.S.C. Inc. “[a]ddress and further documents supplied.” With its report, Iran provided the copy of a check for USD 190.06 made out by Kharg to “CSC Incorporated” and copies, partially illegible, of an invoice, or a number of invoices, issued by “CSC Incorporated” to Kharg.

1326. In its 30 October 1985 report to the Tribunal, the United States reiterated that it needed more information regarding C.S.C., and that “C.S.C. in Chicago was a real estate firm.”

1327. In its 5 July 1990 report to the Tribunal, the United States stated, once again, that it had been unable to locate C.S.C. It further related that, according to AIOC records, “the order was cancelled,” and that “[m]ost materials were returned to CSC and other items were transferred to a Kharg Chemical Surplus.”

1328. In its Response of 26 September 2001 to Iran’s brief and evidence, the United States asserted that, “[i]n evidence recently obtained [and submitted with the United States

⁶³⁴ See also *supra* para. 1320.

Response],⁶³⁵ . . . it appears that Chicago Valve and Pipe Corporation⁶³⁶ was the predecessor company to C.S.C. Inc.”⁶³⁷

The Parties' Contentions

Iran's Contentions

1329. Iran argues that, given the lack of any proof that the G-171 Items were delivered to Kharg in Iran, they should be deemed to have been located in the United States on 19 January 1981 and, thus, subject to Paragraph 9.

1330. Iran does not dispute that items of Purchase Order No. KC-790090 were returned to the vendor prior to 19 January 1981; it argues, however, that there is nothing suggesting that those items had also been sold to the vendor. In this connection, Iran disputes that AIOC had any authority to sell the G-171 Items back to the vendor.⁶³⁸ Moreover, Iran contends that there is no indication that any of the G-171 Items were not in existence within the jurisdiction of the United States on the date of the Algiers Declarations.

The United States' Contentions

1331. The United States asserts that AIOC sold many of the G-171 Items back to C.S.C. and scrapped the remainder of those items prior to 19 January 1981.

1332. Specifically, with respect to items 1 through 3, 4 (5 units), 5 through 10, 13 through 15, 22, 24 through 27, and 30 from Purchase Order No. KC-790090,⁶³⁹ the United States contends that the AIOC “Return Goods Authorization” form on record indicates that those items were returned to the vendor in December 1980.⁶⁴⁰ The United States argues that, because AIOC resold these items to C.S.C. before 19 January 1981, Kharg did not own them on that date, and, consequently, they do not fall within the scope of Paragraph 9. In response to Iran’s argument

⁶³⁵ See *supra* paras. 1320-1321.

⁶³⁶ See *id.*

⁶³⁷ But see *supra* note 633.

⁶³⁸ See also *supra* para. 1258.

⁶³⁹ See *supra* paras. 1320 and 1322.

⁶⁴⁰ See *supra* para. 1320.

that AIOC had no authority to sell G-171 Items back to the vendor, the United States contends that AIOC “had at least apparent authority to resell Kharg’s material.”

1333. The United States asserts that the remainder of Purchase Order No. KC-790090 – namely, items 4 (15 units), 11, 12, 16-21, 23, 28, and 29 – was sent to the Kharg Chemical surplus account prior to 19 January 1981, as confirmed by the AIOC internal “Supplier Performance/Phone Expediting Record” in evidence.⁶⁴¹

The Tribunal’s Decision

1334. The evidence presented convinces the Tribunal that: (i) items 1 through 3, 4 (5 units), 5 through 10, 13 through 15, 22, 24 through 27, and 30 of Purchase Order No. KC-790090 were sold back and returned to the vendor by AIOC in December 1980; and (ii) items 4 (15 units), 11, 12, 16-21, 23, 28, and 29 of that Purchase Order were sent by AIOC to the Kharg Chemical surplus account before 19 January 1981. This evidence includes:

- (a) an AIOC “Return Goods Authorization” form, dated 21 December 1979, (1) indicating that certain items of Purchase Order No. KC-790090 had been returned to the vendor, Chicago Valve and Pipe Corporation, the successor company to C.S.C.,⁶⁴² via Yellow Transit Systems on 10 December 1980; and (2) bearing the hand-written notation that further materials, namely, items 4 (15 units), 11, 12, 16-21, 23, 28, and 29 of Purchase Order No. KC-790090, had been sent to “KC surplus”;⁶⁴³
- (b) a Yellow Transit Systems straight bill of lading, dated 10 December 1980, covering a shipment of miscellaneous parts from ADS to Chicago Valve and Pipe Corporation;
- (c) an AIOC “Material Transfer” form regarding Purchase Order No. KC-790090 dated 9 December 1980, listing various items from Purchase Order

⁶⁴¹ See *supra* para. 1322.

⁶⁴² The evidence indicates that Chicago Valve and Pipe Corporation was the successor company to C.S.C. rather than the opposite, as the United States suggests (*see supra* para. 1328). The Tribunal notes in this connection that, while Purchase Order No. KC-790090 and the invoices sent to Kharg for the G-171 Items, all issued in 1979, identify C.S.C. as the vendor, all subsequent relevant documents on record, beginning with the 21 December 1979 AIOC “Return Goods Authorization” form, identify Chicago Valve and Pipe Corporation as the vendor.

⁶⁴³ See *supra* para. 1320.

No. KC-790090 that were returned to Chicago Valve & Pipe Corporation.;⁶⁴⁴
and

- (d) an AIOC internal “Supplier Performance/Phone Expediting Record” relating to Purchase Order No. KC-790090, confirming that “everything” was “[r]eturned to vendor” by ADS on 10 December 1980 except for items 4 (15 units), 11, 12, 16-21, 23, 28, and 29 of that Purchase Order, which went to “KC surplus.”⁶⁴⁵

1335. Furthermore, the Tribunal finds that the United States has adequately investigated this Claim. In its 1984, 1985, and 1990 reports on Iranian tangible properties, the United States informed Iran and the Tribunal that it had been unable to locate C.S.C., and that it needed more information about this company.⁶⁴⁶ In its 1990 report, in addition, it advised that, according to information it had obtained from AIOC, Purchase Order No. KC-790090 had been cancelled; most of the G-171 Items had been returned to C.S.C.; and other items had been transferred to a Kharg Chemical surplus account. In its Response of 26 September 2001 to Iran’s brief and evidence, the United States provided further evidence relating to Claim G-171, indicating that C.S.C. had been succeeded by Chicago Valve and Pipe Corporation.

1336. Iran has not shown that it gave adequate direction to AIOC or, after the company had been identified by the United States, to Chicago Valve and Pipe Corporation to effect the transfer of the G-171 Items to Iran.

1337. In light of these circumstances, even assuming that the G-171 Items were Iranian properties and still in existence within the jurisdiction of the United States on 19 January 1981, the Tribunal concludes that, considering the information that the United States possessed about the G-171 Items, the United States did everything it could have reasonably been expected to do to satisfy its Paragraph 9 obligation to take steps to ensure that the G-171 Items were transferred to Iran.⁶⁴⁷ With respect to those items from Purchase Order No. KC-790090 that were sent to the Kharg Chemical surplus account in late 1980, in particular, the Tribunal finds that it was not unreasonable for the United States to assume that they had been scrapped or

⁶⁴⁴ See *supra* para. 1321.

⁶⁴⁵ See *supra* para. 1322.

⁶⁴⁶ See *supra* paras. 1324, 1326, and 1327.

⁶⁴⁷ See *supra* paras. 169 & 211.

otherwise disposed of and thus were no longer in existence within its jurisdiction on 19 January 1981.

1338. In light of the above conclusion, the Tribunal need not decide whether AIOC, as the purchasing agent of Kharg, had the authority to sell G-171 items back to the vendor.

1339. In view of the above, Claim G-171 is dismissed.

(vii) Claim G-172 (consolidated with Claim G-176) (Kharg/Midland Pipe & Supply Co.)

Introduction

1340. In Claim G-172, Iran seeks a maximum of USD 19,931.51 in damages for the United States' alleged failure to arrange for the transfer to Iran of various flanges, joints, and valves ordered from Midland Pipe & Supply Company ("Midland").

1341. Claim G-172 relates to items ordered from Midland under three purchase orders, namely, Purchase Orders Nos. KC-790004, KC-790009, and KC-790067 ("G-172 Items").

Purchase Order No. KC-790004

Factual Background

1342. Through Purchase Order No. KC-790004, issued on 6 July 1979, AIOC ordered from Midland five items of connectors, nipples, pipe plugs, and flanges at a price of USD 504.05.⁶⁴⁸

1343. Between 25 July and 17 August 1979, Midland issued four invoices covering all five items of Purchase Order No. KC-790004, billing Kharg a total of USD 550.38 (including some USD 45 in shipping costs). Kharg paid this amount through checks issued on 14 and 22 August, and 1 September 1979, respectively.

⁶⁴⁸ On 14 June 1979, Kharg had written a telex to AIOC, stating, *inter alia*: "The following is a list of requisitions for which we are unable to place orders due to vendor[] concern over receipt of payments for material." This list included the following reference: "KC-790004 flanges, fittings Dlrs. 560.00."

1344. According to the March and April 1980 Lists,⁶⁴⁹ in those months, the items of Purchase Order No. KC-790004, invoiced at USD 550.38, were in storage in Houston, at the warehouse of World Trade, the freight forwarder designated by AIOC.

1345. The record includes an internal AIOC “Material Transfer” form dated 13 March 1981, listing, among others, all five items of Purchase Order No. KC-790004. According to this form, the items were to be shipped to Sagebrush Pipeline Supply Company (“Sagebrush”), a supplier of AIOC’s.

1346. On 23 March 1981, AIOC, acting on behalf of IPAC, and Sagebrush signed an “Agreement of Sale,” in which AIOC agreed to sell, and Sagebrush agreed to purchase, certain items described in a letter, also dated 23 March 1981, from Sagebrush to AIOC that was attached to the “Agreement of Sale.” The 23 March 1981 Sagebrush letter listed, among others, the items of Purchase Order No. KC-790004, stating that they had all been received by Sagebrush and offering USD 126.02 for their purchase. Sagebrush subsequently paid this amount through check dated 3 April 1981.

The Parties’ Contentions

Iran’s Contentions

1347. Iran asserts that all the items of Purchase Order No. KC-790004 had been delivered to the freight forwarder designated by AIOC, Kharg’s agent, prior to 19 January 1981. Thus, they were “Iranian properties” and in existence within the jurisdiction of the United States on that date. Accordingly, Iran contends, because the United States failed to arrange for their transfer to Iran, the United States’ responsibility under Paragraph 9 is established.

1348. Iran argues that the 23 March 1981 “Agreement of Sale” between AIOC and Sagebrush was not validly concluded and could not properly transfer title to the items to Sagebrush. Iran asserts in this connection that AIOC did not own the items, and Kharg had not given AIOC the authority to sell them on Kharg’s behalf. According to Iran, “a purported sale by a party who did not own the items . . . and . . . gave no warranty as to the items, even as to title,” does not qualify as an arm’s length market transaction.

⁶⁴⁹ See *supra* paras. 1221-1222.

1349. In any event, Iran contends, the items were purportedly sold to Sagebrush only after 19 January 1981.

The United States' Contentions

1350. In response, the United States asserts that AIOC had sold the items of Purchase Order No. KC-790004 before the United States received any indication from Iran that it needed assistance procuring the transfer of the items. Thus, even if Iran were not bound by the actions of AIOC, Iran failed to take the necessary steps to make the United States' performance of its obligation under Paragraph 9 possible. Consequently, the United States concludes, the United States is not responsible for the non-transfer of items under Purchase Order No. KC-790004.

Purchase Order No. KC-790009

Factual Background

1351. On 27 July 1979, AIOC ordered 12 items of valves from Midland under Purchase Order No. KC-790009 for a total price of USD 11,048.40; the 12 items are not numbered sequentially but rather as follows: items 1, 3, 4, 5, 7, 9, 10, 13, 14, 15, 18, and 20.⁶⁵⁰

1352. The record contains three invoices from Midland, billing Kharg a total of USD 5,964.88 under Purchase Order No. KC-790009, as follows: (i) USD 5,714.62 through invoice No. 8669 dated 17 August 1979, covering items 1, 3, 4, 10, 13-15, and 18; (ii) USD 186.23 through invoice dated 17 August 1979, covering shipping; and (iii) USD 64.03 through invoice No. 9217 dated 31 August 1979, covering item 9. Kharg paid those three invoices through checks Nos. 6071 and 6140 issued on 1 September and 23 October 1979.

1353. According to the March and April 1980 Lists,⁶⁵¹ in those months, items that had been received from Midland under Purchase Order No. KC-790009, invoiced at USD 10,984.88, were in storage in Houston at the warehouse of World Trade, the freight forwarder designated by AIOC.

⁶⁵⁰ On 14 June 1979, Kharg had written a telex to AIOC, stating, *inter alia*: "The following is a list of requisitions for which we are unable to place orders due to vendor[] concern over receipt of payments for material." This list included the following reference: "KC-790009 gate valves Dlr. 14,071.66 (est.)." Telexes from Kharg to AIOC dated 31 July and 8 August 1979 indicate that Kharg had not ordered "items 6 and 16" because they were "no longer available."

⁶⁵¹ See *supra* paras. 1221-1222.

1354. The record contains a letter from Midland to AIOC dated 10 December 1980, by which Midland responded to a request by AIOC “to return material” ordered under the “Kharg Chemical Job” and communicated to AIOC “the terms and conditions” on which Midland could accept the return of items 1, 3, 4, 9, 10, 13, 14, 15, 18, and 20 of Purchase Order No. KC-790009.

1355. In an attachment to its 10 December 1980 letter, Midland indicated that its supplier would “not accept the return” of item 20, for which Midland had billed Kharg by invoice No. 12903 of 27 December 1979. The Tribunal notes that this invoice is recorded in the Piper List One,⁶⁵² which indicates that Midland had billed Kharg USD 5,020 for item 20 (four units of steel valve gates). As noted, the Piper List One records the amounts paid by AIOC to satisfy vendors who had not been paid by Kharg.

1356. The record further contains copies of the following documents:

- (a) an AIOC “Material Transfer” form, dated 15 December 1980, indicating that item 1 on Purchase Order No. KC-790009 had been shipped to Gulf of Suez Petroleum Company Egypt, an AIOC affiliate;
- (b) an AIOC “Return Goods Authorization” form, with an enclosed list of materials, stating that items 1, 3, 4, 9, 10, 13, 14, 15, and 18 of Purchase Order No. KC-790009 had been returned to the vendor, Midland, on 13 March 1981 via Yellow Freight Systems;
- (c) an AIOC “Return Goods Authorization” form, indicating that, on 13 March 1981, additional items of Purchase Order No. KC-790009 had been sent to Sagebrush via Yellow Freight Systems; this document, however, does not specify what those items were;
- (d) an AIOC “Material Transfer” form, dated 13 March 1981, indicating that items 4, 9, 15, 16, and 18 on Purchase Order No. KC-790009 had been shipped to Midland;

⁶⁵² See *supra* para. 1226.

- (e) an internal AIOC “Action Note,” referencing the 13 March 1981 “Return Goods Authorization” described above and stating:
- Item #1 . . . sold KC(H)0006(80) . . .
 - Item #3 . . . sold KC(H)0006(81) . . .
 - Item #13 . . . cannot be found . . .
 - Item #14 . . . sold KC(H)0006(81)
- (f) an “Agreement of Sale” dated 23 March 1981 between AIOC, acting on behalf of IPAC, and Sagebrush, whereby AIOC agreed to sell, and Sagebrush agreed to purchase, certain items described in a letter, also dated 23 March 1981, from Sagebrush to AIOC that was attached to the “Agreement of Sale”; the 23 March 1981 letter indicated that Sagebrush had received from AIOC, among others, a shipment of materials of Purchase Order No. KC-790009, from which, however, items 1, 3, 4, 5, 7, 9, 10, 13, 14, 15, and 18 were missing, though they were mentioned in AIOC’s packing list; Sagebrush offered USD 1,255 for the items that it had received;
- (g) a check dated 3 April 1981, through which Sagebrush paid to AIOC, *inter alia*, the USD 1,255 offered in its 23 March 1981 letter to AIOC;
- (h) an undated “Agreement of Sale” between AIOC, acting on behalf of IPAC, and Midland; in the block reserved for the description of the property sold, this Agreement bears the hand-written notation “See attached credit \$9,062.63”; the Agreement also bears the handwritten notation “delivered (Cicero IL)”;
- (i) a “Memorandum of Credit” from Midland to AIOC dated 30 March 1981, crediting AIOC’s account a total of USD 9,062.63; the Memorandum specifies that USD 2,298.06 out of that total related to items 4, 9, 10, 15, and 18 of Purchase Order No. KC-790009;
- (j) a Yellow Freight Systems straight bill of lading, dated 1981 (day and month not indicated), covering a shipment from ADS to Midland, described as “1 box valves . . . KC-79-0067, KC-79-0009”;

- (k) a letter dated 24 March 1981 from Standard Oil Company to Midland, referencing, among others, Purchase Orders KC-790067 and KC-790009 and stating:

Records from our warehouse in Houston indicate that shipments billed on the above mentioned order numbers were returned to your plant on February 26, 1981, and March 13, 1981, respectively, via Yellow Freight Systems.

Please inventory parts and issue credit. . . .

- (l) an AIOC internal “Supplier Performance/Phone Expediting Record” relating to Purchase Order No. KC-790009, recording phone calls made on 24 March 1981 and indicating that: (i) items 4, 9, 10, 15, 18, and 20 “only” had been returned to the vendor, Midland, by ADS on 13 March 1981; (ii) item 1 “only” had been “transferred by ADS to EGW 801626-04” on 11 December 1980; (iii) items 3 and 14 “only” had been “transferred by ADS to EGG 805354-01” on 26 February 1981; and (iv) item 13 “only” could not be located at ADS;
- (m) a letter from Kharg to Midland, dated 13 April 1983, following up on an earlier letter dated 15 November 1982, stating:

[With respect to] our purchase order No. K[C]-7900[0]9 as well as our payment amounting to \$5,778.65 which was made per our checks No[s]. 6071 and 6140 against your invoices 8669 and 9217 . . . as mentioned before we have still not received the relative material

You are kindly requested to peruse the matter at your earliest convenience.

The Parties’ Contentions

Iran’s Contentions

1357. As it did in connection with Purchase Order No. KC-790004, Iran asserts that all the items of Purchase Order No. KC-790009 were “Iranian properties” and in existence within the jurisdiction of the United States on 19 January 1981. Accordingly, because the United States failed to arrange for their transfer to Iran, the United States’ responsibility under Paragraph 9 is established.⁶⁵³

⁶⁵³ See *supra* para. 1347.

1358. With the exception perhaps of item 1, which was transferred to AIOC's affiliate Gulf of Suez Petroleum Company Egypt on 15 December 1980, Iran continues, all other items of Purchase Order No. KC-790009 were purportedly transferred either to Sagebrush on 23 March 1981 or Midland on 30 March 1981. For the reasons stated above,⁶⁵⁴ however, Iran contends that those purported transfers could not properly convey title to the items to those companies, and, in any event, the transfers to Sagebrush and Midland occurred only after 19 January 1981.

The United States' Contentions

1359. The United States argues that it not responsible under Paragraph 9 for the non-transfer of any of the items of Purchase Order No. KC- 790009 at issue. With respect to individual items, the United States asserts the following:

- (a) item 1 was sold by AIOC to Gulf of Suez Petroleum Company Egypt on 15 December 1980, so, Kharg did not have title to this item on 19 January 1981;
- (b) item 13 could not be located at the ADS warehouse as of 13 March 1981, as indicated by the AIOC internal "Action Note" and "Supplier Performance/Phone Expediting Record" in evidence;⁶⁵⁵ attempts made after the Algiers Declarations to locate item 13 were unsuccessful;
- (c) items 3 and 14 were sold by AIOC to other AMOCO affiliates on 26 February 1981, before the United States received any indication from Iran that it needed assistance in procuring the transfer of these items, as shown by the "Supplier Performance/Phone Expediting Record",⁶⁵⁶
- (d) items 4, 9, 10, 15, 18, and 20 were sold back to the vendor, Midland, by AIOC on 13 March 1981, before the United States received any indication from Iran that it needed assistance in procuring the transfer of these items, as shown by the "Supplier Performance/Phone Expediting Record",⁶⁵⁷

⁶⁵⁴ See *supra* para. 1348.

⁶⁵⁵ See *supra* para. 1356 (e) & (l).

⁶⁵⁶ See *supra* para. 1356 (l).

⁶⁵⁷ See *id.*

- (e) item 5 was delayed and would not have been ready for shipment until late December 1979, by which time, however, it would have been unlikely that AIOC would have processed the order; this is supported by handwritten annotations on the copy of Purchase Order No. KC- 790009 on record, stating “16 wks as of [4 September]” and “16 wks for item 5”; there is nothing to show that item 5 was ever shipped, so, it never became “Iranian” property within the meaning of Paragraph 9; and
- (f) item 7 was also delayed; “it is likely that this item too was never delivered” because there is no reference to it in the record after Purchase Order No. KC- 790009.

Purchase Order No. KC-790067

Factual Background

1360. On 25 June 1979, AIOC ordered items of valves from Midland under Purchase Order No. KC-790067. Only items 1, 2, 6, 7, 12, 13, 15, 16, and 17 of this Purchase Order are at issue in this Claim.

1361. Between 27 June and 8 August 1979, Midland issued four invoices under Purchase Order No. KC-790067, billing Kharg a total of USD 7,740.65 for items 1 (for one unit out of two ordered), 2, 6, 7, 12, 13, 15, 16, and 17 (including USD 11.65 in UPS charges for shipping within the United States). Kharg paid these four invoices through three checks issued between 24 July and 23 August 1979.⁶⁵⁸

1362. According to the March and April 1980 Lists,⁶⁵⁹ in those months, items that had been received from Midland under Purchase Order No. KC-790067, invoiced at USD 8,396.25, were in storage in Houston at the warehouse of World Trade, the freight forwarder designated by AIOC.

1363. The record further contains copies of the following documents:

⁶⁵⁸ Records of payments by Kharg in evidence indicate that Midland had billed Kharg a further USD 655.60 for items of Purchase Order No. 790067 for which Iran asserts no claim.

⁶⁵⁹ See *supra* paras. 1221-1222.

- (a) a “Release and Assignment of Claim” document, dated 25 July 1980, whereby Midland assigned to AIOC a claim of USD 47.49, which Midland apparently had against Kharg for payment of what seems to be one of two units of item 1 of Purchase Order No. KC-790067 (valve gates), which amount AIOC had paid to Midland; the sum of USD 47.49 is recorded in the Piper List One,⁶⁶⁰ which indicates that Midland had billed Kharg for that amount in September 1979 by invoice No. 9705;
- (b) a letter from Midland to AIOC dated 10 December 1980, responding to a request by AIOC “to return material” ordered under the “Kharg Chemical Job” and communicating to AIOC “the terms and conditions” on which Midland could accept the return of items 1, 2, 4, 5, 6, 7, 12, 13, 15, 16, and 17 of Purchase Order No. KC-790067;
- (c) an AIOC “Material Transfer” form concerning Purchase Order No. KC-790067 dated 15 December 1980, indicating that item 17 had been transferred to Gulf of Suez Petroleum Company Egypt;
- (d) an AIOC “Return Goods Authorization” form, indicating that, on 13 March 1981, items of Purchase Order No. KC-790067 had been returned to Midland via Yellow Freight Systems; this document does not identify those items directly but rather refers to “Material Receipts” (MR) “213250” and “213554”;
- (e) an AIOC “Material Transfer” form, dated 13 March 1981 concerning Purchase Order No. KC-790067, indicating that items covered by “MR-213250” and “MR-213554,” namely, items 2, 7, 12, 13, and 15, had been returned to Midland;
- (f) an internal AIOC “Action Note,” dated 13 March 1981, referencing the 13 March 1981 “Return Goods Authorization” for Purchase Order No. KC-790067, and indicating that item 16 could not be found “at HMDC”;

⁶⁶⁰ See *supra* para. 1226.

- (g) a Yellow Freight Systems straight bill of lading, dated 1981 (day and month not indicated), covering a shipment from ADS to Midland, described as “1 box valves . . . KC-79-0067, KC-79-0009”;
- (h) an “Agreement of Sale” dated 23 March 1981 between AIOC, acting on behalf of IPAC, and Sagebrush, whereby AIOC agreed to sell, and Sagebrush agreed to purchase, certain “personal property”;
- (i) a letter dated 24 March 1981 from Standard Oil Company to Midland, referencing, among others, Purchase Orders KC-790067 and KC-790009 and stating:

Records from our warehouse in Houston indicate that shipments billed on the above mentioned order numbers were returned to your plant on February 26, 1981, and March 13, 1981, respectively, via Yellow Freight Systems.

Please inventory parts and issue credit. . . .

- (j) a “Memorandum of Credit” from Midland to AIOC dated 30 March 1981, crediting AIOC’s account a total of USD 9,062.63; the Memorandum specifies that USD 4,846 out of that total related to items 2, 7, 12, 13, and 15 of Purchase Order No. KC-790067;
- (k) an AIOC “Return Goods Authorization” form, indicating that items 1 (one of two units ordered) and 6 of Purchase Order No. KC-790067 had been transferred to Sagebrush on 13 May 1981 via Yellow Freight Systems;
- (l) an AIOC “Material Transfer” form concerning Purchase Order No. KC-790067 dated 12 May 1981, indicating that item 1 (one of two units ordered) and item 6 had been transferred to Sagebrush;
- (m) a Yellow Freight Systems straight bill of lading dated 12 May 1981, covering a shipment from ADS to Sagebrush, described as “1, Box, Valves”;
- (n) a check issued by Sagebrush in favor of AIOC dated 19 May 1981 for USD 573.65, bearing the handwritten annotation “includes KC 7900067”;

- (o) a letter dated 5 April 1983 from Kharg to Midland, requesting that Midland review alleged discrepancies between amounts it had invoiced Kharg and amounts Kharg had paid.

The Parties' Contentions

Iran's Contentions

1364. As it did in connection with Purchase Orders Nos. KC-790004 and KC-790009, Iran asserts that all the items of Purchase Order No. KC-790067 were "Iranian properties" and in existence within the jurisdiction of the United States on 19 January 1981. Accordingly, because the United States failed to arrange for their transfer to Iran, the United States' responsibility under Paragraph 9 is established.⁶⁶¹

1365. With the exception perhaps of item 17, which was apparently transferred to AIOC's affiliate Gulf of Suez Petroleum Company Egypt on 15 December 1980, Iran continues, all other items of Purchase Order No. KC-790067 were purportedly transferred either to Midland or Sagebrush only after 19 January 1981. In any event, for the reasons stated above,⁶⁶² Iran contends that those purported transfers could not properly convey title to the items to those companies.

The United States' Contentions

1366. The United States argues that it is not responsible under Paragraph 9 for the non-transfer of any of the disputed items under Purchase Order No. KC-790067. In brief, the United States contends: Iran did not have title to item 17 on 19 January 1981 because AIOC had sold it to Gulf of Suez Petroleum Company Egypt in December 1980; item 16 had been lost by March 1981 and may or may not have been located within the United States' jurisdiction on 19 January 1981; the seven remaining items were sold either to Midland or Sagebrush in March and May 1981, respectively, before the United States received any indication from Iran that it needed assistance in procuring their transfer.

⁶⁶¹ See *supra* para. 1347.

⁶⁶² See *supra* para. 1348.

The Parties' Reports to the Tribunal on Iranian Tangible Properties

1367. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, with respect to Claim G-172, Iran indicated that Midland was the holder of the properties and sought USD 14,069.68, noting: “Kharg has demanded shipment of orders, so far there has been no reply.” With respect to Claim G-176, Iran sought USD 1,064.05, indicating Midland as the holder of the properties and commenting that “Kharg has demanded shipment of orders, so far there has been no reply.”

1368. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, with respect to Claim G-172, the United States stated: “Claim is for \$14,069.08. Documents provided by Iran indicate transaction for \$14,141.71. Is this transaction as . . . G-176?” With respect to Claim G-176, in turn, the United States queried: “Is this same transaction as . . . G-172?”

1369. In its 17 December 1984 report to the Tribunal on Iranian tangible properties, Iran grouped Claims G-172 and G-176 together, stating: “Total amount of orders is US\$14,069.08 as stated.”

1370. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States noted with respect to Claims G-172 and G-176: “Claim is for \$14,069.08. Documents provided by Iran indicate transaction for \$14,141.71. Goods shipped to Kharg via World.”

1371. In its reports to the Tribunal on Iranian tangible properties of 13 November 1987 and 17 January 1990, with respect to Claims G-172 and G-176, Iran reiterated: “Total amount of orders is US\$14,069.08 as stated.”

1372. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States indicated:

Amoco's records show discrepancy between purchase orders and invoices. Some items were returned to vendor, incurring cancellation charges; some held by Amoco exporting and packing company; some sent inter-company at fair value; some held in Amoco warehouse; and some sold to Sagebrush Corp.

With its report, the United States proffered the bulk of the documentary evidence on record relating to Claim G-172, including documents showing the “Release and

Assignment of Claim” by Midland in favor of AIOC and the sales by AIOC of G-172 Items to Midland and Sagebrush.

The Tribunal’s Decision

1373. The Tribunal is satisfied based on the evidence presented that all G-172 Items were delivered to Kharg’s freight forwarder in the United States before 19 January 1981, and, thus, that title thereto had transferred to Kharg before that date.⁶⁶³ The Tribunal is further satisfied that, on 15 December 1980, AIOC shipped item 1 of Purchase Order No. KC-790009 and item 17 of Purchase Order No. KC-790067 to its affiliate Gulf of Suez Petroleum Company Egypt.⁶⁶⁴ It is undisputed, and the record shows, that, other than these two items, the G-172 Items were either sold back to Midland or sold to Sagebrush by AIOC on or after 26 February 1981.⁶⁶⁵

1374. Accordingly, the Tribunal holds that, with the exception of item 1 of Purchase Order No. KC-790009 and item 17 of Purchase Order No. KC-790067, the G-172 Items were still in existence within the jurisdiction of the United States on 19 January 1981, and, therefore, fall within the meaning of “Iranian properties” under Paragraph 9. The Tribunal hereinafter refers to those G-172 Items still in existence within the United States jurisdiction on that date as “the Remaining G-172 Items.”

1375. As noted, Mr. Piper, a former regional production manager of Amoco Production Company, stated in his affidavit in Case No. 56 (*Amoco Finance International Corp.*) that, beginning in June 1980 and throughout 1981, AIOC proceeded to settle claims of vendors who had not been paid by Kharg.⁶⁶⁶ Mr. Piper further stated that, in order to mitigate losses, AIOC sold at fair market value prices some of the materials that had been ordered by Kharg and were under AIOC’s control when the Blocking Order was issued on 14 November 1979.⁶⁶⁷ Mr. Piper asserted, moreover, that, to avoid wastage during the period of blocking, AIOC also

⁶⁶³ See *supra* paras. 1344, 1353, 1356, 1362, and 1363.

⁶⁶⁴ See *supra* paras. 1356 (a) & (l) and 1363 (c).

⁶⁶⁵ Concerning Midland, see *supra* paras. 1354; 1356 (b), (d), (h)-(l); 1363 (b), (d), (e), (g), (i), (j); concerning Sagebrush, see *supra* paras. 1345; 1346; 1356 (c), (f), (g); 1363 (h), (k)-(n).

⁶⁶⁶ See *supra* para. 1223.

⁶⁶⁷ See *supra* para. 1224.

sold various materials purchased for Kharg for which the vendors had already been paid by Kharg.⁶⁶⁸

1376. Mr. Piper stated that the sums AIOC paid in satisfaction of vendor claims, less the sums AIOC received upon the disposition of materials in its possession related to those claims, amounted to USD 56,361.81.⁶⁶⁹ Mr. Piper further stated that the sum that AIOC received for the resale of materials for which Kharg had paid the vendors amounted to USD 31,634.48.⁶⁷⁰ According to Mr. Piper, AIOC thus suffered a net loss of USD 24,727.33 in connection with Kharg materials, for which Amoco International S.A. had a valid claim.⁶⁷¹

1377. In light of Mr. Piper's statements in his affidavit, the Tribunal concludes that, in effect, AIOC sold the Remaining G-172 Items to recoup payments it had made to satisfy vendors who had not been paid by Kharg and for which AIOC believed it had a claim against Kharg (which AIOC ultimately valued at USD 24,727.33⁶⁷²).

1378. Consequently, the Tribunal finds that AIOC retained and sold the Remaining G-172 Items because of the existence of an unpaid debt, and that, consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration, and its international responsibility is engaged with regard to the Remaining G-172 Items.⁶⁷³ The Tribunal 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.⁶⁷⁴

⁶⁶⁸ *See supra* para. 1225.

⁶⁶⁹ *See supra* para. 1226.

⁶⁷⁰ *See supra* para. 1227.

⁶⁷¹ *See id.*

⁶⁷² *See supra* para. 1376.

⁶⁷³ The obligations of the United States under the General Declaration with respect to tangible Iranian properties are, first, to remove the restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of those properties and to direct persons holding those properties who were subject to the jurisdiction of the United States to transfer the properties as directed by the Government of Iran and, second, to take steps to ensure that this directive will be complied with. *See* Award No. 529, para. 77 (a), 28 IRAN-U.S. C.T.R. at 140.

⁶⁷⁴ *See supra* para. 12.

1379. In light of the above conclusion, the Tribunal need not decide whether AIOC, as the purchasing agent of Kharg, had the authority to sell the Remaining G-172 Items to Midland or Sagebrush.

1380. For the foregoing reasons, the Tribunal upholds Claim G-172 insofar as it concerns the Remaining G-172 Items.

(viii) Claim G-173 (Kharg/The Foxboro Co.)

Introduction

1381. In Claim G-173, Iran seeks USD 1,415 in damages for the United States' alleged failure to arrange for the transfer to Iran of transmitter sets ordered from The Foxboro Company ("Foxboro").

1382. Claim G-173 was not included in the schedule for the Hearing in the second phase of the proceedings in the present Cases and belongs to the group of Claims to be "decided by the Tribunal on the basis of the documents before it."⁶⁷⁵

Factual Background

1383. On 8 December 1978, Kharg ordered a complete transmitter set and a differential pressure transmitter ("G-173 Items") from Foxboro under Purchase Order No. KC-7800415.

1384. According to the sparse documentary record of this Claim, primarily consisting of copies of invoicing and shipping documents provided by Foxboro to the United States in 1984, it appears that Foxboro billed Kharg USD 1,415 for the G-173 Items, and that Foxboro shipped those items to Behring International, Inc. ("Behring"), one of Iran's freight forwarders in the United States, in early 1979.

1385. By letter of 26 April 1983, Kharg advised Foxboro that, according to its books, materials under Purchase Order No. KC-7800415 had not been received by Kharg's "storehouse stock department." Kharg requested that Foxboro clarify the status of the order.

1386. By letter dated 5 March 1984, Foxboro informed the State Department that it had fulfilled its contractual obligations vis-à-vis Kharg "by completing shipment to the prescribed

⁶⁷⁵ See *supra* para. 50.

forwarder, Behring” With its letter, as noted, Foxboro provided the State Department with invoicing and shipping documents.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1387. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States indicated that the G-173 Items had been shipped to Behring. In support, it provided to Iran and the Tribunal a copy of Foxboro’s 5 March 1984, together with the attached documentation.

1388. In its 17 January 1990 report to the Tribunal on Iranian tangible properties, in relation to Claim G-173, Iran stated: “Claim is hereby withdrawn.” The Tribunal notes that previously, in the brief accompanying Iran’s 13 November 1987 report to the Tribunal on Iranian tangible properties, Iran had stated:

Claimant believes that the withdrawal of certain claims does not negate the recovery of damages from Respondent. Claimant reserves the right of its entities to file with the Tribunal the arguments and evidence related to such damages, if necessary. For ascertaining the withdrawal of certain claims, correspondence is being carried out with the relevant entities.

The Parties’ Contentions

Iran’s Contentions

1389. Iran did not submit any brief or evidence in support of Claim G-173 in its written pleadings following the Tribunal’s Order of 30 June 1992.⁶⁷⁶

1390. At the Hearing, Iran stated that, while it would not refer to Claim G-173, the Parties had agreed that this claim “would be dealt with on the documents.” Moreover, in response to arguments by the United States,⁶⁷⁷ Iran, pointing to its withdrawal of Claim G-173 in its

⁶⁷⁶ By Order dated 30 June 1992, the Tribunal established the schedule for the submission by the Claimant of “its 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 the submission by the Respondent of its brief and evidence in response. *See supra* para. 39.

⁶⁷⁷ *See infra* para. 1391.

17 January 1990 report,⁶⁷⁸ stated that “the fact that a claim for transfer of the actual property was withdrawn does not mean that the claim for damages was withdrawn.”

The United States’ Contentions

1391. The United States contends that Claim G-173 should be dismissed because Iran withdrew the claim in 1990 and, in any event, it failed to preserve it in its written pleadings subsequent to the Tribunal’s Order of 30 June 1992.⁶⁷⁹

The Tribunal’s Decision

1392. In its 17 January 1990 report to the Tribunal on Iranian tangible properties, Iran expressly and unequivocally stated that Claim G-173 “is hereby withdrawn.”⁶⁸⁰ Iran did not qualify the scope of this withdrawal; specifically, Iran did not indicate that this withdrawal was limited to the claim for the transfer to Iran of the G-173 Items and did not include any claim for damages resulting from a United States breach.

1393. Certainly, in its previous report to the Tribunal on Iranian tangible properties of 13 November 1987, Iran had stated that “the withdrawal of certain claims does not negate the recovery of damages from Respondent,” and, accordingly, it “reserve[d] the right of its entities to file with the Tribunal the arguments and evidence related to such damages, if necessary.”⁶⁸¹ Iran, however, has submitted neither argument nor evidence relating to any damages in Claim G-173 after its 1990 withdrawal of this Claim, thus not availing itself of the opportunity afforded by the Tribunal’s Order of 30 June 1992. Consequently, according to its own terms, Iran’s 1987 reservation of rights is of no consequence with respect to Claim G-173.

1394. In view of the above, the Tribunal concludes that Iran withdrew Claim G-173 in its entirety, and it will therefore not proceed to the examination of its merits.

⁶⁷⁸ See *supra* para. 1388.

⁶⁷⁹ See *supra* para. 39 & note 676.

⁶⁸⁰ See *supra* para. 1388.

⁶⁸¹ *Id.*

(ix) *Claim G-174 (Kharg/Sagebrush Pipeline Supply Co. & Process Sales, Inc.)*

Introduction

1395. In Claim G-174, Iran seeks a maximum of USD 2,507.83 in damages for the United States' alleged failure to arrange for the transfer of relays, fittings, and valves ordered from Sagebrush and from Process Sales, Inc. ("Process Sales") under three different purchase orders.

Purchase Orders Nos. KC-790099 and KC-790034 (Sagebrush)

Factual Background

1396. On 22 June 1979, AIOC ordered 25 items of lock fittings and one check valve from Sagebrush through Purchase Order No. KC-790099 at a total price of USD 251.92.⁶⁸² On or about the same date, AIOC ordered five items of flanges from Sagebrush under Purchase Order No. KC-790034 at a total price of USD 533. The Tribunal will refer to the items of Purchase Orders Nos. KC-790099 and KC-790034, collectively, as "G-174 Sagebrush Items."

1397. On 12 and 17 July 1979, Sagebrush issued two invoices concerning Purchase Order No. KC-790099, billing Kharg USD 102.77 (including shipping costs) and USD 152.72, respectively, for the items of that Purchase Order. Further, on 17 July 1979, Sagebrush issued invoice No. 7-24034 concerning Purchase Order No. KC-790034, billing Kharg a total of USD 533 under invoice No. 7-24034 for the items of that Purchase Order (on 19 July 1979, Sagebrush issued invoice No. 7-24082, billing Kharg USD 37.91 for shipping costs). On 8 August 1979, Kharg issued a check in payment of all of Sagebrush's invoices.

1398. According to the March and April 1980 Lists,⁶⁸³ in those months, the G-174 Sagebrush Items of (i) Purchase Order No. KC-790099, invoiced at USD 312.92, and (ii) of Purchase Order No. KC-790034, invoiced at USD 102.77, were in storage in Houston, at the warehouse of World Trade, the freight forwarder designated by AIOC.

1399. The record further contains copies of the following documents:

⁶⁸² The copy of this Purchase Order in evidence contains the handwritten notation: "3/20/81 Returned to vendor by ADS 3/13/81 – Complete order."

⁶⁸³ See *supra* paras. 1221-1222.

- (a) a “delivery ticket” issued by the shipping company Freight Services, Inc., on 10 July 1979 concerning the delivery of the check valve on Purchase Order No. KC-790099 to World Trade;
- (b) an AIOC “Vendee Material Status Report,” dated 2 December 1980, indicating that the items of Purchase Order No. KC-790099 had been received “complete” at the packer in Houston on 25 July 1979;
- (c) a Yellow Freight Systems bill of lading, dated 10 March 1981, indicating that ADS had shipped G-174 Sagebrush Items back to Sagebrush;
- (d) an “Agreement of Sale” dated 23 March 1981 between AIOC, acting on behalf of IPAC, and Sagebrush, whereby AIOC agreed to sell, and Sagebrush agreed to purchase, certain items described in a letter, also dated 23 March 1981, from Sagebrush to AIOC that was attached to the “Agreement of Sale”; the 23 March 1981 letter indicated that Sagebrush had received from AIOC, among others, all the G-174 Sagebrush Items; Sagebrush offered a total of USD 595.98 for those items (specifically, USD 62.98 for the items of Purchase Order No. KC-790099 and USD 533 for the items of Purchase Order No. KC-790034);
- (e) a check issued by Sagebrush in favor of AIOC, dated 3 April 1981, through which Sagebrush paid, *inter alia*, the USD 595.98 offered in its 23 March 1981 letter to AIOC;
- (f) a letter dated 26 April 1983 from Kharg to Sagebrush, advising that the items of Purchase Order KC-790099 had not been received and requesting that Sagebrush clarify the status of the order.

Purchase Order No. KC-790099-01 (Process Sales)

1400. In July or August 1979, AIOC ordered 12 items of relays from Process Sales under Purchase Order No. KC-790099-01 at a total price of USD 1,617.60. The Tribunal will refer to these items as the “G-174 Process Sales Items.”

1401. On 14 August 1979, Process Sales issued an invoice concerning Purchase Order No. KC-790099-01, billing Kharg USD 1,623 (including shipping costs) for the G-174 Process Sales Items. Kharg paid this invoice by check dated 19 August 1979.

1402. An AIOC “Vendee Material Status Report” in evidence, dated 2 December 1980, indicates that the G-174 Process Sales Items had been received “complete” at the packer in Houston on 25 July 1979;

1403. According to the March and April 1980 Lists,⁶⁸⁴ in those months, the G-174 Process Sales Items were in storage in Houston, at the warehouse of World Trade. There is no evidence in the record as to the location and fate of the G-174 Process Sales Items after April 1980.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1404. The United States first learned of the G-174 Sagebrush Items on 31 August 1983, when Iran presented its Reply to the United States’ Statement of Defense.⁶⁸⁵ There is no mention of Process Sales or of any G-174 Process Sales Items in that pleading.

1405. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, with respect to Claim G-174, Iran indicated that Sagebrush was the holder of the “materials ordered” and sought USD 1,856.40. In support of this Claim, Iran produced copies of the two invoices from Sagebrush for Purchase Order No. KC-790099, totaling USD 255.49,⁶⁸⁶ and a copy of the invoice from Process Sales for Purchase Order No. KC-790099-01, totaling USD 1,623.⁶⁸⁷ This seems to be the first time that a document mentioning Process Sales appears in the present Cases.

1406. The record contains a letter from Sagebrush dated 22 February 1984 to the State Department, stamped received by the latter on 7 March 1984, enclosing copies of (i) the two invoices from Sagebrush relating to Purchase Order No. KC-790099;⁶⁸⁸ (ii) the 10 July 1979 “delivery ticket” concerning the delivery of the check valve on Purchase Order No. KC-790099 to World Trade;⁶⁸⁹ and (iii) Purchase Order No. KC-700099. In its 22 February 1984 letter,

⁶⁸⁴ See *supra* paras. 1221-1222.

⁶⁸⁵ Reply of the Islamic Republic of Iran to the Statement of Defense of the United States to Claims Nos. II-A and II-B, Appendix G, at 16 (31 Aug. 1983).

⁶⁸⁶ See *supra* para. 1397.

⁶⁸⁷ See *supra* para. 1401.

⁶⁸⁸ See *supra* para. 1397.

⁶⁸⁹ See *supra* para. 1399 (a).

Sagebrush wrote that the enclosed documentation “evidenc[ed] shipment on Kharg Chemical Company, Limited order #KC79[0]099.”

1407. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States noted: “Claim is for \$1,856.40. Purchase order supplied is for \$255.49. First document [that is, the Process Sales invoice submitted by Iran with its 27 January 1984 report⁶⁹⁰] does not relate to Sagebrush.”

1408. In its 17 December 1984 report to the Tribunal on Iranian tangible properties, Iran asserted for the first time its claim for the G-174 Process Sales Items, as follows:

- i) Total amount of claim is changed to \$1,873.46
 - ii) \$250.46 of this total is against Sagebrush as per previously attached documents.
 - iii) \$1,623.00 is against Process Sales Inc. as per attached documents.
- [. . .]

With its report, Iran resubmitted the copy of the invoice from Process Sales for Purchase Order No. KC-790099-01, totaling USD 1,623.⁶⁹¹

1409. On 7 October 1985, the State Department wrote to Process Sales, stating, in pertinent part:

Iran’s own document appears to indicate that the goods [on Purchase Order KC-790099-01] were shipped. That would suggest that, assuming your accounts are settled with Amoco, we should indicate to Iran that its remedy is with Amoco, not with you. . . . [We] would appreciate your confirmation that this would be a correct statement concerning the goods sold by you, or such corrections as are necessary.

There is no evidence that Process Sales replied to the State Department.

1410. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States indicated that: (i) the G-174 Sagebrush Items had been “[s]old to Amoco” and “shipped to Kharg via World [Trade]”; and (ii) the G-174 Process Sales Items had been “sold to Amoco

⁶⁹⁰ See *supra* para. 1405.

⁶⁹¹ See *supra* para. 1401.

and shipped.” With its report, the United States produced the 22 February 1984 letter from Sagebrush, with enclosures.⁶⁹²

1411. In its 13 November 1987 and 17 January 1990 reports to the Tribunal on Iranian tangible properties, Iran stated that the “[g]oods [had] not been received.”

1412. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States noted:

Company sold goods to Amoco; shipped to Kharg via World in 1979. U.S. furnished documents in 1985. Amoco returned entire order to Sagebrush and received refund.

This comment by the United States concerned the G-174 Sagebrush Items only. In support, the United States provided, *inter alia*, the 23 March 1981 letter from Sagebrush to AIOC, offering USD 595.98 for the G-174 Sagebrush Items, and a copy of the check from Sagebrush to AIOC, through which Sagebrush paid AIOC that amount.⁶⁹³

The Parties' Contentions

Iran's Contentions

1413. Iran contends that the G-174 Sagebrush Items and the G-174 Process Sales Items were all “Iranian properties” in existence within United States’ jurisdiction on 19 January 1981, and, as such, they fell within the scope of Paragraph 9. Iran argues that, because the United States failed to arrange for their transfer to Iran, the United States has breached Paragraph 9.

The United States' Contentions

G-174 Sagebrush Items

1414. The United States contends that it is not responsible for the G-174 Sagebrush Items because these items were sold back by AIOC to the vendor before the United States received any indication from Iran that Iran needed assistance procuring their transfer.

⁶⁹² See *supra* para. 1406.

⁶⁹³ See *supra* para. 1399 (d)-(e).

G-174 Process Sales Items

1415. The United States asserts that it has been unable to determine the ultimate disposition of the G-174 Process Sales Items after the issuance of the March 1980 List, according to which, on that date, the G-174 Process Sales Items were in storage in Houston, at the warehouse of World Trade, the freight forwarder designated by AIOC.⁶⁹⁴ The United States contends, however, that, because AIOC resold or scrapped much of the material held at the freight forwarder in the fall of 1980, it is likely that the G-174 Process Sales Items were also scrapped at that time and were therefore no longer in existence within the jurisdiction of the United States on 19 January 1981.

The Tribunal's Decision

G-174 Sagebrush Items

1416. The Tribunal is satisfied based on the evidence presented that the G-174 Sagebrush Items were delivered to Kharg's freight forwarder in the United States before 19 January 1981, and, thus, that title thereto had transferred to Kharg before that date.⁶⁹⁵ It is undisputed, and the record shows, that all the G-174 Sagebrush Items were sold back to Sagebrush by AIOC in March 1981.⁶⁹⁶ Accordingly, the Tribunal holds that the G-174 Sagebrush Items were still in existence within the jurisdiction of the United States on 19 January 1981, and, therefore, fall within the meaning of "Iranian properties" under Paragraph 9.

1417. Consistent with its conclusion in Claim G-172, in light of Mr. Piper's statements in his affidavit,⁶⁹⁷ the Tribunal further holds that, in effect, AIOC sold the G-174 Sagebrush Items back to Sagebrush in March 1981 to recoup payments AIOC had made to satisfy vendors who had not been paid by Kharg.⁶⁹⁸

1418. Consequently, the Tribunal finds that AIOC retained and sold the G-174 Sagebrush Items because of the existence of an unpaid debt, and that, consequently, those items were in

⁶⁹⁴ See *supra* para. 1403.

⁶⁹⁵ See *supra* para. 1398.

⁶⁹⁶ See *supra* para. 1399 (c)-(e).

⁶⁹⁷ See *supra* paras. 1375-1377.

⁶⁹⁸ See *supra* para. 1377.

fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration, and its international responsibility is engaged with regard to the G-174 Sagebrush Items.⁶⁹⁹

1419. The Tribunal 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.⁷⁰⁰

G-174 Process Sales Items

1420. The evidence, consisting primarily of the March and April 1980 Lists,⁷⁰¹ shows that, in those months the G-174 Process Sales Items were in storage in Houston, at the warehouse of World Trade.⁷⁰² Thus, because the Process Sales Items were delivered to Kharg's freight forwarder in the United States before 19 January 1981, the Tribunal holds that title thereto had transferred to Kharg before that date.

1421. The question arises whether the G-174 Process Sales Items were still in existence within the jurisdiction of the United States on 19 January 1981. As noted, there is nothing in the record showing the location and fate of those items after April 1980.⁷⁰³

1422. According to Iran, the April 1980 List suggests that the G-174 Process Sales Items were in existence within the jurisdiction of the United States on 19 January 1981, or, Iran contends, "at least there is nothing to contradict that." According to the United States, by contrast, it is likely that AIOC scrapped those items in the fall of 1980.

1423. In view of its holdings, *infra*, the Tribunal need not establish whether the G-174 Process Sales Items were located within the jurisdiction of the United States on the date of the Algiers Declarations.

⁶⁹⁹See Award No. 529, para. 77 (a), 28 IRAN-U.S. C.T.R. at 140 & *supra* note 673.

⁷⁰⁰See *supra* para. 12.

⁷⁰¹See *supra* paras. 1221-1222.

⁷⁰²See *supra* para. 1403.

⁷⁰³See *supra* para. 1403.

1424. The Tribunal notes that the United States first learned that Iran was asserting a claim for the G-174 Process Sales Items through Iran's 17 December 1984 report to the Tribunal on Iranian tangible properties.⁷⁰⁴ Thereafter, on 7 October 1985, the United States wrote to Process Sales, seeking confirmation that the G-174 Process Sales Items had been shipped to Kharg's freight forwarder.⁷⁰⁵ Further, in its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States indicated that the G-174 Process Sales Items had been sold to Amoco and shipped to World Trade, the freight forwarder designated by AIOC.⁷⁰⁶ The Tribunal further notes that, with its Response of 26 September 2001 to Iran's brief and evidence, the United States proffered the March and April 1980 Lists,⁷⁰⁷ which indicated that, in those months, the G-174 Process Sales Items were in storage in Houston, at the warehouse of World Trade. This represents information that the United States had sought and obtained, at its request, likely from AIOC.

1425. The Tribunal notes that Iran has not been able to establish that it had given adequate direction to AIOC to effect the transfer of the G-174 Process Sales Items to Iran after it had been provided with the relevant information by the United States.

1426. In light of the foregoing, the Tribunal finds, on balance, that the United States adequately investigated this Claim and informed Iran accordingly. Under the circumstances, the United States could not have reasonably been expected to do more.

1427. Consequently, even assuming that G-174 Process Sales Items still existed within the jurisdiction of the United States on 19 January 1981, the Tribunal concludes that, considering the information it was able to gather about those items, the United States did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the G-174 Process Sales Items were transferred to Iran.⁷⁰⁸

Overall Conclusion

1428. For the foregoing reasons, the Tribunal holds as follows:

⁷⁰⁴ See *supra* para. 1408.

⁷⁰⁵ See *supra* para. 1409. As noted, there is no evidence on record of any reply from Process Sales.

⁷⁰⁶ See *supra* para. 1410.

⁷⁰⁷ See *supra* paras. 1221-1222.

⁷⁰⁸ See *supra* paras. 169 & 211.

- (i) Claim G-174 is upheld insofar as it concerns the G-174 Sagebrush Items;
 - (ii) Claim G-174 is dismissed insofar as it concerns the G-174 Process Sales Items.
- (x) *Claim G-175 (Kharg/Fisher Controls Co.)*

Introduction

1429. In Claim G-175, Iran seeks USD 3,281.68 in damages for the United States' alleged failure to arrange for the transfer of a pressure control valve ordered from Fisher Controls.⁷⁰⁹ At the Hearing, Iran also stated that it "claim[ed] for the amount it paid" for the pressure control valve.

Factual Background

1430. On 15 August 1979, AIOC ordered a pressure control valve ("G-175 Item") from Fisher Controls through Purchase Order No. KC-790064 at a price of USD 3,281.68.

1431. On 28 September 1979, Fisher Controls billed Kharg USD 3,281.68 for the G-175 Item, which amount Kharg paid on 20 October 1979.

1432. By letter dated 6 December 1979, Fisher Controls' supplier informed AIOC that the G-175 Item was "on hold in [Fisher Controls'] shipping department, built and boxed." The supplier further advised that, "[i]f the unit is cancelled, there will be a charge of \$656.34."

1433. By letter dated 7 May 1980, Fisher Controls' supplier informed AIOC that Fisher Controls would continue to keep Purchase Order No. KC-790064 on hold but would return the G-175 Item "to inventory."

1434. An internal AIOC accounting record in evidence dated 20 April 1981, accompanied by supporting documents, indicates that, in March 1981, Fisher Controls had sent a check to AIOC for USD 2,673.60, representing the prepayment Kharg had made under Purchase Order No. KC-790064 in October 1979, less an amount that had been invoiced by Fisher Controls as "cancellation charges." The AIOC accounting record noted that the USD 2,673.60 was "to be deposited to the account of Kharg Chemical Company." The copy of Fisher Controls' check for USD 2,673.60 attached to the AIOC accounting record bears a handwritten annotation,

⁷⁰⁹ See *supra* para. 1279.

dated 4 April 1981, apparently signed by an AIOC employee, stating: “KC790064. Material did not leave the vendor’s plant.”

1435. By letter dated 26 April 1983, Kharg advised Fisher Controls that it had not received the G-175 Item and requested that Fisher Controls clarify the status of Purchase Order No. KC-790064.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1436. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States noted that the G-175 Item had been “returned by Amoco,” and that Fisher Controls had “provided refund to Amoco, less restocking charge.” In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States clarified that, in fact, “Amoco [had] cancelled purchase order and U.S. company [had] sent refund to Amoco in March 1981, less charges incurred for cancellation.”

The Parties’ Contentions

Iran’s Contentions

1437. Iran asserts that the G-175 Item falls within the meaning of “Iranian properties” under Paragraph 9. Iran further asserts that the USD 3,281.68 prepayment for the G-175 Item that Kharg made in October 1979 “was treated by AIOC as Kharg property.”

1438. Moreover, according to Iran, the cancellation of Purchase Order No. KC-790064 by AIOC, even if it were relevant or legal, occurred only after 19 January 1981. In this connection, Iran argues that, in any event, AIOC had no authority to cancel that purchase order.

The United States’ Contentions

1439. The United States contends that AIOC cancelled Purchase Order No. KC-790064; as a result, the G-175 Item never left Fisher Controls’ premises but rather was returned to the company’s inventory. Accordingly, the United States argues, because title to the G-175 Item never passed to Iran, that item does not fall within the scope of Paragraph 9.

The Tribunal's Decision

1440. The threshold question in this Claim is whether Kharg held title to the G-175 Item on 19 January 1981.

1441. It is undisputed that the G-175 Item was never delivered to Kharg's freight forwarder. It is further undisputed, and the evidence bears out, that the G-175 Item never left the facilities of the vendor, Fisher Controls, which were located in Marshalltown, in the State of Iowa.⁷¹⁰ The evidence further strongly suggests that AIOC cancelled Purchase Order No. KC-790064.⁷¹¹ In view of its holdings, *infra*, the Tribunal need not determine whether this cancellation occurred before or after 19 January 1981.

1442. For the same reasons stated above with respect to Claim G-169,⁷¹² the Tribunal holds that Kharg never acquired title to the G-175 Item. Accordingly, the Tribunal concludes that the G-175 Item does not fall within the meaning of "Iranian properties" under Paragraph 9. Consequently, Iran's claim relating to the G-175 Item is dismissed.

1443. To the extent that Iran makes a claim, under Paragraph 9, Paragraph 8, or General Principle A, for the return of the USD 3,281.68 prepayment Kharg made to Fisher Controls in October 1979,⁷¹³ any such claim must also be dismissed for the reasons set forth earlier in this Partial Award.⁷¹⁴

(xi) *Claim G-177 (Kharg/Big Three Industries, Inc.)*

Introduction

1444. In Claim G-177, Iran seeks a maximum of USD 699.10 in damages for the United States' alleged failure to arrange for the transfer of boiler spare parts ordered from Big Three Industries, Inc. ("Big Three").

⁷¹⁰ See *supra* paras. 1432-1434.

⁷¹¹ See *supra* para. 1434.

⁷¹² See *supra* paras. 1291-1292.

⁷¹³ See *supra* para. 1431.

⁷¹⁴ See *supra* paras. 99, 223-232, 247, 828, 1210.

Factual Background

1445. This Claim relates to four items of spare parts for a boiler, which AIOC ordered from Big Three on or about July 1979 (“G-177 Items”). On 17 September 1979, Big Three issued a pro forma invoice, referencing Purchase Order No. KC-780461 and billing Kharg USD 699.10 for the G-177 Items. Kharg paid this amount on 19 August 1979. Subsequently, on 6 September 1979, AIOC issued Purchase Order No. KC-780461.

1446. As established by (i) a 20 September 1979 Big Three shipping order and (ii) a WEPAC “Material Receipt Register” dated 28 September 1979, the G-177 Items were received in Houston by the freight forwarder designated by AIOC on 20 September 1979.

1447. According to the March and April 1980 Lists,⁷¹⁵ in those months, the G-177 Items were in storage in Houston at the warehouse of the freight forwarder, World Trade.

1448. An internal AIOC “Material Transfer” form, dated 3 November 1980, indicates that the G-177 Items had been sent to the IPAC scrap account. This is confirmed by an AIOC “Vendee Material Status Report,” dated 2 December 1980. In this context, the Tribunal notes that the copy of Purchase Order No. KC-780461 in evidence contains a handwritten annotation, reading: “To IPAC scrap account 11/3/80.”

1449. By letter dated 28 April 1983, Kharg informed Big Three that Kharg had not received the G-177 Items and requested that Big Three clarify the status of the order.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1450. The United States first learned of the G-177 Items on 31 August 1983, when Iran presented its Reply to the United States’ Statement of Defense.⁷¹⁶

1451. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, Iran noted that Kharg had demanded shipment of the G-177 Items but there had been no reply from Big Three. With its report, Iran submitted a copy of Big Three’s 17 July 1979 pro forma invoice.⁷¹⁷

⁷¹⁵ See *supra* paras. 1221-1222.

⁷¹⁶ Reply of the Islamic Republic of Iran to the Statement of Defense of the United States to Claims Nos. II-A and II-B, Appendix G, at 16 (31 Aug. 1983).

⁷¹⁷ See *supra* para. 1445.

1452. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States indicated that Big Three had sold the G-177 Items to AIOC and shipped them to Kharg via the freight forwarder. In support, the United States provided a copy of the 20 September 1979 Big Three shipping order.⁷¹⁸

1453. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States completed the information about the G-177 Items, advising that AIOC had transferred them to the IPAC scrap account on 3 November 1980. With its report, the United States proffered a copy of the internal AIOC “Material Transfer” form dated 3 November 1980, indicating that the G-177 Items had been sent to the IPAC scrap account.⁷¹⁹

The Parties’ Contentions

Iran’s Contentions

1454. Iran asserts that there is no evidence that the G-177 Items were not in existence within the jurisdiction of the United States on 19 January 1981. According to Iran, that the G-177 Items were sent to the IPAC scrap account in 1980 does not necessarily mean that they had in fact been scrapped prior to 19 January 1981.⁷²⁰ Thus, Iran contends, the G-177 Items fall within the meaning of “Iranian properties” under Paragraph 9.

The United States’ Contentions

1455. The United States argues that, because the G-177 Items were sent to the IPAC scrap account in November 1980, Iran could not have held title to them on 19 January 1981; thus, the G-177 Items are outside the scope of Paragraph 9.⁷²¹

⁷¹⁸ See *supra* para. 1446.

⁷¹⁹ See *supra* para. 1448.

⁷²⁰ See also Iran’s contentions in connection with Claim G-165, *supra* para. 1237.

⁷²¹ See also *supra* para. 1239.

The Tribunal's Decision

1456. The evidence satisfies the Tribunal that the G-177 Items were delivered to Kharg's freight forwarder in Houston prior to 19 January 1981, and, thus, that title thereto had transferred to Kharg before that date.

1457. The threshold question in this Claim is whether the G-177 Items were still in existence within the jurisdiction of the United States on 19 January 1981.

1458. The Tribunal is persuaded by the evidence presented that AIOC sent the G-177 Items to the IPAC scrap account in November 1980.⁷²² This evidence was offered by the United States with its 5 July 1990 report to the Tribunal on Iranian tangible properties and its Response of 26 September 2001 to Iran's brief and evidence. The Tribunal finds, on balance, that the United States has adequately investigated this Claim and informed Iran accordingly in its submissions to the Tribunal.

1459. While the indication that the G-177 Items had been sent to the scrap account does not necessarily imply that they had been physically destroyed prior to 19 January 1981, the Tribunal considers that it was not unreasonable for the United States to assume that those items no longer existed as of that date.

1460. Iran has not been able to establish with reliable evidence that the G-177 Items were still existence within the jurisdiction of the United States on 19 January 1981, nor has it shown that it has given adequate direction to AIOC to effect the transfer of the G-177 Items to Iran.

1461. In light of all the above, the Tribunal concludes that, even assuming that the G-177 Items still existed within the jurisdiction of the United States on 19 January 1981, the United States did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the G-177 Items were transferred to Iran.⁷²³

1462. In view of the foregoing, Claim G-177 is dismissed.

⁷²² See *supra* para. 1448.

⁷²³ See *supra* paras. 169 & 211.

(xii) *Claim G-178 (Kharg/Arnessen Supply Corp.)*

Introduction

1463. In Claim G-178, Iran seeks a total of USD 1,092 in damages for the United States' alleged failure to arrange for the transfer of certain items that AIOC ordered from Arnessen Supply Corporation ("Arnessen") under Purchase Order No. KC-7800241-05 and Purchase Order No. KC-7800319 ("G-178 Items").

Purchase Order No. KC-7800241-05

Factual Background

1464. Through Purchase Order No. KC-7800241-05 dated 13 November 1978, AIOC ordered from Arnessen several items at a total price of USD 4,301.50. Iran claims non-receipt of two of those items, namely, bellows and arc link parts.

1465. Purchase Order No. KC-7800241-05 indicates that the disputed bellows and arc link parts had been manufactured by the Japanese company Niigata Worthington Company, located in Tokyo, Japan. Further, in the block titled "F.O.B. City or Location," the Purchase Order indicates "Japan."

1466. By telex dated 17 July 1979, AIOC informed Kharg that Purchase Order No. KC-7800241-05 had been shipped complete aboard the vessel *Atlantic Albatross*, which had departed Yokohama, Japan, on 25 June 1979, with an estimated time of arrival in Bushehr, Iran, on 10 August 1979.

1467. On 30 July 1979, Arnessen sent an invoice to Kharg covering all items of Purchase Order No. KC-7800241-05. Arnessen billed Kharg a total of USD 252 for the bellows and arc link parts at issue in this Claim.

1468. On 26 April 1983, Kharg sent a letter to Beckman Instruments, Inc. ("Beckman") – a company unrelated to Purchase Order No. KC-7800241-05 – advising that it had not received materials billed at USD 252 under that Purchase Order and requesting that Beckman clarify the status of the order.

The Parties' Contentions

Iran's Contentions

1469. Iran asserts that Kharg never received the Niigata bellows and arc link parts covered by Purchase Order No. KC-7800241-05.⁷²⁴ In support, Iran relies on the 26 April 1983 letter Kharg sent to Beckman, stating that Kharg had not received materials of that Purchase Order billed at USD 252.⁷²⁵

The United States' Contentions

1470. According to the United States, the evidence indicates that the disputed items were delivered to Kharg in Iran before 19 January 1981. In support, the United States relies on AIOC's 17 July 1979 telex, advising Kharg that Purchase Order No. KC-7800241-05 had been shipped complete aboard the vessel *Atlantic Albatross*.⁷²⁶ The United States contends, further, that the disputed items were procured from a Japanese vendor and at no time were located within, or subject to, the jurisdiction of the United States.

Purchase Order No. KC-7800319

Factual Background

1471. Through Purchase Order No. KC-7800319, issued in 1978 or 1979, AIOC ordered from Arnessen certain items, including flappers and nozzles.

1472. The only evidence on record relating to Purchase Order No. KC-7800319 consists of: (i) a partially illegible copy of invoice No. 2401920 issued by Arnessen to Kharg on 27 August 1979 under that Purchase Order (the invoiced amount is not visible); and (ii) a check for USD 2,159.30 dated 22 October 1979 issued by Kharg in payment of, *inter alia*, Arnessen's invoice No. 2401920.

1473. Arnessen's invoice No. 2401920 indicates that all items covered by Purchase Order No. KC-7800319 had been manufactured by the Japanese company Yamatake Honeywell. The

⁷²⁴ See *supra* para. 1464.

⁷²⁵ See *supra* para. 1468.

⁷²⁶ See *supra* para. 1466.

Tribunal notes in this connection that a number of items on Purchase Order No. KC-7800241-05, described above,⁷²⁷ had also been manufactured by Yamatake Honeywell.

1474. Iran asserted its claim for Purchase Order No. KC-7800319 for the first time in its 26 December 1996 brief, erroneously referencing Claim G-184, which involves Wilson Industries, Inc., rather than Arnessen.⁷²⁸

The Parties' Contentions

Iran's Contentions

1475. Iran asserts that Kharg never received the flappers and nozzles covered by Purchase Order No. KC-7800319, for which Kharg had paid USD 840. Iran contends that the United States failed to submit evidence concerning the location and delivery of those items. Iran contends, further, that there is no indication that the United States ever contacted AIOC about the disputed items.

The United States' Contentions

1476. The United States asserts, as a preliminary matter, that Claim G-178, insofar as it relates to Purchase Order No. KC-7800319, should be dismissed as late-filed. According to the United States, Iran asserted this portion of Claim G-178 for the first time in its 26 December 1996 brief, some 17 years after the Purchase Order had been placed. Iran's delay in presenting this claim, the United States continues, has prejudiced the United States' defense and made it impossible for the United States to recover any records relating to the claim.

1477. In any event, the United States contends, Arnessen sourced the disputed flappers and nozzles from Yamatake Honeywell, a Japanese company; therefore, even if those items had not been shipped to Iran before 19 January 1981, they would have remained in Japan. Accordingly, the United States concludes, the disputed flappers and nozzles were never located within, or subject to, the jurisdiction of the United States.

⁷²⁷ See *supra* paras. 1464-1465.

⁷²⁸ See *infra* para. 1566.

The Parties Reports to the Tribunal on Iranian Tangible Properties

1478. Iran first asserted Claim G-178, limited to Purchase Order No. KC-7800241-05, in its 31 August 1983 Reply to the United States' Statement of Defense. In that pleading, Iran erroneously identified Beckman as the holder of the items in dispute, which it described as "materials" valued at USD 252.

1479. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States requested more information about Claim G-178.

1480. In its 17 December 1984 report to the Tribunal on Iranian tangible properties, Iran advised that the "goods" had in fact been ordered from Arnessen; accordingly, it corrected the name of the alleged holder from Beckman to Arnessen and withdrew the claim against Beckman. In support of Claim G-178, to that point still limited to USD 252 under Purchase Order No. KC-7800241-05, Iran submitted a copy of Arnessen's 30 July 1979 invoice to Kharg.⁷²⁹

The Tribunal's Decision

1481. The critical question in this Claim is whether the G-178 Items were located within the jurisdiction of the United States on 19 January 1981.

1482. Concerning the bellows and arc link parts covered by Purchase Order No. KC-7800241-05, the evidence: (i) indicates that those items were procured by Arnessen from the Japanese company Niigata Worthington Company in Japan and were to be shipped directly from the Japanese source to Kharg in Iran;⁷³⁰ and (ii) strongly suggests that the disputed bellows and arc link parts had in fact been shipped from Yokohama, Japan, to Iran in June or July 1979.⁷³¹

1483. Concerning the flappers and nozzles covered by Purchase Order No. KC-7800319, the evidence shows that those items had been procured by Arnessen from the Japanese company

⁷²⁹ See *supra* para. 1467.

⁷³⁰ See *supra* para. 1465.

⁷³¹ See *supra* para. 1466.

Yamatake Honeywell in Japan.⁷³² The Tribunal notes that a number of items of Purchase Order No. KC-7800241-05, which was to be shipped to Kharg directly from Japan, had also been sourced from Yamatake Honeywell.⁷³³

1484. Based on the foregoing considerations, the Tribunal finds that there is no evidence establishing that, at any time, any of the G-178 Items were located within the jurisdiction of the United States. Accordingly, the Tribunal concludes that the G-178 Items do not fall within the meaning of “Iranian properties” under Paragraph 9. In light of this finding, the Tribunal need not decide whether Claim G-178, insofar as it relates to Purchase Order No. KC-7800319, was late-filed.

1485. Consequently, Claim G-178 is dismissed.

(xiii) Claim G-179 (Kharg/Barr-Saunders, Inc.)

Introduction

1486. In Claim G-179, Iran seeks USD 192.80 in damages for the United States’ alleged failure to arrange for the transfer of certain pipe fittings that AIOC ordered from Barr-Saunders, Inc. (“Barr-Saunders”).

Factual Background

1487. In Claim G-179, Iran alleges non-receipt by Kharg of 20 pipe fittings listed as item No. 33 of Purchase Order No. KC-780159 (“Item 33”), which covered a total of 36 items. On 30 August 1978, Barr-Saunders issued invoice No. E-38230, which billed Kharg for multiple items of Purchase Order No. KC-780159, including Item 33, billed at USD 192.80.

1488. Kharg paid in full the entire price of Purchase Order No. KC-780159, namely, USD 3,361, on 24 September 1978.⁷³⁴

1489. According to entries dated 8 and 17 September 1978 on an internal AIOC “Supplier Performance/Phone Expediting Record” in evidence, Purchase Order No. KC-780159 was

⁷³² See *supra* para. 1473.

⁷³³ See *id.*

⁷³⁴ Barr-Saunders billed Kharg a total of USD 3,361 under Purchase Order No. KC-780159 through three invoices, namely, invoices Nos. E-38228, E-38229, and E-38230.

“shipped complete” and received aboard the vessel *S.S. Taiko*, with an estimated time of arrival in Khorramshahr, Iran, on 14 October 1978.

1490. By telex dated 17 July 1979, Kharg informed AIOC that Kharg had received Purchase Order No. KC-780159 short shipped, because Item 33, with a value of USD 192.80, had not been included in the shipment.

1491. AIOC replied by telex dated 19 July 1979, informing Kharg that “FRDR” – very likely meaning the freight forwarder – was “checking records and rechecking warehouse for missing [Item] 33” and would “advise.”

1492. Iran produced a copy of a letter dated 28 April 1983, through which Kharg advised Barr-Saunders that it had not received materials of Purchase Order No. KC-780159 billed at “\$188.94” under invoice “No. E-38228” and requested that Barr-Saunders clarify the status of that Purchase Order. It should be noted, however, that Barr-Saunders had billed Kharg USD 192.80, rather than USD 188.94, for Item 33 under a different invoice, that is, invoice No. E-38230.⁷³⁵

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1493. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States advised: “Documents are illegible. Goods shipped to Iranian agent 1978, and shipment received in Iran. Alleged dispute over short shipment undocumented and contested by U.S. company.”

1494. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States advised: “Sold to Amoco; shipped to Kharg in 1978 via World. Alleged disputed over short shipment undocumented.”

1495. In its 13 November 1987 report to the Tribunal on Iranian tangible properties, Iran advised that Kharg had been unable to contact Barr-Saunders “due to economic sanction[s] imposed on Iran by the U.S.”

⁷³⁵ See *supra* para. 1487 & note 734.

1496. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States noted:

Amoco records show materials purchased from Barr-Saunders with value of \$3504.60 shipped to Kharg on board S/S TAIKO, eta October 14, 1978. Dispute over alleged short shipment undocumented.

With its report, the United States proffered a copy of the internal AIOC "Supplier Performance/Phone Expediting Record" described above, containing entries dated September 1978, stating that Purchase Order No. KC-780159 had been shipped complete and received aboard the vessel *S.S. Taiko*, with an estimated time of arrival in Khorramshahr on 14 October 1978.⁷³⁶

The Parties' Contentions

Iran's Contentions

1497. Iran does not dispute that items on Purchase Order No. KC-780159 were shipped to Iran in late 1978. Iran does dispute, however, that Item 33 was included in that shipment. Iran notes that, in its telex of 17 July 1979 to AIOC, Kharg followed up on the short shipment of Item 33. According to Iran, though, there is no evidence of any further response from AIOC suggesting that it did not still have Item 33, or that it was otherwise taking steps to reship it.

1498. Iran argues that the inability of the United States to present valid documents showing that Item 33 had been shipped to Iran should be construed as evidence that the item was still within the jurisdiction of the United States on 19 January 1981.

The United States' Contentions

1499. The United States asserts that Item 33 was part of a larger order on Purchase Order No. KC-780159 that was shipped to Iran aboard the vessel *S.S. Taiko* in September 1978, with an estimated time of arrival in Iran of 14 October 1978. It was over nine months later, in July 1979, the United States continues, that Kharg sent AIOC the telex indicating that Item 33 was missing from the shipment. According to the United States, however, the period beginning in the fall of 1978 through the summer of 1979 corresponds with the massive disruptions in

⁷³⁶ See *supra* para. 1489.

Iranian ports that accompanied the Iranian Revolution; under these circumstances, it cannot be assumed that an item that Kharg could not locate had not been shipped to it.

1500. Pointing to AIOC's 19 July 1979 telex, informing Kharg that the freight forwarder would check its records and recheck its warehouse for Item 33,⁷³⁷ the United States emphasizes that Iran has submitted no further correspondence between Kharg and AIOC to reveal how the matter was resolved.

1501. Considering all the above, the United States contends that it cannot be presumed that Item 33 still existed within the jurisdiction of the United States, and that Iran owned it, as of 19 January 1981, a year and a half after the exchange of telexes between Kharg and AIOC.

The Tribunal's Decision

1502. It is undisputed that, in late 1978, items on Purchase Order No. KC-780159 were shipped to Iran. The dispute between the Parties focuses on whether Item 33 was included in that shipment: the United States asserts that it was, while Iran asserts that it was not. There is no evidence as to whether and, if so, how, AIOC followed up on Kharg's telex of 17 July 1979, alleging short shipment of Item 33. Equally, there is no reliable evidence that Item 33 was still within the jurisdiction of the United States on 19 January 1981, and, in the circumstances, the Tribunal is not prepared to presume that it was. In this connection, the Tribunal notes that it is unclear whether Kharg itself, in its letter of 28 April 1983 to Barr-Saunders, was complaining about non-receipt of Item 33 or some other item that is unrelated to Claim G-179.⁷³⁸

1503. In any event, in view of its holdings, *infra*, the Tribunal need not establish definitively whether Item 33 was shipped to Iran prior to 19 January 1981.

1504. In its 17 September 1984 and 30 October 1985 reports to the Tribunal on Iranian tangible properties, the United States indicated that Item 33 had been shipped in 1978, and that the dispute over short shipment was "undocumented." In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States provided additional information to the effect that Item 33 had been shipped to Kharg aboard the *S.S. Taiko*, with an estimated time of arrival of 14 October 1978. In support, with this report, the United States proffered the copy of the

⁷³⁷ See *supra* para. 1491.

⁷³⁸ See *supra* para. 1492.

internal AIOC “Supplier Performance/Phone Expediting Record” described above, stating that Purchase Order No. KC-780159 had been “shipped complete” and received aboard the vessel *S.S. Taiko*.⁷³⁹ This represents information that the United States had sought and obtained, at its request, likely from AIOC.

1505. Iran has not shown that it inquired of AIOC about the outcome of the freight forwarder’s search for Item 33,⁷⁴⁰ or that it otherwise gave AIOC adequate direction to effect the transfer of Item 33 to Iran.

1506. In light of the foregoing, the Tribunal finds, on balance, that the United States has adequately investigated this Claim and informed Iran accordingly. Under the circumstances, the United States could not have reasonably been expected to do more.

1507. Consequently, even assuming that Item 33 still existed within the jurisdiction of the United States on 19 January 1981, the Tribunal concludes that, considering the information it was able to gather about that item, the United States did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that Item 33 was transferred to Iran.⁷⁴¹

1508. In view of the above, Claim G-179 is dismissed.

(xiv) Claim G-180 (Kharg/PanelFab International Corp.)

Introduction

1509. In Claim G-180, Iran seeks USD 1,782.78 in damages for the United States’ alleged failure to arrange for the transfer of certain items relating to the construction of prefabricated housing units ordered from PanelFab International Corporation (“PanelFab”).

Factual Background

1510. In Claim G-180, Iran alleges non-receipt by Kharg of six items relating to the construction of prefabricated housing units ordered under Purchase Order No. KC-780251

⁷³⁹ See *supra* paras. 1489 & 1496.

⁷⁴⁰ See *supra* para. 1491.

⁷⁴¹ See *supra* paras. 169 & 211.

("G-180 Items"). The G-180 Items included interior wall paneling, trim, adhesive, and, respectively, 42 and 29 yards of carpet.

1511. On 24 April 1978, PanelFab issued invoice No. 78-9512, which billed Kharg USD 1,782.78 for the G-180 Items. This invoice indicated that the 29 yards of carpet had been "damaged on site."

1512. By letter dated 11 May 1978 to Kharg, PanelFab stated the following:

Attached here please find an invoice for materials that we used in the bathrooms and closets. As you know, these materials were not included in the original drawings but we used them in accordance with a directive by [an official] in the Staff Quarters of IPAC, and you wanted the buildings exactly as them. . . . Also, the twenty-nine yards of carpeting which came in damaged, you instructed [PanelFab] that you would pay for this rather than put in a claim for it, which would cost you more in the long run.

1513. The record includes an August 1978 Kharg requisition form referencing Purchase Order No. KC-780251 and listing the G-180 Items. The requisition form indicated, as invoice No. 78-9512 did,⁷⁴² that the 29 yards of carpet had been "damaged on site," and it contained the following notation: "This requisition is to cover the cost of materials already supplied and installed by PanelFab Inc. as per the attached invoice 78-9512."

1514. By letter No. M-492 dated 28 April 1983, Kharg, referencing a letter No. M-329 it had sent to PanelFab on 19 December 1982, informed PanelFab that it had not received materials of Purchase Order No. KC-780251 billed at USD 1,782.78 under invoice No. 78-9512 and requested that PanelFab clarify the status of that Purchase Order.

1515. By letter of 23 May 1983, referencing Kharg's letters Nos. M-329 and M-492, PanelFab replied to Kharg as follows:

Attached is a copy of a letter addressed to [Kharg] dated May 11, 1978 clearly stating that [Kharg] had, in fact, received the materials and that the materials were used in [Kharg's] bathrooms and closets at the staff quarters of IPAC on April 24, 1978.

⁷⁴² See *supra* para. 1511.

*The Parties' Contentions**Iran's Contentions*

1516. Iran argues that there is no evidence that the G-180 Items were ever shipped to Iran. In particular, Iran disputes that the 11 May 1978 and 23 May 1983 letters from PanelFab to Kharg constitute adequate proof of any such shipment.⁷⁴³

The United States' Contentions

1517. The United States asserts that Kharg both received and used the G-180 Items in Iran, as proven by the 11 May 1978 and 23 May 1983 letters from PanelFab to Kharg.⁷⁴⁴ According to the United States, therefore, because the G-180 Items were not within the jurisdiction of the United States on 19 January 1981, they do not fall within the scope of Paragraph 9.

The Tribunal's Decision

1518. The evidence presented convinces the Tribunal that the G-180 Items were shipped to Iran prior to 19 January 1981. This evidence includes:

- (a) PanelFab's invoice No. 78-9512, indicating that the 29 yards of carpet included among the G-180 Items had been "damaged on site";⁷⁴⁵
- (b) PanelFab's letter of 11 May 1978 to Kharg, in which PanelFab referred to:
 - (i) an enclosed invoice "for materials that we used in the bathrooms and closets" and
 - (ii) "the twenty-nine yards of carpeting which came in damaged";⁷⁴⁶
- (c) Kharg's August 1978 requisition form relating to Purchase Order No. KC-780251, listing the G-180 Items and indicating that: (i) the 29 yards of carpet had been "damaged on site"; and (ii) Kharg's requisition was to cover the

⁷⁴³ See *supra* paras. 1512 & 1515.

⁷⁴⁴ See *id.*

⁷⁴⁵ See *supra* para. 1511.

⁷⁴⁶ See *supra* para. 1512.

cost of materials “already supplied and installed by PanelFab” per invoice No. 78-9512.⁷⁴⁷

- (d) PanelFab’s letter of 23 May 1983 to Kharg, attaching a copy of PanelFab’s letter of 11 May 1978 to Kharg and stating that Kharg had, in fact, received the G-180 Items, which had been “used in [Kharg’s] bathrooms and closets at the staff quarters of IPAC on April 24, 1978.”⁷⁴⁸

1519. In view of the above, and in the absence of countervailing evidence, the Tribunal concludes that the G-180 Items were not within the jurisdiction of the United States on 19 January 1981, and, thus, that those items do not fall within the scope of Paragraph 9.

1520. In light of the foregoing, Claim G-180 is dismissed.

(xv) *Claim G-181 (Kharg/Rapid Industrial Corp.)*

Introduction

1521. In Claim G-181, Iran seeks USD 55.81 in damages for the United States’ alleged failure to arrange for the transfer to Iran of a dial indicator purchased from Rapid Industrial Corporation (“Rapid Industrial”).

1522. Claim G-181 was not included in the schedule for the Hearing in the second phase of the proceedings in the present Cases and belongs to the group of Claims to be “decided by the Tribunal on the basis of the documents before it.”⁷⁴⁹ Accordingly, the Parties made no submissions with respect to this Claim at the Hearing.

Factual Background

1523. On 30 October 1978, Rapid Industrial issued an invoice, billing Kharg USD 57.76 for a dial indicator AIOC had ordered under Purchase Order No. KC-780348.

1524. By telex dated 2 November 1978, AIOC informed Kharg that, among other items, the dial indicator on Purchase Order No. KC-780348 had been shipped “complete” to Iran,

⁷⁴⁷ See *supra* para. 1513.

⁷⁴⁸ See *supra* para. 1515.

⁷⁴⁹ See *supra* para. 50.

specifically, “on AWB IR-096-7494-4376 Flying Tigers to NY connect[ing] IR 1702 on 11/4 to Tehran.”

1525. By letter dated 30 April 1983, Kharg advised Rapid Industrial that it had not received materials of Purchase Order No. KC-780348 billed at USD 55.81 under Rapid Industrial’s invoice of 30 October 1978 and requested that Rapid Industrial clarify the status of that Purchase Order.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1526. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, in relation to Claim G-181, Iran sought USD 129.10 for “materials” allegedly held by Rapid Industrial. In support, Iran submitted copies of: (i) Kharg’s 30 April 1983 letter to Rapid Industrial described above;⁷⁵⁰ (ii) a letter from Kharg to Rapid Industrial dated 28 April 1983, advising that Kharg had not received materials of Purchase Order No. KC-780257 (unrelated to Claim G-181) billed by Rapid Industrial at USD 73.29; and (iii) Rapid Industrial’s invoice of 30 October 1978, billing Kharg USD 57.76 for the dial indicator at issue in this Claim.⁷⁵¹

1527. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States noted that, while Iran’s “[d]ocuments do not match claim,” they “indicate that goods worth \$57.76 were shipped to Iranian agent on October 26, 1978.”

1528. In its 17 December 1984 report to the Tribunal on Iranian tangible properties, Iran stated:

- i) Claim for order No. KC-78[0]257 for \$73.29 is hereby withdrawn -
- ii) Order No. KC-78[0]348 for \$55.81 (original value of 57.76 minus deductions) as per previously attached invoice has not been received.

Iran made similar statements in its 13 November 1987 and 17 January 1990 reports to the Tribunal on Iranian tangible properties.

1529. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States observed:

⁷⁵⁰ See *supra* para. 1525.

⁷⁵¹ See *supra* para. 1523.

Company has no records from this period. Documents provided by Iran indicate that goods worth \$57.76 were shipped.

1530. The Tribunal notes that, other than the statements it made in its reports to the Tribunal on Iranian tangible properties, Iran has made no submissions concerning Claim G-181 in its written pleadings in the present Cases.

The Tribunal's Decision

1531. This Claim is characterized by a paucity of evidence and a virtual absence of argument. What evidence there is, suggests that the dial indicator at issue was shipped to Iran in November 1978.⁷⁵² Iran has produced no proof that that item was still within the jurisdiction of the United States on 19 January 1981, and, in the circumstances, the Tribunal is not prepared to presume that it was.

1532. In light of the above, the Tribunal concludes that the dial indicator ordered under Purchase Order No. KC-780348 was not within the jurisdiction of the United States on 19 January 1981, and, thus, that that item did not fall within the scope of Paragraph 9.

1533. Consequently, Claim G-181 is dismissed.

(xvi) Claim G-182 (Kharg/Englewood Electric Supply)

Introduction

1534. In Claim G-182, Iran seeks USD 6,782.98 in damages for the United States' alleged failure to arrange for the transfer to Iran of certain materials Kharg purchased from Englewood Electrical Supply ("Englewood").

1535. Claim G-182 was not included in the schedule for the Hearing in the second phase of the proceedings in the present Cases and belongs to the group of Claims to be "decided by the Tribunal on the basis of the documents before it."⁷⁵³ While the United States, accordingly, made no specific submissions with respect to this Claim at the Hearing, Iran elected to do so.

⁷⁵² See *supra* para. 1524.

⁷⁵³ See *supra* para. 50.

Factual Background

1536. The record of this Claim contains, among others, copies of the following documents:

- (a) a Kharg Material Requisition form (or part thereof), referencing Purchase Order No. KC-780367 and listing over 50 items;⁷⁵⁴ the date on this form is illegible;
- (b) invoice No. 122488 issued by Englewood on 5 June 1979, billing Kharg USD 420.13 for certain items ordered under Purchase Order No. KC-780367-01 dated 7 December 1978;⁷⁵⁵
- (c) a telex from AIOC to Kharg dated 12 July 1979, advising that: (i) among others, the materials covered by Purchase Order No. KC-780367 had been “shipped complete” aboard the *S.S. Feax*, with an estimated time of arrival of 10 August 1979 at Kharg Island; and (ii) Purchase Order No. KC-780367-01 was a “partial order shipment[]” (meaning, it can be inferred, that a number of items covered by that Purchase Order had not been included in the shipment);
- (d) invoice No. 346591 issued by Englewood on 20 July 1979, billing Kharg USD 240.92 for an item, “[p]art order of 20,” ordered under Purchase Order No. KC-780367-01;
- (e) Purchase Order No. KC-780367-03 dated 27 September 1979, covering four items, priced at USD 1,211.78.

1537. According to the March and April 1980 Lists,⁷⁵⁶ in those months, items of Purchase Order No. KC-780367-01, invoiced at USD 5,536.12, and items of Purchase Order No. KC-780367-03, invoiced at USD 1,246.86, were in storage in Houston, at the warehouse of World Trade. There is no evidence in the record as to the location and fate of those items after April 1980.

1538. On 28 April 1983, Kharg sent a letter to Bentley and Nevada Co. (“Bentley and Nevada”) – a company unrelated to any of the Purchase Orders at issue in this Claim – advising

⁷⁵⁴ Purchase Order No. KC-780367 is not in evidence.

⁷⁵⁵ Purchase Order No. KC-780367-01 is not in evidence.

⁷⁵⁶ See *supra* paras. 1221-1222.

that it had not received materials billed at USD 628.06 under invoice No. 346591 on Purchase Order No. KC-780367-01 and requesting that Bentley and Nevada clarify the status of that Purchase Order.

The Parties' Reports to the Tribunal on Iranian Tangible Properties

1539. In its 31 August 1983 Reply to the United States' Statement of Defense, Iran erroneously identified Bentley and Nevada as the holder of the items in dispute, which it described as "materials" valued at USD 628.06.

1540. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, Iran continued to list Bentley and Nevada as the holder of the disputed items, which Iran still valued at USD 628.06. With the report, Iran proffered the undated Kharg Material Requisition form described above.⁷⁵⁷

1541. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States noted that: (i) the parts listed "on documents" and (ii) the "[i]nvoice numbers listed" were not from Bentley and Nevada.

1542. In its 17 December 1984 report to the Tribunal on Iranian tangible properties, Iran (i) withdrew the claim "against Bentley and Nevada"; (ii) stated that the "[s]ame goods" had been ordered from Englewood; and (iii) maintained the claim for USD 628.06. Further, Iran produced copies of Englewood's invoices Nos. 122488 and 346591⁷⁵⁸ and asserted that items "Nos 1, 3, 5" on the former invoice and "all items" on the latter had not been received by Kharg. Iran made similar statements in its 13 November 1987 and 17 January 1990 reports to the Tribunal on Iranian tangible properties.

1543. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States stated: "Goods sold to Amoco. Not returned to Englewood."

1544. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States asserted: "Amoco records show items shipped aboard S/S/ FEAX Kharg Island

⁷⁵⁷ See *supra* para. 1536.

⁷⁵⁸ See *supra* para. 1536.

August 10, 1979.” In support, the United States produced a copy of the 12 July 1979 telex from AIOC to Kharg described above.⁷⁵⁹

The Parties’ Contentions

Iran’s Contentions

1545. The Tribunal notes that, other than the statements it made in its reports to the Tribunal on Iranian tangible properties, Iran has made no submissions concerning Claim G-182 in its written pleadings in the present Cases.

1546. At the Hearing, Iran pointed out that AIOC’s telex to Kharg of 12 July 1979 indicates that the shipment of Purchase Order No. KC-780367-01 aboard the *S.S. Feax* was not complete because various items were missing. Continuing, Iran asserted that, in fact, the April 1980 List shows that materials relating to Purchase Orders Nos. KC-780367-01 and KC-780367-03 (which Iran contends was a revision to Purchase Order No. KC-780367-01), for a total amount of USD 6,782.98, were held by Kharg’s freight forwarder in Houston in April 1980. On the basis of this information, Iran suggests that these items remained within the jurisdiction of the United States on 19 January 1981.

The United States’ Contentions

1547. In its Response of 26 September 2001 to Iran’s brief and evidence, the United States requested that the Tribunal dismiss Claim G-182, asserting that Iran had abandoned this Claim. Consequently, the United States did not brief Claim G-182.

The Tribunal’s Decision

1548. The March and April 1980 Lists⁷⁶⁰ show that, in April 1980, items of Purchase Orders Nos. KC-780367-01 and KC-780367-03 were in storage with World Trade in Houston.⁷⁶¹ Consequently, because those items were delivered to Kharg’s freight forwarder in the United States prior to 19 January 1981, the Tribunal holds that title thereto had transferred to Kharg before that date. The central question in this Claim thus becomes whether items of Purchase

⁷⁵⁹ See *supra* para. 1536.

⁷⁶⁰ See *supra* paras. 1221-1222.

⁷⁶¹ See *supra* para. 1537.

Orders Nos. KC-780367-01 and KC-780367-03 were still in existence within the jurisdiction of the United States on 19 January 1981.

1549. This Claim is generally characterized by a paucity of both evidence and argument. As noted, there is nothing in the record showing the location and fate of the disputed items after April 1980.⁷⁶² That items of Purchase Orders Nos. KC-780367-01 and KC-780367-03 were in storage with Kharg's freight forwarder in Houston in that month does not necessarily mean that those items were still in existence within the jurisdiction of the United States on 19 January 1981, as Iran suggests, and the Tribunal, on the record before it, is not prepared to presume that they were.

1550. Accordingly, the Tribunal holds that Iran has not proven that the disputed items were within the jurisdiction of the United States on 19 January 1981, and, thus, that they fall within the scope of Paragraph 9.

1551. In light of the foregoing, Claim G-182 is dismissed.

(xvii) Claim G-183 (Kharg/ The Harco Corp.)

Introduction

1552. In Claim G-183, Iran seeks USD 2,116.80 in damages for the United States' alleged failure to arrange for the transfer to Iran of 27 units of galvalum anodes purchased from The Harco Corporation ("Harco").

Factual Background

1553. On 21 June 1979, AIOC, on behalf of Kharg, ordered from Harco 27 units of galvalum anodes under Purchase Order No. KC-790114 ("G-183 Items").

1554. On 27 July 1979, Harco issued invoice No. 39332, billing Kharg USD 2,116.80 for the G-183 Items. Kharg paid that amount by check on 22 August 1979.

⁷⁶² *See id.*

1555. According to the March and April 1980 Lists,⁷⁶³ in those months, the G-183 Items were in storage in Houston, at the warehouse of World Trade.

1556. The Piper List Two⁷⁶⁴ indicates that AIOC sold “galvalum anodes” to Amoco Philippines Petroleum Company (“Amoco Philippines”) at a price of USD 2,116.80, which amount Amoco Philippines paid to AIOC on 13 January 1981.

1557. By letter of 19 December 1982, Kharg informed Harco that it had found an “outstanding amount” of USD 2,116.80 in Harco’s account on Kharg’s books relating to Purchase Order No. KC-790114 and requested that Harco either deliver the G-183 Items or reimburse the USD 2,116.80 to Kharg. Kharg again wrote to Harco about the matter on 28 April 1983, requesting that Harco clarify the status of Purchase Order No. KC-790114.

1558. On 28 July 1983, Harco sent a message to AIOC, advising that Harco had delivered the G-183 Items that were referenced in Kharg’s correspondence to “World Forwarding Company” on 1 August 1979. Harco requested that AIOC trace the shipment through the freight forwarders and respond to Kharg.

The Parties’ Contentions

Iran’s Contentions

1559. Iran points out that, according to the evidence, (i) the G-183 Items were delivered to World Trade in Houston in August 1979, and (ii) those items were still located in Houston in April 1980. In light of the entry on the Piper List Two,⁷⁶⁵ Iran concedes that the G-183 Items were transferred to Amoco Philippines in January 1981 for USD 2,116.80. As noted above,⁷⁶⁶ it is Iran’s position, however, that AIOC did not own items purchased by Kharg, and Kharg had not authorized AIOC to sell such items on Kharg’s behalf. In Iran’s view, there is no evidence that the G-183 Items were shipped to Kharg prior to 19 January 1981. This means, Iran concludes, that those items were still within the jurisdiction of the United States on 19 January 1981.

⁷⁶³ See *supra* paras. 1221-1222.

⁷⁶⁴ See *supra* para. 1227.

⁷⁶⁵ See *supra* para. 1556.

⁷⁶⁶ See *supra* para. 1348.

The United States' Contentions

1560. According to its final pleadings at the Hearing, the United States argues that, because AIOC transferred the G-183 Items to Amoco Philippines on 13 January 1981, those items were not owned by Iran on 19 January 1981, and, thus, they do not fall within the scope of Paragraph 9. In response to arguments by Iran, the United States contends that AIOC had at least apparent authority to resell Kharg's material.

The Tribunal's Decision

1561. It is undisputed, and the evidence bears out, that the G-183 Items were delivered to Kharg's freight forwarder in the United States before 19 January 1981.⁷⁶⁷ The Tribunal therefore holds that title thereto had transferred to Kharg before that date.

1562. The crucial question in this Claim thus becomes whether the G-183 Items were still located within the jurisdiction of the United States on 19 January 1981 and, consequently, fell within the scope of Paragraph 9.

1563. The March and April 1980 Lists indicate that, in those months, the G-183 Items were in storage with Kharg's freight forwarder in Houston. There is no conclusive evidence, however, of their location on 19 January 1981. It is undisputed, and the evidence confirms, that the G-183 Items had been sold to Amoco Philippines prior to that date,⁷⁶⁸ and both Parties agree that those items were transferred to Amoco's Philippines affiliate in January 1981.⁷⁶⁹ Further, the Piper List Two shows that Amoco Philippines paid to AIOC the purchase price of USD 2,116.80 on 13 January 1981.⁷⁷⁰ In light of the foregoing circumstances, the Tribunal finds, on balance, that it would not be unreasonable to conclude that, by 19 January 1981, the G-183 Items had already been shipped to Amoco's Philippines affiliate and thus were no longer located within the jurisdiction of the United States, and the Tribunal so concludes. In the absence of countervailing evidence, and on the present record, the Tribunal is not prepared to presume that the G-183 Items were still located within the jurisdiction of the United States on the date of the Algiers Declarations.

⁷⁶⁷ See *supra* paras. 1555 and 1558.

⁷⁶⁸ See *supra* para. 1556.

⁷⁶⁹ See *supra* paras. 1559-1560.

⁷⁷⁰ See *supra* para. 1556.

1564. In light of the above conclusion, the Tribunal need not decide whether AIOC, as the purchasing agent of Kharg, had the authority to sell the G-183 Items to Amoco Philippines.

1565. Based on the foregoing, the Tribunal dismisses Claim G-183.

(xviii) Claim G-184 (Kharg/Wilson Industries, Inc.)

Introduction

1566. In Claim G-184, Iran seeks USD 64.53 in damages for the United States' alleged failure to arrange for the transfer to Iran of items of Liquid Wrench purchased from Wilson Industries, Inc. ("Wilson Industries").

Factual Background

1567. The record of this Claim contains copies of the following documents:

- (a) a Radiator Specialty Company "straight" bill of lading (with enclosed "Material Safety Data Sheet" issued by the United States Department of Labor), dated 26 October 1978;
- (b) invoice No. 127662 issued by Wilson Industries on 22 November 1978, billing Kharg USD 64.53 for eight cases of Liquid Wrench ordered under Purchase Order No. 780373 ("G-184 Items"); the invoice indicates that the G-184 Items had been shipped to "World Export Packers" (meaning, in all likelihood, WEPAC⁷⁷¹) in Houston on 26 October 1978;
- (c) a letter dated 13 April 1983 from Kharg to Wilson Industries, stating, among other things, that Kharg had not received the materials covered by Wilson Industries' invoice No. 127662 and requesting that Wilson Industries review the matter.

The Parties' Reports to the Tribunal on Iranian Tangible Properties

1568. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, Iran indicated that it had not received the G-184 Items.

⁷⁷¹ See *supra* para. 1215.

1569. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States noted that the G-184 Items had been sold to Amoco and shipped to Kharg “via “World.” With its report, the United States produced, *inter alia*, a copy of Wilson Industries’ invoice No. 127662.

1570. In its 13 November 1987 and 17 January 1990 reports to the Tribunal on Iranian tangible properties, Iran reiterated that Kharg had not received the G-184 Items.

1571. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States indicated: “U.S. company sold ‘Liquid Wrench’ to Amoco; shipped to Kharg via World in 1978. U.S. provided documents in 1985.”

The Parties’ Contentions

Iran’s Contentions

1572. The Tribunal notes that Iran has made virtually no submissions concerning Claim G-184 in its written pleadings in the present Cases.

1573. At the Hearing, Iran asserted that, while the United States had been able to prove shipment of the G-184 Items to Kharg’s freight forwarder in Houston in 1978, it had been unable to prove that those items were subsequently shipped to Kharg in Iran. Iran contends that it has received no explanation as to the fate of the G-184 Items.

The United States’ Contentions

1574. The United States asserts that, because Iran never submitted any pleadings concerning Claim G-184 after the Tribunal’s Order of 30 June 1992,⁷⁷² Claim G-184 must be dismissed as abandoned.

The Tribunal’s Decision

1575. The threshold issue in this Claim is whether the G-184 Items were in existence within the jurisdiction of the United States on 19 January 1981.

⁷⁷² See *supra* para. 39 & note 676.

1576. Claim G-184 generally suffers from a scarcity of both evidence and argument. While there is evidence that Wilson Industries shipped the G-184 Items to “World Export Packers” (meaning, in all likelihood, WEPAC) in Houston on 26 October 1978,⁷⁷³ there is nothing in the record showing the location and fate of those items after that date. The Tribunal notes, further, that neither the March 1980 nor the April 1980 List records items of Purchase Order No. 780373 as being in storage in Houston in those months.

1577. In light of the above, the Tribunal holds that Iran has not proven that the G-184 Items were in existence within the jurisdiction of the United States on 19 January 1981, and, thus, that they fall within the scope of Paragraph 9.

1578. Based on the foregoing, the Tribunal dismisses Claim G-184.

(xix) Claim G-185 (Kharg/The Falk Corp.)

Introduction

1579. In Claim G-185, Iran seeks USD 228.18 in damages for the United States’ alleged failure to arrange for the transfer to Iran of two items of couplings purchased from The Falk Corporation (“Falk”).

Factual Background

1580. In Claim G-185, Iran alleges non-receipt by Kharg of two items of couplings ordered from Falk under Purchase Order No. KC-790100 (“G-185 Items”).

1581. On 24 August 1979, Falk issued invoice No. 7923608, billing Kharg USD 228.18 for the G-185 Items, which amount Kharg paid on 21 October 1979.

1582. Falk shipped the G-185 Items to WEPAC, one of the freight forwarders designated by AIOC, on 12 September 1979. WEPAC received those items on 19 September 1979, as shown by a WEPAC “Material Receipt Register” dated 28 September 1979.

⁷⁷³ See *supra* para. 1567.

1583. According to the March and April 1980 Lists,⁷⁷⁴ in those months, the G-185 Items were in storage in Houston, at the warehouse of World Trade. There is no evidence on record concerning the location and fate of those items after April 1980.

1584. By letter of 14 March 1983, Kharg informed Falk that it had found an “outstanding amount” of USD 223.30 in Falk’s account on Kharg’s books relating to Purchase Order No. KC-790100 and requested that Falk either deliver the G-185 Items or reimburse the USD 223.30 to Kharg. There is no evidence that Kharg received any reply.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1585. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, Iran indicated that it had not received the G-185 Items.

1586. In its 30 October 1985 report to the Tribunal on Iranian tangible properties, the United States noted that the G-185 Items had been sold to Amoco and shipped to Kharg “via World.”

1587. In its 13 November 1987 and 17 January 1990 reports to the Tribunal on Iranian tangible properties, Iran reiterated that Kharg had not received the G-185 Items.

1588. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States indicated: “U.S. company shipped materials to World in 1979. Amoco records indicate invoice amount is \$228.18.”

The Parties’ Contentions

Iran’s Contentions

1589. Iran asserts that the April 1980 List establishes that the G-185 Items were held by Kharg’s freight forwarder in Houston in that month. Moreover, Iran points out that the United States has provided no evidence as to what subsequently happened to those items. On this basis, Iran suggests that these items remained within the jurisdiction of the United States on 19 January 1981.

⁷⁷⁴ See *supra* paras. 1221-1222.

The United States' Contentions

1590. The United States asserts that it has been unable to document the disposition of the G-185 Items after 20 March 1980, the date of the March 1980 List. The United States maintains, however, that, because in the fall of 1980 AIOC resold or scrapped much of Kharg's materials held at the freight forwarder's, it is likely that the G-185 Items had also been disposed of by AIOC at that time.

The Tribunal's Decision

1591. The March and April 1980 Lists⁷⁷⁵ show that, in April 1980, the G-185 Items were in storage with World Trade in Houston.⁷⁷⁶ Consequently, because those items were delivered to Kharg's freight forwarder in the United States prior to 19 January 1981, the Tribunal holds that title thereto had transferred to Kharg before that date. The critical question in this Claim thus becomes whether the G-185 Items were still in existence within the jurisdiction of the United States on 19 January 1981.

1592. This Claim is generally characterized by a paucity of both evidence and argument. As noted, there is nothing in the record showing the location and fate of those items after April 1980.⁷⁷⁷ That the G-185 Items were in storage with Kharg's freight forwarder in Houston in that month does not necessarily mean that those items were still in existence within the jurisdiction of the United States on 19 January 1981, as Iran suggests, and the Tribunal, on the record before it, is not prepared to presume that they were.

1593. Accordingly, the Tribunal holds that it has not been proven that the G-185 Items were within the jurisdiction of the United States on 19 January 1981, and, thus, that they fall within the scope of Paragraph 9.

1594. Based on the foregoing, the Tribunal dismisses Claim G-185.

⁷⁷⁵ See *supra* paras. 1221-1222.

⁷⁷⁶ See *supra* para. 1583.

⁷⁷⁷ See *id.*

(xx) *Claim G-186 (Kharg/R.J. Drews & Sons, Inc.)*

Introduction

1595. In Claim G-186, Iran seeks USD 511.22 in damages for the United States' alleged failure to arrange for the transfer to Iran of certain items Kharg purchased from R.J. Drews & Sons, Inc. ("Drews & Sons") under Purchase Orders Nos. KC-790125 and KC-790007-01 (collectively, the "G-186 Items").

Factual Background

1596. On 30 July 1979, AIOC ordered from Drews & Sons three items of stud bolts (totaling 180 pieces) under Purchase Order No. KC-790125 ("KC-790125 Items") at a price of USD 354.16.

1597. On 15 August 1979, Drews & Sons issued invoice No. 5226, billing Kharg USD 354.16 for the KC-790125 Items, which amount Kharg paid by check issued on 1 September 1979.

1598. Two WEPAC "Material Receipt Register" forms on record, dated 18 and 24 August 1979, respectively, indicate that, by 16 August 1979, all of the KC-790125 Items had been delivered to WEPAC.

1599. The record further contains copies of the following documents:

- (a) the April 1980 List,⁷⁷⁸ showing that, in that month, the G-186 Items⁷⁷⁹ were in storage in Houston, at the warehouse of Kharg's freight forwarder; the April 1980 List indicates that the (unspecified) items that Kharg had purchased from Drews & Sons under Purchase Order No. KC-790007 (which are the subject of that portion of Claim G-186 relating to Purchase Order No. KC-790007-01⁷⁸⁰) had been invoiced at USD 157.06;
- (b) a letter dated 11 June 1980 from AIOC to Drews & Sons, asking whether Drews & Sons had received payment for: (i) invoice No. 5226 under Purchase Order No. KC-790125, in the amount of USD 354.16; and (ii) invoice No. 5231 under

⁷⁷⁸ See *supra* para. 1222.

⁷⁷⁹ See *supra* para. 1595.

⁷⁸⁰ See *id.*

Purchase Order No. KC-790007-01, in the amount of USD 157.06; in this letter, AIOC requested that, if Drews & Sons had not been paid, it “submit to [AIOC] a duplicate invoice made out to Amoco Iran, and [a] completed . . . ‘Release and Assignment of Claim’ for each unpaid invoice”;

- (c) an AIOC internal “Return Goods Authorization” form, indicating that Purchase Order No. KC-790125 had been returned “complete” to Standco Industries, Inc., Drews & Sons’ supplier, on 9 December 1980 via “company pickup”;
- (d) a confirmation, dated 9 December 1980, indicating that four cartons of various types of studs had been shipped to Standco Industries, Inc. via ADS Company Pickup;
- (e) an AIOC “Material Transfer” form regarding Purchase Order No. KC-790125, dated 10 December 1980, indicating that the KC-790125 Items had been returned to the vendor;
- (f) a letter dated 15 December 1980 from Standard Oil Company (Indiana) to Drews & Sons, referencing Purchase Orders Nos. KC-790125 and KC-790007-01 and stating, in relevant part:

Records from our Houston warehouse indicate that the material you advised you would accept on the above purchase orders was returned to your supplier, Standco Ind. Inc., via Company Pick-up on December 10, 1980.

Please inventory the parts and issue credit. The attached “Agreement of Sale” form is to be completed and returned with your check made out to Amoco International Oil Company ;

- (g) an “Agreement of Sale” dated 3 February 1981 between AIOC, acting on behalf of Kharg, and Drews & Sons, whereby AIOC agreed to sell, and Drews & Sons agreed to purchase, the following materials at a total price of USD 308.89: (i) the KC-790125 Items; and (ii) items of Purchase Order KC-790007-01 described as “200 5/8 x 3”;
- (h) a check dated 3 February 1981 for USD 308.89 issued by Drews & Sons in favor of AIOC;

- (i) an AIOC accounting record dated 26 February 1981 relating to Purchase Orders Nos. KC-790125 and KC-790007-01, noting that Drews & Sons' check for USD 308.89 "in payment for their material received in transfer of KC-79-0007-1 and KC-79-0125" was to be deposited to the account of Kharg;
- (j) a letter dated 14 March 1983 from Kharg to Drews & Sons, advising that Kharg had found an "outstanding amount" of USD 354.16 in Drews & Sons account on Kharg's books relating to Purchase Order No. KC-790125 and requesting that Drews & Sons either deliver the KC-790125 Items or reimburse the USD 354.16 to Kharg; there is no evidence that Kharg received any reply.

The Parties' Reports to the Tribunal on Iranian Tangible Properties

1600. In its 27 January 1984 report to the Tribunal on Iranian tangible properties, Iran indicated that it had not received the KC-790125 Items, which it valued at USD 354.16.

1601. In its 17 September 1984 and 30 October 1985 reports to the Tribunal on Iranian tangible properties, the United States, with respect to Claim G-186, noted: "Property returned for credit, less restocking charge. Credit held in name of Amoco."

1602. In its 13 November 1987 and 17 January 1990 reports to the Tribunal on Iranian tangible properties, Iran demanded either the delivery of the "goods" or the reimbursement of the "amount paid to supplier."

1603. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States indicated: "U.S. company sold material to Amoco; Amoco cancelled order and returned material. Drews reimbursed Amoco."

The Parties' Contentions

Iran's Contentions

1604. Iran asserts that the evidence shows that the purported sale of the G-186 Items to Drews & Sons occurred after 19 January 1981; this evidence includes: (i) the "Agreement of Sale" dated 3 February 1981 between AIOC and Drews & Sons; and (ii) the 3 February 1981 check for USD 308.89 through which Drews & Sons paid the purchase price.

1605. Iran disputes, in any event, that AIOC had any authority to sell the G-186 Items back to the vendor. Thus, Iran argues, the 3 February 1981 “Agreement of Sale” between AIOC and Drews & Sons did not validly transfer ownership of the G-186 Items to the latter.⁷⁸¹

1606. Iran concludes that, in the absence of evidence to the contrary, it should be presumed that the G-186 Items were “Iranian properties” in existence within the jurisdiction of the United States on 19 January 1981.

The United States’ Contentions

1607. The United States contends that, although the “Agreement of Sale” and the check through which Drews & Sons paid for the G-186 Items are both dated after 19 January 1981, the evidence on record suggests that those items were sold back to the vendor prior to that date; in this connection, the United States points, *inter alia*, to the AIOC internal “Return Goods Authorization” form, indicating that the KC-790125 Items had been returned “complete” to Drews & Sons’ supplier on 9 December 1980.

1608. The United States concludes that, because Kharg did not own the G-186 Items on 19 January 1981, those items do not fall within the scope of Paragraph 9.

The Tribunal’s Decision

1609. The evidence presented satisfies the Tribunal that the G-186 Items were delivered to Kharg’s freight forwarder in the United States before 19 January 1981, and, thus, that title thereto had transferred to Kharg before that date.

1610. Equally, the evidence persuades the Tribunal that the G-186 Items were returned to the vendor, Drews & Sons, in December 1980. This evidence includes:

- (a) the AIOC internal “Return Goods Authorization” form, indicating that Purchase Order No. KC-790125 had been returned “complete” to Standco Industries, Inc., Drews & Sons’ supplier, on 9 December 1980;⁷⁸²

⁷⁸¹ See also *supra* para. 1258.

⁷⁸² See *supra* para. 1599 (c).

- (b) the 9 December 1980 confirmation, indicating that four cartons of various types of studs had been shipped to Standco Industries, Inc. via ADS Company Pickup;⁷⁸³
- (c) the 10 December 1980 AIOC “Material Transfer” form regarding Purchase Order No. KC-790125, indicating that the KC-790125 Items had been returned to the vendor;⁷⁸⁴
- (d) the 15 December 1980 letter from Standard Oil Company (Indiana) to Drews & Sons, referencing Purchase Orders Nos. KC-790125 and KC-790007-01 and stating that “the material [Drews & Sons] advised [it] would accept on the above purchase orders was returned to [its] supplier, Standco Ind. Inc.” on 10 December 1980;⁷⁸⁵
- (e) the 3 February 1981 “Agreement of Sale” between AIOC, acting on behalf of Kharg, and Drews & Sons, through which Drews & Sons purchased the KC-790125 Items and items of Purchase Order KC-790007-01 described as “200 5/8 x 3.”⁷⁸⁶

1611. Further, the Tribunal finds that the United States has adequately investigated this Claim and informed Iran appropriately. The United States first learned that Iran was asserting a claim for the KC-790125 Items on 31 August 1983, when Iran presented its Reply to the United States’ Statement of Defense.⁷⁸⁷ In its 17 September 1984, 30 October 1985, and 5 July 1990 reports to the Tribunal on Iranian tangible properties, the United States advised Iran that the KC-790125 Items had been returned for credit to the vendor.⁷⁸⁸ The United States learned that Iran was also asserting a claim for items of Purchase Order KC-790007-01 only in 2014, at the Hearing.

⁷⁸³ See *supra* para. 1599 (d).

⁷⁸⁴ See *supra* para. 1599 (e).

⁷⁸⁵ See *supra* para. 1599 (f).

⁷⁸⁶ See *supra* para. 1599 (g).

⁷⁸⁷ Reply of the Islamic Republic of Iran to the Statement of Defense of the United States to Claims Nos. II-A and II-B, Appendix G, at 17 (31 Aug. 1983).

⁷⁸⁸ See *supra* paras. 1601 & 1603.

1612. The Tribunal notes, moreover, that, with its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States produced, *inter alia*, AIOC's 11 June 1980 letter to Drews & Sons and Standard Oil Company (Indiana)'s 15 December 1980 letter to Drews & Sons.⁷⁸⁹ In addition, with its Response of 26 September 2001 to Iran's brief and evidence, the United States produced all other significant documents relating to this Claim,⁷⁹⁰ other than Drews & Sons' 15 August 1979 invoice No. 5226,⁷⁹¹ Kharg's 1 September 1979 check for USD 354.16,⁷⁹² and Kharg's a letter dated 14 March 1983 to Drews & Sons,⁷⁹³ which were originally proffered by Iran.

1613. Iran has not shown that it gave adequate direction to AIOC to effect the transfer of the G-186 Items to Iran.

1614. Based on all the above circumstances, even assuming that the G-186 Items were Iranian properties and still in existence within the jurisdiction of the United States on 19 January 1981, the Tribunal concludes that, considering the information that the United States possessed about the G-186 Items, the United States did everything it could have reasonably been expected to do to satisfy its Paragraph 9 obligation to take steps to ensure that the G-186 Items were transferred to Iran.⁷⁹⁴

1615. In light of the above conclusion, the Tribunal need not decide whether AIOC, as the purchasing agent of Kharg, had the authority to sell the G-186 items back to the vendor.

1616. In view of the foregoing, the Tribunal dismisses Claim G-186.

⁷⁸⁹ See *supra* para. 1599 (b) & (f).

⁷⁹⁰ See *supra* para. 1599 (c)-(e), (g) & (i).

⁷⁹¹ See *supra* para. 1597.

⁷⁹² See *id.*

⁷⁹³ See *supra* para. 1599 (j).

⁷⁹⁴ See *supra* paras. 169 & 211.

(xxi) *Claim G-187 (Kharg/The Kerite Co.)*

Introduction

1617. In Claim G-187, Iran seeks a maximum of USD 7,472.65 in damages for the United States' alleged failure to arrange for the transfer to Iran of 2,000 feet of electrical power cable purchased from The Kerite Company ("Kerite").

Factual Background

1618. On 24 July 1979, AIOC, on behalf of Kharg, ordered 2,000 feet of electrical power cable from Kerite ("G-187 Item"). According to a Kerite shipping report in evidence, the G-187 Item was shipped to Kharg's freight forwarder in Houston on 8 August 1979. On 9 August 1979, Kerite issued invoice No. 4544U, billing Kharg USD 7,472.65 for that item, which amount (minus a 0.5 percent discount) Kharg paid on 2 September 1979.

1619. The March and April 1980 Lists⁷⁹⁵ indicate that, in those months, the G-187 Item was in storage in Houston, at the warehouse of Kharg's freight forwarder.

1620. An AIOC "Vendee Material Status Report" in evidence, dated 2 December 1980, indicates that the G-187 Item, "complete order," had been sent to the "IPAC surplus account" on 20 October 1980. In this context, the Tribunal notes that one of the copies of Purchase Order No. KC-790033 in evidence, submitted by the United States, contains what appears to be a contemporaneous handwritten annotation, reading: "To IPAC surplus acct 10/20/80."

1621. To prove that the G-187 Item had been transferred to the "IPAC surplus account," the United States submitted, *inter alia*, an undated ADS "Material Transfer – Supplement" form, which records Purchase Order No. KC-790033 and the G-187 Item and contains the "Reference: "IP(H)0022(81); IP(H)0023(81); IP(H)0024(81)[;] IP(H)0025(81)." The United States has not explained how this document correlates to the "IPAC surplus account."

1622. By letter of 14 March 1983, Kharg informed Kerite that it had found an "outstanding amount" of USD 7,435.29 in Kerite's account on Kharg's books relating to Purchase Order

⁷⁹⁵ See *supra* paras. 1221-1222.

No. KC-790033 and requested that Kerite either deliver the G-187 Item or reimburse the USD 7,435.29 to Kharg. There is no evidence that Kharg received any reply.

The Parties' Reports to the Tribunal on Iranian Tangible Properties

1623. In its 17 September 1984 report to the Tribunal on Iranian tangible properties, the United States, with respect to Claim G-187, noted: "Documents provided by Iran indicate property shipped to Iranian agent in August 1979. Kerite presumes goods shipped to Iran because not returned to Kerite."

1624. In its 17 July 1985 supplemental report to the Tribunal on Iranian tangible properties, Iran reiterated that the G-187 Item had not been delivered to Kharg.

1625. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States indicated: "U.S. company sold cable to Amoco; shipped to Kharg via World in 1979. Amoco transferred to IPAC surplus account on October 20, 1980." With its report, the United States submitted, *inter alia*, the copy of Purchase Order No. KC-790033 bearing the handwritten annotation, reading: "To IPAC surplus acct 10/20/80."⁷⁹⁶

The Parties' Contentions

Iran's Contentions

1626. Iran asserts that the G-187 Item was still in storage in Houston with the freight forwarder on 19 January 1981. Accordingly, Iran continues, because the G-187 Item was owned by Kharg and still in existence within the jurisdiction of the United States on that date, it falls within the scope of "Iranian properties" under Paragraph 9.

The United States' Contentions

1627. The United States maintains that it bears no responsibility for this Claim because AIOC sent the G-187 Item to the IPAC scrap account on 20 October 1980. As a result, the United States contends, at that time, Kharg lost title to that item. Accordingly, the United States concludes that, because the G-187 Item was not owned by Iran on 19 January 1981, it does not fall within the scope of "Iranian properties" under Paragraph 9.

⁷⁹⁶ See *supra* para. 1620.

The Tribunal's Decision

1628. The evidence satisfies the Tribunal that the G-187 Item was delivered to Kharg's freight forwarder in Houston prior to 19 January 1981, and, thus, that title thereto had transferred to Kharg before that date.

1629. The question thus becomes whether the G-187 Item was still in existence within the jurisdiction of the United States on 19 January 1981.

1630. The Tribunal is persuaded by the evidence presented that AIOC sent the G-187 Item to the "IPAC surplus account" in October 1980.⁷⁹⁷ This evidence, which is not disputed by Iran, was offered by the United States with its 5 July 1990 report to the Tribunal on Iranian tangible properties and its Response of 26 September 2001 to Iran's brief and evidence.⁷⁹⁸ The Tribunal finds, on balance, that the United States has adequately investigated this Claim and informed Iran accordingly in its submissions to the Tribunal.

1631. While the indication that the G-187 Item had been sent to the surplus account in October 1980 does not necessarily imply that it had been physically destroyed prior to 19 January 1981, the Tribunal considers that it was not unreasonable for the United States to assume that that item no longer existed as of that date.

1632. Iran has not been able to establish with reliable evidence that the G-187 Item was still in existence within the jurisdiction of the United States on 19 January 1981, nor has it shown that it has given adequate direction to AIOC to effect the transfer of the G-187 Item to Iran.

1633. In light of all the above, the Tribunal concludes that, even assuming that the G-187 Item still existed within the jurisdiction of the United States on 19 January 1981, the United States did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the G-187 Item was transferred to Iran.⁷⁹⁹

1634. Based on the foregoing, the Tribunal dismisses Claim G-187.

⁷⁹⁷ See *supra* para. 1620.

⁷⁹⁸ See *id.*

⁷⁹⁹ See *supra* paras. 169 & 211.

(xxii) *Claim G-188 (Kharg/Electro Wire, Inc.)*

Introduction

1635. In Claim G-188, Iran seeks a maximum of USD 1,975 in damages for the United States' alleged failure to arrange for the transfer to Iran of 5,000 feet of cable purchased from Electro Wire, Inc. ("Electro Wire").

Factual Background

1636. On 24 July 1979, AIOC, on behalf of Kharg, ordered 5,000 feet of copper control cable from Electro Wire ("G-188 Item") under Purchase Order No. KC-790033-01 at a price of USD 1,975. On 30 July 1979, Electro Wire issued invoice No. 2258, billing Kharg USD 1,975 for the G-188 Item, which amount (less a 1 percent discount) Kharg paid on 19 August 1979.

1637. According to Electro Wire's invoice No. 2258, the G-188 Item was shipped to WEPAC in Houston on 20 July 1979. The March and April 1980 Lists⁸⁰⁰ indicate that, in those months, the G-188 Item was still in storage in Houston, at the warehouse of Kharg's freight forwarder.

1638. The AIOC "Vendee Material Status Report," dated 2 December 1980 that is discussed *supra*, in connection with Claim G-187,⁸⁰¹ indicates that the G-188 Item, "complete order," had also been sent to the "IPAC surplus account" on 20 October 1980.

1639. By letter of 14 March 1983, Kharg informed Electro Wire that it had found an "outstanding amount" of USD 1,955.25⁸⁰² in Electro Wire's account on Kharg's books relating to Purchase Order No. "KC-79 0033" and requested that Electro Wire either deliver the G-188 Item or reimburse the USD 1,955.25 to Kharg. There is no evidence that Kharg received any reply.

⁸⁰⁰ See *supra* paras. 1221-1222.

⁸⁰¹ See *supra* para. 1620.

⁸⁰² This is the sum that Kharg paid Electro Wire on 19 August 1979, corresponding to the amount of invoice No. 2258 minus the 1 percent discount. See *supra* para. 1636.

*The Parties' Contentions**Iran's Contentions*

1640. Iran asserts that the G-188 Item was still in storage in Houston with the freight forwarder on 19 January 1981. Accordingly, Iran continues, because the G-188 Item was owned by Kharg and still in existence within the jurisdiction of the United States on that date, it falls within the scope of "Iranian properties" under Paragraph 9.

The United States' Contentions

1641. The United States maintains that it bears no responsibility for this Claim because AIOC sent the G-188 Item to the IPAC scrap account on 20 October 1980. As a result, the United States contends, at that time, Kharg lost title to that item. Accordingly, the United States concludes that, because the G-188 Item was not owned by Iran on 19 January 1981, it does not fall within the scope of "Iranian properties" under Paragraph 9.

The Tribunal's Decision

1642. The evidence satisfies the Tribunal that the G-188 Item was delivered to Kharg's freight forwarder in Houston prior to 19 January 1981, and, thus, that title thereto had transferred to Kharg before that date.

1643. The question before the Tribunal is whether the G-188 Item was still in existence within the jurisdiction of the United States on 19 January 1981.

1644. The Tribunal is persuaded by the evidence presented that AIOC sent the G-188 Item to the "IPAC surplus account" in October 1980.⁸⁰³ This evidence, which is not disputed by Iran, was offered by the United States with its Response of 26 September 2001 to Iran's brief and evidence.

1645. While the indication that the G-188 Item had been sent to the surplus account in October 1980 does not necessarily imply that it had been physically destroyed prior to 19 January 1981, the Tribunal considers that it is quite possible that that item no longer existed

⁸⁰³ See *supra* para. 1638.

as of that date. Iran has not been able to establish with reliable evidence that the G-188 Item was still in existence within the jurisdiction of the United States on 19 January 1981.

1646. In the absence of countervailing evidence, and on the present record, the Tribunal is not prepared to presume that the G-188 Item still existed within the jurisdiction of the United States on the date of the Algiers Declarations.

1647. Based on the foregoing, the Tribunal dismisses Claim G-188.

(xxiii) Claim G-189 (Kharg/Powers Industries, Inc.)

Introduction

1648. In Claim G-189, Iran seeks USD 5,320 in damages for the United States' alleged failure to arrange for the transfer to Iran of two "cabin portable exterior building" units purchased from Powers Industries, Inc. ("Powers Industries").

Factual Background

1649. On 26 September 1978, AIOC, on behalf of Kharg, ordered various materials from Powers Industries under Purchase Order No. KC-780212-01, including, as Items 13 and 14, respectively, three and two units of assembled "cabin portable exterior building[s]," priced at USD 5,722.90 and USD 5,320, respectively. Claim G-189 concerns the two "cabin portable exterior building" units listed as Item 14.

1650. On 27 November 1978, Powers Industries issued invoice No. 28104, billing Kharg USD 5,722.90 and USD 5,320 for Items 13 and 14, respectively,⁸⁰⁴ which amounts Kharg paid by check dated 3 June 1979.⁸⁰⁵

1651. By telex of 12 July 1979, AIOC informed Kharg that, among others, Item 13 of Purchase Order No. KC-780212-01 had been shipped to Iran aboard the vessel *S.S. Feax*, with an estimated time of arrival of 10 August 1979 at Kharg Island. In this connection, the Tribunal notes the copy of a 5 July 1979 World Trade "Liner Bill of Lading" in evidence, indicating

⁸⁰⁴ Powers Industries issued a separate invoice billing Kharg for all other items covered by Purchase Order No. KC-780212-01.

⁸⁰⁵ Kharg's check was for USD 11,575.90, which sum comprised the total price of Items 13 and 14 – that is, USD 11,042.90 – plus freight charges amounting to USD 533.

that, among others, “3 boxes – portable buildings” under Purchase Order No. KC-780212-01 had been shipped aboard the *S.S. Feax*, with destination Kharg Island.

1652. On 30 July 1979, WEPAC sent a material receipt note to AIOC, stating the following:

Please revise . . . P.O. No. KC 78 0212-1 . . . to delete Item 14 due to material to be returned to the vendor. Item 13 was shipped on SS “Feax” with an E.T.A. of 8-20-79.

1653. By letter of 14 March 1983, Kharg informed Powers Industries that it had found an “outstanding amount” of USD 11,575.90 in Powers Industries’ account on Kharg’s books relating to Purchase Order No. KC-780212-01 and requested that Powers Industries either furnish the materials or reimburse the USD 11,575.90 to Kharg. There is no evidence that Kharg received any reply.

The Parties’ Reports to the Tribunal on Iranian Tangible Properties

1654. Iran first asserted Claim G-189 in its 31 August 1983 Reply to the United States’ Statement of Defense. In that pleading, Iran valued the items in dispute at USD 11,575.90, which indicates that Iran originally claimed for both Items 13 and 14 of Purchase Order No. KC-780212-01.⁸⁰⁶

1655. In its 5 July 1990 report to the Tribunal on Iranian tangible properties, the United States, *inter alia*, indicated: “Amoco records show most items shipped to Kharg via M/V CONCORDIA TADJ, eta January 11, 1979 and balance shipped via S/S FEAX, eta August 10, 1979.”

The Parties’ Contentions

Iran’s Contentions

1656. In light of the evidence, Iran accepts that Item 13 of Purchase Order No. KC-780212-01 was shipped to Kharg in Iran aboard the *S.S. Feax*, with an estimated time of arrival of 10 August 1979. Further, Iran accepts that Item 14 was deleted from the order, and that it was returned to the vendor sometime after 30 July 1979, the date of WEPAC’s material receipt note

⁸⁰⁶ See *supra* note 805.

to AIOC.⁸⁰⁷ Iran contends that, however, there is no evidence that Kharg received any reimbursement for the cancellation of the order, which must have been accounted for by AIOC. Iran, therefore, claims for the value of the item.

The United States' Contentions

1657. The United States agrees with Iran on the facts of this Claim. It argues, however, that, because Kharg, or AIOC acting on behalf of Kharg, cancelled Item 14 from Purchase Order No. KC-780212-01 as of 30 July 1979, Kharg did not own that item on 19 January 1981. Accordingly, the United States concludes, Item 14 does not fall within the scope of Paragraph 9.

The Tribunal's Decision

1658. In its final pleadings, Iran made clear that Claim G-189 relates only to Item 14 of Purchase Order No. KC-780212-01.⁸⁰⁸ It is undisputed that Item 14 was delivered to Kharg's freight forwarder in Houston in late 1978 or in 1979. Consequently, the Tribunal holds that title to Item 14 transferred to Kharg prior to 19 January 1981.

1659. There is nothing in the record showing the location and fate of Item 14 after 30 July 1979, the date of WEPAC's material receipt note to AIOC.⁸⁰⁹ That Item 14 was returned to the vendor sometime after that date does not necessarily imply that it still existed within the jurisdiction of the United States on 19 January 1981, and the Tribunal, in the absence of any evidence on this point, is not prepared to presume that it was.

1660. Accordingly, to the extent that Iran is making a claim under Paragraph 9 for the value of Item 14, the Tribunal holds that it has not been established that Item 14 existed within the jurisdiction of the United States on 19 January 1981, and, thus, that it falls within the meaning of "Iranian properties" under Paragraph 9. Hence, Iran's claim for the value of that item is dismissed.

⁸⁰⁷ See *supra* para. 1652.

⁸⁰⁸ See *supra* para. 1656.

⁸⁰⁹ See *supra* para. 1652.

1661. To the extent that Iran is making a claim, under Paragraph 9, Paragraph 8, or General Principle A, for the return of the USD 5,320 that Kharg paid to Powers Industries in 1979,⁸¹⁰ any such claim must also be dismissed for the reasons set forth earlier in this Partial Award.⁸¹¹

(xxiv) Claim G-190 (Kharg/American Society of Mechanical Engineers)

Introduction

1662. In Claim G-190, Iran seeks USD 62 in damages for the United States' alleged failure to arrange for the transfer to Iran of "manuals" purchased from The American Society of Mechanical Engineers ("ASME").

1663. Claim G-190 was not included in the schedule for the Hearing in the second phase of the proceedings in the present Cases and belongs to the group of Claims to be "decided by the Tribunal on the basis of the documents before it."⁸¹²

Factual Background

1664. The record contains the copy of a largely illegible invoice issued by ASME sometime in 1979, billing Kharg USD 62 for a number of items.

1665. The record further contains the copy of a letter dated 15 May 1983, by which Kharg informed ASME that it had found an "outstanding amount" of USD 62 in ASME's account on Kharg's books in connection with Purchase Order No. "KC-78411-01" dated 1 February 1979 and requested that ASME either furnish the material or reimburse the USD 62 to Kharg.

1666. Iran proffered no further evidence in support of Claim G-190.

The Parties' Reports to the Tribunal on Iranian Tangible Properties

1667. Iran first asserted Claim G-190 in its 31 August 1983 Reply to the United States' Statement of Defense. In that pleading, Iran identified ASME as the holder of the items in dispute, which it described as "[m]aterials" valued at USD 62. In its 27 January 1984 response

⁸¹⁰ See *supra* paras. 1650 & 1656.

⁸¹¹ See *supra* paras. 99, 223-232, 247, 828, 1210.

⁸¹² See *supra* para. 50.

to the United States' request for additional information on Iranian tangible properties, Iran clarified that the materials in question were "[m]anuals." In its 17 December 1984 report to the Tribunal on Iranian tangible properties, Iran indicated that ASME's invoice to Kharg was dated 1 September 1979 and bore the number "91090139."⁸¹³

1668. Iran provided no further information about Claim G-190 in any of its reports to the Tribunal on Iranian tangible properties.

The Parties' Contentions

Iran's Contentions

1669. Other than the statements it made in its reports to the Tribunal on Iranian tangible properties, Iran submitted no pleadings concerning Claim G-190, either in its written submissions or at the Hearing.

The United States' Contentions

1670. The United States contends that, because Iran never submitted any pleadings in respect of Claim G-190 following the Tribunal's Order of 30 June 1992,⁸¹⁴ it failed to preserve this Claim, which should therefore be dismissed.

The Tribunal's Decision

1671. Iran submitted no argument and virtually no evidence in support of Claim G-190. Consequently, the Tribunal dismisses Claim G-190 on the ground that it is unsubstantiated.

(xxv) Claim 1996-A (Kharg/Cooper Energy Services)

Introduction

1672. In Claim 1996-A, Iran seeks a maximum of USD 7,192.68 in damages for the United States' alleged failure to arrange for the transfer to Iran of certain items purchased from Cooper Energy Services ("Cooper").

⁸¹³ See *supra* para. 1664.

⁸¹⁴ See *supra* para. 39 & note 676.

1673. More specifically, in this Claim, Iran asserts non-receipt of two units of spare engine parts ordered under Purchase Order No. KC-780227 and one item, consisting of six compressor valves, ordered under Purchase Order KC-780141 (collectively, the “1996-A Items”).

Factual Background

1674. On 28 November 1978, Cooper issued invoice No. 1133426, billing Kharg USD 4,622.40 under Purchase Order No. KC-780141 for six compressor valves, which are listed as item “17” on Cooper’s invoice (“Item 17”). Kharg paid Cooper the USD 4,622.40 on 3 June 1979.

1675. On 20 March 1979, Cooper issued invoice No. 0832851, billing Kharg USD 2,570.28 under Purchase Order No. KC-780227 for three units of spare engine parts (“KC-780227 Items”). Kharg paid Cooper that amount on 25 October 1979.

1676. A WEPAC “Material Receipt Register” in evidence indicates that two units of the KC-780227 Items were received by the freight forwarder in Houston on 22 August 1979. Further, a 2 December 1980 AIOC “Vendee Material Status Report” indicates that: (i) one out of three units of the KC-780227 Items had been shipped to Kharg aboard the vessel *S.S. Concordia Tadj*, with an estimated date of arrival in Iran of 11 January 1979; and (ii) the remaining two units of the KC-780227 Items were located “at packer (Ocean) Houston 8/22/79, Item 1 (2 ea) to complete order.”

1677. The 2 December 1980 AIOC “Vendee Material Status Report” further indicates that, while a number of materials of Purchase Order No. KC-780141 had been sent to Kharg through various shipments aboard the vessels *S.S. Concordia Tadj* and *S.S. Feax*, with estimated dates of arrival in Iran between 30 September 1978 and 10 August 1979, Item 17 had not been shipped to Kharg. With respect to Item 17, the “Vendee Material Status Report” noted, rather: “At [packer] (Ocean) [Houston] 7/6/79 item 17 to complete order.” The Tribunal notes that the 2 December 1980 AIOC “Vendee Material Status Report” was proffered by the United States with its Response of 26 September 2001 to Iran’s brief and evidence.

1678. According to the March and April 1980 Lists,⁸¹⁵ in those months, items of Purchase Orders Nos. KC-780227 and KC-780141 were in storage in Houston at the warehouse of the freight forwarder, World Trade.

The Parties' Contentions

Procedural Objections Common to All of Iran's 1996 Claims Involving Kharg

Introduction

1679. Iran asserted Claims 1996-A, 1996-B, 1996-C, 1996-D, and 1996E/F ("1996 Claims") for the first time in its brief and evidence of 26 December 1996 and further addressed those Claims at the Hearing.

The United States' Contentions

1680. The United States argues that the 1996 Claims represent new claims that are barred by the Tribunal Rules and the doctrine of extinctive prescription given that Iran notified the United States of these Claims only some 15 years after the execution of the Algiers Declarations. According to the United States, Iran unreasonably delayed the presentation of the 1996 Claims; as a result, the United States has suffered substantial prejudice because, due to the passage of time, the necessary evidence to defend fully against those claims has become unavailable to it. Thus, the United States contends, Iran's 1996 Claims should be disallowed under both Article 20 of the Tribunal Rules and the international law doctrine of extinctive prescription.

Iran's Contentions

1681. Iran, for its part, contends that, because the United States' obligation under Paragraph 9 is a continuing one, there is no time-limit for the submission of claims for a breach of that provision. Iran further argues that the United States has not been prejudiced by the timing of the submission of the 1996 Claims. In this connection, Iran asserts, in particular, that: (i) the United States has been able to produce detailed information in relation to Claims 1996-A and

⁸¹⁵ See *supra* paras. 1221-1222.

1996-D; and (ii) the United States has failed to provide any evidence of prejudice in relation to other 1996 Claims.

Merits of Claim 1996-A

Iran's Contentions

1682. Based on the 2 December 1980 AIOC "Vendee Material Status Report,"⁸¹⁶ Iran contends that it has been established, as the United States concedes, that (i) two units of the KC-780227 Items and (ii) Item 17 were located at the freight forwarder's premises in Houston on 2 December 1980. Further, pointing to the United States' inability to document the subsequent disposition of those items, Iran argues that it can be presumed that they were in existence within the jurisdiction of the United States on 19 January 1981.

The United States' Contentions

1683. The United States contends that it has been unable to document the disposition, after the March 1980 List, of the items of Purchase Orders Nos. KC-780227 and KC-780141 that were in storage with Kharg's freight forwarder in Houston.⁸¹⁷ According to the United States, however, given that AIOC resold or scrapped much of the material held at the freight forwarder's in the fall of 1980, it is likely that the 1996-A Items were also scrapped at the time.

The Tribunal's Decision

Procedural Objections Common to All of Iran's 1996 Claims Involving Kharg

1684. As an initial matter, it is irrelevant for the decision of the present procedural objections that, under Paragraph 17 of the General Declaration, there is no time-limit for the submission of a dispute concerning the interpretation or performance of any provision of the General Declaration.⁸¹⁸ The relevant question, rather, is whether, in the circumstances, Iran's 1996 Claims are admissible under the Tribunal Rules.

⁸¹⁶ See *supra* paras. 1676-1677.

⁸¹⁷ See *supra* para. 1678.

⁸¹⁸ Paragraph 17 of the General Declaration provides: "If any other dispute arises between the parties as to the interpretation or performance of any provision of this Declaration, either party may submit the dispute to binding

1685. In application of the principles set forth earlier in this Partial Award,⁸¹⁹ upon analysis, the Tribunal finds that, although they were asserted for the first time in Iran's brief and evidence of 26 December 1996, Iran's 1996 Claims neither disrupted nor delayed the arbitral proceedings. Further, the United States has had the opportunity to respond, and did in fact respond, to the legal and factual issues raised in those Claims, both in its written pleadings (in particular, in its response of 26 September 2001 to Iran's brief and evidence and its rebuttal brief and evidence of 17 January 2011) and at the Hearing. Thus, the United States has had the full opportunity to present its case, as required by Article 15 of the Tribunal Rules. In these circumstances, admission of Iran's 1996 Claims would not prejudice the United States. Accordingly, the Tribunal determines that Iran's 1996 Claims are admissible under Article 20 of the Tribunal Rules. In view of this conclusion, the United States' argument based on extinctive prescription is necessarily dismissed.

Merits of Claim 1996-A

1686. The evidence satisfies the Tribunal that the 1996-A Items were delivered to Kharg's freight forwarder in Houston in the summer of 1979,⁸²⁰ and, thus, that title thereto had transferred to Kharg before 19 January 1981. In view of its holding, *infra*, the Tribunal need not decide whether those items still existed within the jurisdiction of the United States on the date of the Algiers Declarations.

1687. As noted, Iran asserted Claim 1996-A on 26 December 1996, when it submitted its rebuttal brief and evidence.⁸²¹ Thus, the United States first learned about this Claim and the 1996-A Items almost 15 years after the date of the Algiers Declarations and over 17 years after those items had been delivered to Kharg's freight forwarder in Houston.⁸²² Given the considerable delay with which Iran notified the United States of Claim 1996-A, it stands to reason that it had become significantly more problematic for the United States to locate and

arbitration by the tribunal established by, and in accordance with the provisions of, the Claims Settlement Agreement" General Declaration, Paragraph 17, 1 IRAN-U.S. C.T.R. at 8. Article III, paragraph 4, of the Claims Settlement Declaration, in turn, provides that the deadline of 19 January 1982 for the submission of claims with the Tribunal "[does] not apply to the procedures contemplated by Paragraphs 16 and 17" of the General Declaration. Claims Settlement Declaration, Article III (4), 1 IRAN-U.S. C.T.R. at 10.

⁸¹⁹ See *supra* para. 221.

⁸²⁰ See *supra* paras. 1676-1677.

⁸²¹ See *supra* para. 1679.

⁸²² See *supra* para. 1686.

collect evidence to defend against this Claim. By the time the United States became aware of Claim 1996-A, the 1996-A Items may well have been lost, scrapped or otherwise disposed of by AIOC or the freight forwarders; those entities may well have discarded or misplaced relevant records; and the memories of persons involved in the relevant events may well have faded.

1688. The United States researched, to the extent possible, Claim 1996-A and was able to produce, with its Response of 26 September 2001 to Iran's brief and evidence, the 2 December 1980 AIOC "Vendee Material Status Report" showing that, as of that date, the 1996-A Items were located at the packer's in Houston.⁸²³ The United States further produced the March 1980 List.⁸²⁴ These documents represent evidence that the United States sought and obtained at its request, likely from AIOC. In its Response of 26 September 2001, the United States indicated that it had been unable to document the further disposition of the 1996-A Items.⁸²⁵

1689. In light of the above, the Tribunal holds that the United States adequately investigated Claim 1996-A and did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the 1996-A Items were transferred to Iran.⁸²⁶

1690. Based on the foregoing, the Tribunal dismisses Claim 1996-A.

(xxvi) Claim 1996-B (Kharg/Dallas Instruments, Inc.)

Introduction

1691. In Claim 1996-B, Iran seeks USD 5,144.51 in damages for the United States' alleged failure to arrange for the transfer to Iran of certain equipment purchased from Dallas Instruments, Inc. ("Dallas Instruments").

⁸²³ See *supra* paras. 1676-1677.

⁸²⁴ See *supra* para. 1678.

⁸²⁵ See *supra* para. 1683.

⁸²⁶ See *supra* paras. 169 & 211.

Factual Background

1692. On 28 March 1979, Dallas Instruments issued invoice No. 16391F, billing Kharg USD 5,144.51 under Purchase Order No. KC-780326 for a tape recorder, a rechargeable battery, a timing module, and some operating and maintenance manuals (“1996-B Items”). In the field “Date Shipped,” the invoice indicates 27 March 1979. Kharg paid Dallas Instruments’ invoice by check on 24 June 1979.

1693. By letter of 2 May 1983, responding to an inquiry by Kharg, Dallas Instruments informed as follows:

Enclosed please find copies of our packing list and air bill showing shipment of the material in question. [Enclosed is also] a copy of P.O. KC-780326 . . . showing shipping instructions. As you can see, we followed exactly all shipping instructions on the P.O.

We suggest you take this matter up with Amoco Research Center. They should be able to tell you what they have done and where they shipped the instrument after they received it from us.

*The Parties’ Contentions**Iran’s Contentions*

1694. Iran asserts that there is no evidence as to the fate of the 1996-B Items after they were delivered to either AIOC or Kharg’s freight forwarder in 1979. In particular, Iran continues, there is no evidence that they were shipped to Iran. According to Iran, therefore, it must be presumed that the 1996-B Items remained within the United States’ jurisdiction on 19 January 1981.

The United States’ Contentions

1695. The United States contends that Iran has failed to prove that the 1996-B Items were within the jurisdiction of the United States on 19 January 1981.

The Tribunal’s Decision

1696. The Tribunal is satisfied on the basis of the evidence presented that the 1996-B Items were delivered to either AIOC or Kharg’s freight forwarder in the United States in

early/mid-1979.⁸²⁷ Accordingly, the Tribunal holds that title to those items transferred to Kharg at that time. The crucial question in this Claim therefore becomes whether the 1996-B Items were still in existence within the jurisdiction of the United States on 19 January 1981.

1697. Claim 1996-B generally suffers from a scarcity of both evidence and argument. There is nothing in the record showing the location and fate of the 1996-B Items after they were delivered to either AIOC or Kharg's freight forwarder in early/mid-1979. That those items were located in the United States at that time does not necessarily imply that they still existed within the jurisdiction of the United States on 19 January 1981, and the Tribunal, on the record before it, is not prepared to presume that they were. In this connection, the Tribunal notes, further, that neither the March 1980 nor the April 1980 List records items of Purchase Order No. 780326 as being in storage in Houston in those months.

1698. In light of the above, the Tribunal holds that Iran has not proven that the 1996-B Items were in existence within the jurisdiction of the United States on 19 January 1981, and, thus, that they fall within the scope of Paragraph 9.

1699. Based on the foregoing, the Tribunal dismisses Claim 1996-B.

(xxvii) Claim 1996-C (Kharg/Ingersoll Rand Equipment Corp.)

Introduction

1700. In Claim 1996-C, Iran seeks USD 7,302.20 in damages for the United States' alleged failure to arrange for the transfer to Iran of equipment purchased from Ingersoll Rand Equipment Corporation ("Ingersoll").

Factual Background

1701. The record contains copies of two invoices issued by Ingersoll under Purchase Order No. KC-790051, one undated and the other dated 29 August 1979, billing Kharg a total of USD 7,3012.20 for some 36 items ("1996-C Items"). The record further contains the copy of a check dated 25 October 1979, through which Kharg paid this amount to Ingersoll. Iran submitted no further evidence in support of this Claim.

⁸²⁷ See *supra* paras. 1692-1693.

The Parties' Contentions

Iran's Contentions

1702. Iran contends that the documents it produced prove that Kharg owned the 1996-C Items. Iran further contends that, because the United States has not proffered any evidence showing that the 1996-C Items were shipped to Iran, it should be presumed that those items existed within the jurisdiction of the United States on 19 January 1981.

The United States' Contentions

1703. The United States contends that Iran's evidence is inadequate to prove that the 1996-C Items were within the jurisdiction of the United States on 19 January 1981, or that Iran had title to them.

The Tribunal's Decision

1704. This Claim is characterized by a paucity of both evidence and argument. Even if the Tribunal were prepared to assume that title to the 1996-C Items had passed to Kharg through delivery to either AIOC or Kharg's freight forwarder in 1979, around the time when Ingersoll billed Kharg for those items,⁸²⁸ there is nothing in the record showing the location of the 1996-C Items on 19 January 1981.

1705. Accordingly, the Tribunal holds that Iran has not proven that the 1996-C Items were within the jurisdiction of the United States on 19 January 1981, and, thus, that they fall within the scope of Paragraph 9.

1706. Based on the foregoing, the Tribunal dismisses Claim 1996-C.

(xxviii) Claim 1996-D (Kharg/Scientific Energy Systems Corp.)

Introduction

1707. In Claim 1996-D, Iran seeks USD 38,235 in damages for the United States' alleged failure to arrange for the transfer to Iran of certain equipment purchased from Scientific Energy Systems Corporation ("SESC").

⁸²⁸ See *supra* para. 1701.

Factual Background

1708. Iran asserts non-receipt of: (i) a BETA 200 analyzer system and accessories under Purchase Order No. KC-780134; and (ii) two different models of “transducer” under Purchase Order No. KC-780362. SESC’s supplier for these materials was the company PMC/Beta Corporation (“PMC/Beta”). (The items of Purchase Orders Nos. KC-780134 and KC-780362 in dispute will be hereinafter also referred to, collectively, as “1996-D Items.”)

1709. The record of this Claim contains, among others, copies of the following documents:

- (a) Purchase Order No. KC-780134 dated 26 September 1978, through which AIOC ordered from SESC a BETA 200 analyzer system, together with accessories, at a total purchase price of USD 36,120;
- (b) PMC/Beta invoice No. 0245 stamped received on 11 October 1979, billing Kharg USD 36,120 under Purchase Order No. KC-780134 for the BETA 200 analyzer system, together with accessories;
- (c) invoice No. 0385 issued by PMC/Beta on 16 October 1979, billing Kharg USD 2,115 under Purchase Order No. KC-780362 for two different models of “transducers”;
- (d) checks Nos. 6086 and 6088, both dated 3 September 1979, for USD 20,000 and USD 18,235, respectively, issued by Kharg in favor of SESC in relation to Purchase Orders Nos. KC-780134 and KC-780362;
- (e) an AIOC “Vendee Material Status Report,” dated 2 December 1980, indicating that the 1996-D Items, “complete order,” had been sent to the “Kharg Chemical surplus account” on 1 December 1980;
- (f) a letter dated 19 December 1982, by which Kharg informed PMC/Beta that it had found an “outstanding amount” of USD 36,120 in PMC/Beta’s account on Kharg’s books in connection with Purchase Order No. KC-780134 and requested that PMC/Beta either furnish the materials or reimburse the USD 36,120 to Kharg;

- (g) a letter dated 2 January 2001 from Metrix-PCM/Beta to the State Department, responding to a request for information and advising that Metrix-PCM/Beta “only [kept] [its] records for 7 years” and therefore was “unable to provide” the documents requested.

The Parties’ Contentions

Iran’s Contentions

1710. According to Iran, that the 1996-D Items were sent to the Kharg Chemical surplus account on 1 December 1980 does not necessarily mean that they had in fact been scrapped prior to 19 January 1981. Consequently, Iran contends, it must be presumed that those items still existed within the jurisdiction of the United States on that date.

The United States’ Contentions

1711. The United States contends that Iran has failed to prove that the 1996-D Items existed within the jurisdiction of the United States on 19 January 1981. According to the United States, those items had been scrapped by AIOC prior to that date.

The Tribunal’s Decision

1712. The 2 December 1980 AIOC “Vendee Material Status Report” shows that the 1996-D Items had been delivered to either AIOC or Kharg’s freight forwarder in 1979 or 1980,⁸²⁹ and, therefore, that title thereto had transferred to Kharg before 19 January 1981. In view of its holding, *infra*, the Tribunal need not decide whether those items still existed within the jurisdiction of the United States on the date of the Algiers Declarations.

1713. As noted, Iran asserted Claim 1996-D on 26 December 1996, when it submitted its rebuttal brief and evidence.⁸³⁰ Thus, the United States first learned about this Claim and the 1996-D Items almost 15 years after the date of the Algiers Declarations and some 16-17 years after those items had been delivered to either AIOC or Kharg’s freight forwarder. Given the considerable delay with which Iran notified the United States of Claim 1996-D, it is logical

⁸²⁹ See *supra* para. 1709 (e).

⁸³⁰ See *supra* para. 1679.

that it had become appreciably more difficult for the United States to locate and collect evidence to defend against this Claim.⁸³¹

1714. The United States researched, to the extent possible, Claim 1996-D and was able to produce, with its Response of 26 September 2001 to Iran's brief and evidence, the 2 December 1980 AIOC "Vendee Material Status Report," showing that the 1996-D Items had been sent to the "Kharg Chemical surplus account" on 1 December 1980.⁸³² The United States further produced the 2 January 2001 letter from Metrix-PCM/Beta advising that Metrix-PCM/Beta "only [kept] [its] records for 7 years."⁸³³

1715. In light of the above, the Tribunal holds that the United States adequately investigated Claim 1996-D and did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the 1996-D Items were transferred to Iran.⁸³⁴

1716. Based on the foregoing, the Tribunal dismisses Claim 1996-D.

(xxix) Claim 1996-E/F (Kharg/Wilson Industries, Inc.)

Introduction

1717. In Claim 1996-E/F, Iran seeks a total of USD 15,458.07 in damages for the United States' alleged failure to arrange for the transfer to Iran of certain equipment purchased from Wilson Industries (the same vendor involved in Claim G-184⁸³⁵).

1718. This Claim relates to items ordered from Wilson Industries under six discrete purchase orders, namely, Purchase Orders Nos.: (i) KC-780378; (ii) KC-780436; (iii) KC-780456; (iv) KC-790054; (v) KC-790106; and (vi) KC-790123. Iran explained at the Hearing that Claim 1996-E/F "comprises the detailed breakdown of the approximately \$16,000 originally claimed by Iran under [C]laim G-167." The Tribunal will deal with each of these Purchase Orders separately.

⁸³¹ See also *supra* para. 1687.

⁸³² See *supra* para. 1709 (e).

⁸³³ See *supra* para. 1709 (g).

⁸³⁴ See *supra* paras. 169 & 211.

⁸³⁵ See *supra* para. 1566.

Purchase Order No. KC-780378

Factual Background

1719. On 14 December 1978, Wilson Industries issued invoice No. 128450, billing Kharg for three different kinds of Rustoleum paints under Purchase Order No. KC-780378, including USD 435.75 for 15 cans of Rustoleum paint, “heat resistant,” “glossy enamel,” which were to be shipped to WEPAC in Houston. The copy of the invoice in evidence, submitted by Iran, contains, next to the indication of the price of those paint cans, a hand-written notation, stating: “recd only one can.” Kharg paid Wilson Industries’ invoice by check on 3 June 1979. The copy of the check in evidence, also submitted by Iran, includes, next to the designation for invoice No. 128450, a hand-written notation, reading: “shortage \$406.70.”

1720. The record further contains, among others, copies of the following documents, which were produced by the United States with its Response of 26 September 2001:

- (a) a World Trade “Liner Bill of Lading,” dated 5 July 1979, relating to a shipment from Houston, Texas, to Kharg, in Iran, aboard the vessel *SS Feax*; this shipment included, among other things, four boxes containing different kinds of “paints” ordered under Purchase Order No. KC-780378;
- (b) an AIOC “Vendee Material Status Report,” dated 2 December 1980, indicating that the items of Purchase Order No. KC-780378: (i) had been received by Kharg’s freight forwarder in Houston on 4 December 1978; and (ii) had all been shipped to Kharg aboard the *S.S. Feax*, with an estimated time of arrival at Kharg Island of 10 August 1979, except “item 4 [14 ea],” which had been sent to “IPAC scrappage” on 21 October 1980.

The Parties’ Contentions

Iran’s Contentions

1721. Iran asserts that Kharg received only one of the 15 cans of the “heat resistant,” “glossy enamel” Rustoleum paint covered by Purchase Order No. KC-780378. In support, Iran relies on: (i) the hand-written notation on the copy of Wilson Industries’ invoice No. 128450 in

evidence;⁸³⁶ and (ii) the 2 December 1980 AIOC “Vendee Material Status Report,” indicating that all items of Purchase Order No. KC-780378 had been shipped to Kharg aboard the *S.S. Feax*, with an estimated time of arrival at Kharg Island of 10 August 1979, except “item 4 [14 ea],” which had been sent “IPAC scrappage” on 21 October 1980.⁸³⁷ In connection with the latter, Iran contends that “item 4 [14 ea]” corresponds to the 14 cans of Rustoleum paint that had been short shipped. Iran maintains that there is no evidence as to the fate of those items after they were sent to the scrap account. Thus, Iran concludes, it must be presumed that they still existed within the jurisdiction of the United States on 19 January 1981.

The United States’ Contentions

1722. The United States asserts that, because the item number for the disputed Rustoleum paint cans is not specified on Wilson Industries’ invoice No. 128450, it cannot be definitively determined whether those items were among the various paints shipped to Kharg in August 1979. In any event, the United States contends, those items: (i) had either been shipped to Iran in August 1979 aboard the *S.S. Feax* and, thus, were not within the jurisdiction of the United States on 19 January 1981; or (ii) had been sent to the IPAC scrap account on 21 October 1980, and, thus, Iran did not have title thereto on 19 January 1981.

The Tribunal’s Decision

1723. The 2 December 1980 AIOC “Vendee Material Status Report” shows that the Rustoleum paint cans at issue in this Claim had been delivered to Kharg’s freight forwarder on 4 December 1978,⁸³⁸ and, therefore, that title thereto had transferred to Kharg before 19 January 1981. In view of its holding, *infra*, the Tribunal need not decide whether those items still existed within the jurisdiction of the United States on the date of the Algiers Declarations.

1724. For reasons similar to those stated in relation to Claim 1996-D,⁸³⁹ the Tribunal holds that the United States adequately investigated Iran’s Claim concerning Purchase Order No. KC-780378 and did everything it could reasonably have been expected to do in the

⁸³⁶ See *supra* para. 1719.

⁸³⁷ See *supra* para. 1720 (b).

⁸³⁸ See *supra* para. 1720 (b).

⁸³⁹ See *supra* paras. 1713-1714.

circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the Rustoleum paint cans at issue in this Claim were transferred to Iran.⁸⁴⁰

1725. Based on the foregoing, the Tribunal dismisses Iran's Claim concerning Purchase Order No. KC-780378.

Purchase Order No. KC-780436

Factual Background

1726. In September 1979, AIOC placed Purchase Order No. KC-780436 with Wilson Industries for the purchase of one item of balancing equipment at a price of USD 1,728, which amount Kharg paid by check issued on 19 August 1979.

1727. With its response of 26 September 2001, the United States proffered a copy of an internal AIOC "Material Transfer" form dated 18 December 1980, indicating that the balancing equipment procured under Purchase Order No. KC-780436 had been transferred from the ADS warehouse in Houston to the "IPAC surplus account" on that date.

The Parties' Contentions

Iran's Contentions

1728. Iran asserts that Kharg never received the balancing equipment at issue in this Claim. Iran's position is that, because there is no evidence as to the fate of that item after it was sent to the "IPAC surplus account" in December 1980, it must be presumed that it still existed within the jurisdiction of the United States on 19 January 1981.

The United States' Contentions

1729. The United States contends that, because the disputed balancing equipment was sent to the "IPAC surplus account" in December 1980, Iran did not have title to this item on 19 January 1981.

⁸⁴⁰ See *supra* paras. 169 & 211.

The Tribunal's Decision

1730. The 18 December 1980 internal AIOC “Material Transfer” form shows that the balancing equipment procured under Purchase Order No. KC-780436 had been delivered to either AIOC or Kharg’s freight forwarder prior to December 1980, and, therefore, that title thereto had transferred to Kharg before 19 January 1981. In view of its holding, *infra*, the Tribunal need not decide whether that item still existed within the jurisdiction of the United States on the date of the Algiers Declarations.

1731. For reasons similar to those stated in relation to Claim 1996-D and Iran’s Claim concerning Purchase Order No. KC-780378,⁸⁴¹ the Tribunal holds that the United States adequately investigated Iran’s Claim concerning Purchase Order No. KC-780436 and did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the disputed balancing equipment was transferred to Iran.⁸⁴²

1732. Based on the foregoing, the Tribunal dismisses Iran’s Claim concerning Purchase Order No. KC-780436.

*Purchase Order No. KC-790106**Factual Background*

1733. In mid-1979, AIOC ordered 14 items of bolts and nuts from Wilson Industries under Purchase Order No. KC-790106 at a price of USD 915.33, which amount Kharg paid by check issued on 2 September 1979.

1734. The record contains, among others, copies of the following documents, which were produced by the United States with its Response of 26 September 2001:

- (a) an AIOC “Vendee Material Status Report,” dated 2 December 1980, indicating that: (i) items 1 through 12 of Purchase Order No. KC-790106 had been received by AIOC’s packer in Houston on 9 October 1979; and (ii) items 13 and

⁸⁴¹ See *supra* paras. 1713-1714 & 1724.

⁸⁴² See *supra* paras. 169 & 211.

14, which completed the order, had been received by the packer on 10 October 1979;

- (b) an internal AIOC “Material Transfer” form, dated 18 December 1980, indicating that all 14 items of Purchase Order No. KC-790106 had been transferred from the ADS warehouse in Houston to the “IPAC surplus account” on that date;

The Parties’ Contentions

Iran’s Contentions

1735. Iran asserts that Kharg did not receive any of the 14 items of bolts and nuts of Purchase Order No. KC-790106. Iran’s position is that, because there is no evidence as to the fate of those items after they were sent to the “IPAC surplus account” in December 1980, it must be presumed that they still existed within the jurisdiction of the United States on 19 January 1981.

The United States’ Contentions

1736. The United States contends that, because the 14 items of bolts and nuts at issue were sent to the “IPAC surplus account” in December 1980, Iran did not have title to those items on 19 January 1981.

The Tribunal’s Decision

1737. The 2 December 1980 AIOC “Vendee Material Status Report” shows that the 14 items of bolts and nuts of Purchase Order No. KC-790106 had all been received by AIOC’s packer in Houston by 10 October 1979,⁸⁴³ and, therefore, that title to those items had transferred to Kharg before 19 January 1981. In view of its holding, *infra*, the Tribunal need not decide whether those items still existed within the jurisdiction of the United States on the date of the Algiers Declarations.

1738. For reasons similar to those stated in relation to Claim 1996-D and Iran’s Claims concerning Purchase Orders Nos. KC-780378 and KC-780436,⁸⁴⁴ the Tribunal holds that the United States adequately investigated Iran’s Claim concerning Purchase Order No. KC-790106

⁸⁴³ See *supra* para. 1734 (a).

⁸⁴⁴ See *supra* paras. 1713-1714, 1724 & 1731.

and did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that the disputed 14 items of bolts and nuts were transferred to Iran.⁸⁴⁵

1739. Based on the foregoing, the Tribunal dismisses Iran's Claim concerning Purchase Order No. KC-790106.

Purchase Order No. KC-780456

Factual Background

1740. On or about 1 September 1979,⁸⁴⁶ AIOC ordered 34 items of technical equipment and tools from Wilson Industries under Purchase Order No. KC-780456 ("KC-780456 Items") at a price of USD 4,240.02.

1741. On 2 September 1979, Kharg issued check No. 6076 in favor of Wilson Industries in payment of that amount. By telex of 9 September 1979, Kharg advised AIOC that it would be air mailing to AIOC 16 checks, including check No. 6076, and requested that AIOC acknowledge receipt of the 16 checks and forward them to the "respective vendors." By telex of 18 September 1979 to Kharg, AIOC acknowledged receipt of those 16 checks. By an "Action Note" dated 1 November 1979, AIOC forwarded Kharg's check No. 6076 to Wilson Industries.

1742. According to the March and April 1980 Lists,⁸⁴⁷ in those months, KC-780456 Items invoiced at USD 1,512.17 were in storage in Houston, at the warehouse of World Trade, the freight forwarder designated by AIOC.

1743. The record further contains copies of, among others, the following documents:

⁸⁴⁵ See *supra* paras. 169 & 211.

⁸⁴⁶ Neither Party has produced a copy of Purchase Order No. KC-780456. The record contains a copy of Wilson Industries' Quotation No. H1-61-85467-9H of 16 July 1979 for the KC-780456 Items, addressed to Kharg c/o AIOC (*see infra* para. 1743 (a)); the last page of the Quotation bears a stamp, reading, *inter alia*: "VERIFIED: [initials, illegible] 8, 29, 79." Accordingly, in the absence of more conclusive evidence, the Tribunal assumes that the KC-780456 Items were ordered on 1 September 1979, three days following the verification date indicated on the stamp and one day before Kharg issued the check for USD 4240.02 in favor of Wilson Industries (*see supra* para. 1741).

⁸⁴⁷ See *supra* paras. 1221-1222.

- (a) Wilson Industries' "Quotation No. H1-61-85467-9H" to Kharg, issued on 16 July 1979 under Purchase Order No. KC-780456, listing 34 items of technical equipment and tools priced at a total of USD 4,240.02;
- (b) an internal AIOC "Material Transfer" form, dated 18 December 1980, indicating that items 1 through 7 and 16 through 34 of Purchase Order No. KC-780456, priced at USD 4,240.02, had been transferred from the ADS warehouse in Houston to the "IPAC surplus account";
- (c) invoice No. 192772 issued by Wilson Industries on 16 March 1981, billing Kharg USD 4,240.02 for the KC-780456 Items;
- (d) a "Release and Assignment of Claim" document, dated 16 March 1981, whereby Wilson Industries, "in consideration for the payment" of USD 4,240.02 it had received from AIOC: (i) released AIOC and Amoco Iran Oil Company and their affiliates "from any and all claims or causes of action" that Wilson Industries may have had against AIOC, Amoco Iran Oil Company, and their affiliates "arising out of or in connection with" Wilson Industries' sales of goods to Kharg resulting from Purchase Order No. KC-780456; and (ii) assigned and transferred to Amoco Iran Oil Company "any and all rights, interests, claims and causes of action" that Wilson Industries had against Kharg relating to those sales of goods;
- (e) an internal AIOC accounting record titled "Vendor Invoice Transmittal" form, dated 23 March 1981, transmitting Wilson Industries' invoice No. 192772, billing Kharg USD 4,240.02 for the KC-780456 Items,⁸⁴⁸ to AIOC's accounting department for payment;
- (f) a check for USD 4,240.02 issued by AIOC in favor of Wilson Industries on 1 April 1981;
- (g) an internal AIOC "Material Transfer" form (bearing the stamp "Surplus Material Report Updated"), dated 4 June 1981, indicating that the following items of Purchase Order No. KC-780456, listed on Wilson Industries' invoice

⁸⁴⁸ See *supra* para. 1743 (b).

No. 192772 of 16 March 1981,⁸⁴⁹ had been returned to Wilson Industries by ADS: 1 (12 out of 14 units ordered); 2 (9 out of 10 units ordered); 7-10; 12-21; 22 (two out of three units ordered); 23-26;⁸⁵⁰ 28; 29 (six out of seven units ordered); 30-34;

- (h) an “Agreement of Sale” dated 1 July 1981 between Amoco Production Company (International) (“APC”), acting on behalf of IPAC, and Wilson Industries, whereby APC agreed to sell, and Wilson Industries agreed to purchase, *inter alia*, items of “personal property” described as “KC-780456 Tools”;
- (i) a check for USD 4,240.02 issued by Wilson Industries in favor of APC on 21 October 1981.

The Parties’ Contentions

Iran’s Contentions

1744. Iran asserts that the KC-780456 Items were delivered to Kharg’s freight forwarder and paid for by Kharg prior to 19 January 1981; thus, in Iran’s view, they became Iranian properties prior to that date. Further, according to Iran, that the KC-780456 Items had been transferred to the “IPAC surplus account” in December 1980 does not mean that they no longer existed within the jurisdiction of the United States on 19 January 1981, as shown by the fact that they were returned to Wilson Industries in mid-1981. For the reasons stated above,⁸⁵¹ Iran contends that, in any event, the purported sale agreement between APC and Wilson Industries⁸⁵² could not properly convey title to those items to Wilson Industries.

1745. Accordingly, Iran concludes that the KC-780456 Items represented “Iranian properties” within the meaning of Paragraph 9.

⁸⁴⁹ See *supra* para. 1743 (c).

⁸⁵⁰ Wilson Industries’ invoice No. 192772 of 16 March 1981 indicates that six units of item 26 had been ordered, whereas the 4 June 1981 AIOC “Material Transfer” form indicates, at page “Supplement #5,” that ten units of item 26 were subsequently returned to Wilson Industries.

⁸⁵¹ See *supra* para. 1348.

⁸⁵² See *supra* para. 1743 (h).

The United States' Contentions

1746. The United States argues that it is not responsible for the KC-780456 Items because: (i) those items were either sent to the IPAC scrap account on 18 December 1980, and, thus, Iran did not have title to them on 19 January 1981; or (ii) they were returned to Wilson Industries by AIOC in mid-1981, prior to the United States receiving any indication that Iran needed assistance obtaining their return. In either event, the United States concludes, the KC-780456 Items were disposed of long before the United States was advised of this Claim, so, the United States could not have taken steps to ensure their transfer to Iran.

1747. The United States contends, further, that Iran has failed to prove that Kharg actually paid for the KC-780456 Items. The United States asserts that AIOC's "Action Note," forwarding Kharg's check No. 6076 to Wilson Industries,⁸⁵³ was issued on 1 November 1979, a mere 14 days before the Blocking Order of 14 November 1979, freezing Iranian assets, went into effect; the United States contends that, therefore, it is highly unlikely that check No. 6076 was ever negotiated. The United States maintains that the evidence suggests the opposite, namely: (i) on 1 April 1981, AIOC paid Wilson Industries USD 4,240.02 for Purchase Order No. KC-780456; (ii) in exchange for this payment, Wilson Industries signed a "Release and Assignment of Claim" form on 16 March 1981, assigning any rights or claims for payment of Purchase Order No. KC-780456 against Kharg to AIOC; and, (iii) when AIOC subsequently sold the property back to Wilson Industries on 21 October 1981, Wilson Industries paid AIOC USD 4,240.02. In light of the above, the United States contends that "it would appear" that Kharg never paid for the KC-780456 Items.

The Tribunal's Decision

1748. It undisputed, and the evidence is persuasive, that the KC-780456 Items had been delivered to Kharg's freight forwarder prior to, and were in the possession of either AIOC or ADS in the United States on, 19 January 1981. This evidence consists, in particular, of the 18 December 1980 and 4 June 1981 internal AIOC "Material Transfer" forms.⁸⁵⁴ Accordingly,

⁸⁵³ See *supra* para. 1741.

⁸⁵⁴ See *supra* para. 1743 (b) & (g). Item 11 of Purchase Order No. KC-780456, listed on Wilson Industries' invoice No. 192772 of 16 March 1981 (*see supra* para. 1743 (b)), is not recorded on either the 18 December 1980 or the 4 June 1981 internal AIOC "Material Transfer" form. However, neither Party asserts, and, in the circumstances, there is no ground for the Tribunal to assume, that item 11 had not been delivered to Kharg's freight forwarder and was not in the possession of either AIOC or ADS on 19 January 1981, along with the other KC-780456 Items.

by 19 January 1981, title to the KC-780456 Items had passed to Kharg. Further, it is beyond dispute that the KC-780456 Items existed within the jurisdiction of the United States on that date.

1749. Consequently, the Tribunal holds that the KC-780456 Items represent “Iranian properties” under Paragraph 9.

1750. The record shows that, after 26 February 1981, the date of the Unlawful Treasury Regulations, AIOC sold back to Wilson Industries KC-780456 Items priced at USD 4,240.02,⁸⁵⁵ which corresponds to the original purchase price Wilson Industries had charged Kharg under invoice No. 192772 for all 34 KC-780456 Items.⁸⁵⁶ That Wilson Industries agreed to pay, and in fact did pay,⁸⁵⁷ to AIOC the original full price of the KC-780456 Items strongly suggests to the Tribunal that AIOC sold back to Wilson Industries all the KC-780456 Items, and not just those listed on the 4 June 1981 internal AIOC “Material Transfer” form.⁸⁵⁸

1751. As noted, Mr. Piper, a former regional production manager of Amoco Production Company, stated in his affidavit in Case No. 56 (*Amoco Finance International Corp.*) that, beginning in June 1980 and throughout 1981, AIOC proceeded to settle claims of vendors who had not been paid by Kharg.⁸⁵⁹ Mr. Piper further stated that, in order to mitigate losses, AIOC sold at fair market value prices some of the materials that had been ordered by Kharg and were under AIOC’s control when the Blocking Order was issued on 14 November 1979.⁸⁶⁰ Mr. Piper asserted, moreover, that, to avoid wastage during the period of blocking, AIOC also sold various materials purchased for Kharg for which the vendors had already been paid by Kharg.⁸⁶¹

1752. Mr. Piper stated that the sums AIOC paid in satisfaction of vendor claims, less the sums AIOC received upon the disposition of materials in its possession related to those claims,

⁸⁵⁵ See *supra* para. 1743 (f)-(h).

⁸⁵⁶ See *supra* para. 1743 (c).

⁸⁵⁷ See *supra* paras. 1743 (h)-(i).

⁸⁵⁸ See *supra* para. 1743 (g).

⁸⁵⁹ See *supra* para. 1223.

⁸⁶⁰ See *supra* para. 1224.

⁸⁶¹ See *supra* para. 1225.

amounted to USD 56,361.81.⁸⁶² Mr. Piper further stated that the sum that AIOC received for the resale of materials for which Kharg had paid the vendors amounted to USD 31,634.48.⁸⁶³ According to Mr. Piper, AIOC thus suffered a net loss of USD 24,727.33 in connection with Kharg materials, for which Amoco International S.A. had a valid claim.⁸⁶⁴

1753. In light of Mr. Piper's statements in his affidavit, the Tribunal concludes that, in effect, AIOC sold the KC-780456 Items to recoup payments that AIOC had made to satisfy vendors who had not been paid by Kharg and for which AIOC believed it had a claim against Kharg (which AIOC ultimately valued at USD 24,727.33⁸⁶⁵). Whether or not Kharg paid Wilson Industries for the KC-780456 Items⁸⁶⁶ has no bearing on this conclusion.

1754. Consequently, the Tribunal finds that AIOC retained and sold the KC-780456 Items because of the existence of an unpaid debt, and that, consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration, and its international responsibility is engaged with regard to the KC-780456 Items.⁸⁶⁷ The Tribunal 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.⁸⁶⁸

1755. In light of the above conclusion, the Tribunal need not decide whether AIOC, as the purchasing agent of Kharg, had the authority to sell the KC-780456 Items back to the vendor.

⁸⁶² See *supra* para. 1226.

⁸⁶³ See *supra* para. 1227.

⁸⁶⁴ See *id.*

⁸⁶⁵ See *supra* para. 1752.

⁸⁶⁶ See *supra* paras. 1744 & 1747.

⁸⁶⁷ The obligations of the United States under the General Declaration with respect to tangible Iranian properties are, first, to remove the restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of those properties and to direct persons holding those properties who were subject to the jurisdiction of the United States to transfer the properties as directed by the Government of Iran and, second, to take steps to ensure that this directive will be complied with. See Award No. 529, para. 77 (a), 28 IRAN-U.S. C.T.R. at 140.

⁸⁶⁸ See *supra* para. 12.

1756. Based on the foregoing, Iran's Claim relating to Purchase Order No. KC-780456 is upheld.

Purchase Order No. KC-790054

Factual Background

1757. On or about 1 September 1979,⁸⁶⁹ AIOC ordered 48 items of technical equipment and tools from Wilson Industries under Purchase Order No. KC-790054 ("KC-790054 Items") at a price of USD 7,513.89. On 2 September 1979, Kharg issued check No. 6078 in favor of Wilson Industries for USD 7,513.89 in relation to Purchase Order No. KC-790054. Through an "Action Note" dated 1 November 1979, AIOC forwarded Kharg's check No. 6078 to Wilson Industries.

1758. According to the March and April 1980 Lists,⁸⁷⁰ in those months, KC-790054 Items invoiced at USD 6,910.43 were in storage in Houston, at the warehouse of World Trade, the freight forwarder designated by AIOC.

1759. The record further contains copies of, among others, the following documents:

- (a) Wilson Industries' "Quotation No. H1-61-85461-9H" to Kharg, issued on 18 July 1979 under Purchase Order No. KC-790054, listing 48 items of technical equipment and tools priced at a total of USD 7,513.89;⁸⁷¹
- (b) a series of WEPAC "Material Receipt Register" forms, dated between 16 October and 13 December 1979, indicating that all 48 KC-790054 Items, except items 18 and 34, had been received by the freight forwarder in Houston by 12 December 1979;

⁸⁶⁹ Neither Party has produced a copy of Purchase Order No. KC-790054. The record contains a copy of Wilson Industries' Quotation No. H1-61-85461-9H of 18 July 1979 for the KC-790054 Items, addressed to Kharg c/o AIOC; the last page of the Quotation bears a stamp, reading, *inter alia*: "VERIFIED: [initials, illegible] 8, 29, 79." Accordingly, in the absence of more conclusive evidence, the Tribunal assumes that the KC-790054 Items were ordered on 1 September 1979, three days following the verification date indicated on the stamp and one day before Kharg issued the check for USD 7,513.89 in favor of Wilson Industries (*see infra* para. 1757).

⁸⁷⁰ *See supra* paras. 1221-1222.

⁸⁷¹ "Quotation No. H1-61-85461-9H" ("Quotation") does not indicate a price for item 18; rather, in the column "unit price," it records the acronym "DID." The total price indicated on the Quotation for item 34 is USD 14.7[] (the second cents figure on the copy of the Quotation in evidence is illegible).

- (c) an internal AIOC “Material Transfer” form, dated 18 December 1980, indicating that items 1 through 33 and 35 through 48 of Purchase Order No. KC-790054 had been transferred from the ADS warehouse in Houston to the “IPAC surplus account”;
- (d) an internal AIOC “Supplier Performance/Phone Expediting Record” (partially illegible), recording a phone call that took place apparently on 24 January 1981 and indicating that: (i) various items of Purchase Order No. KC-790054 had been sent to the “K.C.” surplus account on 18 December 1980;⁸⁷² and (ii) various items of that purchase order had been returned to the vendor;
- (e) an internal AIOC “Material Transfer” form (bearing the stamp “Surplus Material Report Updated”), dated 4 June 1981, indicating that 44 items of Purchase Order No. KC-790054 had been returned to Wilson Industries by ADS;⁸⁷³
- (f) an “Agreement of Sale” dated 1 July 1981 between Amoco Production Company (International) (“APC”), acting on behalf of IPAC, and Wilson Industries, whereby APC agreed to sell, and Wilson Industries agreed to purchase, *inter alia*, items of “personal property” described as “KC-790054 Tools.”

The Parties’ Contentions

Iran’s Contentions

1760. Iran’s arguments in this Claim are similar to those it raises in relation to its Claim regarding Purchase Order No. 780456.⁸⁷⁴ Concerning any alleged difficulties in identifying exactly which of the KC-790054 Items were sent to the “IPAC surplus account” in December 1980 and which were returned to Wilson Industries in 1981, Iran contends that this is of little

⁸⁷² Item 18 (*see supra* para. 1759 (b)) was among these items.

⁸⁷³ It is impossible to ascertain from the 4 June 1981 “Material Transfer” form precisely which of the KC-790054 Items listed in Wilson Industries’ Quotation (*see supra* para. 1759 (a)) were returned to Wilson Industries because the copy of the Quotation in evidence is partially illegible. For the same reason, it is impossible to determine whether all ordered units of each of the 44 items of Purchase Order No. KC-790054 listed on the 4 June 1981 “Material Transfer” form were returned to Wilson Industries or only a portion of those ordered units.

⁸⁷⁴ *See supra* paras.1744-1745.

relevance because, in any event, those items were all “Iranian properties” in existence within the jurisdiction of the United States on 19 January 1981.

The United States’ Contentions

1761. The United States contends that it cannot be held responsible under Paragraph 9 for the KC-790054 Items because items were either sent to the surplus account on 18 December 1980, and Iran therefore did not have title to them on 19 January 1981, or other items were returned to Wilson Industries on 4 June 1981, prior to the United States receiving any indication from Iran that Iran needed assistance procuring the return of the KC-790054 Items.

1762. The United States further contends that it is not possible to ascertain from the documents in evidence exactly which of the KC-790054 Items were sent to the surplus account and were then returned to Wilson Industries, and which remained on the surplus account.

The Tribunal’s Decision

1763. It seems to be undisputed, and the Tribunal is persuaded, that the KC-790054 Items had been delivered to Kharg’s freight forwarder prior to, and were in the possession of either AIOC or ADS in the United States on, 19 January 1981. This evidence consists, in particular, of: (i) the WEPAC “Material Receipt Register” forms, dated between 16 October and 13 December 1979;⁸⁷⁵ and (ii) the 18 December 1980 and 4 June 1981 internal AIOC “Material Transfer” forms.⁸⁷⁶ Accordingly, by 19 January 1981, title to the KC-790054 Items had passed to Kharg.

1764. Further, the evidence persuades the Tribunal that the overwhelming bulk, if not all, of the KC-790054 Items existed within the jurisdiction of the Tribunal on 19 January 1981. This evidence consists, in particular, of the 4 June 1981 internal AIOC “Material Transfer” form.⁸⁷⁷

⁸⁷⁵ See *supra* para. 1759 (b).

⁸⁷⁶ See *supra* para. 1759 (c) & (e). Item 34 of Purchase Order No. KC-790054, listed on Wilson Industries’ “Quotation No. H1-61-85461-9H,” issued on 18 July 1979 (*see supra* para. 1759 (a)), is not recorded on either the 18 December 1980 or the 4 June 1981 internal AIOC “Material Transfer” form. However, neither Party seems to assert, and, in the circumstances, there is no ground for the Tribunal to assume, that item 34 had not been delivered to Kharg’s freight forwarder and was not in the possession of either AIOC or ADS on 19 January 1981, along with the other KC-790054 Items.

⁸⁷⁷ See *supra* para. 1759 (e).

1765. Accordingly, the Tribunal holds that the KC-790054 Items represent “Iranian properties” under Paragraph 9.

1766. Based on the evidence presented, the Tribunal is satisfied that, after 26 February 1981, the date of the Unlawful Treasury Regulations, AIOC sold back to Wilson Industries the overwhelming bulk, but not all, of the KC-790054 Items.⁸⁷⁸

1767. For the reasons stated in relation to Iran’s Claim concerning Purchase Order No. KC-780456 and earlier in this Partial Award,⁸⁷⁹ the Tribunal concludes that, in effect, AIOC sold those items to recoup payments that AIOC had made to satisfy vendors who had not been paid by Kharg and for which AIOC believed it had a claim against Kharg (which AIOC ultimately valued at USD 24,727.33⁸⁸⁰). Whether or not Kharg paid Wilson Industries for the KC-790054 Items has no bearing on this conclusion.

1768. Consequently, the Tribunal finds that AIOC retained and sold the overwhelming bulk, but not all, of the KC-790054 Items because of the existence of an unpaid debt, and that, consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration, and its international responsibility is engaged with regard to those items.⁸⁸¹ The Tribunal 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.⁸⁸²

1769. In light of the above conclusion, the Tribunal need not decide whether AIOC, as the purchasing agent of Kharg, had the authority to sell KC-790054 Items back to the vendor.

⁸⁷⁸ See *supra* para. 1759 (e) & (f).

⁸⁷⁹ See *supra* paras. 1751-1752.

⁸⁸⁰ See *supra* para. 1752.

⁸⁸¹ The obligations of the United States under the General Declaration with respect to tangible Iranian properties are, first, to remove the restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of those properties and to direct persons holding those properties who were subject to the jurisdiction of the United States to transfer the properties as directed by the Government of Iran and, second, to take steps to ensure that this directive will be complied with. See Award No. 529, para. 77 (a), 28 IRAN-U.S. C.T.R. at 140.

⁸⁸² See *supra* para. 12.

1770. Based on the foregoing, Iran's Claim relating to Purchase Order No. KC-790054 is upheld.

Purchase Order No. KC-790123

Factual Background

1771. On or about 1 September 1979,⁸⁸³ AIOC ordered 16 items of bolts and nuts from Wilson Industries under Purchase Order No. KC-790123 ("KC-790123 Items"). On 25 July 1979, Wilson Industries issued pro-forma invoice No. H1-61-86100-9H, billing Kharg USD 624.13 for the KC-790123 Items. On 3 September 1979, Kharg issued check No. 6084 in favor of Wilson Industries in payment of that amount. Through an "Action Note" dated 1 November 1979, AIOC forwarded Kharg's check No. 6084 to Wilson Industries.

1772. According to the March and April 1980 Lists,⁸⁸⁴ in those months, the KC-790123 Items, invoiced at USD 624.13, were in storage in Houston, at the warehouse of World Trade, the freight forwarder designated by AIOC.

1773. The record further contains copies of, among others, the following documents:

- (a) an AIOC "Vendee Material Status Report," dated 2 December 1980, indicating that, by 18 October 1979, all KC-790123 Items had been received by AIOC's packer in Houston;
- (b) an internal AIOC "Material Transfer" form, dated 18 December 1980, indicating that all KC-790123 Items had been transferred from the ADS warehouse in Houston to the "IPAC surplus account";
- (c) an internal AIOC "Material Transfer" form (bearing the stamp "'Surplus Material Report Updated'"), dated 4 June 1981, indicating that eight items of

⁸⁸³ Neither Party has produced a copy of Purchase Order No. KC-790123. The record contains a copy of Wilson Industries' pro-forma invoice No. H1-61-86100-9H of 25 July 1979 for the KC-790123 Items, addressed to Kharg c/o AIOC (*see supra* para. 1771); the last page of the pro-forma invoice bears a stamp, reading, *inter alia*: "VERIFIED: [initials, illegible] 8, 29, 79." Accordingly, in the absence of more conclusive evidence, the Tribunal assumes that the KC-790123 Items were ordered on 1 September 1979, three days following the verification date indicated on the stamp and two days before Kharg issued the check for USD 624.13 in favor of Wilson Industries (*see supra* para. 1771).

⁸⁸⁴ *See supra* paras. 1221-1222.

Purchase Order No. KC-790123 had been returned to Wilson Industries by ADS;⁸⁸⁵

- (d) an “Agreement of Sale” dated 1 July 1981 between Amoco Production Company (International) (“APC”), acting on behalf of IPAC, and Wilson Industries, whereby APC agreed to sell, and Wilson Industries agreed to purchase, *inter alia*, items of “personal property” described as “KC-790123 Tools.”

The Parties’ Contentions

Iran’s Contentions

1774. Iran’s arguments in this Claim are similar to those it raises in relation to its Claims regarding Purchase Orders Nos. 780456 and KC-790054.⁸⁸⁶

The United States’ Contentions

1775. The United States asserts that the KC-790123 Items were all sent to the “IPAC surplus account” prior to 19 January 1981; consequently, because Kharg did not have title to those items on that date, the United States cannot be held responsible therefor under Paragraph 9.

The Tribunal’s Decision

1776. The evidence shows that the KC-790123 Items had all been delivered to Kharg’s freight forwarder prior to, and were in the possession of either AIOC or ADS in the United States on, 19 January 1981. This evidence consists, in particular, of: (i) the March and April 1980 Lists,⁸⁸⁷ (ii) the 2 December 1980 AIOC “Vendee Material Status Report”,⁸⁸⁸ and (iii) the

⁸⁸⁵ It appears from a comparison of the 4 June 1981 “Material Transfer” form with Wilson Industries’ pro-forma invoice No. H1-61-86100-9H (*see supra* para. 1771) that the eight items recorded on the 4 June 1981 “Material Transfer” form are items 5, 7, and 11-16 listed on Wilson Industries’ pro-forma invoice.

⁸⁸⁶ *See supra* paras. 1744-1745 & 1760.

⁸⁸⁷ *See supra* para. 1772.

⁸⁸⁸ *See supra* para. 1773 (a).

18 December 1980 AIOC “Material Transfer” form.⁸⁸⁹ Accordingly, the Tribunal finds that title to the KC-790123 Items had passed to Kharg prior to 19 January 1981.

1777. The question thus becomes whether the KC-790123 Items existed within the jurisdiction of the United States on 19 January 1981. Certainly, the eight KC-790123 Items recorded on the 4 June 1981 AIOC “Material Transfer” form, namely, items 5, 7, and 11-16 listed on Wilson Industries’ pro-forma invoice No. H1-61-86100-9H (“Items 5, 7, and 11-16”),⁸⁹⁰ which AIOC had returned to Wilson Industries in June 1981, existed within the United States’ jurisdiction on that date.⁸⁹¹

1778. Whether the remaining eight KC-790123 Items, namely items 1-4, 6, and 8-10 listed on Wilson Industries’ pro-forma invoice No. H1-61-86100-9H (“Items 1-4, 6, and 8-10”),⁸⁹² were also located within that jurisdiction on 19 January 1981 is a more difficult question. On balance, considering all the evidence, the Tribunal is persuaded that Items 1-4, 6, and 8-10 were also located within the jurisdiction of the United States on that date. In reaching this conclusion, the Tribunal considers the very specific circumstances relating to the KC-790123 Items, in particular, that, while it is true that all those items were transferred to the “IPAC surplus account” on 18 December 1980, there is also evidence that AIOC subsequently removed KC-790123 Items from the surplus account and sold them back to Wilson Industries in mid-1981.

1779. In light of the above, the Tribunal holds that the KC-790123 Items constitute “Iranian properties” under Paragraph 9.

1780. Documents on record show that, in mid-1981, AIOC sold back to Wilson Industries Items 5, 7, and 11-16.⁸⁹³ For the reasons stated in relation to Iran’s Claim concerning Purchase Order No. KC-780456 and earlier in this Partial Award,⁸⁹⁴ the Tribunal concludes that, in effect, AIOC sold Items 5, 7, and 11-16 to recoup payments that AIOC had made to satisfy

⁸⁸⁹ See *supra* para. 1773 (b).

⁸⁹⁰ See *supra* note 885.

⁸⁹¹ See *supra* para. 1773 (c).

⁸⁹² Purchase Order No. KC-790123 covered a total of 16 items. See *supra* para. 1771.

⁸⁹³ See *supra* para. 1773 (c)-(d) & note 885.

⁸⁹⁴ See *supra* paras. 1751-1753.

vendors who had not been paid by Kharg and for which AIOC believed it had a claim against Kharg (which AIOC ultimately valued at USD 24,727.33⁸⁹⁵). Whether or not Kharg paid Wilson Industries for those items has no bearing on this conclusion.

1781. Consequently, the Tribunal finds that AIOC retained and sold Items 5, 7, and 11-16 because of the existence of an unpaid debt, and that, consequently, those items were in fact excluded from the transfer directive of Executive Order No. 12281 by Section 535.333 of the Unlawful Treasury Regulations. As a result, the United States has breached its obligations under the General Declaration, and its international responsibility is engaged with regard to those items.⁸⁹⁶ The Tribunal 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.⁸⁹⁷

1782. In light of the above conclusion, the Tribunal need not decide whether AIOC, as the purchasing agent of Kharg, had the authority to sell KC-790123 Items back to the vendor.

1783. By contrast, there is no indication that, at any time, AIOC also sold back to Wilson Industries, or sold to a third party, Items 1-4, 6, and 8-10, and the Tribunal, on the record before it, is not prepared to presume that AIOC did sell those items. For reasons similar to those stated in relation to Claim 1996-D,⁸⁹⁸ the Tribunal holds that the United States adequately investigated Iran's Claim concerning Purchase Order No. KC-790123 and did everything it could reasonably have been expected to do in the circumstances to satisfy its Paragraph 9 obligation to take steps to ensure that Items 1-4, 6, and 8-10 were transferred to Iran.⁸⁹⁹

1784. Based on the foregoing, Iran's Claim on Purchase Order No. KC-790123:

- (i) is upheld insofar as it relates to Items 5, 7, and 11-16;

⁸⁹⁵ See *supra* para. 1752.

⁸⁹⁶ The obligations of the United States under the General Declaration with respect to tangible Iranian properties are, first, to remove the restrictions it had imposed during the period from 14 November 1979 to 19 January 1981 upon the mobility and free transfer of those properties and to direct persons holding those properties who were subject to the jurisdiction of the United States to transfer the properties as directed by the Government of Iran and, second, to take steps to ensure that this directive will be complied with. See Award No. 529, para. 77 (a), 28 IRAN-U.S. C.T.R. at 140.

⁸⁹⁷ See *supra* para. 12.

⁸⁹⁸ See *supra* paras. 1713-1714.

⁸⁹⁹ See *supra* paras. 169 & 211.

- (ii) is dismissed insofar as it relates to Items 1-4, 6, and 8-10.

Overall Conclusion

1785. In view of the above, the Tribunal: (i) dismisses Claim 1996-E/F with regard to Purchase Orders Nos. KC-780378, KC-780436, and KC-790106; and (ii) upholds Iran's Claim 1996-E/F with regard to Purchase Orders Nos. KC-780456, KC-790054, and KC-790123 (in relation to Items 5, 7, and 11-16).

3. Reparation

a) *Introduction*

1786. Where the Tribunal finds that the United States has not complied with its obligations under the Algiers Declarations, the United States will be required to compensate Iran for any losses Iran incurred as a result of such breach. In establishing the form of reparation and the amount of compensation due by the United States, the Tribunal will have regard to the principles of international law governing the legal consequences of an internationally wrongful act by a state, which the Tribunal is authorized by Article V of the Claims Settlement Declaration to apply.⁹⁰⁰

1787. Under customary international law, as reflected in Article 31(1) of the ILC Articles, “[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”⁹⁰¹ The touchstone of full reparation was enunciated by the Permanent Court of International Justice in its judgment of 1928 in *Factory at Chorzów*, in the following terms:

The essential principle contained in the actual notion of an illegal act . . . is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which

⁹⁰⁰ Article V of the Claims Settlement Declaration requires that the Tribunal “decide all cases on the basis of respect for law,” applying, among other things, “principles of . . . international law as the Tribunal determines to be applicable.” Claims Settlement Declaration, art. V, 1 IRAN-U.S. C.T.R. at 11.

⁹⁰¹ ILC Articles, art. 31 (1). See See Rep. of the Int'l Law Comm'n, *supra*, note 89, art. 31.

should serve to determine the amount of compensation due for an act contrary to international law.⁹⁰²

Factory at Chorzów is widely regarded as the most authoritative exposition of the principles governing reparation for injury caused by internationally wrongful acts.⁹⁰³

1788. The forms of reparation recognized under customary international law as ways of satisfying a responsible state's obligation to make full reparation include, as formulated in *Factory at Chorzów*,⁹⁰⁴ restitution in kind and compensation. Article 34 of the ILC Articles provides that "[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination"⁹⁰⁵

1789. It has also been recognized, as confirmed in *Factory at Chorzów*, that restitution is the primary form of reparation for injury caused by an internationally wrongful act.⁹⁰⁶ Accordingly, Article 35 of the ILC Articles provides:

Article 35. Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;
- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.⁹⁰⁷

⁹⁰² *Factory at Chorzów* (Ger. v. Pol.), Judgment (Merits), 1928 P.C.I.J. (ser. A) No. 17, at 47 (13 Sept.).

⁹⁰³ See BORZU SABAHI, COMPENSATION AND RESTITUTION IN INVESTOR-STATE ARBITRATION – PRINCIPLES AND PRACTICE 47 (2011). For international case-law, see, e.g., *Amoco Int'l Finance Corp. and Islamic Republic of Iran et al.*, Award No. 310-56-3, para. 191 (14 July 1987) reprinted in 15 IRAN-U.S. C.T.R. 189, 246; *Petrobart Ltd. v. Kyrgyz Republic*, Award (SCC Arb. No. 126/2003), at 30-31 (29 Mar. 2005); *CMS Gas Transmission Co. v. Argentine Republic*, Award (ICSID Case No. ARB/01/8), para. 400 (12 May 2005); *Siemens A.G. v. Argentine Republic*, Award (ICSID Case No. ARB/02/8), paras. 350-51 (6 Feb. 2007); *Bernhard Friedrich Arnd Rüdiger von Pezold et al. v. Republic of Zimbabwe*, Award (ICSID Case No. ARB/10/15), para. 683 (28 July 2015).

⁹⁰⁴ See *supra* para. 1787.

⁹⁰⁵ ILC Articles, art. 34. See Rep. of the Int'l Law Comm'n, *supra*, note 89, art. 34.

⁹⁰⁶ See Rep. of the Int'l Law Comm'n, *supra*, note 89, cmt 3 to art. 35; JAMES CRAWFORD, STATE RESPONSIBILITY – THE GENERAL PART 508-9 (2013); SABAHI, *supra* note 903, at 61.

⁹⁰⁷ ILC Articles, art. 35. See Rep. of the Int'l Law Comm'n, *supra*, note 89, art. 35.

A responsible state is under an obligation to compensate for the damage caused “insofar as such damage is not made good by restitution”⁹⁰⁸ and to give satisfaction for the injury caused “insofar as it cannot be made good by restitution or compensation.”⁹⁰⁹

1790. In establishing the form of reparation and the amount of compensation due by the United States in the Individual Claims where the Tribunal has found that the United States has not complied with its obligations under the Algiers Declarations, the Tribunal will consider the principles delineated in the foregoing paragraphs.

b) Causation

1791. Article 31 of the ILC Articles provides:

Article 31. Reparation

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes damage, whether material or moral, caused by the internationally wrongful act of a State.⁹¹⁰

1792. Concerning the causal link that must exist between the internationally wrongful act and the injury in order for the obligation of reparation of the responsible state to arise, the Commentary to the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts, as adopted on First Reading (1996), remarks appropriately:

In view of the diversity of possible situations, the Commission has not attempted to find any rigid criteria applicable to all cases or to indicate the percentages to be applied for damages awarded against an offending State when its action has been one of the causes, decisive but not exclusive, of an injury to another State. It would, in its view, be absurd to think in terms of laying down in a universally applicable formula the various hypotheses of causal relationship and to try to provide a dividing line between damage for which compensation is due from damage for which compensation is not due. The application of the principles and criteria discussed above can only be made on the basis of the factual elements and circumstances of each case, where the discretionary power of arbitrators or the diplomatic abilities of negotiators will have to play a decisive role in judging the degree to which the injury is indemnifiable.⁹¹¹

⁹⁰⁸ ILC Articles, art. 36 (1). See Rep. of the Int'l Law Comm'n, *supra*, note 89, art. 36.

⁹⁰⁹ ILC Articles, art. 37 (1). See Rep. of the Int'l Law Comm'n, *supra*, note 89, art. 37.

⁹¹⁰ ILC Articles, art. 31. See Rep. of the Int'l Law Comm'n, *supra*, note 89, art. 31.

⁹¹¹ [1993] 2 (2) Y.B. INT'L L. COMM. 1, 70 (para. 13).

1793. Domestic legal systems have devised various concepts and techniques that are designed to address situations where there may be multiple causes in order to correct and refine results arrived at on the basis of purely scientific tests, such as the doctrine of *conditio sine qua non* or the but-for test. These concepts and techniques thus developed are deliberately normative and include inquiry into the “adequacy,” the “foreseeability,” the analysis of (comparative) degrees of “fault” or “unlawfulness,” as well as, in modern times, the analysis of comparative capabilities of risk control and risk management on the part of the various actors involved in a situation producing harm.⁹¹² In particular, a situation characterized by a multiplicity of causes, *i.e.*, a complex made up of various elements, one of which may be the wrongful conduct of a defendant, is typically addressed by embarking on a weighing process.⁹¹³ This process is geared, for example, at identifying the “main,” “principal,” or “dominant” and “effective” one among multiple contributing causes. Australian courts as well as the English Court of Appeal and the House of Lords have consistently emphasized the preponderance of “common sense,” “policy,” and “value judgement” in such inquiries.⁹¹⁴ The Tribunal agrees with, and adopts, this general approach.

1794. In fact, in *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT (2 July 2014), this Tribunal has already addressed a number of complex fact patterns, such as “alternative,” “hypothetical,” “cumulative,” and “overtaking” causes and the manner of how they are to be solved according to leading authorities who have analyzed them in a comparative perspective.⁹¹⁵ The present Cases are further evidence that a comparative analysis of domestic laws provides useful guidance.

1795. The conduct and condition of the aggrieved party is often a concurrent cause of the harm suffered by it (here: Iran). Such conduct may precede, accompany, or follow the wrongful conduct of the tortfeasor/non-performing party (here: issuance of the Unlawful Treasury

⁹¹² A.M. Honoré, *Causation and Remoteness of Damage*, in 11 (1) INT’L. ENC. COMP. L. (Ch. 7) 4, 33-66 (A. Tunc ed., 1982).

⁹¹³ *Id.* at 9-10.

⁹¹⁴ *Monarch Steamship Co. Ltd. v. Karlshamns Oljefabriker A/B* [1949] A.C. 196, at 227-228.; *Alexander v. Cambridge Credit Corp. Ltd.* (1987) 9 N.S.W.L.R. 310, at 333-335 (per Mahoney J.A); *March v. E. & M.H. Stramare Pty. Ltd.* (1991) 171 C.L.R. 506, at 515 (per Mason C.J.); *Galoo Ltd. (in liquidation) and Others v. Bright Grahame Murray and Another* [1994] 1 W.L.R 1360, at 1370-1375 (per Glidewell L.J.).

⁹¹⁵ *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, paras. 51-54, 92-93 (2 July 2014).

Regulations).⁹¹⁶ Faced with this situation, the law has to determine whether and, if so, to what extent it should have a bearing on the tortfeasor's/non-performing party's liability. Among modern legal systems, some have opted for the reduction or, in some cases, extinction of the injured party's damages in case of concurrent fault.⁹¹⁷ As a leading commentator has pointed out, the now generally shared objective is, first, the apportionment of damages in these cases employing a wide variety of conceptual approaches and, second, the general rule requiring the injured party to mitigate the damage,⁹¹⁸ to which the Tribunal will now turn.

c) Mitigation of Damages

1796. Under international law, a failure by an injured State to take reasonable steps to limit the losses it incurred as a result of an internationally wrongful act by another State may result in a reduction of recovery to the extent of the damage that could have been avoided. This

⁹¹⁶ See Honoré, *supra* note 912, at 94.

⁹¹⁷ Austria (Article 1304 Civil Code); Switzerland (Article 44 Code of Obligations). § 254(1) of the German Civil Code provides:

Where fault on the part of the injured party contributes to the occurrence of the damage, liability in damages as well as the extent of the compensation depend on the circumstances and in particular on the extent to which the damage has been caused preponderantly by one or the other party.

Further, subsection (2) of § 254 of the German Civil Code indicates that failure to avert or to minimize the harm is considered a specific expression of contributory negligence:

This also applies if the fault of the injured person is limited to failing to draw attention of the obligor to the danger of unusually extensive damage, where the obligor neither was aware nor ought to have been aware of the danger, or to failing to avert or to reduce the damage. [. . .]

⁹¹⁸ See Honoré, *supra* note 912, at 96, 101-107.

principle has been affirmed by the International Law Commission⁹¹⁹ and applied in decisions of international tribunals,⁹²⁰ including this Tribunal.⁹²¹

1797. The principle of mitigation is also recognized in the domestic law of torts and contracts of many legal systems as well as in transnational commercial law.⁹²² It requires a claimant (“the aggrieved party”) to reduce the harm suffered due to the conduct of the defendant (*e.g.*, a tortfeasor or a “non-performing party” in a contractual relationship). It is not necessary to further inquire into that principle’s legal nature. Its objective is clear, and even domestic systems that only recently have come to state it as such explicitly have employed more general principles, such as “good faith and fair dealing,” “*bonne foi*,” “contributory negligence,” or a mixture or combination thereof, in their endeavor to achieve this objective: to avoid the

⁹¹⁹ See Rep. of the Int’l Law Comm’n, *supra*, note 89, cmt 11 to art. 31 (“Even the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the injury. Although often expressed in terms of a ‘duty to mitigate,’ this is not a legal obligation which itself gives rise to responsibility. It is rather that a failure to mitigate by the injured party may preclude recovery to that extent.”).

⁹²⁰ See Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7, 55, ¶ 80 (25 Sept.) (“[A]n injured State which has failed to take the necessary measures to limit the damage sustained would not be entitled to claim compensation for that damage which could have been avoided.”); U.N. Compensation Comm’n, Governing Council decision 15, *Compensation for Business Losses Resulting from Iraq’s Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause*, 8th sess., 14-18 Dec. 1992, U.N. Doc. S/AC.26/1992/15 (1992), ¶ 9 (IV) (“The total amount of compensable losses will be reduced to the extent that those losses could reasonably have been avoided.”); U.N. Compensation Comm’n, Governing Council, *Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (the “WBC Claim”)*, 15 Nov. 1996, U.N. Doc. S/AC.26/1996/5/Annex (18 Dec. 1996), ¶ 54 (“[U]nder the general principles of international law relating to mitigation of damages . . . the Claimant was not only permitted but indeed obligated to take reasonable steps to . . . mitigate the loss, damage or injury being caused . . .”). Investment tribunals have also recognized the principle of mitigation of damages. See, *e.g.*, *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, Award (ICSID Case No. ARB/99/6), para. 167 (12 Apr. 2002); *Tza Yap Shum v. The Republic of Peru*, Award (ICSID Case No. ARB/07/6), paras. 246 & 250-51 (7 July 2011).

⁹²¹ See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 221 (2 July 2014) (stating that a failure by an injured State to take reasonable steps to limit its losses may result in a reduction of recovery to the extent of the damage that could have been avoided).

⁹²² See Article 7.4.8 of the UNIDROIT Principles of International Commercial Contracts (UPICC), 2016, which reads:

- (1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party’s taking reasonable steps.
- (2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

This principle was already enshrined in the 2010, 2004, and 1994 versions of the UPICC. See also the United Nations Convention on the International Sale of Goods (CISG), which provides in article 77:

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the amount by which the loss should have been mitigated.

aggrieved party sitting back and waiting to be compensated for harm which it could have avoided and reduced.⁹²³ The law requires the aggrieved party to take *reasonable steps* to avoid or reduce any such harm.

1798. As an initial matter, the Tribunal concurs with modern commentators' conclusion that the "reasonable man" is the common law's tool to characterize human – or corporate – behavior by setting standards, knowing full well, however, that they can only be fictitiously objective.⁹²⁴ Importantly, private international law as it relates to determining whether a person's conduct is to be reasonably construed so as to give it the legal effect of offer or acceptance, takes that person's habitual residence into account even if the law governing the contract is a different one.⁹²⁵ In other words, the law recognizes that the "reasonableness" of a person's conduct cannot be judged objectively and independently from circumstances, such as the location where that conduct takes place and the prevailing historical situation. The Tribunal would add that, *inter alia*, time and the broader legal environment are other relevant circumstances.

1799. Acknowledging that the analysis of a party's conduct is necessarily case specific, the Tribunal will return to this in the context of the Individual Claims.

d) *Evidentiary Standards*

1800. As the Tribunal observed in *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT (2 July 2014),⁹²⁶ it is well-established in international law that difficulties in assessing damages should not deprive a claimant whose interests have been injured from obtaining compensation.⁹²⁷ This principle has been embraced in decisions of international arbitral tribunals. Thus, for example, in *Vivendi v. Argentina*, the tribunal stated:

⁹²³ UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016, art. 7.4.8, cmt. 1 (UNIDROIT, 2016). For the historical reasons and the development and details of these and other tools employed not least to overcome both the principle of full reparation ("all or nothing") and the rigid limits upon recovery, see H. Stoll, *Consequences of Liability: Remedies*, in 11 (2) INT'L. ENC. COMP. L. (Ch. 8) 155 *et seq.* (A. Tunc ed., 1983).

⁹²⁴ See John Gardner, *The Many Faces of the Reasonable Person*, 131 L.Q.R. 563 (2015).

⁹²⁵ Customary in many legal systems, it was, for example, adopted in Article 8 (2) of the Convention on the Law Applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980 (80/934/EEC), O.J. 8.10.1980, No. L 266, at 1; now Article 10 (2) Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (Rome I), O.J. EU 4.7.2008, No. L 177/6. It was also adopted by the Swiss legislator in Article 123 of the 1987 Law on Private International Law.

⁹²⁶ *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, paras. 230-31 (2 July 2014).

⁹²⁷ See, e.g., SERGEY RIPINSKY & KEVIN WILLIAMS, DAMAGES IN INTERNATIONAL LAW 121 (2008).

“it is well settled that the fact that damages cannot be fixed with certainty is no reason not to award damages when a loss has been incurred.”⁹²⁸ In *Tecmed v. Mexico*, the tribunal stated that “any difficulty in determining the compensation does not prevent the assessment of such compensation where the existence of damage is certain.”⁹²⁹

1801. In quantifying the amount of compensation to be awarded, international arbitral tribunals generally apply the standard of proof of balance of probabilities. For example, in *Sapphire International Petroleum Ltd. v. National Iranian Oil Co.*, the sole arbitrator, Pierre Cavin, stated:

It is not necessary to prove the exact damage suffered in order to award damages. On the contrary, when such proof is impossible, particularly as a result of the behaviour of the author of the damage, it is enough for the judge to be able to admit with sufficient probability the existence and extent of the damage.⁹³⁰

1802. In *Lemire v. Ukraine*, concerning the standard for proving damages, the Tribunal stated:

Once causation has been established, and it has been proven that the *in bonis* party has indeed suffered a loss, less certainty is required in proof of the actual amount of damages; for this latter determination Claimant only needs to provide a basis upon which the Tribunal can, with reasonable confidence, estimate the extent of the loss.⁹³¹

1803. Further, international jurisprudence has recognized the authority of international arbitral tribunals to determine equitably (*i.e.*, in equity *intra legem*) the amount of damages –

⁹²⁸ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, Award (ICSID Case No. ARB/97/3), para. 8.3.16 (20 Aug. 2007). See also *Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, Award (ICSID Case No. ARB/84/3), para. 215 (20 May 1992).

⁹²⁹ *Técnicas Medioambientales TECMED S.A. v. United Mexican States*, Award (ICSID Case No. ARB(AF)/00/2), para. 190 (29 May 2003).

⁹³⁰ *Sapphire International Petroleum Ltd. v. National Iranian Oil Co.*, Award (15 Mar. 1963), 35 I.L.R. 136, 187-88. See also *Ioannis Kardassopoulos et al. v. Republic of Georgia*, Award (ICSID Cases Nos. ARB/05/18 and ARB/07/15), para. 229 (3 Mar. 2010); *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, Award (ICSID Case No. ARB(AF)/09/1), paras. 685-86 (22 Sept. 2014).

⁹³¹ *Joseph Charles Lemire v. Ukraine*, Award (ICSID Case No. ARB/06/18), para. 246 (28 Mar. 2011) (footnote omitted). See also *Impregilo S.p.A. v. Argentine Republic*, Award (ICSID Case No. ARB/07/17), para. 371 (21 June 2011) (noting that, in the circumstances, it would have been “unreasonable to require precise proof of the extent of the damage sustained by [the claimant],” the tribunal held that, “[i]nstead, reasonable probabilities and estimates have to suffice as a basis for claims for compensation”).

and, in the process, to resort to approximations – where circumstances do not permit a precise calculation.⁹³²

1804. Similar principles have also been applied by the Eritrea-Ethiopia Claims Commission (“Commission”). In establishing whether the damages claimed had occurred, the Commission

⁹³² See, e.g., *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, Award (ICSID Case No. ARB/97/3), para. 8.3.16 (20 Aug. 2007) (holding that, where damages cannot be fixed with certainty, “approximations are inevitable”); *Petrobart Ltd. v. Kyrgyz Republic*, Award (SCC Arb. No. 126/2003), at 83-84 (29 Mar. 2005) (given that the information on record was “too uncertain to allow the Arbitral Tribunal to make precise mathematical calculations of the damage,” the tribunal made “a more general assessment” of the damage “based on probabilities and reasonable appreciations”); *Técnicas Medioambientales TECMED S.A. v. United Mexican States*, Award (ICSID Case No. ARB(AF)/00/2), para. 190 (29 May 2003) (holding that the tribunal “may consider general equitable principles when setting the compensation owed to the Claimant”); *Arctic Sunrise Arbitration* (Neth. v. Russ.), Award on Compensation (PCA Case No. 2014-02), para. 98 (10 July 2017) (in awarding an “amount of compensation on an equitable basis,” the tribunal noted that, while the claimant had not submitted any supporting documentation that would allow the tribunal to specifically assess the value of the items claimed, the tribunal did “not doubt that the Arctic 30 had personal belongings with them . . . and that the Respondent’s unlawful conduct caused material injury to the Arctic 30” with respect to those items); *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicar.), I.C.J., Judgment (Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica), para. 35 (2 Feb. 2018) (“[T]he absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage.”); *Ahmadou Sadio Diallo* (Guinea v. Dem. Rep. Congo), Judgment, paras. 32-36, 2012 I.C.J. 324, 337-38 (19 June) (having been satisfied that the DRC’s unlawful conduct had “caused some material injury to Mr. Diallo” due to the loss of certain items of personal property, the International Court of Justice awarded an amount “on the basis of equitable considerations,” even though Guinea had offered no evidence of the value of those items); *Trail Smelter Arbitration* (U.S. v. Can.), 3 R.I.A.A. 1911, 1920 (U.S.-Can. Arb. Trib. 1938), quoting with approval the Supreme Court of the United States of America in *Story Parchment Co. v. Paterson Parchment Paper Co.* (1931), 282 U.S. 555:

Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.

See also RIPINSKY & WILLIAMS, *supra* note 927, at 121-22 (“In circumstances in which the precise calculation is difficult or impossible, for example due to inconclusive evidence, tribunals may exercise discretion and resort to ‘approximations.’ Approximations are based on arbitrators’ collective sense of what is reasonable and equitable in the circumstances of the case.” (Footnotes omitted.)).

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

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

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

adopted the standard of “clear and convincing evidence.”⁹³³ However, for purposes of quantifying damages, the Commission required “less rigorous proof,” recognizing, *inter alia*, “the enormous practical problems faced by both Parties in quantifying the extent of damage following the 1998-2000 war.”⁹³⁴ The Commission opined that the determination of the appropriate compensation for the violations of international law it had established “require[ed] exercises of judgment and approximation.”⁹³⁵

1805. Likewise, it is also well-established in the jurisprudence of this Tribunal that, when circumstances make it difficult or impossible precisely to quantify compensation, the Tribunal “is obliged to exercise its discretion to ‘determine equitably’ the amount involved.”⁹³⁶ In so doing, the Tribunal has “a wide margin of appreciation to make reasonable approximations.”⁹³⁷ The Tribunal may, in particular, decide to exercise its discretion in instances where the party bearing the burden of proof did not have access to the required evidence.

⁹³³ See *The Federal Democratic Republic of Ethiopia v. The State of Eritrea*, Eri.-Eth. Cl. Comm., Ethiopia’s Damages Claims, Final Award, para. 36 (17 Aug. 2009); *The State of Eritrea v. The Federal Democratic Republic of Ethiopia*, Eri.-Eth. Cl. Comm., Eritrea’s Damages Claims, Final Award, para. 36 (17 Aug. 2009).

⁹³⁴ *The Federal Democratic Republic of Ethiopia v. The State of Eritrea*, Ethiopia’s Damages Claims, Final Award, para. 36; *The State of Eritrea v. The Federal Democratic Republic of Ethiopia*, Eritrea’s Damages Claims, Final Award, para. 36.

⁹³⁵ *The Federal Democratic Republic of Ethiopia v. The State of Eritrea*, Ethiopia’s Damages Claims, Final Award, para. 37; *The State of Eritrea v. The Federal Democratic Republic of Ethiopia*, Eritrea’s Damages Claims, Final Award, para. 37. In this connection, the Commission stated that, in circumstances where the relevant evidence was “uncertain or ambiguous,” it “made the best estimates possible on the basis of the available evidence.” *Id.* Further, the Commission “recognized that when obligated to determine appropriate compensation, it must do so even if the process involves estimation, or even guesswork, within the range of possibilities indicated by the evidence.” *Id.*

⁹³⁶ *Starrett Housing Corp. et al. and Islamic Republic of Iran et al.*, Award No. 314-24-1, para. 339 (14 Aug. 1987), reprinted in 16 IRAN-U.S. C.T.R. 112, 221.

⁹³⁷ *Starrett Housing Corp.*, Award No. 314-24-1, para. 339, 16 IRAN-U.S. C.T.R. at 222. See also *Eastman Kodak Co. and Islamic Republic of Iran*; Award No. 514-227-3, para. 54 (1 July 1991), reprinted in 27 IRAN- U.S.C.T.R. 3, 21; *Seismograph Service Corp. et al. and National Iranian Oil Co. et al.*, Award No. 420-443-3, para. 306 (31 Mar. 1989), reprinted in 22 IRAN- U.S.C.T.R. 3, 80; *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 48 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 206; *Thomas Earl Payne and Islamic Republic of Iran*, Award No. 245-335-2, para. 37 (8 Aug. 1986), reprinted in 12 IRAN-U.S. C.T.R. 3, 15-16; *American International Group, Inc. et al. and Islamic Republic of Iran et al.*, Award No. 93-2-3 (19 Dec. 1983), reprinted in 4 IRAN-U.S. C.T.R. 96, 109; *Economy Forms Corp. and Islamic Republic of Iran et al.*, Award No. 55-165-1 (14 June 1983), reprinted in 3 IRAN-U.S. C.T.R. 42, 52.

e) *Individual Claims*

(1) Claim G-18 (Ministry of Culture and Arts/Forough)

(a) *Introduction*

1806. 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.”⁹³⁸ The Tribunal must therefore determine whether the United States’ breach of its Paragraph 9 obligation with respect to the 1718 “ex-Wilmotte” Stradivarius violin⁹³⁹ (“the Stradivarius,” except where necessary to distinguish it from other Stradivarius violins) was a cause of the non-transfer of the instrument to Iran.

1807. According to its Summary Table of Claims, in Claim G-18 Iran seeks the return of the Stradivarius or, alternatively, USD 6 million, representing the alleged 2013 fair market value of the instrument. At the Hearing, Iran submitted that its damages claim should be calculated “on the basis of either the 1981 value of the violin . . . or the full current market value of the violin, whichever is greater.” Iran also claims certain consequential losses in an amount of USD 12,000 per year from 19 January 1981 (*i.e.*, the date Iran alleges is the date of the United States’ breach of its Paragraph 9 obligation) until the return of the Stradivarius, or payment of compensation. Furthermore, Iran seeks interest on any awarded amounts.

1808. Prior to the Hearing, Iran also claimed damages for a bow and accessories allegedly purchased with the Stradivarius, costs incurred by Iran for its attorneys and a private detective in the United States, and premiums paid by Iran to insure the Stradivarius. However, as set out in its Summary Table of Claims, Iran has abandoned these aspects of its claim.

(b) *Causation*

(i) *The Parties’ Contentions*

1) *Iran’s Contentions*

1809. Iran asserts that the cause of the non-transfer of the Stradivarius was the United States’ failure to take steps to ensure that Mr. Forough returned the instrument to Iran. According to

⁹³⁸ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. 112 at 139.

⁹³⁹ *See supra* paras. 331-332.

Iran, since it has proved that the United States did not take any steps to ensure the transfer of the Stradivarius to Iran, and that Iran suffered damages as a result, it is self-evident that the cause of the damage suffered by Iran was the United States' failure to take those steps.

2) *The United States' Contentions*

1810. The United States argues that Iran has not established that the non-transfer of the Stradivarius was caused by any breach by the United States of its Paragraph 9 obligation. The United States contends that there is no evidence that Mr. Forough kept the Stradivarius as a result of any United States law, regulation, or other government action. Furthermore, the United States maintains that it was Iran's own failure to resolve the ownership dispute in an appropriate forum that caused the non-transfer of the Stradivarius.

(ii) *The Tribunal's Decision*

1811. In determining whether the causal link between the United States' breach of Paragraph 9 and Iran's alleged injury is sufficient to establish the United States' liability in damages for this Claim, the Tribunal will take into account the principles delineated earlier in this Partial Award.⁹⁴⁰ In the Tribunal's view, such causal link could be considered established if the Tribunal were able to conclude with reasonable certainty that, had the United States taken steps to ensure that the Stradivarius was transferred to Iran, the instrument would have been shipped to Iran.

1812. After reviewing all the evidence, the Tribunal is convinced⁹⁴¹ that, had the United States taken steps to ensure that the Stradivarius was transferred to Iran, the instrument would have been transferred in accordance with the transfer directive of Executive Order No. 12281; thus, Mr. Forough would not have been allowed to retain the Stradivarius and refuse its transfer. Even if one were to accept that Iran's initial conduct somehow contributed to the non-transfer of the Stradivarius (*i.e.*, by not establishing that it held title before a court competent for domestic purposes between litigants alleging claims based on private law), the Tribunal finds that Iran was under no duty to seek that determination in any court, including United States

⁹⁴⁰ See *supra* paras. 1791-1795.

⁹⁴¹ See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 148 n.153 (2 July 2014).

courts. It was principally the United States' failure to take any steps to ensure the transfer thereof that caused the damage suffered by the Ministry.

1813. Accordingly, the Tribunal holds that, in the circumstances, the United States' failure to take any steps to ensure the transfer of the Stradivarius was the principal cause of the non-transfer thereof to Iran. Thus, the United States is liable in damages to Iran for the United States' breach of the General Declaration.

1814. The Tribunal determines below the nature and extent of any damage suffered by Iran as a result of the United States' breach of the Algiers Declarations, as described above.

(c) *Valuation*

(i) *The Parties' Contentions*

1) *Iran's Contentions*

Claim for the Return of the Stradivarius

1815. As its primary request for relief, Iran seeks return of the Stradivarius. According to Iran, it is undisputed that the Ministry purchased and paid for the instrument in September 1976. Iran also submits that the Stradivarius was only given to Mr. Forough to hold in trust for the Ministry. Accordingly, Iran contends that it is the rightful owner of the instrument and is entitled to its return.

Claim for the Fair Market Value of the Stradivarius

1816. In the alternative, as noted above, Iran claims damages in the amount of the fair market value of the Stradivarius as of October 2013 (*i.e.*, the date of the Hearing) on the basis that the United States "has been continuously in breach of its paragraph 9 transfer obligation from 1981 to the present day."

1817. To determine the value of the Stradivarius in October 2013, Iran relies on the testimony of its expert witness, Mr. Kerry Keane, at the Hearing. Mr. Keane is a trained violin maker and string instrument specialist who used to work for and now consults for Christie's. Mr. Keane was instructed to establish the fair market value, not an insurance or replacement value, of the Stradivarius in 1981 and in 2013. Mr. Keane was engaged by Iran shortly before the Hearing and did not submit an expert report.

1818. While maintaining its position that the instruments should be valued as of October 2013, Iran also submits that the Tribunal was given “the tools” to make its assessment of damages on the basis of a valuation date “other than 1981, or 2013, on which [the Tribunal has been provided with] direct evidence.” Iran also argues that, if the Tribunal were to choose a date other than 1981 or 2013, the Tribunal should adopt Mr. Keane’s assumption, which he stated is conservative, that the value of such instruments increases at a rate of four percent, compounded, each year.

1819. Mr. Keane testified that there are five determinants of value for string instruments, namely: (i) attribution (who made the instrument) and expertise; (ii) quality (*inter alia*, its tonal quality) and the period in which the instrument was produced; (iii) condition (how much of the instrument is original, any repairs or restoration, how much damage the instrument has suffered since its creation); (iv) provenance (who has owned and played it); and (v) freshness to the market (whether the instrument was newly offered for sale, or if it has been on the market for some time). Mr. Keane also testified that the “prices of rare Italian violins have continued to rise, and they rise at a steady rate if you look at them over the last ten years, if you look at them over the last 20 years.”

1820. Furthermore, when referring to violins manufactured in Antonio Stradivari’s shop, Mr. Keane confirmed that the market gives particular importance to whether the instrument was built during the so-called “golden period,” *i.e.*, between 1700 and 1720. Mr. Keane stated that the Stradivarius that is the subject of this Claim was built during the golden period.

1821. Mr. Keane indicated that violin makers around the world considered the 1718 “ex-Wilmotte” violin to be “a good solid Strad,” adding that it was “not the best,” but still had “good quality.” Mr. Keane also stated that its maintenance records, dating back to 1986, showed that it had been “played quite a bit,” but was nonetheless “well maintained.”

1822. Mr. Keane also explained that information concerning auction sales of antique violins and Stradivarius violins in particular was “[v]ery public” and available directly from auction houses or through companies who publish this information. In particular, Mr. Keane stated that “the property itself, the condition, attributions, provenance and ultimately the sale price is all public record.”

1823. In order to provide his valuation of the Stradivarius in 1981, Mr. Keane referred to a sale in 1981 of a comparable Stradivarius violin, also built during the golden period, for

USD 475,000 and another sale on an unspecified date of a violin of “not quite as good quality” for USD 395,000. On the basis of these two sales, Mr. Keane valued the Stradivarius in 1981 at USD 450,000.

1824. In order to provide his valuation of the Stradivarius in October 2013, Mr. Keane referred to four sales of what he considered to be comparable Stradivarius violins from the golden period that had reportedly taken place between 2000 and 2010.

- (i) The Lady Blunt, a Stradivarius violin from 1721, was sold in a charity auction in June 2010, for the world record price of GBP 9.8 million (almost USD 14.4 million at that time). Mr. Keane testified that the Lady Blunt was a “magnificent instrument” and that its original neck and the majority of its original varnish had been preserved. However, Mr. Keane added that “tonally, it doesn’t really perform as well as a musical instrument as others.”
- (ii) The General Kyd-Perlman, a Stradivarius violin from 1714, was sold in a private sale in September 2009, as part of a package with another instrument for a total amount of USD 18 million. According to Mr. Keane, the reported price for the sale of the General Kyd-Perlman was USD 5.5 million. However, Mr. Keane testified that he believed that the actual price of the General Kyd-Perlman might have been somewhat higher, probably around USD 7 or 8 million. Mr. Keane explained that this violin was named after both a 19th century English general and Mr. Itzhak Perlman, who performed with it for much of his early career.
- (iii) La Pucelle, a Stradivarius violin from 1709, was sold privately to a collector in 2001 for USD 6 million. Mr. Keane explained that the violin received its name because of its “virginal state,” and the “lovely varnish on it.” Mr. Keane described it as “an extraordinary work.”
- (iv) The Dolphin, a Stradivarius violin from 1714, was sold privately in 2000 to the Nippon Foundation for USD 5.5 million.

1825. On the basis of these sales and the determinants of value described above (including the maintenance and repair performed on the Stradivarius throughout the years), Mr. Keane testified that the fair market value of the 1718 “ex-Wilmotte” Stradivarius violin was USD 6.5 million in October 2013 (*i.e.*, the date of the Hearing).

1826. However, following Mr. Keane's cross-examination and the testimony of the United States' expert witness, Mr. Theodore Martens of PricewaterhouseCoopers ("PwC"), Iran accepted that Mr. Keane's valuation should be adjusted to take account of a buyer's premium (*i.e.*, the commission charged by the auction house in the case of an auction sale).

1827. As to the amount of that buyer's premium, Mr. Keane explained that "each [auction] house has standard increments in which they structure their buyer's premium," and that the buyer's premium for each auction house is published. For example, Mr. Keane stated that "Christie's buyer's premium ranges at 25 percent for the sums under \$50,000; at above 50,000 and less than a million, it's 20 percent; and at a million and above, it's 12 percent." Mr. Keane also explained that commissions for private sales range from four or five percent for a simple sale to 20 percent where more work is involved and become negotiable when the sale is above USD 5 million.

1828. During his cross-examination, Mr. Keane confirmed that the USD 6.5 million valuation he had provided was an "all in" price, *i.e.*, including any buyer's premium. Mr. Keane revised his valuation accordingly to USD 6 million.

1829. Iran submits that maintenance and other costs incurred by Mr. Forough should not be deducted from the damages awarded by the Tribunal because "it is not unreasonable for such amounts to be paid by the person who has taken the benefit of the violin and caused such maintenance costs to be incurred." Iran also argues that "the owner of the violin, Roudaki (Vahdat) Hall . . . is fully acquainted with the method of preservation and maintenance of invaluable music instruments" and "would not have incurred additional costs for maintaining, storing, insuring and providing security for the violin."

1830. Therefore, Iran submits that, in case the Stradivarius is not returned to Iran, the Tribunal should award damages to Iran of USD 6 million, which it contends represents the fair market value of the Stradivarius in October 2013.

Claim for Loss of Use

1831. Iran also seeks damages for the loss of use of the Stradivarius from 19 January 1981 to the date it is returned to Iran or, alternatively, payment of compensation.

1832. Iran claims an amount of USD 12,000 per year, based on the affidavit of Mr. Mohammad Biglari Pour, the former Director of Music at the Iranian Broadcasting Organization, who Iran describes as its “initial expert on valuation.” Mr. Biglari Pour passed away before the Hearing. The relevant passage of Mr. Biglari Pour’s affidavit is as follows:

I believe that lack of this instrument and the impossibility of using it in the past 26 years, due to the non-availability of which no solo performances with very high quality were presented, caused substantial damage upon Iran, as we could have many contracts with different companies of the world for solo performances accompanied by great international orchestras. As we did not have this instrument, such performances were not held. I estimate the damage for loss of use of this instrument to have been US\$12,000, per year.

2) *The United States’ Contentions*

Claim for the Return of the Stradivarius

1833. The United States argues that Iran was only entitled to the return of property it actually owned. According to the United States, “Paragraph 9 does not require the United States to transfer non-Iranian property to Iran, nor does it require the United States to deprive [United States] nationals and residents of property simply because Iran claims to own it.” Therefore, the United States contends that, before the United States could arrange for the transfer to Iran of property over which a United States person asserted title, the contest as to who owned the property had to be resolved. In the present case, according to the United States, since Iran never resolved its dispute with Mr. Forough over title to the Stradivarius, the United States’ Paragraph 9 obligation was never triggered.

Claim for the Fair Market Value of the Stradivarius

1834. The United States submits that it is “Iran’s burden to establish the quantum of losses with specificity.”

1835. The United States notes that Mr. Keane’s testimony was premised either on a valuation date of 1981 or a valuation date of October 2013, which the United States “presume[s] is a proxy for the date of [the] award.” For the United States, however, the valuation date must be “driven by the date of breach” and, if the Tribunal were to find a date of breach other than one of the dates as of which Mr. Keane valued the Stradivarius, there would be no evidence in the record as to its fair market value.

1836. In the alternative, the United States contends that, if the Tribunal accepts that the valuation date should be a date other than the date of breach, the Tribunal could calculate the value using Mr. Keane's assumption that such an instrument would increase in value at compound rate of four percent per year. However, the United States insists that any such calculation should be based on the original purchase price, rather than Mr. Keane's valuations as of 1981 or 2013, as the original purchase price constitutes the "only actual sales data for the [violin] in the record." Notwithstanding this acceptance of Mr. Keane's assumption, the United States also notes that Mr. Keane had not been willing to make a prediction as to the value of the violin in "two or three years" on the basis that "it would be highly unprofessional for [him] to speculate."

1837. As noted above, the United States relies on the expert report prepared by Mr. Martens and his testimony at the Hearing. Mr. Martens stated in his report that "[i]n the context of valuing unique items like the violin . . . the information required to arrive at an accurate estimate . . . will depend on a number of industry-specific considerations." However, as Mr. Martens stated during his cross-examination, he does not have any specific knowledge or expertise in musical instruments or their valuation. Presumably for this reason, Mr. Martens described in his report and at the Hearing how his team spoke to a representative of Christie's to discuss the valuations. On the basis of this conversation, Mr. Martens stated that the "primary cost drivers of musical instruments include the identity of the craftsman and the conservation of the piece," and that "[v]aluing musical instruments is done on a case-by-case basis" and, "[a]part from the craftsman, the value rests almost entirely on the physical condition of the instrument." According to Mr. Martens, the representative of Christie's informed him that it would be "virtually impossible" for Christie's to perform a valuation without access to the instruments or a photograph thereof.

1838. At the Hearing, Mr. Martens accepted that Iran's expert witness, Mr. Keane, "obviously has the expertise, the background," and that he "learned a lot from reading his testimony." Mr. Martens also approved of Mr. Keane's general approach to determining the fair market value (*i.e.*, having regard to comparable sales). However, Mr. Martens raised several concerns with regard to Mr. Keane's valuation of the Stradivarius, as described in relevant part below.

1839. The United States challenged Mr. Keane's testimony at the Hearing on the basis that he had failed to refer to the following more recent sales of Stradivarius violins, which were also for considerably lower amounts:

- (i) The Penny, a Stradivarius violin from the golden period sold by Mr. Keane himself in 2008 for USD 1.3 million. Mr. Keane suggested that he had not taken into account the sale of the Penny because it lacked many of its original pieces.
- (ii) The Molitor, a Stradivarius violin said to have been owned by Napoléon Bonaparte, which was sold at auction in 2009 for USD 3.6 million. Mr. Keane had seen this instrument and suggested that he disregarded it because it was “pre-golden” and did not “fit into the rubric of a golden period example.”
- (iii) The Hammer, a Stradivarius violin from the golden period sold by Mr. Keane himself in 2006 for USD 3,544,000. Mr. Keane stated that The Hammer was a “spectacular instrument, though it had quite a few cracks in the top, but very well repaired . . . the only criticism [he] could give was it didn’t retain a lot of its original varnish.” The United States observes that Mr. Keane did not provide an explanation for not considering this sale for the purposes of his valuation of the “ex-Wilmotte.”
- (iv) The Baron von der Leyen, a Stradivarius violin from the golden period sold by Tarisio in 2012 for USD 2.6 million. Mr. Keane stated that he “was not so familiar with” this instrument but, as observed by the United States, did not otherwise provide an explanation for not considering this sale for the purposes of his valuation of the “ex-Wilmotte.” Mr. Martens stated that, in his view, it was unclear whether Mr. Keane had taken this sale into account despite it being the most recent sale of a comparable violin.

1840. The United States also urges the Tribunal to take into consideration that one of the four sales referenced by Mr. Keane was a charity auction sale and that the other three sales were private sales. As to the charity auction sale (of the Lady Blunt violin), the United States argued that “[t]here’s no way to know how much of that price reflected the market valuation of the violin rather than the charitable intent of the buyer.” Mr. Martens stated that he considered this sale to be “an outlier under the circumstances,” *i.e.*, because of the charitable aspect of the sale.

1841. In relation to the private sales, the United States argues that the amount of seller’s agent’s commission was unknown, and that, as some of the purchasers were collectors, the sales price might reflect a (higher) special value (*e.g.*, for completing that collector’s collection) rather than the fair market value. Mr. Martens for his part was concerned that the private sales lacked transparency and may have reflected above-market values.

1842. On cross-examination, the United States also challenged Mr. Keane's valuations on the basis that he did not take into account a condition report (*i.e.*, a report describing a physical examination of the instrument and estimating the repair work that has been performed) or a dendrochronology analysis (*i.e.*, an analysis of the age of an instrument on the basis of the growth patterns seen in the wood, which can assist with attribution), as he normally would when performing a valuation for Christie's. The United States further challenged Mr. Keane's valuation because he gave only a single value, rather than a range of values; Mr. Keane had explained that pre-sale estimates before auctions are typically presented as a range of values.

1843. The United States also submits that, on the basis of Mr. Marten's testimony, Mr. Keane referred to old rates for buyer's premiums in his testimony and that current rates (*i.e.*, as of October 2013) should be used. As explained by Mr. Martens, his team checked "how the buyer's premium was calculated" via the Christie's website just before he gave his testimony at the Hearing and "determined [that] . . . they charge, based upon levels of sales proceeds . . . 25 percent for the first 100,000, 20 percent for the next 1.9 million, and for all proceeds above 2 million, they charge 12 percent." According to Mr. Martens, the buyer's premium for a USD 6.5 million auction sale would be USD 850,000. Thus, Mr. Martens concluded that, if Mr. Keane's all-in valuation were to be accepted as the basis for the fair market value of the Stradivarius, then the Tribunal should award USD 5.65 million instead of Mr. Keane's USD 6 million.

1844. Finally, the United States submits on the basis of Mr. Martens's testimony that avoided costs should be deducted from any amount awarded to Iran because they have not been incurred by Iran. Specifically, Mr. Martens noted Mr. Forough's statement that he had spent roughly USD 50,000 in maintaining and caring for the Stradivarius over the years. Mr. Martens explained that the relevant costs would have to be deducted on the basis of their invoice date. Previously, the United States also argued that "shipping, handling, and insurance of the violin during its transfer to Iran" and "further expenses [for] maintaining, storing, insuring, and providing security for the violin" should be deducted from any award to Iran.

Claim for Loss of Use

1845. The United States submits that Iran's claim for consequential damages must be rejected for lack of evidentiary support. The United States argues that Iran's claim relies solely on the affidavit of Mr. Biglari Pour which simply provides a figure of USD 12,000 per year without

any further support as to actual concerts or other opportunities lost due to the absence of the Stradivarius.

1846. According to Mr. Martens's report, "in the context of cases involving the loss of property, a claim for consequential damages typically involves an explanation of the theory of consequential damages, describing the relevant facts and circumstances and how and why damages occurred as a result of not having the property for a specified period of time. Such damages are often described on a "but-for" basis" Mr. Martens also states in his report that "a proper assessment of consequential damages requires a claimant to produce basic evidence supporting the fact that such additional losses were incurred." According to Mr. Martens, "Iran's consequential damages claims fail to meet those standards."

(ii) *The Tribunal's Decision*

Return of the Stradivarius

1847. As noted above at paragraph 1806, Iran's primary claim is for the return of the Stradivarius. The Tribunal will consider this Claim having regard to the principles of international law governing the legal consequences of an internationally wrongful act by a State, which principles the Tribunal is authorized by Article V of the Claims Settlement Declaration to apply.⁹⁴² As discussed above,⁹⁴³ under international law "the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act."⁹⁴⁴ Restitution is the principal form of reparation foreseen in Article 34 of the ILC Articles for injuries caused by such internationally wrongful act. In turn, Article 35 of the ILC Articles provides:

Article 35. Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;

⁹⁴² Claims Settlement Declaration, art. V, 1 IRAN-U.S. C.T.R. at 11. *See also Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 191 (2 July 2014).

⁹⁴³ *See supra* para. 1787.

⁹⁴⁴ ILC Articles, art. 31. *See Rep. of the Int'l Law Comm'n, supra*, note 89, cmt to art. 31.

- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.⁹⁴⁵

1848. The Tribunal determines that such a remedy is all the more appropriate, given that the Stradivarius is a unique object rather than an interchangeable commodity.

1849. In the present case, the Tribunal notes that the Stradivarius is not only still in existence and within the jurisdiction of the United States, but that the United States is aware of its location or can readily identify it through Mr. Forough. The Tribunal determines that the return of the instrument is neither materially impossible nor does it entail a burden out of all proportion, as provided by Article 35 of the ILC Articles. Under these circumstances, the Tribunal finds that ordering the United States to arrange for the transfer of the Stradivarius constitutes the proper remedy, so as to put Iran in the situation it would have been had the breach by the United States not occurred.

1850. Notwithstanding the above, in light of Mr. Forough's testimony during the Hearing and his attitude towards the Stradivarius and its potential return to Iran, the Tribunal is aware that the United States might face certain difficulties in recovering the instrument and arranging for its transfer to Iran. Consequently, the Tribunal considers it reasonable to grant the United States a four-month period in which to locate and arrange for the transfer of the Stradivarius to Iran.

Method of valuation: Fair Market Value

1851. In the alternative, should the United States be unable to return the Stradivarius, the Tribunal notes that Iran seeks compensation in the amount of USD 6 million.

1852. In analyzing Iran's claim for direct damages, the Tribunal notes three issues. First, the Parties are in broad agreement that determining the fair market value of the Stradivarius is the correct valuation method for assessing Iran's direct damages. Second, according to Iran's Summary Table of Claims when cross-referenced to the testimony of Mr. Keane at the Hearing, Iran's claim is based on a valuation date of October 2013. Third, the reliability and veracity of the evidence given by Mr. Keane was not impugned by the United States, other than in respect of the fact that he did not obtain a condition report or dendrochronology for the instruments before valuing them. In this regard, the Tribunal notes Mr. Keane's explanation that a physical

⁹⁴⁵ ILC Articles, art. 35. See Rep. of the Int'l Law Comm'n, *supra*, note 89, cmt to art. 35.

inspection of the instruments would be needed to prepare a condition report or dendrochronology, which would not have been possible in the circumstances of this case. As noted above, Mr. Martens, not only conceded that Mr. Keane had the expertise and background to provide a valuation of the Stradivarius, but agreed with his fair market value approach.⁹⁴⁶ However, both Mr. Martens and counsel for the United States highlighted certain inconsistencies or omissions in Mr. Keane's expert witness testimony regarding the Stradivarius, urging the Tribunal to bear this in mind when determining the fair market value of the Stradivarius violin as of October 2013.

1853. In light of the above, the Tribunal concludes that the Parties agree that the fair market value approach is the correct method of valuing the Stradivarius. In determining the fair market value of the instrument, the Tribunal can neither overlook Mr. Martens's lack of specific expertise in the field of string instruments nor the fact that the United States has failed to put forward an alternative value for the instrument (with the exception of the request to take into account the higher rates of the buyer's premium at Christie's valid in October 2013 in the event the Tribunal were to accept Mr. Keane's all-in valuation of USD 6.5 million).

1854. Furthermore, the Tribunal takes note of the reservations expressed by Mr. Martens and counsel for the United States as to the sales that Mr. Keane has taken into account to arrive at his valuation and his calculation of the fair market value and, to some extent, shares those reservations. First, the Tribunal finds it difficult to accept that Mr. Keane did not take into consideration four sales of allegedly comparable instruments that were sold between 2006 and 2012 for significant lower amounts (the Penny, the Molitor, the Hammer, and the Baron von der Leyen), and that he failed to provide convincing reasons for not considering these sales. Second, Mr. Keane failed to explain why the Stradivarius at issue in this Claim, which he described as "a good solid Strad, not the best" should fetch approximately the same price as La Pucelle, which he described as "an extraordinary work." Finally, the Tribunal notes that Mr. Keane testified that the Hammer, which he described as a "spectacular instrument," was sold in 2006 for a price of USD 3,544,000. As the United States pointed out at the Hearing, applying Mr. Keane's assumption of a four percent increase in value, compounded annually, would result in a value in 2013 of approximately USD 4,663,662 (before any deduction for a

⁹⁴⁶ See *supra* para. 1838.

buyer's premium or sales commission). Nevertheless, Mr. Keane provided a valuation as of 2013 for the Stradivarius, which he described as "not the best," of USD 6.5 million.

1855. These considerations lead the Tribunal to the conclusion that, despite the general reliability of the evidence given by Mr. Keane, Iran's expert witness, the valuation provided by Mr. Keane for the "ex-Wilmotte" violin would not appear to be an impeccable basis on which the Tribunal can make its assessment of direct damages due to Iran. Therefore, the Tribunal finds it necessary to reach, on the basis of the information provided by the Parties and their expert witnesses, its own assessment of the fair market value of the Stradivarius in October 2013.

Valuation of the Stradivarius

1856. It bears repeating here that, as explained in the Tribunal's general comments on evidentiary standards above, it is well-established in international law that difficulties in calculating damages should not deprive a claimant whose interests have been injured from obtaining compensation.⁹⁴⁷ This principle has been endorsed in recent decisions of international arbitral tribunals. Thus, for example, in *Vivendi v. Argentina*, the tribunal stated: "it is well settled that the fact that damages cannot be fixed with certainty is no reason not to award damages when a loss has been incurred."⁹⁴⁸ In *Tecmed v. Mexico*, the tribunal stated that "any difficulty in determining the compensation does not prevent the assessment of such compensation where the existence of damage is certain."⁹⁴⁹

1857. Further, there is considerable jurisprudence in investment arbitrations in which tribunals have recognized the authority of international arbitral tribunals to determine the amount of damages – and, in the process, to resort to approximations – where circumstances do not permit a precise calculation.⁹⁵⁰ Likewise, it is also well-established in the jurisprudence

⁹⁴⁷ *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 230 (2 July 2014). See also, e.g., *RIPINSKY & WILLIAMS*, *supra* note 927, at 121.

⁹⁴⁸ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, Award (ICSID Case No. ARB/97/3), para. 8.3.16 (20 Aug. 2007). See also *Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, Award (ICSID Case No. ARB/84/3), para. 215 (20 May 1992).

⁹⁴⁹ *Técnicas Medioambientales TECMED S.A. v. United Mexican States*, Award (ICSID Case No. ARB(AF)/00/2), para. 190 (29 May 2003).

⁹⁵⁰ See, e.g., *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, Award (ICSID Case No. ARB/97/3), para. 8.3.16 (20 Aug. 2007) (holding that, where damages cannot be fixed with certainty, "approximations are inevitable"); *Petrobart Ltd. v. Kyrgyz Republic*, Award (SCC Arb. No. 126/2003) at 83-84 (29 Mar. 2005) (given that the information on record was "too uncertain to allow the Arbitral Tribunal

of this Tribunal that, when circumstances make it difficult or impossible to precisely quantify compensation, the Tribunal may exercise its discretion to assess the amount of damages.⁹⁵¹ In particular, the Tribunal's practice shows that evidence of actual sales of comparable items can be useful in establishing the fair market value of an item.⁹⁵²

1858. In the present case, the Tribunal will, on the basis of the information and guidance provided by the Parties and the expert witnesses, make a determination as to the fair market value of the Stradivarius as of 14 October 2013, *i.e.*, the date of Mr. Keane's testimony at the Hearing. As to the valuation date, the Tribunal notes that it is not disputed that the value of the Stradivarius will have changed over time. In addition, the United States appears to recognize at least in principle that the most recent evidence as to the value of such a property should be used, that is the evidence presented to the Tribunal on 14 October 2013.⁹⁵³

1859. The Tribunal has been presented with a total of eight sales of allegedly comparable violins that took place either privately or at auction, between 2000 and 2012. For the reasons explained by Mr. Keane and Mr. Martens (namely, lack of transparency of price-building, lack of reliable information, ignorance of underlying motives for the sale, etc.), one could exclude the allegedly comparable violins that were sold in private sales and consider only those sold at auctions. However, while the Stradivarius was purchased by Iran in a private sale in 1976, the Tribunal is not in the position to judge whether Iran, today, would need to enter into a private transaction if it was looking for a replacement instrument, or whether it would have to purchase it at an auction. Therefore, the Tribunal finds it appropriate to take into account both the private sales and the auctions. Furthermore, the Tribunal deems it necessary to exclude the two outlier sales, namely, that of Lady Blunt (at the high end) and that of the Penny (at the low end).

to make precise mathematical calculations of the damage," the tribunal made "a more general assessment" of the damage "based on probabilities and reasonable appreciations"). *See also* RIPINSKY & WILLIAMS, *supra* note 927, at 121-22 ("In circumstances in which the precise calculation is difficult or impossible, for example due to inconclusive evidence, tribunals may exercise discretion and resort to 'approximations.' Approximations are based on arbitrators' collective sense of what is reasonable and equitable in the circumstances of the case." (Footnotes omitted.))

⁹⁵¹ *See, e.g., Starrett Housing Corp. et al. and Islamic Republic of Iran et al.*, Award No. 314-24-1, para. 339 (14 Aug. 1987), *reprinted in* 16 IRAN-U.S. C.T.R. 112, 221.

⁹⁵² *SEDCO, Inc. and National Iranian Oil Co. et al.*, Award No. 309-129-3, para. 31 (7 July 1987), *reprinted in* 15 IRAN-U.S. C.T.R. 23, 37-38; *Harold Birnbaum and Islamic Republic of Iran*, Award No. 549-967-2 (6 July 1993), *reprinted in* 31 IRAN-U.S. C.T.R. 287.

⁹⁵³ *See supra* para. 1836.

1860. Consequently, the Tribunal deems it appropriate to assess the fair market value of the Stradivarius in October 2013 on the basis of the mean of the prices for the remaining six sales. The Tribunal has considered other approaches to selecting the violins it should take into consideration for purposes of assessing the fair market value of the Stradivarius as of October 2013. Upon reflection, none of those alternative approaches would be preferable on the basis that they are logically or commercially superior.

1861. The Tribunal also notes the Parties' agreement that the buyer's premium (or commission, in the case of a private sale) should not form part of a fair market valuation. The Tribunal refers to Mr. Martens's explanation of how the buyer's premium applied by Christie's in October 2013 should be calculated (*i.e.*, 25 percent up to USD 100,000, 20 percent between USD 100,000 and USD 2 million, and 12 percent above 2 million). The Tribunal also notes that Mr. Keane testified that the commission on a private sale could vary from four percent to 20 percent, depending on the work involved, and that commissions were generally negotiable in the relevant price range. The Tribunal further notes Mr. Keane's statement that "the auction houses compete vigorously . . . against private venues." Accordingly, the Tribunal will take into account a buyer's premium for each of the sales, despite the fact that they are a combination of auction sales and private sales, on the assumption that the two charges will not differ substantially for the range of values for violins that have been presented to the Tribunal.

1862. It is also necessary to take into account the dates of the sales that are being considered. As noted above, the Parties have accepted that the value of the violins being considered will change over time and Mr. Keane testified to a conservative four percent annual increase to determine the value of musical instruments based on historical information, which the United States indicated was acceptable to it. The Tribunal therefore finds that Mr. Keane's estimate that the value of a violin will increase by four percent annually is a reasonable basis for adjusting the comparator sales to a valuation date of 14 October 2013 (*i.e.*, the date of Mr. Keane's testimony).⁹⁵⁴

⁹⁵⁴ The Tribunal notes that it is in principle possible to use Mr. Keane's estimate to adjust the value to the date of the award, but considers that it has only been presented with evidence as to the validity of that estimate as of the date of Mr. Keane's testimony.

	Sale price [USD]	Date of sale ⁹⁵⁵	Sale price adjusted to October 2013 [USD]	Net of buyer's premium (~sales commission) [USD]
General Kyd- Perlman	5.5 million ⁹⁵⁶	September 2009 (15 September 2009)	6,454,997.04	5,515,397.39
Dolphin	5.5 million	2000 (1 July 2000)	9,264,801.14	7,988,025.01
La Pucelle	6 million	2001 (1 July 2001)	9,718,322.88	8,387,124.13
Molitor	3.6 million	2009 (1 July 2009)	4,259,734.45	3,583,566.32
Hammer	3,544,000	2006 (1 July 2006)	4,717,592.49	3,986,481.39
Baron von der Leyen	2.6 million	2012 (25 April 2012)	2,754,440.25	2,258,907.42

1863. Therefore, the Tribunal determines that the fair market value of the Stradivarius in October 2013 is USD 5,286,583.61. This value will be subject to pre-award interest, as discussed below.⁹⁵⁷

Expenses incurred by the holder, Mr. Forough, while the Stradivarius was on loan

1864. The United States argues that expenses incurred by Mr. Forough, such as those for repairs and refurbishments, during the time he held the Stradivarius, must be deducted from any award to Iran so that Iran is not placed in a better position than it would have been absent any breach on the part of the United States.

1865. Although neither Party has addressed this issue, the Tribunal wishes to note that, had it been seised of the matter in a dispute between Iran and Mr. Forough, this question would depend on the law applicable to the relationship between the owner of the Stradivarius, Iran, and the unlawful possessor, Mr. Forough. Most legal systems belonging to the civil law

⁹⁵⁵ The Tribunal's assumptions as to the exact date of each sale are indicated in parentheses.

⁹⁵⁶ The reported price of USD 5.5 million for the General Kyd-Perlman has been used for this calculation.

⁹⁵⁷ See *infra* para. 2567 *et seq.*

tradition characterize this property-law relationship as *rei vindicatio*, while common law systems conceptualize it as related to trespassing. Consequential claims of the owner and the possessor against each other may be characterized as contractual, quasi-contractual (*negotiorum gestio*), restitution, or delictual (tort). The determination of the law applicable to these issues depends on how this relationship is to be characterized. If characterized as *negotiorum gestio* (as most civil law systems would do on the present facts), under Articles 4 and 2 of the Regulation No 864/2007 on the Law Applicable to Non-Contractual Obligations (Rome II),⁹⁵⁸ the “law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs,” *i.e.*, the place where the holder incurred the expenses would apply. In those instances, Mr. Forough would – in all likelihood and judging on the basis of typical common law jurisdictions – have no claim for reimbursement. Yet, as mentioned above, neither Party has addressed this matter.

1866. However and more importantly, whether or not Mr. Forough would be entitled to be reimbursed for the expenses incurred in maintaining the Stradivarius in a hypothetical claim with Iran has no bearing on the determination of the compensation due to Iran as a consequence of the United States’ breach of its international obligation. There is no justification why the United States, liable under public international law, should benefit from expenses incurred by the (unlawful) holder of the instrument.

1867. Therefore, the Tribunal finds that no deduction for maintenance and other costs shall be made.

1868. Consequently, after reviewing all the evidence, the Tribunal awards USD 5,286,583.61 to Iran as compensation in the event that the United States is unable to arrange for the transfer of the Stradivarius to Iran within four months of the date of this Partial Award.

Claim for Loss of Use

1869. Iran seeks damages the Ministry allegedly suffered due to having been deprived of the use of the Stradivarius from 19 January 1981, the date on which Iran asserts the United States’ breach of the Algiers Declarations commenced, until the return of the instrument or the payment of compensation. In support of its claim Iran relies solely on the affidavit of

⁹⁵⁸ Council Regulation 864/2007 on The Law Applicable to Non-Contractual Obligations (Rome II), arts. 4 & 2, 2007 O.J. (L 199) 40, 43-44.

Mr. Biglari Pour, who generally refers in two paragraphs to music concerts, solo performances, and contracts with different companies that were not concluded due to the lack of the Stradivarius. Mr. Biglari Pour quantified the loss of use in an amount of USD 12,000 per annum.⁹⁵⁹ However, Mr. Biglari Pour provided no explanation regarding how he reached said figure nor did he attach any documents in support of his statements to his affidavit. Furthermore, Iran has presented no further evidence as to whether the Stradivarius would have generated any revenue or profits during the relevant period.

1870. In relation to Iran's claims for lost revenue, the Tribunal recalls its earlier decisions that lost profits may be awarded, provided that Iran is able to establish to the Tribunal's satisfaction that such profits would have accrued.⁹⁶⁰ In this context, the Tribunal has found that an alleged loss of profit has to be shown with a sufficient degree of certainty and has rejected claims that were found to be too speculative.⁹⁶¹ In *Sedco, Inc. v. National Iranian Oil Co.*,⁹⁶² when analyzing the claimant's loss-of-use claim, the Tribunal took into consideration four elements, namely: (i) the equipment could not have been replaced immediately; (ii) the specific time replacement would have taken; (iii) the income that would have been generated by the use of the item; and (iv) the specific amounts of that income.⁹⁶³ In granting the claimant's loss-of-use claim, the Tribunal considered, among other elements, that: (i) the claimant could have in fact leased the items at stake profitably had it possessed them during those nine months;⁹⁶⁴ (ii) it would have in fact taken the claimant nine months to replace the

⁹⁵⁹ See *supra* para. 1832.

⁹⁶⁰ See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 55 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 209; *Dadras Int'l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 267 (7 Nov. 1995), reprinted in 31 IRAN-U.S. C.T.R. 127, 200.

⁹⁶¹ See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 58 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 209-210 (dismissing a claim for lost profits because the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit); *Seismograph Service Corp. et al. and Islamic Republic of Iran et al.*, Award No. 420-443-3, paras. 306-307 (22 Dec. 1988), reprinted in 22 IRAN-U.S. C.T.R. 3, 80-81 (partially dismissing a claim for lost profits because the profit margin claimed by the Claimant was exaggerated deeming it purely speculative); *Dadras Int'l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 276 (7 Nov. 1995), reprinted in 31 IRAN-U.S. C.T.R. 127, 203-4 (dismissing a claim for lost profits for failure of proof because the damages claimed were unduly speculative, and the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit).

⁹⁶² *Sedco, Inc. and National Iranian Oil Co. et al.*, Award No. 309-129-3, paras. 85-86 (7 July 1987), reprinted in 15 IRAN-U.S. C.T.R. 23, 53.

⁹⁶³ *Sedco, Inc.*, Award No. 309-129-3, paras. 85-86, 15 IRAN-U.S. C.T.R. at 53.

⁹⁶⁴ *Sedco, Inc.*, Award No. 309-129-3, paras. 85-86, 15 IRAN-U.S. C.T.R. at 53.

items.⁹⁶⁵ Further, in determining the amount of lost profits to be awarded, the Tribunal rejected the claimant's claim for a daily profit of USD 5,000 per item as "not compelling," and it limited its award to the amount of profit "actually earned" in comparable operations in Iran in 1978.⁹⁶⁶

1871. Against this background, the Tribunal finds that Iran's claim for loss of use does not meet the Tribunal's standards for substantiation of this kind of claim. Neither Mr. Biglari Pour nor Iran have shown that the Stradivarius could not have been replaced at the time, how long such a replacement would have taken, and what revenue the Stradivarius would have generated had it been returned to Iran. Mr. Biglari Pour's damage assessment contains no explanation as to how he reached the figure of USD 12,000 per annum, nor did he attach any documentation that would support his assertions with any degree of certainty.

1872. The Tribunal therefore finds that Iran has not established with a sufficient degree of certainty that the timely return of the Stradivarius would have resulted in a profit for Iran. Consequently, Iran's claim for loss of use is dismissed.

Conclusion

1873. In view of the above, the Tribunal directs the United States to arrange for the transfer of the Stradivarius to Iran within four months of the date of this Partial Award. Thus, the United States shall take steps to ensure that the holder or holders of the Stradivarius will transfer the instrument to Iran within that time period.⁹⁶⁷ In the event that the Stradivarius is not transferred to Iran within four months of the date of this Partial Award, the Tribunal awards USD 5,286,583.61 to Iran as direct damages, derived from the 14 October 2013 fair market value of the instrument, due as a result of the United States' failure to comply with its obligations under the Algiers Declarations.

⁹⁶⁵ *Sedco, Inc.*, Award No. 309-129-3, paras. 85-86, 15 IRAN-U.S. C.T.R. at 53. The Tribunal, however, reduced to seven months the period for which the claimant could recover, to account for the time it would have taken to restart operations.

⁹⁶⁶ *Sedco, Inc.*, Award No. 309-129-3, paras. 85-86, 15 IRAN-U.S. C.T.R. at 53.

⁹⁶⁷ *See supra* paras. 168-169.

(2) Claim Supp. (2)-12 (National Iranian Radio and Television/Kamran Mashayekhi)

(a) *Introduction*

1874. 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.”⁹⁶⁸ The Tribunal has found that the four Gagliano instruments and two bows at issue in Claim Supp. (2)-12 were 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 items.⁹⁶⁹ 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 four Gagliano instruments and two bows to Iran. Thus, the United States is liable in damages to Iran for its breach of the General Declaration.

1875. According to its Summary Table of Claims, in Claim Supp. (2)-12, Iran seeks the return of the four Gagliano instruments and two bows or, alternatively, USD 990,625, *i.e.*, the sum of the following values, which Iran submits are the relevant fair market values in October 2013: (1) USD 144,000 for the 1780 Giuseppe Gagliano violin; (2) USD 160,000 for the 1738 Nicolò Gagliano violin; (3) USD 648,000 for the 1774 Nicolò Gagliano cello; (4) USD 26,250 for the 1804 Joanes Gagliano viola; and (5) USD 12,375 for the two bows. Iran also claims interest. Iran previously claimed consequential damages and legal costs but, as set out in its Summary Table of Claims, Iran has since abandoned these aspects of its claim.

(b) *The Parties’ Contentions*

(i) *Iran’s Contentions*

Return of the Four Gagliano Instruments and Two Bows

1876. As noted above, Iran seeks the return of the four Gagliano instruments and two bows as its primary relief. Kamran Mashayekhi purchased the four Gagliano instruments and six bows on behalf of NIRT on 21 March 1978 and, as noted by Iran at the Hearing, delivered

⁹⁶⁸ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

⁹⁶⁹ *See supra* paras. 392-394.

four of the bows to NIRT soon after, as acknowledged in a letter from NIRT to Kamran Mashayekhi dated 17 May 1978. Iran states that it is unclear which four of the six bows were returned, such that it is unclear which two bows are the subject of this Claim.⁹⁷⁰

Fair Market Value

1877. In the alternative, Iran claims damages in the amount of the total of the fair market value in October 2013 of each of the four Gagliano instruments and the two bows. The Tribunal assumes that Iran's position regarding the date of valuation is the same as its position on the date of valuation for the Stradivarius violin at issue in Claim G-18, namely, that it is entitled to the fair market value as of October 2013 because the United States "has been continuously in breach of its paragraph 9 transfer obligation from 1981 to the present day."

1878. At the Hearing and in its Summary Table of Claims, Iran relied on the valuations of the four instruments and two bows carried out by its expert witness, Mr. Keane, who as noted above in relation to Claim G-18, is a trained violin maker, musical instrument specialist, and former employee of and now consultant to Christie's.

1879. As for Claim G-18 above, Iran instructed Mr. Keane to establish the fair market value, not an insurance or replacement value, of the four Gagliano instruments and the two bows in 1981 and 2013.

1880. Mr. Keane explained that in preparation for his testimony, he reviewed the letters of authenticity issued by the seller, Jacques Français, and the photographs attached thereto, for each of the instruments at issue in this Claim. He stated that he accessed these letters of authenticity from a public archive at the Smithsonian Institute. These letters of authenticity, according to Mr. Keane, "describe[] the instrument, g[i]ve background and provenance, and full description of measurements."

1881. As for Claim G-18 above, while maintaining its position that the instruments should be valued as of October 2013, Iran submits that the Tribunal had been given "the tools" to make its assessment of damages on the basis of a valuation date "other than 1981, or 2013, on which [the Tribunal has been provided with] direct evidence." Iran also argues that, if the Tribunal were to choose a date other than 1981 or 2013, the Tribunal should adopt Mr. Keane's

⁹⁷⁰ The Tribunal notes that the letter from NIRT to Kamran Mashayekhi dated 17 May 1978 acknowledges the receipt of the "Tourte, Pecatte, Hill, and Vigneron" bows.

assumption, which he stated is conservative, that the value of such instruments increases at a rate of four percent, compounded, each year.

1882. As to the valuation itself, Mr. Keane appears to have used the same five determinants described above in relation to the valuation of the Stradivarius violin for Claim G-18. His statement, noted above in relation to Claim G-18, that “prices on rare Italian violins have continued to rise, and they rise at a steady rate if you look at them over the last ten years, if you look at them over the last 20 years” is also applicable to this Claim.

1883. Again, Iran appears to accept that, because the comparable sales considered by Mr. Keane are all sales by auction, his valuations should be adjusted to take account of the buyer’s premium. Mr. Keane’s testimony as to the amount of that buyer’s premium described in paragraph 1827 above is also applicable to this Claim.

1884. Finally, Iran’s argument that maintenance costs should not be deducted from any damages awarded by the Tribunal, as set out above at paragraph 1829 in relation to Claim G-18, is also applicable to this Claim.

The 1780 Giuseppe Gagliano Violin

1885. According to Mr. Keane, the Giuseppe Gagliano violin, which was sold to Kamran Mashayekhi for USD 25,000 on 21 March 1978, would have had a value “probably in the neighborhood of about [USD]30,000” in 1981.

1886. To arrive at a value for this violin in October 2013, Mr. Keane referred to four relatively recent sales (all by auction) of Giuseppe Gagliano violins. These were: (i) a 2011 sale at Brompton’s for GBP 90,000; (ii) a 2009 sale at Christie’s for USD 94,500; (iii) a 2010 sale at Bonhams for GBP 60,000; and (iv) a 2010 sale at Adam Partridge for GBP 103,000.

1887. Taking into account these sales and value determinants described above, Mr. Keane valued the 1780 Giuseppe Gagliano violin at issue in this Claim at USD 180,000 in October 2013 (*i.e.*, the date of the Hearing). According to Mr. Keane, he arrived at this valuation for the following reasons:

Looking at the desirability of Gaglianos in the marketplace, and how they have increased over the years, 50/60 years ago, Gaglianos were viewed as a very inexpensive Italian alternative, when one couldn’t afford a Northern Italian work, and many of the professional players of the last generation played on

Gaglianos, because one could get great Italian quality, tonal quality, for a fraction of the price one would pay for a Cremonese or Venetian instrument, so one sees a lot of working musicians who have owned them. As this market has been heated up over the last 30 years or so, Gaglianos have continued to increase in value.

1888. On the basis of Mr. Keane's valuation, and taking into account a flat 20 percent buyer's premium, Iran claims USD 144,000 as the fair market value, in October 2013, of the 1780 Giuseppe Gagliano violin.

The 1738 Nicolò Gagliano Violin

1889. Mr. Keane testified that the value of the Nicolò Gagliano violin would have been USD 40,000 in 1981.

1890. To arrive at a fair market value for this violin in October 2013, Mr. Keane described three recent sales (again, all sales by auction) of Nicolò Gagliano violins from the same period as the one at issue in this Claim: (i) a 2011 sale by Tarisio's for approximately USD 156,000; (ii) a 2009 sale at Sotheby's for GBP 121,000; and (iii) a 2007 sale at Christie's for USD 144,000.

1891. Mr. Keane valued the 1738 Nicolò Gagliano violin at issue in this Claim at USD 200,000 in October 2013. Mr. Keane's reasoning for this value included the fact that the work of Nicolò Gagliano was "most coveted [of all the makers in the Gagliano family], and it's very consistent in quality . . . of both workmanship and varnish, and tonally they're excellent instruments."

1892. On the basis of Mr. Keane's valuation, and taking into account a flat 20 percent buyer's premium, Iran claims USD 160,000 as the fair market value, in October 2013, of the 1738 Nicolò Gagliano violin.

The 1774 Nicolò Gagliano Cello

1893. Mr. Keane testified that the value of the 1774 Nicolò Gagliano cello would have been USD 80,000 in 1981.

1894. As to the value of the cello in October 2013, Mr. Keane explained that the Nicolò Gagliano cello at issue in this Claim was sold by Brompton's in October 2011 for "a world

record price of GBP 480,000.”⁹⁷¹ According to Mr. Keane, sales of Nicolò Gagliano cellos are “very rare” and, at the time of the sale, the cello was also “fresh to the market” and had “remained in the same ownership . . . for over 30 years.” Mr. Keane stated that this “sale [] recalibrated the Gagliano cello market across the board” such that he “would use the sale of this specific cello as the baseline” (*i.e.*, rather than a valuation based on multiple comparable sales) because “it’s a direct market comparable.” He also explained that he was able to conclude that it was the same cello on the basis of “the documentation in Jacques Francais’ file,” which provided him with the Hill catalog number, which had also been noted in the records of the October 2011 sale by Brompton’s. He also made a visual comparison on the basis of the available images.

1895. With this “direct comparator” in hand, Mr. Keane applied his estimate, noted above, of the increase in value of such instruments over time to arrive at a valuation in October 2013 of USD 810,000.

1896. On the basis of Mr. Keane’s valuation, and taking into account a flat 20 percent buyer’s premium, Iran therefore claims USD 648,000 as the fair market value of the 1774 Nicolò Gagliano cello in October 2013.

The 1804 Joanes Gagliano Viola

1897. Mr. Keane “didn’t feel comfortable appraising” the 1804 Joanes Gagliano viola because he was unable to conclude that the viola was “truly by Gagliano.” Mr. Keane provided two reasons: first, he had “never seen a Joanes Gagliano viola,” and, second, whereas Joanes Gagliano had a reputation for “good, very clean” work, based on the available photographs, he “didn’t think the quality [of this viola] was there.” Mr. Keane thought that the instrument was the work of a nineteenth- or early twentieth-century Neapolitan copyist. Mr. Keane was also unsure whether the viola was a full-sized viola (40-41 cm) or a petite viola (38 cm), the latter of which would have much less interest in the marketplace.

1898. Notwithstanding the above, Mr. Keane testified that the value of the 1804 Joanes Gagliano viola in 1981 would have been USD 35,000 or, assuming authenticity, USD 40,000. However, given his doubts as to attribution, Mr. Keane considered that the value of a full-size

⁹⁷¹ GBP 480,000 would have corresponded to approximately USD 756,457 in October 2011 (1 GBP = 1.575952 USD).

viola made by a good quality copyist would have a value of USD 80,000 in October 2013. However, if the viola were not the work of a good quality copyist and were a petite viola, then in his expert witness opinion, the value would be USD 35,000.

1899. Using the more conservative valuation of USD 35,000, and taking into account a flat 20 percent buyer's premium, Iran claims USD 26,250 as the fair market value, in October 2013, of the 1804 Joanes Gagliano viola.

The Two Bows

1900. As noted above, Iran has exhibited a copy of the bill of sale from Jacques Français showing that, on 21 March 1978, the following six bows were purchased for the following prices: (i) a François Xavier Tourte violin bow for USD 13,500; (ii) a Dominique Peccatte violin bow for USD 5,000; (iii) a Joseph Arthur Vigneron violin bow for USD 1,300; (iv) a John Dodd cello bow for USD 2,500; (v) a James Tubbs viola bow for USD 2,500; and (vi) a W Hill & Sons violin bow for USD 1,200.

1901. Mr. Keane acknowledged the difficulty in providing his opinion as to the values of the bows given that he had not seen any photographs of the bows and was thus unaware of their condition and unable to identify the model. Mr. Keane also stated that the two most valuable bows from the original sale, the Tourte and the Peccatte, were the most likely to have been paired with the Stradivarius violin that had been purchased at the same time by Mr. Mashayekhi, which is not at issue in this Claim. Nevertheless, Mr. Keane provided his opinion as to the valuation, as of October 2013, of all of the bows, as follows: (i) between USD 200,000 and USD 250,000 for the François Xavier Tourte violin bow; (ii) between USD 100,000 and USD 150,000 for the Dominique Peccatte violin bow; (iii) between USD 12,000 and USD 18,000 for the Joseph Arthur Vigneron violin bow; (iv) between USD 8,000 and USD 12,000 for the John Dodd cello bow; (v) between USD 15,000 and USD 25,000 for the James Tubbs viola bow; and (vi) between USD 5,000 and USD 8,000 for the W Hill & Sons violin bow.

1902. Iran states that it recognizes that, for the reasons set out above, it is not certain which two of the bows it is seeking and notes Mr. Keane's view that one of the two most valuable bows was likely to have been sold with the Stradivarius. On these bases, Iran claims "the median price of the two least valuable bows, which are the Hill and the Dodd" (*i.e.*, USD 6,500 and USD 10,000, respectively, or a total of USD 16,500). Although Mr. Keane did not specify

during his testimony that the numbers provided were for auction sales,⁹⁷² Iran nevertheless takes into account a flat 25 percent buyer's premium and claims USD 4,875 for the W Hill & Sons violin bow and USD 7,500 for the John Dodd cello bow, *i.e.*, a total of USD 12,375 for the two bows.

1903. Therefore, if the instruments and bows are not returned, Iran claims a total of USD 990,625 in damages for the instruments and bows.

(ii) *The United States' Contentions*

Return of the Four Gagliano Instruments and Two Bows

1904. The United States does not dispute that the four Gagliano instruments and two bows were Iranian properties on 19 January 1981 for the purposes of Paragraph 9 of the General Declaration.

Fair Market Value

1905. As a general matter, the United States submits that it is "Iran's burden to establish the quantum of losses with specificity."

1906. As to the valuation of the Gagliano instruments and the bows, the United States notes the testimony of Iran's expert witness, Mr. Keane, was premised either on a valuation date of 1981 or a valuation date of October 2013, which the United States "presume[s] is a proxy for the date of the award." As for Claim G-18, the United States argues that the valuation date must be the "driven by the date of breach," and, if the Tribunal were to find a date of breach other than the dates as of which Mr. Keane valued the instruments and bows, there would be no evidence in the record as to the relevant fair market value of the instruments and bows.

1907. In the alternative, the United States contends that, as for Claim G-18, if the Tribunal accepts that the valuation date should be a date other than the date of breach, Mr. Keane's approach of assuming four percent compound increase in value is acceptable, but it should be calculated on the basis of the original purchase prices, rather than Mr. Keane's valuations as of 1981 or 2013. The only exception, according to the United States, would be the Nicolò

⁹⁷² In fact, Mr. Keane referred to sales of bows "in the private market" and "in the marketplace." As noted above, Mr. Keane explained that commissions for private sales range from four to 20 percent, whereas the buyer's premium for a public auction sale at these values would be 25 percent.

Gagliano cello, which the United States accepts was sold at auction in London in October 2011, such that the more recent actual sales data, taking into account the buyer's premium, should be used as the basis for the calculation of its subsequent increase in value.

1908. The United States relies again on the expert witness opinion of Mr. Martens, who prepared an expert report responding to Iran's evidence on damages during the written phase of the proceedings and testified at the Hearing. Mr. Martens states in his report for this Claim that an appropriate approach to appraising the value of the instruments is "to obtain data regarding what other purchasers in the market have paid for assets that can be considered reasonably similar to those being valued." Mr. Martens also states that the "primary cost drivers of musical instruments include the identity of the craftsman and the conservation of the piece," and that "[v]aluing musical instruments is done on a case-by-case basis and apart from the craftsman, the value rests almost entirely on the physical condition of the instrument." However, as for the Stradivarius violin at issue in Claim G-18, Mr. Martens stated that he and his team were "unable to . . . value the instruments" on the basis of a conversation they had with a representative of Christie's, who advised them that it would be "virtually impossible" for Christie's to perform a valuation without access to the instruments or a photograph of the instruments.

1909. As noted above in relation to Claim G-18, Mr. Martens accepted that Iran's expert witness, Mr. Keane, "obviously has the expertise, the background," and that he "learned a lot from reading his testimony." However, Mr. Martens also raised several concerns with regard to Mr. Keane's valuation of the instruments and bows, as described in relevant part below.

1910. As noted above at paragraph 1842 in relation to Claim G-18, the United States challenged Mr. Keane's valuations on the basis that he did not take into account a condition report and a dendrochronology analysis, and because he provided only single values for the instruments and bows, rather than ranges of values.

1911. The United States also stated that, as explained at paragraph 1843 above in relation to Claim G-18, if the Tribunal were to accept Mr. Keane's figures, appropriate deductions would need to be made to reflect the fact that Mr. Keane's figures include the buyer's premium, which should not be part of a fair market valuation. In this regard, the United States refers to a calculation performed by Mr. Martens in respect of the value of the 1774 Nicolò Gagliano cello.

1912. In relation to Iran’s claim for the value of the two unspecified bows, the United States observes that Iran did not present evidence “of a sale of a comparable bow” and relies only on Mr. Keane’s “quick opinion” of what the bows would sell for “with no supporting data whatsoever.” Accordingly, the United States submits, “while the Tribunal may be in a position . . . to weigh and make a decision on the fair market value of the violins . . . the evidence does not permit such an analysis with respect to the [bows].”

1913. Finally, the United States submits that shipping expenses should be deducted from the valuations used as the basis of any award as the instruments and bows were not in fact shipped, and Iran should not be placed in a better position than it would have been in absent any breach on the part of the United States.

(c) *The Tribunal’s Decision*

(i) *Return of the Four Gagliano Instruments and Two Bows*

1914. As noted above at paragraph 1875, Iran’s primary claim is for the return of the instruments and bows. The Tribunal will consider this Claim having regard to the principles of international law governing the legal consequences of an internationally wrongful act by a State, which principles the Tribunal is authorized by Article V of the Claims Settlement Declaration to apply.⁹⁷³ As discussed above,⁹⁷⁴ under international law, “the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”⁹⁷⁵ In the case of Claim Supp. (2)-12, the Tribunal finds that ordering the United States to arrange for the transfer of the four Gagliano instruments and the two bows constitutes the proper remedy, so as to put Iran in the situation it would have been had the breach by the United States not occurred. The Tribunal determines that such a remedy is all the more appropriate, given that the Gagliano instruments and the two bows are unique objects rather than interchangeable commodities.

1915. In so ordering, the Tribunal is aware of three difficulties that may arise in carrying out such an order. First, the Tribunal notes the Parties’ apparent agreement that the 1774 Nicolò

⁹⁷³ Claims Settlement Declaration, art. V, 1 IRAN-U.S. C.T.R. at 11. *See also Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 191 (2 July 2014).

⁹⁷⁴ *See supra* para. 1787.

⁹⁷⁵ Article 31(1) of the ILC Articles provides that “[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.” *See Rep. of the Int’l Law Comm’n, supra*, note 89, cmt to art. 31. *See supra* paras. 1787-1790.

Gagliano cello was likely the instrument that was sold by Brompton's in 2011. The Parties have provided no indication to the Tribunal as to either the identity of the buyer or the whereabouts of the cello. Second, in its 22 March 1983 Statement of Defense, the United States stated that Kamran Mashayekhi held four instruments in California, but on 30 October 1985, the United States reported to the Tribunal that Kamran Mashayekhi held only one violin and no other property. Moreover, additional information in relation to the instruments and bows is not likely to be forthcoming since, as at 15 October 2013, Kamran Mashayekhi was "in a nursing home, suffering from dementia." It is therefore unclear to the Tribunal which of the instruments, if any, Kamran Mashayekhi still holds within the jurisdiction of the United States. Third, the Tribunal notes the agreement of the Parties that four of the six bows purchased in 1978 were returned to Iran on 17 May 1978. The Tribunal also takes note of Iran's position that it is unclear which of the four bows had been returned. In ordering the United States to arrange for the transfer of the two bows to Iran, therefore, the Tribunal is not in a position to be able to specify with certainty which two bows are the subject of the order.

1916. In the light of these three difficulties, the Tribunal considers it reasonable to grant the United States a four-month period in which to locate and arrange for the transfer of the four Gagliano instruments and the two bows.

(ii) *Method of Valuation: Fair Market Value*

1917. In the alternative, should the United States be unable to return the four Gagliano instruments and the two bows, the Tribunal notes that Iran seeks compensation in the amount of USD 990,625, which it claims represents the total of the fair market value of each of the four Gagliano instruments and bows in October 2013.

1918. The Tribunal considers four points to be of particular importance for Iran's claim for damages. First, the Parties are in broad agreement that the damages awarded to Iran should be based on the fair market value of the instruments and bows. Second, according to Iran's Summary Table of Claims when cross-referenced to the testimony of Mr. Keane, its final damages claim is based only on the October 2013 fair market value of the four Gagliano instruments and the two bows, and not for their fair market value at any other date. Third, the reliability and veracity of the evidence given by Mr. Keane was not impugned by the United States other than in respect of the fact that he did not obtain a condition report or dendrochronology for the instruments before valuing them. The Tribunal notes Mr. Keane's

explanation that a physical inspection of the instruments would be needed to prepare a condition report or dendrochronology, which would not have been possible in the circumstances of this case. The Tribunal also notes that the United States and its expert witness, Mr. Martens, did not challenge Mr. Keane's level of expertise in relation to the valuation of the instruments and bows. Fourth, the fact that the whereabouts of the instruments and bows are at present unknown and that Iran can only claim compensation on the basis of its expert witness' opinion, which is in turn based only on Jacques Français' records and comparable sales (in the case of the instruments) and his industry knowledge (in the case of the bows) and not a physical inspection of the instruments and bows themselves, is caused by the Unlawful Treasury Regulations, because this regime allowed Kamran Mashayekhi to first retain and then dispose of some or all of the properties, which should have been returned to Iran. Consequently, in fairness Iran cannot be sanctioned because it was prevented from accessing the evidence it might otherwise have been able to rely upon to bolster its evidence of the value of the instruments and bows.

1919. These considerations lead the Tribunal to the following conclusions. The Tribunal agrees with the Parties that the damages awarded in the alternative to Iran should be based on the fair market value of the four Gagliano instruments and two bows. The Tribunal also accepts Mr. Keane's methodology for determining that fair market value, that is: (i) in the case of the instruments, his review of the letters of authenticity and photographs; (ii) in the case of the two violins and the cello, his identification of comparable sales; and (iii) in the case of the viola and the bows, his industry knowledge. The Tribunal notes the United States' reservations about the absolute accuracy of Mr. Keane's valuations on account of the fact that he was unable to personally view the instruments and bows. However, as noted above, the Tribunal takes account of the fact that the root cause of Mr. Keane's inability to personally inspect the instruments and bows is the failure by United States to arrange for their transfer. The Tribunal also recalls its general comments on evidentiary standards and at paragraph 1856 in relation to Claim G-18 that are applicable when the Tribunal is faced, as it is here, with some degree of difficulty in assessing damages.

1920. The Tribunal accepts October 2013 as the date of valuation for the following reasons. As for Claim G-18, it is not disputed that the value of the instruments and bows has changed over the significant period of time that has passed since both the original sale in 1978 and the date of the United States' breach in 1981. In addition, the United States appears to recognize

at least in principle that the most recent evidence as to the value of a property should be used.⁹⁷⁶ The Tribunal also takes into account the fact that Mr. Keane provided reasons for his valuations as of October 2013 and that corresponding reasons were not provided for his valuations as of 1981. This gives the Tribunal more confidence that Mr. Keane's valuations as of October 2013 are accurate. The Tribunal also notes that Mr. Keane did not provide valuations of the bows as of 1981.

1921. The Tribunal also accepts and the Parties are in agreement that the buyer's premium should be taken into account, where applicable, because Mr. Keane's valuations are based on auction sales. The Tribunal additionally notes that Iran did not contest the testimony of Mr. Martens as to the rates of buyer's premiums applied by Christie's in October 2013. The Tribunal thus accepts the application of the Christie's buyer's premiums as of October 2013 but finds that Iran has misapplied the relevant rates when calculating the fair market values of the instruments and bows based on Mr. Keane's all-in values. The Tribunal is able to replicate Iran's values by applying a flat rate based on the amount of Mr. Keane's valuations (*i.e.*, 20 percent on the full amount if it is over USD 100,000), rather than graduated rates in accordance with the methodology explained by both Parties' expert witnesses (*i.e.*, 25 percent on the first USD 100,000 and 20 percent on amounts above USD 100,000).

(iii) Valuation of the Four Gagliano Instruments

1922. In view of the above, the Tribunal concludes that the valuations provided by Mr. Keane as of October 2013 for the 1780 Giuseppe Gagliano violin, the 1738 Nicolò Gagliano violin, and the 1774 Nicolò Gagliano cello are the best available basis for the Tribunal's assessment of damages in this Claim.

1923. The Tribunal finds it necessary, however, to note that Mr. Keane did not feel comfortable appraising the 1804 Joanes Gagliano viola because he was not certain that it was a Gagliano instrument and because, based on photographs, he "didn't think the quality was there." The Tribunal also notes that he could not tell whether the viola was full-sized or petite, and that if it had been a petite viola, there would have been much less market interest in the instrument. The Tribunal further notes that Mr. Keane did not believe the viola to be an

⁹⁷⁶ See *supra* para. 1907.

authentic Gagliano instrument, but rather that it was the work of a nineteenth- or early twentieth-century Neapolitan copyist.

1924. The Tribunal therefore cannot tell with any certainty whether the instrument claimed to be the 1804 Joanes Gagliano viola is authentic and, in any case, what its fair market value would be. The Tribunal recalls that Mr. Keane's testimony was that a good quality, full-sized viola made by a copyist would command a fair market value in 2013 of USD 80,000. If, however, the viola was not made by a good quality copyist and were a petite viola, then in Mr. Keane's view the fair market value in 2013 would be USD 35,000. Iran has based its claim on the lowest value provided by Mr. Keane, *i.e.*, USD 35,000.

1925. The Tribunal notes that the four Gagliano instruments, including the instrument alleged to be the 1804 Joanes Gagliano viola, were purchased from Jacques Français, who Mr. Keane confirmed was a reputable purveyor of rare violins. Further, the four Gagliano instruments were insured with Chubb, a well-known insurance company. On the basis of this evidence, the Tribunal finds that, even if doubt were to be cast on the authenticity of the 1804 Joanes Gagliano viola, the instrument that was purchased by NIRT in 1978 must have been a copy of reasonable quality to have been certified, sold, and insured as an original by these reputable companies. On this basis, the Tribunal accepts USD 35,000 as the basis for the Tribunal's assessment of the relevant damages.

1926. The Tribunal finds that no deduction for shipping costs, the costs of maintenance of the instruments, and other costs should be taken into account in deciding the fair market value of the instruments, for two reasons. First, the United States has not proven that such costs were incurred by the holder. Second, as held by the Tribunal in Claim G-18 above, no deduction for maintenance and other costs should be made since there is no reason that the United States, responsible for a breach of its obligations under international law, should benefit from any expenses incurred by Kamran Mashayekhi in relation to the instruments.⁹⁷⁷

1927. Consequently, after reviewing all the evidence, the Tribunal concludes that Iran has proven that the amounts it claims as damages for the four Gagliano instruments constitute fair market values, in October 2013, for the items but for its incorrect adjustment for the buyer's premium. Accordingly, the Tribunal awards the amounts set out in the table below to Iran as

⁹⁷⁷ See *supra* para. 1866.

compensation in the event that the United States is unable to arrange for the transfer of the claimed instruments and bows to Iran within four months of the date of this Partial Award. A buyer's premium has been deducted from Mr. Keane's valuation of the viola, despite the fact that Mr. Keane did not explicitly base his valuation on auction sales for the reasons set out at paragraph 1861 in relation to Claim G-18.

	Mr. Keane's valuation as of October 2013 [USD]	Buyer's premium⁹⁷⁸ [USD]	Amount awarded if the United States is unable to arrange for transfer [USD]
1780 Giuseppe Gagliano violin	180,000	41,000	139,000
1738 Nicolò Gagliano violin	200,000	45,000	155,000
1774 Nicolò Gagliano cello	810,000	167,000	643,000
1804 Joanes Gagliano viola	35,000	8,750	26,250

(iv) *Valuation of the Two Bows*

1928. The Tribunal next turns to Iran's claim for damages for the non-return of the two bows, in the amount of USD 12,375.

1929. The Tribunal has noted above that Iran has not specified exactly which two bows it is seeking in the present Claim. Aside from the difficulties in ordering the return of two bows, the specific identity of which is apparently unknown, the Tribunal is also faced with the difficulty of ordering compensation in the form of the fair market value of two bows that have not been identified and cannot be identified because of the situation resulting from the Unlawful Treasury Regulations. Again, for the reasons set out above, difficulties in calculating damages should not deprive Iran from obtaining compensation.⁹⁷⁹

1930. The Tribunal recalls that neither Party contests the evidence that only four of the six bows purchased by Kamran Mashayekhi on behalf of NIRT were returned to Iran. Nor has the

⁹⁷⁸ The buyer's premium has been calculated on the basis of a rate of 25 percent on the first USD 100,000 of the value and 20 percent the remainder of the value below USD 2 million. *See supra* para. 1843.

⁹⁷⁹ *See supra* paras. 1856-1857.

United States disputed the submission that the two remaining bows were not transferred to Iran. What is certain to the Tribunal, therefore, is that two bows that constitute “Iranian properties” were not transferred to Iran as a result of the United States’ breach, and that Iran will suffer a loss should their return not be arranged. Thus, if the United States is unable to arrange for the transfer of the two bows in order to put Iran in the position it would have been absent the breach, the United States is responsible for paying compensation in lieu of the return of the two bows.

1931. The Tribunal notes that basis of Iran’s claim is USD 16,500, the sum of the median values in October 2013 of the two least valuable bows, which are the W Hill & Sons and the Dodd bows. The Tribunal considers this conservative amount to be a just basis for Iran’s alternative compensation. Thus, after deducting a buyer’s premium of USD 4,125, the Tribunal awards USD 12,375 to Iran if the United States is unable to arrange for the transfer of the bows to Iran within four months of the date of this Partial Award. A buyer’s premium has been deducted from Mr. Keane’s valuation of the bows, despite the fact that Mr. Keane did not explicitly base his valuation on auction sales for the reasons set out at paragraph 1861 in relation to Claim G-18.

(v) *Conclusion*

1932. In view of the above, the Tribunal directs the United States to arrange for the transfer of the four Gagliano instruments and two bows to Iran within four months of the date of this Partial Award. Thus, the United States shall take steps to ensure that the holder or holders of the four musical instruments and two bows will transfer them to Iran within that time period.⁹⁸⁰ In the event that the four instruments and two bows are not transferred to Iran within four months of the date of this Partial Award, the Tribunal awards the following amounts to Iran as damages, derived from the October 2013 fair market value of the instruments and bows claimed, which amounts will be due as a result of the United States’ failure to comply with its obligations under the Algiers Declarations:

- USD 139,000 in the event that the 1780 Giuseppe Gagliano violin is not transferred to Iran,⁹⁸¹

⁹⁸⁰ See *supra* paras. 168-169.

⁹⁸¹ See *supra* para. 1927.

- USD 155,000 in the event that the 1738 Nicolò Gagliano violin is not transferred to Iran;⁹⁸²
- USD 643,000 in the event that the 1774 Nicolò Gagliano cello is not transferred to Iran;⁹⁸³
- USD 26,250 in the event that the 1804 Joanes Gagliano viola is not transferred to Iran;⁹⁸⁴
- USD 12,375 in the event that the two bows are not transferred to Iran.

These amounts will be subject to pre-award interest, as discussed below.

(3) Claim G-8 (MORT/Gulf Ports Crating Co.)

(a) *Causation*

1933. 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.”⁹⁸⁵ The Tribunal must therefore determine whether the United States’ breach of its Paragraph 9 obligation with respect to the G-8 Materials caused the delay in the G-8 Materials’ ultimate shipment to Iran in February 1984.⁹⁸⁶

(i) *The Parties’ Contentions*

Iran’s Contentions

1934. In response to the United States’ arguments on causation,⁹⁸⁷ Iran asserts that the cause of the delay in the shipment of the G-8 Materials was the United States’ breach of Paragraph 9 by exempting, in Section 535.333 of the Unlawful Treasury Regulations, lien holders from the transfer directive of Executive Order No. 12281 and Section 535.215 of the Treasury Regulations.

1935. Iran asserts that MORT did not abandon the G-8 Materials between January 1981 and October 1981, as the United States maintains. Iran contends that, in fact, to recover the G-8

⁹⁸² *See id.*

⁹⁸³ *See id.*

⁹⁸⁴ *See id.*

⁹⁸⁵ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

⁹⁸⁶ *See supra* para. 546.

⁹⁸⁷ *See infra* para. 1941 *et seq.*

Materials, MORT arranged settlement negotiations with Gulf Ports, even though it was under no obligation under the Algiers Declarations to do so.

1936. Moreover, Iran denies that MORT failed to implement the 17 November 1981 settlement agreement with Gulf Ports (which, in Iran's view, MORT was not even obligated to conclude in order to recover the G-8 Materials). Iran maintains that the settlement agreement was subject to a number of conditions that were never fulfilled; as a result, it never became fully effective and binding. Iran emphasizes that, nevertheless, MORT in fact did take steps to implement the settlement agreement; for example, in December 1981, MORT officials traveled to the United States to prepare the G-8 Materials for shipment.

1937. Further, Iran notes that Gulf Ports applied for a license to sell the G-8 Materials in September 1982, which license OFAC granted in January 1983.⁹⁸⁸ Iran asserts that Gulf Ports' threats to sell the G-8 Materials imminently led MORT to conclude the final settlement agreement with Gulf Ports on 24 February 1983.⁹⁸⁹ Iran contends that, under Paragraph 9, MORT was under no obligation to settle Gulf Ports' claims in order to recover the G-8 Materials, let alone under an obligation to do so quickly or within any particular period of time.

1938. As noted above, after 1 July 1983, Gulf Ports abandoned the G-8 Materials, which were left unattended in the warehouses.⁹⁹⁰ Iran contends that this action by Gulf Ports, which caused additional damages and expenses to MORT, resulted from Gulf Ports' ability to retain the G-8 Materials for several years; that Gulf Ports was able to do so, in turn, resulted from the United States' breach of Paragraph 9. Iran asserts that MORT was forced, among other things, to extend the warehouse leases for the storage of the G-8 Materials in Houston and New Orleans; to pay for the provision of warehouse security; to pay for the re-crating and re-packing of a significant portion of the G-8 Materials; and to obtain "roll-on/roll-off" vessels to ship the G-8 Materials.⁹⁹¹ According to Iran, in relation to each of the relevant periods in this Claim, MORT acted reasonably to mitigate the losses that were resulting from the United States' breach.

⁹⁸⁸ See *supra* para. 512.

⁹⁸⁹ See *supra* paras. 514-515.

⁹⁹⁰ See *supra* para. 518.

⁹⁹¹ See *supra* para. 521.

1939. Iran contends that the United States' arguments concerning delay on the part of MORT in fact concern the question whether MORT acted reasonably in attempting to mitigate its losses. Because the United States was in breach of its Paragraph 9 obligation to arrange for the transfer of the G-8 Materials from 19 January 1981, anything MORT did to recover them would have been an act of reasonable mitigation. According to Iran, the United States failed to prove the existence, scope, and breach of any duty to mitigate on the part of Iran.

1940. Iran concludes that MORT's own efforts to secure the release of the G-8 Materials cannot and do not constitute an intervening cause that can break the causal link between the United States' breach and Iran's losses.

The United States' Contentions

1941. The United States contends that Iran has failed to discharge its burden of proving that Section 535.333 of the Unlawful Treasury Regulations, and not MORT's own conduct or any other factor, were both a "but for" and the proximate cause of the delay in the transfer of the G-8 Materials to Iran. Thus, the United States argues that Iran has failed to prove that the transfer of the G-8 Materials would have occurred sooner but for the issuance by the United States of the Unlawful Treasury Regulations. Accordingly, the United States concludes that no United States breach can be the "but for" cause of that delay, and the United States cannot be responsible for any losses suffered as a result thereof. In support, the United States invokes, *inter alia*, the International Court of Justice's judgments in the *Gabčíkovo-Nagymaros Project Case*⁹⁹² and the *Genocide Case*.⁹⁹³

1942. Moreover, the United States maintains that, even if Iran could prove that Section 535.333 of the Unlawful Treasury Regulations was the "but for" cause of the delay in transfer, that alone, while being a necessary condition, would not be a sufficient condition for reparation. Iran would also need to prove that the Unlawful Treasury Regulations were the proximate cause of that delay. According to the United States, the requirement of proximate causation establishes a limit on legal responsibility, excluding loss that is too indirect and remote to be the subject of reparation. In support, the United States relies, *inter alia*, on the writings of Bin

⁹⁹² *Gabčíkovo-Nagymaros Project (Hung. v. Slov.)*, Judgment, para. 152, 1997 I.C.J. 7, 81 (25 Sept.).

⁹⁹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro)*, Judgment, para. 462, 2007 I.C.J. 43, 233-34 (26 Feb.).

Cheng.⁹⁹⁴ Hence, the United States concludes that, even if the Tribunal were to determine that the Unlawful Treasury Regulations somehow concurrently caused Iran a loss, such loss would be too indirect or remote for any compensation to be appropriate in Claim G-8.

1943. On the facts, the United States maintains that, if MORT had not waited until October 1981 to contact Gulf Ports, and if it had followed through with the settlement agreements it had negotiated with Gulf Ports, MORT would have received the G-8 Materials expeditiously. More specifically, the United States asserts, first, that Section 535.333 of the Unlawful Treasury Regulations could not have caused any delay in the shipment of the G-8 Materials before MORT had contacted Gulf Ports about the G-8 Materials in October 1981. Given that the G-8 Materials could not have been shipped from Gulf Ports absent MORT's instructions, logistical arrangements, and payment of shipping costs, prior to MORT's contacting Gulf Ports, then, any delay was purely of MORT's own making.

1944. Second, the United States asserts that Section 535.333 of the Unlawful Treasury Regulations did not cause the delay in shipment between November 1981 and 1 July 1983, either. The United States maintains that, at no point during this period, did MORT take the steps necessary to arrange for the shipping of the G-8 Materials. MORT neither executed the 17 November 1981 settlement agreement with Gulf Ports, nor paid the charges and removed the G-8 Materials by the 31 March 1982 deadline fixed by that agreement. After the Tribunal recorded the final settlement agreement of 24 February 1983 as an Award on Agreed Terms, MORT further delayed shipment by delaying more than six months before making any arrangements. In this connection, the United States contends that Iran has failed to prove that any delays were due to export licensing issues.

1945. Third, the United States maintains that Section 535.333 of the Unlawful Treasury Regulations could not have caused any further delay in shipping between 1 July 1983 and February 1984, when the G-8 Materials were ultimately shipped, because the G-8 Materials were no longer encumbered by a lien. Pursuant to the 24 February 1983 settlement agreement between Gulf Ports and MORT, Gulf Ports released its claim for storage charges, and any lien, in exchange for the payment of the settlement amount. According to the United States, the

⁹⁹⁴ CHENG, *supra*, note 122, at 244.

length of time it took to ship the properties after Gulf Ports received the settlement amount was caused by factors entirely unrelated to the United States' obligation under Paragraph 9.

(ii) *The Tribunal's Decision*

1946. In determining whether the causal link between the United States' breach of Paragraph 9 and Iran's alleged injury is sufficient to establish the United States' liability in damages for this Claim, the Tribunal will take into account the principles delineated earlier in this Partial Award.⁹⁹⁵ In the Tribunal's view, such causal link could be considered established if the Tribunal were able to conclude with reasonable certainty that, absent Treasury Regulations Section 535.333, the G-8 Materials would have been shipped to Iran sooner than February 1984. Moreover, and in line with the approach taken by domestic law, as analyzed in a comparative perspective,⁹⁹⁶ the Tribunal will attempt to determine the comparative degrees of the Parties' contribution and to identify the "main," "principal," or "dominant" among the multiple contributing causes.

1947. As an initial matter, the Tribunal is satisfied that it cannot conclude that MORT's lack of detailed knowledge regarding the location and the status of its properties, rather than the entry into force of the Unlawful Treasury Regulations on 26 February 1981 (upon which the holders of the properties based their alleged right not to release them), caused losses accrued from 19 January to 17 August 1981. On the latter date, HNTB, MORT's engineering consulting firm in the United States, in response to MORT's request for the contact details of the warehouses and storage areas of the items purchased,⁹⁹⁷ provided information on the status and the whereabouts of the properties.⁹⁹⁸ As regards the relevant facts, MORT's telex, in the Tribunal's view, does not reflect total ignorance (and even less, as the United States suggests, "abandonment"), but rather lack of detailed knowledge, as would appear to be normal for a government acting through agents in a distant foreign country where it contracts for the purchase of goods and services. As regards the legal analysis of the facts before it, the Tribunal feels unable to conclude that what was caused by MORT's initial uncertainty in assessing the

⁹⁹⁵ See *supra* paras. 1791-1795.

⁹⁹⁶ See *supra* paras. 1793-1795.

⁹⁹⁷ See *supra* para. 436.

⁹⁹⁸ See *id.*

situation and the rather slow and hesitant manner of addressing it, cannot have been caused by the Unlawful Treasury Regulations.

1948. As regards the question as to which action MORT should have (reasonably) taken following the 17 November 1981 settlement agreement and prior to the shipment of the properties in February 1984, the Tribunal views this primarily as an issue of mitigation, and it will address this below.⁹⁹⁹ However, in the Tribunal's view, none of the instances of MORT's hesitant, slow, and somewhat undetermined steps can in a normative sense be said to have been the "main" or "dominant" cause.

1949. After reviewing all the evidence, the Tribunal is convinced that,¹⁰⁰⁰ 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.

1950. Accordingly, the Tribunal holds that, in the circumstances, Section 535.333 of the Treasury Regulations was the principal cause of the delay in transfer of the G-8 Materials to Iran. Thus, the United States is liable in damages to Iran for the United States' breach of the General Declaration.

⁹⁹⁹ See *infra* para. 2065 *et seq.*

¹⁰⁰⁰ See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, n.153 (2 July 2014).

1951. The Tribunal determines below the nature and extent of any damages suffered by MORT as a result of the United States' breach of the Algiers Declarations, as described above. In that connection, the Tribunal will examine whether MORT took reasonable steps to mitigate any such damages.¹⁰⁰¹

(b) *Valuation*

(i) *The Parties' Contentions*

1) *Iran's Contentions*

1952. According to its Summary Table of Claims, on Claim G-8, Iran seeks a total of USD 15,273,656, broken down as follows: (1) USD 6,890,020 for the alleged diminution in value of the Porta-Kamp Housing Units and the Morgan Rock-Crushing Equipment due to deterioration (USD 4,111,875 related to the housing units and USD 2,778,145 related to the rock-crushing equipment); (2) USD 6,205,083 in damages allegedly resulting from the loss of use of the G-8 Materials (USD 2,960,022 related to the Porta-Kamp Housing Units; USD 2,548,189 related to the Morgan Rock-Crushing Equipment; and USD 696,872 related to the Lighting Plants); and (3) USD 2,178,553 in alleged "additional costs" to recover the G-8 Materials. Iran seeks interest on all amounts.

Claim for Diminution of Asset Values Due to Deterioration

1953. Under this head of claim, Iran seeks damages for the diminution in value of the Porta-Kamp Housing Units and Morgan Rock-Crushing Equipment allegedly resulting from their being stored outside, exposed to high humidity and the elements, while they were withheld in the United States from 19 January 1981 until February 1984, when they were shipped to Iran. According to Iran, those items had deteriorated extensively by February 1984. Iran does not claim for any diminution in value of the Lighting Plants because, Iran concedes, they suffered no damage.

1954. To prove the alleged extensive deterioration of the Porta-Kamp Housing Units and Morgan Rock-Crushing Equipment in Houston and New Orleans, respectively, Iran relies, *inter alia*, on: (i) the affidavit and hearing testimony of Mr. Tofigh Sadr Mousavi, an Iranian ship

¹⁰⁰¹ See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 221 & n.218 (2 July 2014) and *supra* paras. 1796-1799.

captain and former employee of Iran Shipping Lines in London; in September or late October 1983, Mr. Mousavi traveled to the United States on MORT's behalf to ready the G-8 Materials for shipment to Iran;¹⁰⁰² (ii) the affidavit testimony of Mr. Ali Mahmoudi, a civil engineer and adviser to MORT, who accompanied Mr. Mousavi on his trip to the United States in late 1983;¹⁰⁰³ and (iii) the affidavit and hearing testimony of Mr. Akbar Mosafer Rahmati, who also accompanied Mr. Mousavi on that trip.¹⁰⁰⁴

1955. Mr. Gholamreza Salami, an Iranian chartered accountant, financial consultant, and former Chairman of the Iranian Independent Chartered Accountants Association, assessed, for Iran, the losses Iran allegedly suffered as a result of the deterioration of the Porta-Kamp Housing Units and Morgan Rock-Crushing Equipment between 19 January 1981 and February 1984. Mr. Salami's valuation is based on two elements: first, the percentage of damage the Porta-Kamp Housing Units and Morgan Rock-Crushing Equipment had undergone by the time they were shipped to Iran in February 1984; and, second, the period for which the United States is allegedly responsible for that damage. Mr. Salami prepared a written valuation report and appeared as an expert witness for Iran at the Hearing.

1956. In assessing the deterioration allegedly undergone by the Porta-Kamp Housing Units, Mr. Salami relied, among other things, on an expert report prepared by Mr. Bahram Baghdadi, a former certified official valuation expert with the Iranian Ministry of Justice. Mr. Baghdadi appeared as an expert witness for Iran at the Hearing, and his report is on record. Further, in assessing the deterioration allegedly undergone by the Morgan Rock-Crushing Equipment, Mr. Salami relied, among other things, on a report prepared by Mr. Farshad Parchami, an Iranian mechanical engineer, who was formerly employed with MORT. Mr. Parchami appeared as a witness for Iran at the Hearing, and his report is on record.

Porta-Kamp Housing Units

1957. Iran asserts that the Porta-Kamp Housing Units consisted of a combination of erect houses and hundreds, or possibly thousands, of modules for building erect houses. Iran

¹⁰⁰² See *supra* para. 520.

¹⁰⁰³ See *id.*

¹⁰⁰⁴ See *supra* paras. 504-505.

explains that the housing units included, *inter alia*, bedrooms, recreational quarters, kitchens, offices, laboratories, and laundries.

1958. Iran maintains that the Porta-Kamp Housing Units underwent no significant deterioration during 1979, the first year they were in storage with Gulf Ports in Houston, particularly during the 12-month manufacturer's warranty. According to Iran, this is because they were made to withstand damage due to exposure to the elements. Indeed, Iran emphasizes, there is no direct evidence of any deterioration to those portable housing units occurring prior to January 1981. In support of this position, Iran relies on the testimony of Mr. Andrew Billingham, a forensic structural engineer, member of the Royal Institute of Chartered Surveyors in the United Kingdom and a Fellow of the Institute of Structural Engineers. Mr. Billingham appeared as an expert witness for Iran at the Hearing. Mr. Billingham introduced himself as having extensive experience in timber-framed housing, including in wood rot and the repair of diseased timber.

1959. Mr. Billingham, in describing the Porta-Kamp Housing Units, pointed to their quality components, robust design, 10-year minimum design life, kiln-dried timber, and 12-month manufacturer's warranty. Responding to contentions by the United States, Mr. Billingham stated that he had never seen wood rot occur to timber-framed housing within 12 months of delivery. In his experience, while mold damage to the timber, in the sense of staining or causing human-related health problems, could occur within 12 months, a fungal, rot-causing attack on the timber could not. According to Mr. Billingham, the Porta-Kamp Housing Units would have suffered a maximum of 10 to 15 percent deterioration during the first two years after their delivery due to exposure to the elements.

1960. Iran asserts that the deterioration of the Porta-Kamp Housing Units increased dramatically between 1981 and February 1984, when they were shipped to Iran. Iran contends that the Gulf Ports storage sites in Houston were in a deprived neighborhood and were not securely protected. Iran maintains that, consequently, in addition to the very severe deterioration the Porta-Kamp Housing Units had suffered from five years of exposure to the elements, they suffered damage from vandalism and theft in 1982 and 1983.

1961. According to Iran, the Porta-Kamp Housing Units had suffered a total damage of 75 percent by February 1984, broken down in 50-percent damage due to prolonged exposure to the elements and an additional 25 percent due to theft and vandalism. In support, Iran relies

on the assessment of its expert witness, Mr. Baghdadi. Iran and Mr. Baghdadi, to buttress the 75-percent total damage figure, refer, among other things, to the affidavit of Mr. Mahmoudi (which includes a series of photographs of Porta-Kamp Housing Units taken in 1983 or 1984) and the affidavit of Mr. Mousavi.¹⁰⁰⁵ Mr. Baghdadi physically examined some of the Porta-Kamp Housing Units at issue for the first time in 2004, in Iran, after they had been in use for almost twenty years.

1962. One of Iran's witnesses, Mr. Rahmati, who visited the Porta-Kamp Housing Units multiple times between December 1981 and late 1983, asserted that, between January 1982 and October 1983, those items had deteriorated significantly and undergone "severe damage." According to Mr. Rahmati, the Porta-Kamp Housing Units were in a much better condition in 1981.

1963. As further support for its 75-percent total damage figure, Iran points to a 1 November 1983 letter from Porta-Kamp, the manufacturer of the housing units, advising MORT that the cost of reconditioning the Porta-Kamp Housing Units stored in Houston could be as much as 60 to 75 percent of their original cost.¹⁰⁰⁶

1964. Further, based on Mr. Salami's assessment, Iran concludes that the United States is responsible for 75 percent of the total damage suffered by the Porta-Kamp Housing Units, based on a straight-line method of depreciation that allocates 25 percent of the damage to Iran in the period before 19 January 1981. More specifically, in reaching this conclusion, Iran and Mr. Salami assume that: (i) the Porta-Kamp Housing Units suffered no deterioration in 1979, the first year they were stored in Houston; (ii) Iran is responsible for any deterioration in the second year, until 19 January 1981; and (iii) the United States is responsible for any deterioration from 19 January 1981 until February 1984, when the items were shipped to Iran. According to Iran and Mr. Salami, this produces a three-to-one split of the Parties' responsibility for the deterioration over four years, between 1980 and 1984.

1965. In applying the methodology just described, Mr. Salami uses as a basis for calculation the alleged 1978 purchase price of the 238 Porta-Kamp Housing Units for which Iran claims, that is, USD 7,309,995.¹⁰⁰⁷ In his calculation, Mr. Salami neither accounts for inflation nor

¹⁰⁰⁵ See *supra* para. 1954.

¹⁰⁰⁶ See *supra* para. 522.

¹⁰⁰⁷ See *supra* para. 537.

indexes that purchase price to reach a 1981 value for the items. Accordingly, in keeping with Mr. Salami's assessment, Iran seeks USD 4,111,875 in damages on this head of claim, allegedly representing the diminution in value of the Porta-Kamp Housing Units between January 1981 and February 1984, which Iran asserts is attributable to the United States.¹⁰⁰⁸

Morgan Rock-Crushing Equipment

1966. It is undisputed that the Morgan Rock-Crushing Equipment consisted of a series of discrete machines, each of which was part of a chain of operations. This chain involves the crushing of large rocks into smaller stones, which are then ground into finer road-grade materials (gravel and sand) for construction. The first-stage machine is the jaw crusher, whose steel jaws crush large rocks into large stones. Those stones are then fed into the second-stage machine, the roller-cone crusher, which grinds them into smaller stones. The latter are then fed into the third-stage machinery, to be reduced to gravel or sand, as required. The second-stage machine, the roller-cone crusher, consists of a steel cone that rotates inside a large steel sleeve to grind the stones that are fed into the gap between the steel cone and the sleeve. According to Iran, a crucial part of the roller-cone crusher are the thrust bearings, which allow the roller-cone crusher to rotate to grind the stones. Iran maintains that the thrust bearings are precision machine parts designed to operate within strict tolerances to ensure the proper functioning of the roller-cone crusher.

1967. Iran alleges that the Morgan Rock-Crushing Equipment sustained little or no deterioration during 1979, the first year it was in storage in New Orleans, but may have sustained limited deterioration during the second year it was in storage (*i.e.*, until 19 January 1981).

1968. To prove the condition of the Morgan Rock-Crushing Equipment after 19 January 1981, Iran relies primarily on the testimony of its expert witness, Mr. Parchami,¹⁰⁰⁹ who saw that equipment for the first time in 1985, in Khuzestan, Iran. Mr. Parchami testifies that the Morgan Rock-Crushing Equipment had been first transported from the port of arrival in Iran to MORT's central warehouse in Tehran and, from there, on to Khuzestan. Mr. Parchami states that he

¹⁰⁰⁸ See *supra* para. 1952.

¹⁰⁰⁹ See *supra* para. 1956.

prepared his written report on the deterioration of the Morgan Rock-Crushing Equipment some eighteen/nineteen years after he had inspected that equipment in Iran.

1969. Mr. Parchami testifies that, by the time the Morgan Rock-Crushing Equipment was delivered and placed at the disposal of the experts to be operated in Iran, it had undergone significant deterioration. Mr. Parchami asserts that the equipment evidenced much corrosion to, and deformation of, the steel structure; particularly, the roller-cone crushers were severely damaged.¹⁰¹⁰ Mr. Parchami further states that the thrust bearings¹⁰¹¹ were damaged beyond repair, and replacements were unavailable because those bearings were of a special design.

1970. According to Mr. Parchami, the damage to the thrust bearings resulted from the pivoting movement of the loose part of the roller-cones caused during transport. Expanding on Mr. Parchami's statement, Iran asserts that the pivoting movement, in turn, was caused by the decay, after five years of exposure, of the wooden spacers inserted to keep the cones in place in the steel sleeves during transport. Mr. Parchami states that, due to the destruction of the thrust bearings, none of the roller-cone crushers was operational. Mr. Parchami further asserts that the electro-motors of the Morgan Rock-Crushing Equipment had also been damaged during transport because they had not been "prepared to be shipped." In Mr. Parchami's view, on account of the overall damage suffered, the Morgan Rock-Crushing Equipment had become useless and only had a scrap value of 30 percent of its original purchase price.

1971. Iran asserts that, though some of the first-stage jaw crushers¹⁰¹² were still operable, there was limited use for the large stones that those crushers produced without having the roller-cone crushers to reduce those stones to smaller manageable sizes.

1972. As further evidence of the condition of the Morgan Rock-Crushing Equipment in 1983, Iran relies on the testimony of other witnesses. Mr. Mahmoudi, who saw that equipment in New Orleans in October 1983, states in his affidavit that all of the Morgan Rock-Crushing Equipment was "corroded" and "damaged," along with "certain wooden boxes." For his part, Mr. Mousavi, who accompanied Mr. Mahmoudi, states in his affidavit that the "machinery was corroded" and "partly broken and destroyed."

¹⁰¹⁰ See *supra* para. 1966.

¹⁰¹¹ See *id.*

¹⁰¹² See *supra* para. 1966.

1973. Based on Mr. Parchami's testimony, Iran contends that, by February 1984, the Morgan Rock-Crushing Equipment had suffered a total damage of 70 percent due to prolonged exposure to the elements.

1974. Further, based on the same rationale Mr. Salami applied with respect to the Porta-Kamp Housing Units, Iran contends that the United States is responsible for 75 percent of the total damage suffered by the Morgan Rock-Crushing Equipment.¹⁰¹³

1975. Accordingly, in keeping with Mr. Salami's valuation method,¹⁰¹⁴ Iran seeks USD 2,778,145 in damages on this head of claim, allegedly representing the diminution in value of the Morgan Rock-Crushing Equipment stored in New Orleans between January 1981 and February 1984, which Iran asserts is attributable to the United States. Iran calculated that amount based on the sum of USD 5,291,705, which represents 60 percent of the 1978 purchase price of the Morgan Rock-Crushing Equipment covered by Purchase Order No. 87-2101-1 (that is, USD 8,819,508).¹⁰¹⁵

Claim for Loss of Use of Assets

1976. On this head of claim, Iran seeks damages MORT allegedly incurred due to having been deprived of the use of the G-8 Materials from 19 January 1981, the date on which Iran asserts the United States' breach of the Algiers Declarations commenced, until February 1984, when the G-8 Materials were shipped to Iran. According to Mr. Salami, such deprivation "could entail both leasing and renting the property," because, had MORT possessed the G-8 Materials during that period, it could have used them "for its other projects (thus not being required to rent like machinery)" or could have "lease[d] them to other organizations and companies."

1977. In keeping with Mr. Salami's approach, which he terms net-capital-yield method, Iran assesses the damages for loss of use by the rate of the return that MORT allegedly would have achieved had the G-8 Materials been available to it from 19 January 1981. Mr. Salami asserts that, because there were no equivalent high-quality portable housing units and rock-crushing equipment available in Iran at the time, it is not possible to assess the damages for loss of use

¹⁰¹³ See *supra* para. 1964.

¹⁰¹⁴ See *supra* paras. 1964-1965.

¹⁰¹⁵ See *supra* para. 491. As noted, Iran maintains that 60 percent of the Morgan Rock-Crushing Equipment covered by Purchase Order No. 87-2101-1 had been delivered to Gulf Ports in New Orleans, whereas 40 percent thereof had been delivered to the Port of Vancouver. See *supra* para. 484.

by comparison with revenues generated from equivalent assets in Iran. Mr. Salami states that, according to the net-capital-yield method, the damage is assessed by examining the expected rate of return on investment of capital equivalent to the sum that MORT used to purchase the assets. Mr. Salami calculates this rate of return based on the average rate of United States Treasury bonds from 1981 through 1983, to which he adds a risk factor to account for the different types of assets.

1978. The average United States Treasury bond rate between 1981 and 1983 was, according to Mr. Salami, 11.17 percent. After considering various risk factors, Mr. Salami arrives at capital-yield rates of 12 percent for the Porta-Kamp Housing Units, 14 percent for the Morgan Rock-Crushing Equipment, and 22 percent for the Lighting Plants. Applying these rates to the original unindexed 1978 purchase prices, rather than the 1981 market values, of those items, Mr. Salami concludes that the damages due to loss of use between 19 January 1981 and February 1984 are as follows: (i) USD 2,960,022 for the Porta-Kamp Housing Units; (ii) USD 2,548,189 for the Morgan Rock-Crushing Equipment; and (iii) USD 696,872 for the Lighting Plants.

1979. Accordingly, Iran seeks a total of USD 6,205,083 in damages on this head of claim, allegedly resulting from the loss of use of the G-8 Materials between 19 January 1981 and February 1984.

Claims for “Additional Costs”

1980. Iran’s third head of damages consists of a number of claims for “additional costs” that MORT allegedly incurred to recover the G-8 Materials. According to Iran, but for the United States’ breach of its Paragraph 9 obligation, the G-8 Materials would have been returned to MORT without it having to incur those costs. Iran calculates its damages for “additional costs” as of 19 January 1981. The claimed additional costs are as follows.

i) Storage and Repackaging Costs

1981. Iran claims for storage costs relating to the G-8 Materials incurred after 19 January 1981. Iran calculates this claim based on the USD 1.6 million MORT paid to Gulf Ports under the 24 February 1983 settlement agreement,¹⁰¹⁶ from which Iran deducts the

¹⁰¹⁶ See *supra* paras. 515-516.

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 Shippers 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 1,852,010.

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.

Mr. Mahmoudi also produced a series of checks issued by MORT in late 1983 in favor of those two lessors as well as a further lessor of storage premises in New Orleans, evidencing rental payments totaling USD 108,500.

v) *Costs for Warehouse Security*

1987. Finally, Iran seeks USD 28,340.50 allegedly paid for security services to protect the Porta-Kamp Housing Units at Market Street and McCarty Drive in Houston after Gulf Ports abandoned the G-8 Materials in July 1983.¹⁰²¹ In support, Iran relies on Mr. Salami's valuation report and Mr. Mahmoudi's affidavit testimony. The latter produced a copy of a 14 November 1983 agreement between MORT and a security company for the provision of 24-hour security services at those two locations at the rate of USD 7 per hour. According to this contract, "one armed guard at each location" would patrol the "interior and exterior of the premises," night and day. Iran asserts, however, that multiple security guards were in fact required at each location, although the contract did not reflect this. Mr. Mahmoudi also proffered a document titled "Recapitulation," which appears to be an internal document, prepared by Mr. Mahmoudi himself. This document includes a list of periodic payments for "Security/Houston," totaling USD 28,043.50, concerning two specifically designated "yards," which the Tribunal understands were the storage premises rented by MORT at Market Street and McCarty Drive in Houston.

Mitigation of Damages

1988. In response to arguments by the United States,¹⁰²² Iran argues, as a general matter, that the United States is responsible for all of Iran's losses unless the United States can: (i) show that Iran was under a duty to mitigate its loss; (ii) explain what steps Iran was obliged to take as part of that duty; and (iii) show that Iran in fact breached that duty by failing to act reasonably in the circumstances. In connection with the latter, Iran contends that the standard of reasonableness for acts of mitigation is generally regarded as not high. Thus, Iran maintains that, assuming it did have a duty to mitigate its damages in this Claim, which Iran denies, Iran would not be expected to do anything out of the ordinary course of business.

¹⁰²¹ *See id.*

¹⁰²² *See infra* para. 2009 *et seq.*

1989. Iran asserts that, if the Tribunal finds that the United States has satisfied its burden of showing that MORT had a duty to mitigate its damages in this Claim, then, MORT in fact did discharge that duty. According to Iran, it did so, in particular, by seeking to conclude the November 1981 and February 1983 settlement agreements with Gulf Ports.¹⁰²³ Iran denies, however, that the conclusion of those settlement agreements was required pursuant to any duty to mitigate. In this connection, Iran also responds to the suggestion made at the Hearing that, as part of its duty to mitigate, in order to prevent further accrual of storage charges for the G-8 Materials, Iran was required to pay those charges to Gulf Ports and subsequently bring a claim against the United States for any storage charges that it believed it did not owe.¹⁰²⁴ In Iran's view, it cannot be that a party is obligated to conclude a settlement agreement as part of a duty to mitigate, let alone to do so in a reasonable period of time. In this context, at the Hearing, counsel for Iran stated:

It seemed to be proposed that this might be a simple matter, just settle the storage charges and then make a separate claim against the United States. But [I have trouble entertaining the idea] that a party should be under a duty to accede to a flagrant breach and obliged, as part of a duty to mitigate, not just to try to settle that claim, but actually settle it, and to do so in a reasonable period of time, and then, under the same duty to mitigate, bring a separate state to state claim in order to seek recovery

1990. Iran concludes that there is no basis for finding that it has breached any duty to mitigate losses in this Claim.

2) *The United States' Contentions*

1991. As a general matter, the United States contends that Iran has failed to provide any evidentiary support for Claim G-8. According to the United States, Iran, as the Claimant, bears the burden of proving its losses with some degree of reliability and specificity. The United States emphasizes that Iran must, not only show that it suffered losses, but also establish with precision what those losses were.

¹⁰²³ See *supra* paras. 501 & 515.

¹⁰²⁴ See *infra* para. 2011.

Claim for Diminution of Asset Values Due to Deterioration

1992. The United States asserts that Iran has failed to prove that the United States is responsible for any losses Iran incurred as a result of the deterioration of the Porta-Kamp Housing Units and the Morgan Rock-Crushing Equipment. The United States maintains that neither Party can prove the exact condition of those items on 19 January 1981 for the purpose of assessing their deterioration between that date and February 1984. However, only Iran bears the burden of proof in this respect.

1993. According to the United States, Iran's theory that the bulk of the deterioration occurred between January 1981 and early 1984 is unsupported. The United States points out that Mr. Salami's valuation is largely based on the testimony of Messrs. Mousavi, Parchami, and Baghdadi, who viewed the Porta-Kamp Housing Units and the Morgan Rock-Crushing Equipment at certain points in time between 1983 and 2004. However, the United States emphasizes, these witnesses had not viewed the items at the relevant times, namely, in January 1981 or immediately before their shipment in February 1984. Further, the United States observes that Iran's expert witnesses, Mr. Billingham and Mr. Salami, never actually saw the items.

1994. The United States concedes that Mr. Rahmati, MORT's attorney, did briefly observe the Porta-Kamp Housing Units and the Morgan Rock-Crushing Equipment in December 1981 and October 1983. The United States maintains, however, that, as Mr. Rahmati testified, during his short visit in December 1981, he never opened any erected or knocked-down housing units, never saw the furniture or fixtures inside, and never tested the level of humidity present in the housing units, which he characterized as "somehow inflated."¹⁰²⁵

1995. The United States contends that Iran's theory, according to which the Porta-Kamp Housing Units and the Morgan Rock-Crushing Equipment underwent little or no deterioration prior to 19 January 1981, is contradicted by the evidence. In the United States' view, the evidence shows, rather, that the Porta-Kamp Housing Units had deteriorated significantly prior to that date, and that, for all the items at issue in this Claim, any additional economic loss after January 1981 was minimal. In support, the United States proffered an expert report prepared by LBC International Investigative Accounting, Inc., an accounting firm specialized in

¹⁰²⁵ See *supra* para. 506.

machinery and equipment appraisals (“LBC Report”). The LBC Report evaluates Iran’s claims for (i) damages from diminution of asset value due to deterioration, (ii) damages for loss of use, and (iii) “additional costs.” The United States presented as witnesses at the Hearing the co-authors of the LBC Report, Messrs. Pierre Bélanger and Arthur Lavigne. Mr. Pierre Bélanger is the founder of the Canadian forensic appraisal company Bélanger Appraisal Consultants Inc. Mr. Arthur Lavigne is a Canadian chartered and forensic accountant.

1996. Mr. Bélanger testified that additional physical damage to the Porta-Kamp Housing Units occurring after January 1981 would not have contributed significantly to the cost of repairs due to a “leveling-off” effect.”

1997. Concerning the Morgan Rock-Crushing Equipment, Mr. Bélanger stated that it is heavy-duty equipment, and that damage due to exposure to the elements would primarily be sustained by its consumables – such as bearings, belts, and knives – while the balance of the equipment – frames, motor control centers, and sealed motors – would not sustain important, operational damage. According to Mr. Bélanger, additional physical damage after 19 January 1981 would be minimal. Mr. Bélanger further stated that Mr. Parchami’s assessment of a 70-percent deterioration figure based on an alleged 30-percent salvage value of the Morgan Rock-Crushing Equipment is methodologically incorrect. Mr. Bélanger explained that, rather, such damage should have been established on the basis of a detailed survey of that equipment, followed by a cost estimation. In this connection, the LBC Report concludes that Iran’s alleged 70-percent deterioration figure for the Morgan Rock-Crushing Equipment is unsupported and speculative.

1998. As further support for its position, the United States presented as an expert witness at the Hearing Mr. Jean René Dumont, a Canadian biochemical engineer working in the field of environmental science and industrial hygiene. Mr. Dumont introduced himself as having extensive experience in assessing the condition and repair of prefabricated housing affected by wood rot. Mr. Dumont also prepared a short paper, dated 13 December 2010, which was appended to the LBC Report, discussing the effects of mildew on the Porta-Kamp Housing Units stored in Houston as well as the Transworld Housing Units stored in Vancouver (“Dumont Letter”). At the Hearing, Mr. Dumont testified about the potential effects of mold and fungal growth on those housing units. Among other things, Mr. Dumont (i) discussed the negative consequences of insufficient air circulation among and within the erected and knocked-down housing units, (ii) addressed the lack of proper maintenance and storage of the

housing units at their locations, and (iii) critiqued the conclusions of Mr. Billingham, Iran's expert witness, on the effects of Houston's climate on mold and fungal growth.¹⁰²⁶ Mr. Dumont testified that, given the proper levels of humidity and temperature, wood rot may affect spruce within one year.

1999. In the Dumont Letter, Mr. Dumont concluded that: (i) it could be expected that, by 19 January 1981, the Porta-Kamp and Transworld Housing Units in Houston and Vancouver, respectively, could have suffered damage exceeding 50 percent of their value; and (ii) by October 1983, "major damages" of more than 75 percent of the value of those housing units should be considered. Mr. Dumont confirmed those conclusions in his testimony at the Hearing.

Claim for Loss of Use of Assets

2000. The United States asserts that neither Iran nor Iran's expert witness, Mr. Salami, has proffered any evidence of the damages Iran seeks on its claim for the loss of use of the G-8 Materials. Specifically, the United States contends that Iran has failed to provide: (i) evidence that there was demand for the G-8 Materials at the relevant times; (ii) evidence that replacement equipment was unavailable; (iii) documentation showing the actual income generated by the G-8 Materials; or (iv) any evidence of the actual damage suffered by MORT. The United States does not accept Iran's proposition that evidence was not available in Iran. According to the United States, rather, Iran has failed to retrieve and present it to the Tribunal.

2001. In support of its position, the United States also relies on the hearing testimony of Mr. Arthur Lavigne, one of the authors of the LBC Report. Mr. Lavigne testified that, in order to substantiate a claim for loss of use of assets, information is required about, among other things: (i) the period during which the assets would have generated revenue; (ii) the profits that the assets would have generated during such period; (iii) whether replacement assets were available; and (iv) whether additional costs were incurred to replace the assets (for example, costs incurred to rent replacements). According to Mr. Lavigne, Mr. Salami failed to consider, or document, any of the above elements in his assessment.

¹⁰²⁶ See *supra* para. 1959.

2002. Mr. Lavigne testified that Mr. Salami's net-capital-yield method¹⁰²⁷ might be used in a loss-of-use analysis, but only if it were demonstrated that the chosen capital-yield rates appear sensible compared to the profit that would be generated by the asset in question.

2003. In conclusion, the United States contends that Iran's claim for the loss of use of the G-8 Materials concerns a theoretical loss based on a notional calculation and does not relate to actual lost revenues. Thus, the United States submits that this head of claim is wholly speculative in nature and should be dismissed.

Claims for "Additional Costs"

2004. The United States contends, generally, that, for each of the claimed "additional costs,"¹⁰²⁸ Iran must prove: (i) that it would not have incurred the cost except for the United States' breach of the Algiers Declarations; and (ii) the amount of the cost incurred. The United States maintains that Iran has failed to make these showings for most of the claimed "additional costs."

2005. Specifically, the United States disputes that the amount MORT paid to Shipside Packing Co. for repackaging the G-8 Materials for shipment in February 1984¹⁰²⁹ represents an "additional" cost. According to the United States, the Porta-Kamp Housing Units and the Morgan Stone-Crushing Equipment had sustained substantial damage by 19 January 1981; consequently, a fair amount of repackaging would have been required even if those items had been shipped to Iran shortly after that date.

2006. Similarly, the United States contends that Iran has not proven that all of the claimed storage costs relating to the G-8 Materials for the period after 19 January 1981 are "additional."¹⁰³⁰

2007. Further, the United States maintains that Iran has failed to prove the amount of security-service fees MORT paid in 1983 and 1984 to protect the Porta-Kamp Housing Units stored in

¹⁰²⁷ See *supra* paras. 1977-1978.

¹⁰²⁸ See *supra* para. 1980.

¹⁰²⁹ See *supra* para. 1982.

¹⁰³⁰ See *supra* para. 1981.

Houston.¹⁰³¹ Particularly, the United States asserts that there is no evidence on record that more than one security guard was used at each location in Houston, as Iran alleges.

2008. Finally, the United States contends that Iran has not proffered any evidence to prove either the travel expenses incurred by MORT's representatives on the occasion of their trips to Vienna, Houston, and New Orleans¹⁰³² or the bulk of the fees allegedly charged to MORT by its United States attorneys.¹⁰³³

Mitigation of Damages

2009. The United States contends that, even if Iran could prove its alleged losses, it may not recover damages that it reasonably could have avoided through mitigation. In this Claim, the United States emphasizes, Iran did not show either that it made reasonable efforts to mitigate its losses, or that its alleged losses were unavoidable.

2010. Thus, the United States asserts that MORT failed to take, among others, the following reasonable steps to mitigate its losses: (i) ship the G-8 Materials to Iran prior to 14 November 1979; (ii) ask that Gulf Ports protect the properties that MORT knew were deteriorating; (iii) contact Gulf Ports promptly after the conclusion of the Algiers Declarations; (iv) follow through on the settlement MORT had reached with Gulf Ports on 17 November 1981 and ship the G-8 Materials to Iran; and (v) purchase replacements for the damaged Morgan Rock-Crushing Equipment parts and for the Porta-Kamp Housing Units.

2011. Further, the United States asserts that Iran could have reasonably avoided the damages for which it claims simply by paying the accrued storage charges for the G-8 Materials to Gulf Ports, thereby halting the accrual of damages, and then bringing a claim against the United States for any storage charges Iran believed it did not owe. According to the United States, this would have been simpler to do than negotiate settlement agreements with Gulf Ports.

2012. The United States concludes that, because Iran failed to take reasonable steps to mitigate the claimed losses, Iran may not recover on this Claim.

¹⁰³¹ See *supra* para. 1987.

¹⁰³² See *supra* para. 1984.

¹⁰³³ See *supra* para. 1985.

(ii) *The Tribunal's Decision*

3) *Claim for Diminution of Asset Values Due to Deterioration*

Porta-Kamp Housing Units

2013. As an initial matter, the Tribunal must determine the degree of deterioration that the Porta-Kamp Housing Units suffered from February 1979, when they were delivered to Gulf Ports in Houston,¹⁰³⁴ and February 1984, when they were shipped to Iran.¹⁰³⁵ The Parties and their expert witnesses largely agree that, by the latter date, the Porta-Kamp Housing Units had deteriorated by some 75 percent as a result of, among other things, prolonged exposure to the elements, lack of proper maintenance and storage, as well as vandalism.¹⁰³⁶ This 75-percent deterioration figure is also consistent with the assessment made by Porta-Kamp in its November 1983 letter to MORT, advising that the cost of reconditioning MORT's Porta-Kamp Housing Units "could be as much as 60 percent to 75 percent of the original cost."¹⁰³⁷

2014. Accordingly, the Tribunal concludes that the Porta-Kamp Housing Units had deteriorated by 75 percent by February 1984, when they were shipped to Iran. Consequently, based on the original purchase price, as determined by the Tribunal, of USD 1,980,000,¹⁰³⁸ by that date, the Porta-Kamp Housing Units had suffered damages totaling USD 1,485,000. In order to apportion the share of those damages to be borne by each Party, the Tribunal must determine the degree of deterioration that the Porta-Kamp Housing Units had suffered by early 1981.

2015. The Parties disagree about the extent to which the Porta-Kamp Housing Units had deteriorated by 19 January 1981. According to Iran and its expert witness, the Porta-Kamp Housing Units underwent no significant deterioration during 1979, the first year they were in storage with Gulf Ports in Houston. In support, Mr. Billingham, Iran's expert witness pointed to the housing units' quality components, robust design, 10-year minimum design life, the fact

¹⁰³⁴ See *supra* para. 492.

¹⁰³⁵ See *supra* para. 526.

¹⁰³⁶ See *supra* paras. 1961-1963 & 1998-1999.

¹⁰³⁷ See *supra* para. 522.

¹⁰³⁸ See *supra* para. 542.

that they were made of kiln-dried timber, and the 12-month manufacturer's warranty.¹⁰³⁹ According to Iran's expert witness, the Porta-Kamp Housing Units would have suffered a maximum of 10 to 15 percent deterioration during the first two years after their delivery due to exposure to the elements, with the remainder of 60 to 65 percent occurring thereafter.¹⁰⁴⁰ Further, Mr. Rahmati, who had seen the Porta-Kamp Housing Units in Houston multiple times between December 1981 and late 1983, asserted that, between January 1982 and October 1983, the housing units had deteriorated significantly, and that they had been in a much better condition in 1981.¹⁰⁴¹

2016. The United States, by contrast, asserts that the Porta-Kamp Housing Units had deteriorated considerably prior to 19 January 1981, and that any additional economic loss that occurred thereafter was minimal. In support, the United States relies on the testimony of its expert witnesses.¹⁰⁴² Among the factors contributing to the alleged rapid deterioration of the housing units, one expert witness pointed to insufficient air circulation among and within the erected and knocked-down housing units, the lack of proper maintenance and storage, as well as mold and fungal growth affecting the timber.¹⁰⁴³ According to the expert witness, it could be expected that, by 19 January 1981, the Porta-Kamp Housing Units would have suffered damage exceeding 50 percent of their value.¹⁰⁴⁴

2017. There is no contemporaneous evidence on record documenting the physical condition of the Porta-Kamp Housing Units in 1981, such as photographs or notes taken by MORT's representatives when they visited Gulf Ports' storage facilities in December of that year.

2018. In connection with the latter, the Tribunal notes that Mr. Rahmati testified that, during that visit, he neither entered any housing units nor tested the level of humidity present in the housing units that he had observed were bloating.¹⁰⁴⁵ The Tribunal finds that his testimony is

¹⁰³⁹ See *supra* paras. 1958-1959.

¹⁰⁴⁰ See *supra* para. 1959.

¹⁰⁴¹ See *supra* para. 1962. See also *supra* para. 506.

¹⁰⁴² See *supra* paras. 1995-1996 & 1999.

¹⁰⁴³ See *supra* para. 1998.

¹⁰⁴⁴ See *supra* para. 1999.

¹⁰⁴⁵ See *supra* para. 506.

too vague to form the basis for any reliable conclusion by the Tribunal on the physical condition of the Porta-Kamp Housing Units in 1981.

2019. Further, none of the Parties' expert witnesses has actually viewed the Porta-Kamp Housing Units at any point in time. Their conclusions on the condition of those items in 1981 are widely divergent and irreconcilable, as well as unsupported by any contemporaneous evidence. In the circumstances of the present Claim, the Tribunal finds that it cannot rely on those conclusions, which the Tribunal regards as too speculative.

2020. In sum, the Tribunal has not been presented with any evidence capable of persuading it either (i) that the Porta-Kamp Housing Units suffered a maximum of 10 to 15 percent deterioration during the first two years after their delivery, as asserted by Iran's expert witness, or (ii) that, by 19 January 1981, those items had suffered damage exceeding 50 percent of their value, as asserted by the United States' expert witness.

2021. Accordingly, absent any reliable proof allowing a precise apportionment, the Tribunal finds it reasonable to assume that the Porta-Kamp Housing Units deteriorated at an even rate of 15 percent per year between February 1979, when they were delivered to Gulf Ports, and February 1984, when they were shipped to Iran. The Tribunal has determined this rate on the basis of a 75-percent total deterioration of the items over a period of roughly five years.¹⁰⁴⁶

2022. Further, the Tribunal holds that Iran must bear the damages due to deterioration of the Porta-Kamp Housing Units occurring from February 1979 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.

2023. The United States, for its part, is liable to Iran for damages due to the deterioration of the Porta-Kamp Housing Units occurring after 1 March 1981 until February 1984. Based on the even deterioration rate of 15 percent per year, the Tribunal finds that the damages due to the deterioration of the Porta-Kamp Housing Units amount to USD 658,600. Accordingly, the Tribunal awards this amount to Iran.

¹⁰⁴⁶ See *supra* para. 2014.

Morgan Rock-Crushing Equipment

2024. The Parties disagree about the total deterioration suffered by the Morgan Rock-Crushing Equipment between February 1979, when it was delivered to Gulf Ports in New Orleans,¹⁰⁴⁷ and February 1984, when it was shipped to Iran.¹⁰⁴⁸

2025. Iran's assessment of the total deterioration suffered by the Morgan Rock-Crushing Equipment is principally, if not exclusively, based on the testimony of Mr. Parchami, who first observed that equipment in Khuzestan, Iran, in 1985.¹⁰⁴⁹ Based on Mr. Parchami's testimony,¹⁰⁵⁰ Iran and its valuation expert witness, Mr. Salami, conclude that, by February 1984, the Morgan Rock-Crushing Equipment had deteriorated by 70 percent due to prolonged exposure to the elements.¹⁰⁵¹ To prove that the crushing equipment had deteriorated significantly by that date, Iran further relies on the testimony of Messrs. Mahmoudi and Mousavi.¹⁰⁵² As noted, Iran asserts that the Morgan Rock-Crushing Equipment sustained little or no deterioration during 1979, the first year it was stored in New Orleans, but may have sustained limited deterioration during the second year it was in storage (*i.e.*, until 19 January 1981).¹⁰⁵³

2026. The United States, by contrast, contends that the Morgan Rock-Crushing Equipment was heavy-duty equipment, designed to withstand exposure to the elements. According to the United States' expert witness, damage due to exposure would primarily be sustained by consumables, such as bearings, while the balance of the equipment would not undergo significant operational damage.¹⁰⁵⁴ In the expert witness' view, additional damage to the rock-crushing equipment after 19 January 1981 would have been minimal.¹⁰⁵⁵

¹⁰⁴⁷ See *supra* para. 492.

¹⁰⁴⁸ See *supra* para. 526.

¹⁰⁴⁹ See *supra* para. 1968.

¹⁰⁵⁰ See *supra* paras. 1968-1970.

¹⁰⁵¹ See *supra* para. 1973.

¹⁰⁵² See *supra* para. 1972.

¹⁰⁵³ See *supra* para. 1967.

¹⁰⁵⁴ See *supra* para. 1997.

¹⁰⁵⁵ See *id.*

2027. It is undisputed that the Morgan Rock-Crushing Equipment was stored outside in New Orleans during five years, in the original export-standard packaging. It is also undisputed that no particular measures had been taken to protect that equipment from the elements. The Tribunal notes that, in a letter of 11 May 1981 to OFAC, Morgan, the manufacturer of the Morgan Rock-Crushing Equipment, advised that the Morgan Rock-Crushing Equipment located in Vancouver and New Orleans had “deteriorated substantially” due to its having been “stored outside for approximately two and one-half years.”¹⁰⁵⁶

2028. On balance, after considering all the evidence, the Tribunal is prepared to accept 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. For the purposes of this Claim, the Tribunal assumes that Mr. Parchami first observed that equipment in mid-1985. Consequently, based on the original purchase price of the Morgan Rock-Crushing Equipment delivered to Gulf Ports, that is, USD 5,291,705,¹⁰⁵⁷ the Tribunal determines that, by mid-1985, the Morgan Rock-Crushing Equipment had suffered damages totaling USD 3,704,193.

2029. The Tribunal, however, is not prepared to hold that the Morgan Rock-Crushing equipment had already deteriorated to that extent by February 1984, when it was shipped to Iran from New Orleans. In light of the evidence presented, the Tribunal accepts that the rock-crushing equipment sustained additional physical damage during transport from New Orleans to the port of arrival in Iran, or, subsequently, in transit to MORT’s central warehouse in Tehran, or, finally, on to Khuzestan.¹⁰⁵⁸ This holds especially true given that, according to Mr. Parchami, the equipment had not been properly prepared for shipment to Iran.¹⁰⁵⁹ In this connection, it should be noted that, in December 1983, MORT had hired Shiplside Packing Co. precisely to re-crate the Morgan Rock-Crushing Equipment and deliver it to the Port of New Orleans Dock for onward shipment.¹⁰⁶⁰ Accordingly, any damage suffered by the Morgan Rock-Crushing Equipment during transportation from New Orleans to, ultimately, Khuzestan must be borne by Iran.

¹⁰⁵⁶ See *supra* para. 435.

¹⁰⁵⁷ See *supra* paras. 491 & 543.

¹⁰⁵⁸ See *supra* paras. 1968-1969.

¹⁰⁵⁹ See *supra* para. 1970.

¹⁰⁶⁰ See *supra* para. 523 and *infra* para. 2041.

2030. Further, based on the record before it, the Tribunal is not persuaded that the Morgan Rock-Crushing Equipment sustained only limited deterioration prior to 19 January 1981, as Iran asserts, or that it sustained only minimal deterioration after that date, as the United States asserts. Consequently, absent any reliable evidence allowing a precise apportionment, the Tribunal finds it reasonable to conclude that the 70-percent total deterioration of the Morgan Rock-Crushing Equipment occurred at an even rate between February 1979, when it was delivered to Gulf Ports, and mid-1985, when Mr. Parchami first observed it in Khuzestan. On this basis, the Tribunal holds that the Morgan Rock-Crushing Equipment deteriorated at an annual rate of 10.9 percent over a period of almost six and one-half years.

2031. In view of the above, the Tribunal holds that Iran must bear the damages due to deterioration of the Morgan Rock-Crushing Equipment occurring during the following periods: (i) from February 1979 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; and (ii) from mid-January 1984¹⁰⁶¹ until mid-1985.

2032. The United States, for its part, is liable to Iran for damages due to the deterioration of the Morgan Rock-Crushing Equipment occurring after 1 March 1981 until mid-January 1984.¹⁰⁶² Based on the even deterioration rate of 10.9 percent per year, the Tribunal finds that the damages due to the deterioration of the Morgan Rock-Crushing Equipment amount to USD 1,148,300. Accordingly, the Tribunal awards this amount to Iran.

4) *Claim for Loss of Use of Assets*

2033. On this head of claim, Iran seeks damages MORT allegedly incurred due to having been deprived of the use of the G-8 Materials from 19 January 1981, the date on which Iran asserts the United States' breach of the Algiers Declarations commenced, until February 1984, when the G-8 Materials were shipped to Iran. Mr. Salami, Iran's expert witness, clarifies that such damages include compensation for the rental income that the G-8 Materials could have

¹⁰⁶¹ The Tribunal selects this date as a matter of convenience, given its conclusion as to the 40/60-percent apportionment between the Port of Vancouver and New Orleans, respectively, of the Morgan Rock-Crushing Equipment purchased by MORT under Purchase Order No. 87-2101-1. *See supra* paras. 484 & 543. As noted, the Morgan Rock-Crushing Equipment stored with the Port of Vancouver in Washington State was shipped to Iran in late 1983, while the Morgan Rock-Crushing Equipment stored with Gulf Ports in New Orleans was shipped to Iran in February 1984. *See supra* paras. 460 & 526.

¹⁰⁶² *See supra* note 1061.

generated during the relevant period and for expenses that MORT incurred to rent replacement equipment.¹⁰⁶³

2034. However, Iran has proffered no evidence as to whether, during the relevant period, the G-8 Materials would have generated any revenue or profits. Nor has it proffered any evidence as to whether, during that period, MORT incurred additional costs to replace the G-8 Materials, or whether replacement assets were even available to it.

2035. Against this background, Mr. Salami evaluates the damages MORT allegedly suffered due to the loss of use of the G-8 Materials using an approach that he terms the net-capital-yield method. According to this method, he assesses those damages by applying an expected rate of return on investment of capital equivalent to the sum that MORT paid to purchase the G-8 Materials. Mr. Salami calculates this rate of return based on the average rate of United States Treasury bonds from 1981 through 1984, to which he adds a risk factor to account for the different types of assets.¹⁰⁶⁴

2036. There is no evidence, however, that the rates chosen by Mr. Salami bear any relation to the possible profit that the G-8 Materials could have generated during the relevant period.

2037. Moreover, Mr. Salami's net-capital-yield method does not meet the criteria established in this Tribunal's practice for the substantiation of claims for the loss of use of tangible assets. In *Sedco, Inc. v. National Iranian Oil Co.*,¹⁰⁶⁵ the claimant had sought damages for the loss of use of certain appropriated oil rigs for a nine-month period, the time allegedly needed to replace a rig. In granting the claimant's loss-of-use claim, the Tribunal considered, among other elements, that: (i) the claimant could have in fact leased the rigs profitably had it possessed them during those nine months;¹⁰⁶⁶ and (ii) it would have in fact taken the claimant nine months to replace the rigs.¹⁰⁶⁷ Further, in determining the amount of lost profits to be awarded, the Tribunal rejected the claimant's claim for a daily profit of USD 5,000 per rig as "not

¹⁰⁶³ See *supra* para. 1976.

¹⁰⁶⁴ See *supra* paras. 1977-1978.

¹⁰⁶⁵ *Sedco, Inc. and National Iranian Oil Co. et al.*, Award No. 309-129-3 (7 July 1987), reprinted in 15 IRAN-U.S. C.T.R. 23.

¹⁰⁶⁶ *Sedco, Inc.*, Award No. 309-129-3, para. 85, 15 IRAN-U.S. C.T.R. at 53.

¹⁰⁶⁷ *Sedco, Inc.*, Award No. 309-129-3, para. 85, 15 IRAN-U.S. C.T.R. at 53. The Tribunal, however, reduced to seven months the period for which the claimant could recover, to account for the time it would have taken to restart operations. See *id.* para. 86, 15 IRAN-U.S. C.T.R. at 53.

compelling,” and it limited its award to the amount of profit “actually earned” on comparable operations in Iran in 1978, which was USD 3,787 per day.¹⁰⁶⁸

2038. Mr. Salami’s damages assessment, by contrast, fails to consider whether MORT could have procured replacements for the G-8 Materials. Indeed, Mr. Salami testified that he was unaware whether MORT had ever attempted to buy any replacements for the Porta-Kamp Housing Units or the Morgan Rock-Crushing Equipment. Moreover, as noted, Mr. Salami’s assessment fails to consider whether the G-8 Materials would have been capable of generating any profits during the relevant period.

2039. In light of the foregoing, the Tribunal holds that the damages claimed by Iran as compensation for the loss of use of the G-8 Materials are unduly speculative. Accordingly, in line with Tribunal precedent, the Tribunal dismisses Iran’s loss-of-use claim for failure of proof.¹⁰⁶⁹

5) *Claims for “Additional Costs”*

Storage and Repackaging Costs and Costs of Disposal of Unsalvageable Porta-Kamp Housing Units

Storage Costs

2040. As an initial matter, the Tribunal holds that the United States is not liable to Iran for any storage costs relating to the G-8 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 February 1984, when those items were shipped to Iran. The Tribunal finds that the best

¹⁰⁶⁸ *Sedco, Inc.*, Award No. 309-129-3, para. 85, 15 IRAN-U.S. C.T.R. at 53.

¹⁰⁶⁹ See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 58 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 210 (dismissing a claim for lost profits because the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit); *Petrolane, Inc. et al. and Islamic Republic of Iran et al.*, Award No. 518-131-2, paras. 109-10 (14 Aug. 1991), reprinted in 27 IRAN-U.S. C.T.R. 64, 101 (dismissing a claim for lost profits because the claimant had not proven that the lead time for obtaining replacement equipment was twelve months, or that the claimant could have rented the expropriated equipment at a profit); *Dadras Int’l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 276 (7 Nov. 1995), reprinted in 31 IRAN-U.S. C.T.R. 127, 203-4 (dismissing a claim for lost profits for failure of proof because the damages claimed were unduly speculative, and the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit).

available evidence on record of the monthly storage costs incurred by MORT for the G-8 Materials is the invoice that Gulf Ports sent to the Iranian Interest Section on 4 January 1981.¹⁰⁷⁰ That invoice billed MORT USD 432,000 in storage charges for the period 4 January 1981 through 4 January 1983; thus, MORT was being invoiced at a monthly storage rate of USD 18,000. Accordingly, on this basis, the Tribunal holds that the total storage costs MORT incurred after 1 March 1981 until February 1984 was USD 648,600. Consequently, the Tribunal awards this amount to Iran.

Repackaging Costs

New Orleans

2041. The best available evidence on record of the costs that MORT incurred for the re-packing and re-crating of the G-8 Materials located in New Orleans is the copy of a contract dated 5 December 1983 between Shipperside and Iran Shipping Lines. For an estimated price of USD 180,799, Shipperside undertook to provide the following services with respect to the G-8 Materials in New Orleans: (i) export boxing; (ii) repairing of salvageable boxes; (iii) re-skidding; (iv) re-bundling; (v) placement of new export marks and bands on boxes; and (vi) delivery of all items to the Port of New Orleans Dock (“Dock Delivery”).

2042. Shipperside estimated that Dock Delivery would cost USD 9,900. The Tribunal will not consider this amount because it is unrelated to re-packing and re-crating. In addition, MORT would have owed the costs of delivery of all G-8 Materials to the ports of shipment, irrespective of the breach by the United States of the Algiers Declarations.

2043. Accordingly, in view of the above, the Tribunal determines that the costs of re-packing and re-crating the G-8 Materials located in New Orleans were USD 170,899.

Houston

2044. Further, the Tribunal finds that the best available evidence on record of the costs that MORT incurred for the re-packing and re-crating of the Porta-Kamp Housing Units located in Houston is the copy of a written estimate prepared by Gulf Ports on 19 April 1983. Gulf Ports estimated those costs at USD 171,665.

¹⁰⁷⁰ See *supra* para. 498.

2045. The Tribunal has also before it the copy of an offer dated 1 December 1983 from Shipperside, the company that in fact was hired to re-pack and re-crate those items, to Iran Shipping Lines, titled "Contract for Services Related to the Preparation for Export Shipment of Set-Up and Knocked Down Buildings and Their Contents." The costs of re-crating and re-packing of the Porta-Kamp Housing Units, however, cannot be distilled from this offer. Moreover, the offer covers services that were obviously unrelated to re-packing and re-crating, and which, in any event, were contingent on the amount and size of the shipping containers and the number of Shipperside man-hours ultimately required.

2046. Accordingly, in view of the above, the Tribunal determines that the costs of re-packing and re-crating the Porta-Kamp Housing Units were USD 171,665, as reflected in the written estimate prepared by Gulf Ports on 19 April 1983.

Conclusion

2047. Based on the foregoing, the Tribunal determines that the costs of re-packing and re-crating all the G-8 Materials in New Orleans and Houston totaled USD 342,564.

2048. The G-8 Materials were stored outside, exposed to humidity and the elements. The Tribunal reasonably believes that, between February 1979, when they were delivered to Gulf Ports, and 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 original export packaging of the G-8 Materials would have deteriorated to some extent. The Tribunal finds it implausible that, despite such deterioration, no measure of export re-packing and re-crating would have been required in early 1981, as asserted by Iran. Consequently, to account for the deterioration of the original export packaging of the G-8 Materials occurring up to 1 March 1981, the Tribunal holds that Iran must bear 20 percent of the total costs of re-packing and re-crating, that is, USD 68,513.

2049. Accordingly, the Tribunal awards Iran USD 274,051 on its claim for re-packing and re-crating costs.

Costs of Disposal of Unsalvageable Porta-Kamp Housing Units

2050. As noted, Iran also seeks compensation for the costs MORT incurred for the disposal by Shipside of unsalvageable Porta-Kamp Housing Units.¹⁰⁷¹ According to a contract between Shipside and Iran Shipping Lines dated 25 January 1984,¹⁰⁷² Shipside charged MORT USD 16,440 for that service. Consequently, the Tribunal awards this amount to Iran.

MORT's Travel Expenses

2051. It is undisputed that MORT representatives traveled to Vienna to attend settlement negotiations in late 1981. It is also undisputed that, multiple times between December 1981 and early 1984, MORT representatives traveled to the United States, among other things, to observe the G-7 and G-8 Materials in Washington State, New Orleans, and Houston, as well as to make preparations for, and supervise, their ultimate shipment to Iran.¹⁰⁷³ Equally, it is undisputed that MORT incurred travel, hotel, and other expenses in relation to those trips.

2052. The amount that Iran seeks on this head of claim, USD 100,000, is not supported by any evidence. Rather, it is based on an estimate by MORT.

2053. In the circumstances, given that Iran has proven that MORT incurred travel and related expenses that it would not have incurred but for the United States' breach of the Algiers Declarations, its failure to prove their precise extent should not preclude Iran from recovering damages altogether.¹⁰⁷⁴ Consequently, the Tribunal finds it fair and reasonable to award Iran the conservative amount of USD 50,000 on this head of claim.

MORT's United States Legal Fees and Expenses

2054. In support of its claim of USD 100,000 for legal fees and expenses charged to MORT by its United States attorneys for assisting with the recovery of the G-8 Materials,¹⁰⁷⁵ Iran has submitted two invoices from an attorney in Houston, Mr. Harrell Gordon Tillman, totaling USD 11,411.55, namely: (i) an invoice for USD 8,570, covering services rendered during the

¹⁰⁷¹ See *supra* para. 1982.

¹⁰⁷² See *supra* para. 525.

¹⁰⁷³ See *supra* paras. 437, 453-454, 499, 504-506, 520-523, 525.

¹⁰⁷⁴ See *supra* para. 1800 *et seq.*

¹⁰⁷⁵ See *supra* para. 520.

periods 24 August-15 September and 22 September-15 November 1983; and (ii) an invoice for USD 2,841.55, covering services rendered from 15 November 1983 to 2 February 1984. Entries on those invoices indicate that MORT paid in full the USD 11,411.55 charged by Mr. Tillman.¹⁰⁷⁶

2055. The remainder of the USD 100,000 that Iran seeks is based on an estimate by MORT.

2056. The Tribunal is satisfied on the basis of the evidence presented that Mr. Tillman assisted MORT in the recovery of the Porta-Kamp Housing Units after Gulf Ports had abandoned the G-8 Materials in July 1983,¹⁰⁷⁷ and that Mr. Tillman charged MORT USD 11,411.55 for those services. Accordingly, the Tribunal awards this amount to Iran.

2057. The Tribunal is further satisfied that other United States law firms assisted MORT in achieving the release of the G-8 Materials withheld by Gulf Ports. The Tribunal deems it fair and reasonable in the circumstances to award Iran USD 10,000 in compensation for amounts charged to MORT by those law firms for such services.

2058. Accordingly, the Tribunal awards Iran a total of USD 21,411.55 on this head of claim.

Costs for Extending Warehouse Leases

2059. The evidence shows that, in late 1983, MORT paid a total of USD 108,500 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 and Gulf Ports' abandonment of those items in July 1983.¹⁰⁷⁸ MORT would not have incurred these costs if Gulf Ports had released the G-8 Materials after the conclusion of the Algiers Declarations.

2060. Consequently, the Tribunal awards Iran USD 108,500 on this head of claim.

¹⁰⁷⁶ According to those entries, MORT paid the total invoiced amount of USD 11,411.55 as follows: (i) USD 2,500 through an advance payment made on 15 September 1983; (ii) USD 5,000 through an advance payment made on 5 October 1983; and (iii) USD 3,911.55 through a further advance payment made in late 1983 or early January 1984.

¹⁰⁷⁷ See *supra* para. 518.

¹⁰⁷⁸ See *supra* para. 1986.

Costs for Warehouse Security

2061. The 14 November 1983 agreement concluded by MORT for the provision of services to protect the Porta-Kamp Housing Units stored at Market Street and McCarty Drive in Houston (“Security Agreement”) began to run on 15 November 1983. The Porta-Kamp Housing Units located at McCarty Drive were moved to the Galena Park Dock at the Port of Houston by 31 December 1983; this fact is reflected in the 1 December 1983 offer from Shipperside to Iran Shipping Lines for services related to the preparation of the Porta-Kamp Housing Units for export shipment.¹⁰⁷⁹ The Porta-Kamp Housing Units located at Market Street, by contrast, were removed from these premises by 31 January 1984, as reflected in the contract concluded by Shipperside and Iran Shipping Lines dated 25 January 1984 for the disposal of unsalvageable Porta-Kamp Housing Units.¹⁰⁸⁰

2062. Under the Security Agreement, the security company undertook to provide “one armed guard at each location who will patrol the interior and exterior of the premises, from 6 PM to 6 AM and one armed guard to patrol the exterior and interior of both locations from 6 AM to 6 PM each day.” Iran has proffered no evidence that more than one guard patrolled either premise at any given time, in derogation of the Security Agreement, and the Tribunal is not prepared to assume that this was the case.

2063. Accordingly, based on the evidence presented, the Tribunal concludes that: (i) 1,128 man-hours of security services were provided on the McCarty Drive storage premises from 15 November 1983 until 31 December 1983, and (ii) 1,872 man-hours of security services were provided on the Market Street storage premises between 15 November 1983 and 31 January 1984. At the rate of USD 7 per hour,¹⁰⁸¹ this results in a total of USD 21,000 in costs incurred by MORT for the provision of security services for the Porta-Kamp Housing Units. Accordingly, the Tribunal awards this amount to Iran.

¹⁰⁷⁹ See *supra* para. 2045. The offer provided that the services to be performed by Shipperside under the contract, including delivery of the Porta-Kamp Housing Units to the Galena Park Dock, would be completed by 31 December 1983. It is undisputed that Iran Shipping Lines accepted Shipperside’s 1 December 1983 offer.

¹⁰⁸⁰ See *supra* para. 2050. In the contract, Shipperside agreed to have all housing units removed from the Market Street premises by 31 January 1984.

¹⁰⁸¹ See *supra* para. 1987.

The Tribunal's Overall Conclusions on Iran's Claims for "Additional Costs"

2064. In sum, the Tribunal awards Iran a total of USD 1,140,002.55 on its claims for "additional costs."¹⁰⁸²

6) *Mitigation*

2065. As explained above, under international law, a failure by an injured State to take reasonable steps to limit the losses it incurred as a result of an internationally wrongful act by another State may result in a reduction of recovery to the extent of the damage that could have been avoided.¹⁰⁸³ In the present Claim, the Tribunal must therefore determine whether MORT, in the circumstances, took all reasonable steps to limit the losses for which it claims. According to the United States, Iran has failed to show that MORT took any such reasonable steps.¹⁰⁸⁴ In this connection, the United States asserts, *inter alia*, that MORT should not recover damages that it could have reasonably avoided by promptly paying Gulf Ports the storage charges for the G-8 Materials, thereby halting their accrual, and bringing a claim against the United States for any storage charges MORT believed it did not owe.

2066. As the Party pleading mitigation, the United States has the burden of proving the facts necessary to establish: (i) that MORT failed to take certain steps it reasonably should have taken to mitigate its damages; and (ii) that, had MORT taken such steps, the claimed losses would have been avoided in whole or in part.¹⁰⁸⁵ Thus, for example, on its case, the United States must prove that MORT failed to take all reasonable steps to limit the claimed losses by not paying the storage charges for the G-8 Materials promptly, and that, had MORT paid those storage charges, its claimed losses would have been avoided in whole or in part.

2067. As an initial matter, there is a structural difference between the case before the Tribunal and a situation discussed routinely in private law contexts when it comes to analyzing whether an aggrieved party has mitigated the losses for which it claims damages. A tenant faced with

¹⁰⁸² See *supra* paras. 2040, 2049, 2050, 2058, 2060, and 2063.

¹⁰⁸³ See *supra* para. 1796.

¹⁰⁸⁴ See *supra* paras. 2009-2012.

¹⁰⁸⁵ See *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, Award (ICSID Case No. ARB/99/6), para. 170 (12 Apr. 2002); *AIG Capital Partners Inc. et al. v. Republic of Kazakhstan*, Award (ICSID Case No. ARB/01/6), para. 10.6.4 (7 Oct. 2003); *Standard Chartered Bank v. Pakistan National Shipping Corp. et al.*, [2001] EWCA CIV 55, paras. 38-39, 41 (Potter LJ) (26 Jan.); *Watts v. Rake*, [1960] 108 CLR 158, 159 (Dixon, CJ HCA) (12 Aug.).

a leaking pipe for the repair of which the landlord, in breach of the terms of lease, refuses to employ a plumber will be required to repair the leak himself (and be entitled to recoup the costs from the landlord), rather than sit back, seeing his property suffer damage, and liquidate damages incurred from the landlord. In the case at hand, the treaty-breach scenario, the “tenant” (MORT) is faced with two obligors. First, the crating company (Gulf Ports), which, exercising immediate control over Iran’s property, can be compared to the landlord. Second, the United States, the obligor under the treaty, exercising immediate control over the “landlord” and the “house” and – legally and factually – intermediated control over MORT’s property. Even if and when MORT paid for the warehouse charges (“repaired the leak”), it would – starting on 26 February 1981 and as long the Unlawful Treasury Regulations were in force – not have had certainty that its property would be released. While the Tribunal acknowledges that, for the purposes of Iran’s claim against the United States, upon which the Tribunal is to render a decision, only the treaty relationship matters, it cannot but note the far greater degree of factual and legal complexity and, consequently, uncertainty, MORT faced if compared to the simple bi-lateral relationship between a landlord and a tenant.

2068. More specifically, to answer the question whether the aggrieved party’s (MORT’s) conduct was *reasonable*, all circumstances – such as the historical situation, the location, the persons of the aggrieved and the non-performing parties, their capacity to analyze the factual situation and the potential legal implications as well as their capacity to rationally devise a legal strategy serving their best interests – have to be taken into account. The much-cited tenant and landlord in the class-room example are no doubt private citizens of the same country speaking the same language with no other issue than the (secondary) contractual obligation of maintaining the rented house standing between them. MORT, however, was, not only confronted with a private party’s claim for contractually owed payments, but also with the additional complexity of a set of Treasury Regulations that, effectively and as a matter of public law, assisted Gulf Ports in its attempts to enforce performance of MORT’s contractual obligation. This is because Gulf Ports was able to retain possession of the G-8 Materials, which otherwise would have been subject to the transfer directive of Executive Order 12281. What is more, these circumstances were set against the background of the tensions and distrust between Iran and the United States that continued after the conclusion of the Algiers Declarations, which would have justified, in the Tribunal’s view, MORT proceeding with caution.

2069. The Tribunal now turns to examining the actions – and the inaction – taken and displayed by the Parties subsequent to 19 January 1981, the date of the Algiers Declarations, and 24 February 1984, the date when the G-8 Materials stored in Houston and New Orleans were shipped to Iran. The Tribunal accepts that, following 19 January 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 was 1 March 1981.

2070. As an initial matter, the Tribunal considers whether it would have been reasonable to expect that MORT settle the pre-19 January 1981 storage charges it owed Gulf Ports promptly after 19 January 1981, so as to eliminate the underlying cause of the damages that accrued after this date and with a view to securing the immediate release of the G-8 Materials by Gulf Ports. For the following reasons, the Tribunal concludes that it would not have been reasonable to expect MORT to do so. First, it was the Iranian Government's position, which it held from the outset until the issuance of Award No. 529 in 1992, that the United States was responsible for paying storage charges incurred by Iran in relation to blocked Iranian properties between 14 November 1979 and 19 January 1981.¹⁰⁸⁶ In light of this position, it would have been reasonable for MORT to take time to assess the situation and the options at its disposal. In reaching this conclusion, the Tribunal has taken into consideration that MORT was not an ordinary private commercial actor but rather an Iranian government Ministry, and that, as such, it would have been expected to act in accordance with its own Government's policies. Second, from a practical viewpoint, considering the disorganization within MORT after months of strife and extreme political tension in Iran due to the Islamic Revolution of 1979, it would have taken some time for MORT to return to an operational mode as regards its affairs in the United States. Third, it was by no means certain that, even if MORT had paid the accrued storage charges, Gulf Ports would have released the G-8 Materials promptly. Finally, as an Iranian government Ministry, considering the acute crisis in relations between Iran and the United States, in the circumstances, it was understandable that MORT would act cautiously, as it appears to have done.

2071. Accordingly, the Tribunal accepts that, during the period immediately following the conclusion of the Algiers Declarations, it was reasonable for MORT to take some time to gather

¹⁰⁸⁶ See Award No. 529, paras. 19 & 68, 28 IRAN-U.S. C.T.R. at 120 & 138; *Ministry of Roads and Transportation of the Islamic Republic of Iran and United States of America* (Case No. B62, reclassified as Case No. A31), Statement of Claim (19 Jan. 1982).

information concerning the G-8 Materials. Later, in the fall of 1981, MORT entered into settlement negotiations with the holders of its properties, which brought about the settlement agreement of 17 November 1981 with Gulf Ports.¹⁰⁸⁷ The Tribunal has considered whether MORT's inaction in the months following that settlement agreement, in particular MORT's failure to remove the G-8 Materials from Gulf Ports' storage facilities by the 31 March 1982 deadline agreed in that settlement agreement,¹⁰⁸⁸ ought to be characterized as a failure to mitigate. The Tribunal concludes that it would not be justified to so characterize MORT's behavior because, in the Tribunal's view, MORT in the circumstances had reason to be cautious and to hesitate as to what action was prudent and safe.

2072. On 18 June 1982, Iran's counsel in the United States, Mr. Thomas Shack, provided advice to MORT by telex concerning certain issues raised in the context of the settlement negotiations with Morgan/Port of Vancouver.¹⁰⁸⁹ This indicates that, as of this point in time, MORT had gained a degree of clarity in respect of how it should structure settlement agreements with the United States holders of its properties. Importantly to MORT, Mr. Shack advised that "a settlement does not preclude a claim against the United States for any damages, including storage charges, which result from the failure to transfer Iran's assets, even if storage charges are paid in a given settlement in order to obtain delivery of certain equipment."

2073. However, Mr. Shack also identified potential problems, such as the possibility that the Tribunal would "not authorize payment from the Security [Account] for amounts which represent[] storage charges which accrued after January 19, 1981." Mr. Shack observed that, to that point, "the Tribunal ha[d] taken a strict view of its jurisdiction, and ha[d] confined such jurisdiction to claims filed no later than January 19, 1981."¹⁰⁹⁰

¹⁰⁸⁷ See *supra* para. 501.

¹⁰⁸⁸ See *supra* para. 502.

¹⁰⁸⁹ See *infra* Claim G-7.

¹⁰⁹⁰ In this connection, it should also be noted that, in October 1981, Iran and the United States requested that the Tribunal interpret the Algiers Declarations, among other things, to determine the conditions under which the Tribunal may record a private settlement as an award on agreed terms and, in particular, the extent to which the Tribunal must establish that it has jurisdiction over the claim that has been settled before it issues such an award. See *Islamic Republic of Iran and United States of America*, Decision No. DEC 8-A1-FT (17 May 1982), reprinted in 1 IRAN-U.S. C.T.R. 144, 150. In its Decision of 17 May 1982, the Tribunal declined to pronounce a general rule and stated that, if requested to make an award on agreed terms, it would "make such examination concerning its jurisdiction as it deem[ed] necessary." *Islamic Republic of Iran*, Decision No. DEC 8-A1-FT, at 12, 1 IRAN-U.S. C.T.R. at 152.

2074. In addition, Mr. Shack recalled that OFAC had already issued a sales license to Morgan and the Port of Vancouver on 18 December 1981, authorizing them to sell other properties belonging to MORT,¹⁰⁹¹ and that OFAC had refused to reconsider its decision to issue that license when Iran requested that it do so.

2075. As regards specifically the G-8 Materials, Gulf Ports applied for such a sales license on 30 September 1982,¹⁰⁹² and OFAC granted that license on 21 January 1983.¹⁰⁹³ This and the other circumstances mentioned above affecting MORT's properties in the United States, also considered against the backdrop of the strained relations between Iran and the United States, would have added to MORT's concerns about its chances of actually recovering the G-8 Materials.

2076. It was only once the Tribunal had recorded the 24 February 1983 settlement agreement between Gulf Ports and MORT as an Award on Agreed Terms dated 9 March 1983 in Case No. 307¹⁰⁹⁴ that MORT might have moved forward more quickly. However, while MORT honored its obligations under the settlement agreement by arranging for the payment of USD 1,600,000 to Gulf Ports, Gulf Ports' managers declared Gulf Ports insolvent immediately after receiving the payment, and Gulf Ports ceased operating shortly thereafter.¹⁰⁹⁵ Sometime after 1 July 1983, the G-8 Materials were abandoned by Gulf Ports and left unattended in the warehouses.¹⁰⁹⁶

2077. The Tribunal has considered whether the United States has established that MORT could have been reasonably expected to do things differently and, in particular, that the G-8 Materials could have been released earlier (and, if so, under which circumstances).

2078. The fact that MORT entered into settlement negotiations in late 1981 is of little importance for determining the answer to these questions. MORT did not appear to have a choice but to enter into settlement negotiations, and ultimately conclude settlement agreements, with Gulf Ports in order to recover the G-8 Materials because Section 535.333 of the Treasury

¹⁰⁹¹ See *supra* para. 451. These Items are at issue in Claim G-7. See *supra* para. 439 *et seq.*

¹⁰⁹² See *supra* para. 512.

¹⁰⁹³ See *id.*

¹⁰⁹⁴ See *Gulf Ports Crating Co. and Ministry of Roads and Transportation et al.*, Award No. 28-307-3 (9 Mar. 1983), reprinted in 2 IRAN-U.S. C.T.R. 126. See *supra* para. 515.

¹⁰⁹⁵ See *supra* para. 517.

¹⁰⁹⁶ See *supra* para. 518.

Regulations excluded them from the transfer directive of Executive Order No. 12281, in violation of the Algiers Declarations. The Tribunal is unable to conclude that in such circumstances MORT could have been reasonably expected to act differently than it did.

2079. The Tribunal cannot exclude *a limine* that, along the timeline from December 1981, when Mr. Rahmati inspected the G-8 Materials, to 9 March 1983, when the Tribunal issued its Award on Agreed Terms in Case No. 307, a few days, or even weeks, could have been saved had MORT acted differently. The Tribunal, however, is not satisfied that this necessarily leads to the conclusion that MORT would have then mitigated to a greater extent the damages it now claims.

2080. The United States has also argued that MORT could have mitigated its losses to a greater extent by protecting the G-8 Materials that it knew were deteriorating.¹⁰⁹⁷ The United States, however, has not established what reasonably could have been done to prevent such deterioration.¹⁰⁹⁸

2081. The United States' issuance of the Unlawful Treasury Regulations on 26 February 1981 and its subsequent continuing breach of its Paragraph 9 obligation must be considered the "dominant" cause of the damages accrued, the element with a (comparatively) greater degree of "fault" and "unlawfulness." The United States' wrongful act having enabled the possessor to withhold MORT's properties, it would now be inappropriate if Iran were to bear the consequences.

2082. The Tribunal recalls that, in the general part of the Reparation section of this Partial Award,¹⁰⁹⁹ it has explained, in a comparative perspective, how causation, the basic requirement for any liability in damages, and the principle of mitigation are conceptually related. Moreover, the Tribunal has stated that, in cases of multiplicities of causes, *normative* criteria must prevail over scientific, mechanical, or mathematical ones. Degrees of "fault" or "unlawfulness" are to

¹⁰⁹⁷ See *supra* para. 2010.

¹⁰⁹⁸ In this connection, the Tribunal notes that, at the Hearing, the United States pointed out that, "between Port of Vancouver and Gulf Ports, 30 acres of storage were needed, or approximately 12 hectares, for MORT's housing units alone." The United States specified that the Gulf Ports storage facilities for the Porta-Kamp Housing Units totaled 16 acres, whereas those at the Port of Vancouver for the Transworld Housing Units totaled 14 acres.

¹⁰⁹⁹ See *supra* paras. 1791-1795.

be compared, the “main” or “dominant” cause among multiple contributing causes needs to be identified, and courts and tribunals are called upon to make value judgments.

2083. The aggrieved party (MORT), was not passively sitting back, but it took a number of reasonable steps aimed at solving the problems, albeit they were taken more slowly than they might have been in different circumstances. For these reasons, the Tribunal does not accept the argument that Iran has failed to mitigate the damages for which it now seeks to be compensated.

7) *The Tribunal’s Total Award on Claim G-8*

2084. In conclusion, the Tribunal awards Iran a total of USD 2,946,902.55 on Claim G-8.¹¹⁰⁰

(4) Claim G-7 (MORT/Port of Vancouver)

(a) *Causation*

2085. 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.”¹¹⁰¹ The Tribunal must therefore determine whether the United States’ breach of its Paragraph 9 obligation with respect to the G-7 Materials caused the delay in the G-7 Materials’ ultimate shipment to Iran in December 1983 and the damage suffered by Iran as a result thereof.¹¹⁰²

2086. With regard to causation, the arguments put forward by the Parties in this Claim are, *mutatis mutandis*, essentially the same as those put forward in Claim G-8.¹¹⁰³

2087. In determining whether the causal link between the United States’ breach of Paragraph 9 and Iran’s alleged injury is sufficient to establish the United States’ liability in damages for this Claim, the Tribunal will take into account the principles set out earlier in this Partial Award.¹¹⁰⁴ In the Tribunal’s view, such a causal link could be considered established if the Tribunal were able to conclude with reasonable certainty that, absent Treasury

¹¹⁰⁰ See *supra* paras. 2023, 2032 & 2064.

¹¹⁰¹ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

¹¹⁰² See *supra* para. 487.

¹¹⁰³ See *supra* para. 1934 *et seq.*

¹¹⁰⁴ See *supra* paras. 1791-1795.

Regulations Section 535.333, the G-7 Materials would have been shipped to Iran sooner than December 1983. Moreover, and in line with the approach taken by domestic law, as analyzed in a comparative perspective, the Tribunal will attempt to determine the comparative degrees of the Parties' contribution and to identify the "main," "principal," or "dominant" among the multiple contributing causes.

2088. After reviewing all the evidence, for reasons similar to those stated in connection with Claim G-8,¹¹⁰⁵ *mutatis mutandis*, the Tribunal is convinced that,¹¹⁰⁶ absent Section 535.333 of the Unlawful Treasury Regulations, the G-7 Materials would indeed have been shipped to Iran earlier. But for that Section, the G-7 Materials would have been subject to the transfer directive of Executive Order No. 12281; thus, the Port of Vancouver would not have been allowed to retain the G-7 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 the Port of Vancouver in order to recover its G-7 Materials because Section 535.333 excluded the G-7 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.

2089. Moreover, and in any event, in Claim G-7, the existence of the Clark County Tax lien,¹¹⁰⁷ which was lifted only sometime in 1983, stood in the way of a prompt transfer of the G-7 Materials to Iran. Therefore, even if MORT had paid the storage charges due to the Port of Vancouver, which it was not obliged to do under the Algiers Declarations, it is not certain that the G-7 Materials would have been released.

¹¹⁰⁵ See *supra* paras. 1947-1948.

¹¹⁰⁶ See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, n.153 (2 July 2014).

¹¹⁰⁷ See *supra* paras. 445 & 459.

2090. Accordingly, the Tribunal holds that, in the circumstances, Section 535.333 of the Treasury Regulations was the principal cause of the delay in transfer of the G-7 Materials to Iran. Thus, the United States is liable in damages to Iran for the United States' breach of the General Declaration.

2091. The Tribunal determines below the nature and extent of any damages suffered by MORT as a result of the United States' breach of the Algiers Declarations, as described above. In that connection, the Tribunal will examine whether MORT took reasonable steps to mitigate any such damages.¹¹⁰⁸

(b) *Valuation*

(i) *The Parties' Contentions*

1) *Iran's Contentions*

2092. According to its Summary Table of Claims, on Claim G-7, Iran seeks a total of USD 13,103,689, broken down as follows: (1) USD 5,403,290 for the alleged diminution in value of the Transworld Housing Units and the Morgan Rock-Crushing Equipment due to deterioration (USD 3,551,194 related to the housing units and USD 1,852,096 related to the rock-crushing equipment); (2) USD 5,533,399 in damages allegedly resulting from the loss of use of the G-7 Materials (USD 3,834,607 related to the Transworld Housing Units and USD 1,698,792 related to the Morgan Rock-Crushing Equipment); and (3) USD 2,167,000 in alleged "additional costs" to recover the G-7 Materials. Iran seeks interest on all amounts.

Claim for Diminution of Asset Values Due to Deterioration

2093. Under this head of claim, Iran seeks damages for the diminution in value of the Transworld Housing Units and Morgan Rock-Crushing Equipment allegedly resulting from their storage at the Port of Vancouver between October 1978 and December 1983, when the G-7 Materials were shipped to Iran. In support of its claim for diminution in value, Iran relies, in particular, on: (i) the affidavit and hearing testimony of Mr. Mousavi, who, in September or late October 1983, traveled to the United States on MORT's behalf to ready the G-7 and

¹¹⁰⁸ See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 221 & n.218 (2 July 2014).

G-8 Materials for shipment to Iran;¹¹⁰⁹ (ii) the affidavit testimony of Mr. Mahmoudi, who accompanied Mr. Mousavi on his trip to the United States in late 1983;¹¹¹⁰ and (iii) the affidavit and hearing testimony of Mr. Rahmati, who also accompanied Mr. Mousavi on that trip.¹¹¹¹

2094. Mr. Salami, Iran's expert witness,¹¹¹² assessed the losses Iran allegedly suffered as a result of the deterioration of the Transworld Housing Units and Morgan Rock-Crushing Equipment between 19 January 1981 and 31 December 1983. Iran's claim insofar as it concerns the diminution in value of the G-7 Materials is based on two elements: first, the percentage of damage the Transworld Housing Units and Morgan Rock-Crushing Equipment had undergone by the time they were shipped to Iran; and, second, the period for which the United States is allegedly responsible for that damage. As noted, Mr. Salami prepared a written valuation report and appeared as an expert witness for Iran at the Hearing.

2095. In assessing the deterioration allegedly undergone by the Transworld Housing Units, Mr. Salami relied, *inter alia*, on the expert report prepared by Mr. Baghdadi.¹¹¹³ Further, in assessing the deterioration allegedly undergone by the Morgan Rock-Crushing Equipment, Mr. Salami relied, *inter alia*, on the report prepared by Mr. Parchami.¹¹¹⁴

Transworld Housing Units

2096. Relying mainly on the testimony of Mr. Mousavi, Iran asserts that, by October 1983, the Transworld Housing Units had suffered a damage of 50 percent. This figure is confirmed by Mr. Baghdadi.

2097. Iran maintains that the Transworld Housing Units stored at the Port of Vancouver suffered no significant damage during the first year of storage. In this connection, Iran notes that: (i) the manufacturer, Transworld, had guaranteed the integrity of the houses for 12 months; (ii) the housing units were designed to be sited outside; and (iii) they were packaged

¹¹⁰⁹ See *supra* para. 1954.

¹¹¹⁰ See *id.*

¹¹¹¹ See *id.*

¹¹¹² See *supra* para. 1955.

¹¹¹³ See *supra* para. 1956.

¹¹¹⁴ See *id.*

to an export standard of packaging. In support, Iran relies on the testimony of Mr. Billingham.¹¹¹⁵

2098. Mr. Billingham, in describing both the Porta-Kamp and the Transworld Housing Units, pointed to their quality components, their robust design, their 10-year minimum design life, their 12-month manufacturer's warranty, and the fact that they were made of kiln-dried timber. Responding to contentions by the United States, Mr. Billingham stated that he had never seen wood rot occur to timber-framed housing within 12 months of delivery. In view of the climatic conditions at the Port of Vancouver in the years 1979, 1980, and 1981, with an average temperature of below 12 degrees, Mr. Billingham opined that the climate would not have been conducive to fungal growth in the first two years. According to Mr. Billingham, the Porta-Kamp and the Transworld Housing Units would have suffered a maximum of 10 to 15 percent deterioration during the first two years after their delivery due to exposure to the elements.

2099. Iran asserts that the Transworld Housing Units suffered little or no deterioration in the first year, during the manufacturer's warranty, but that, after the first year, both the rate and the extent of deterioration steadily increased while the housing units were stored outside in Vancouver. According to Iran, the Transworld Housing Units suffered a total damage of 50 percent. In support, Iran relies on the assessment of Mr. Baghdadi, who examined both the Transworld and Porta Kamp Housing Units in 2004.¹¹¹⁶ Mr. Baghdadi bases his estimate of the extent of the damage on, among other things, the affidavit of Mr. Mahmoudi (which includes a series of photographs of portable housing units taken in 1983 or 1984) and the affidavit of Mr. Mousavi.¹¹¹⁷

2100. Mr. Rahmati, who visited the Transworld and Porta Kamp Housing Units multiple times between December 1981 and late 1983, asserted that, by 1983, contrary to what he had seen in 1981, the housing units were in a "disastrous condition" and had undergone "severe damage." According to Mr. Rahmati, the Porta Kamp Housing Units at Gulf Ports in New Orleans (at issue in Claim G-8) were in a much worse condition than the Transworld Housing Units stored at the Port of Vancouver.

¹¹¹⁵ See *supra* para. 1958.

¹¹¹⁶ See *supra* para. 1961.

¹¹¹⁷ See *id.*

2101. Iran adopts a straight-line method of depreciation, given that accurate figures are not available. Based on Mr. Salami's assessment, Iran assumes that: (i) the Transworld Housing Units suffered no deterioration in 1979, the first year they were stored at the Port of Vancouver; (ii) Iran is responsible for any deterioration in the second year, until 19 January 1981; and (iii) the United States is responsible for any deterioration from 19 January 1981 until 31 December 1983, when the items were shipped to Iran. According to Iran and Mr. Salami, this produces a three-to-one split of the Parties' responsibility for the deterioration over four years, between 1980 and 1984.

2102. On the basis of the methodology just described, Mr. Salami, applying a straight-line depreciation, uses as a basis for calculation the alleged 1978 purchase price of the 301 Transworld Housing Units, that is, USD 9,469,850.¹¹¹⁸ Mr. Salami did not take into account any inflation or indexation factor to the original purchase price to calculate the fair market value in 1981. In keeping with Mr. Salami's assessment, Iran seeks USD 3,551,194 in damages on this head of claim, allegedly representing the diminution in value of the Transworld Housing Units between 19 January 1981 and December 1983, which Iran asserts is attributable to the United States.

Morgan Rock-Crushing Equipment

2103. As described above,¹¹¹⁹ the Morgan Rock Crushing Equipment consisted of a series of discrete machines. The Morgan Rock Crushing Equipment was shipped to Iran in 1983 and 1984; it was first transported to MORT's central warehouse in Tehran and then on to Khuzestan.¹¹²⁰

2104. Iran alleges that the Morgan Rock-Crushing Equipment sustained little or no deterioration during 1979, the first year it was in storage, but may have sustained some limited further deterioration during the second year it was in storage (*i.e.*, until 19 January 1981).

2105. Iran relies primarily on the testimony of Mr. Parchami, who saw the equipment in question for the first time in 1985, in Khuzestan,¹¹²¹ as well as on the testimony of Messrs.

¹¹¹⁸ See *supra* para. 440.

¹¹¹⁹ See *supra* para. 1966.

¹¹²⁰ See *supra* para. 1968.

¹¹²¹ See *supra* paras. 1968-1970.

Mahmoudi and Mousavi, who had seen the equipment during their visits to the United States in 1983.¹¹²²

2106. Iran contends that, by the date it was shipped to Iran in December 1983, the Morgan Rock-Crushing Equipment had suffered a total damage of 70 percent due to prolonged exposure to the elements.

2107. Accordingly, in keeping with Mr. Salami's valuation method,¹¹²³ Iran seeks USD 1,825,096 in damages on this head of claim, allegedly representing the diminution in value of the G-7 Rock-Crushing Equipment between January 1981 and December 1983, which Iran asserts is attributable to the United States. Iran calculated that amount based on the sum of USD 3,527,803, which represents 40 percent of the 1978 purchase price of the Morgan Rock-Crushing Equipment covered by Purchase Order No. 87-2101-1 (that is, USD 8,819,508).¹¹²⁴

Claim for Loss of Use of Assets

2108. On this head of claim, Iran seeks damages MORT allegedly incurred because it had been deprived of the use of the G-7 Materials from 19 January 1981, the date on which Iran asserts the United States' breach of the Algiers Declarations commenced, until January 1984, when the G-7 Materials were shipped to Iran. According to Mr. Salami, if MORT had possessed the G-7 Materials during that period, it could have used them for its other projects or could have leased them to other organizations and companies.

2109. In keeping with Mr. Salami's net-capital-yield method, Iran assesses the damages for loss of use of the G-7 Materials by the rate of the return that MORT allegedly would have achieved had those items been available to it from 19 January 1981. Mr. Salami asserts that, since there were no equivalent high-quality portable housing units and rock-crushing equipment available in Iran at the time, it is not possible to assess the damages for loss of use by comparison with revenues generated from equivalent assets in Iran. Mr. Salami states that, according to his net-capital-yield method, the damage is to be assessed by examining the

¹¹²² See *supra* para. 1972.

¹¹²³ See *supra* paras. 1964-1965, 2094.

¹¹²⁴ See *supra* para. 491. As noted, Iran maintains that 60 percent of the Morgan Rock-Crushing Equipment covered by Purchase Order No. 87-2101-1 had been delivered to Gulf Ports in New Orleans, whereas 40 percent thereof had been delivered to the Port of Vancouver. See *supra* para. 484.

expected rate of return on investment of capital equivalent to the sum that MORT used to purchase the assets. Mr. Salami calculates this rate of return based on the average rate of United States Treasury bonds from 1981 through 1983, to which he adds a risk factor to account for the different types of assets.

2110. The average United States Treasury bond rate between 1981 and 1983 was 11.17 percent, according to Mr. Salami. After considering various risk factors, Mr. Salami arrives at capital-yield rates of 12 percent for the Transworld Housing Units and 14 percent for the Morgan Rock-Crushing Equipment. Applying these rates to the original unindexed 1978 purchase prices, rather than the 1981 market values, of those items, Mr. Salami concludes that the damages due to loss of use between 19 January 1981 and January 1984 are as follows: (i) USD 3,834,607 for the Transworld Housing Units; and (ii) USD 1,698,792 for the Morgan Rock-Crushing Equipment.

Claims for “Additional Costs”

2111. Iran’s third head of damages consists of a number of claims for “additional costs” that MORT allegedly incurred to recover the G-7 Materials. According to Iran, but for the United States’ breach of Paragraph 9, those costs would not have been incurred. Iran calculates its damages for “additional costs” as of 19 January 1981. The claimed additional costs are as follows.

i) Storage Costs

2112. Iran claims for storage costs relating to the G-7 Materials incurred after 19 January 1981. Iran bases this claim on the USD 3 million MORT paid to the Port of Vancouver under the 20 May 1983 Settlement Agreement “to account for storage costs” incurred between February 1980 and August 1983. According to Mr. Mahmoudi, Iran further paid for two additional months of storage at USD 41,000 per month for September and October 1983.

2113. In line with the methodology applied by Mr. Salami, Iran deducts from that amount USD 41,000 per month for the period February 1980 to January 1981, resulting in a total deduction of USD 478,000. Further, Iran concedes that it cannot claim for the cost of handling and loading at the Port of Vancouver and thus deducts USD 10,000 to account for that cost. Finally, Iran deducts USD 627,000 to account for payments made by the Port of Vancouver to

the Islamic Republic of Iran Shipping Line.

2114. Consequently, Iran's claim for storage costs totals USD 1,977,000.

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.

2) *The United States' Contentions*

2119. The United States contends, as a general matter, that Iran has failed to provide specific and reliable evidentiary support for compensation in Claim G-7.

Claim for Diminution of Asset Values Due to Deterioration

2120. The United States asserts that Iran has failed to prove that the United States is responsible for any losses Iran incurred as a result of the deterioration of the Transworld Housing Units and the Morgan Rock-Crushing Equipment stored at the Port of Vancouver. The United States maintains that neither Party can prove the exact condition of those items on 19 January 1981 for the purpose of assessing their deterioration between that date and 1983. However, only Iran bears the burden of proof in this respect.

2121. The United States contends that it can be presumed that export packing lists had been prepared for the properties at the Port of Vancouver, as had been done for those in storage in Houston. According to the United States, the evidence shows that MORT received a joint surveyor report documenting the condition of the equipment at the time it was shipped from the Port of Vancouver to Iran. The United States argues that, by failing to produce any of that evidence, Iran has failed to fulfil its burden of proof. For these reasons, the United States requests that the Tribunal reject Iran's claim based on the diminution in value of the assets.

2122. The United States contends that Iran's theory, according to which the bulk of the deterioration of the G-7 Materials occurred between January 1981 and early 1984, is unsupported. The United States also contends that Mr. Salami's valuation is largely based on the testimony of Messrs. Mousavi, Parchami, and Baghdadi, who viewed the Transworld Housing Units and the Morgan Rock-Crushing Equipment at the earliest in 1983 or as late as 2004. However, the United States emphasizes that these witnesses had not viewed the items at the relevant times, namely, in January 1981 or immediately before their shipment in late 1983. Further, the United States observed that Iran's expert witnesses, Mr. Billingham and Mr. Salami, never actually saw the items.

2123. The United States acknowledges that Mr. Rahmati did briefly view the Transworld Housing Units and the Morgan Rock-Crushing Equipment in December 1981 and October 1983. The United States maintains, however, that, as Mr. Rahmati testified, during

his short visit in December 1981, he never opened any erected or knocked-down housing units, never saw the furniture or fixtures inside, and never tested the equipment.¹¹²⁷

2124. The United States contends that Iran's theory, according to which the Transworld Housing Units and the Morgan Rock-Crushing Equipment underwent little or no deterioration prior to 19 January 1981, is contradicted by the evidence.

2125. The United States points out that in Case No. B67, Iran, relying on Mr. Rahmati's report on his visit to the Port of Vancouver in December 1981, had asserted that "the entire value of the object of the claim is in a state of destruction."

2126. In the United States' view, further evidence shows that the Transworld Housing Units had deteriorated significantly prior to December 1981, and that, for all the items at issue in this Claim, any additional economic loss after January 1981 was minimal. In support, the United States relies on the LBC Report.¹¹²⁸ The LBC Report evaluates Iran's claims for: (i) damages from diminution of asset value due to deterioration; (ii) damages for loss of use; and (iii) "additional costs." As noted, the United States presented as witnesses at the Hearing the co-authors of the LBC Report, Messrs. Bélanger and Lavigne.¹¹²⁹

2127. Mr. Bélanger testified that additional physical damage to the Transworld Housing Units occurring after January 1981 would not have contributed significantly to the cost of repairs due to a "leveling-off" effect."

2128. Mr. Bélanger further stated that the Morgan Rock-Crushing Equipment is heavy-duty equipment, and that damage due to exposure to the elements would not lead to important, operational damage. According to Mr. Bélanger, additional damage after 19 January 1981 would be minimal. Mr. Bélanger further stated that Mr. Parchami's assessment of a 70-percent deterioration based on an alleged 30-percent salvage value of the Morgan Rock-Crushing Equipment was methodologically incorrect. Mr. Bélanger explained that, rather, such damage should have been established on the basis of a detailed survey of that equipment, followed by

¹¹²⁷ See *supra* para. 506.

¹¹²⁸ See *supra* para. 1995.

¹¹²⁹ See *id.*

a cost estimation. In this connection, the LBC Report concludes that Iran's alleged 70-percent deterioration figure for the Morgan Rock-Crushing Equipment is unsupported and speculative.

2129. As noted, as further support for its position, the United States presented as an expert witness Mr. Jean René Dumont.¹¹³⁰ At the Hearing, Mr. Dumont testified, among other things, about the potential effects of mold and fungal growth on the Transworld Housing Units stored in Vancouver.¹¹³¹ As to Mr. Billingham's testimony, according to which no damage had occurred to the housing units during the first year of storage, the United States notes that the first reason given by Mr. Billingham was that it was generally too cold in Vancouver for mold or fungal growth to occur. Mr. Dumont, however, noted the lack of chemical treatment of the timber and insufficient air circulation among and within the erected and knocked down portable housing units. He also addressed the lack of proper maintenance of the properties and questioned Mr. Billingham's conclusions on the effects of the climate in Vancouver on mold and fungal growth and the speed at which spruce may begin to rot if certain conditions are present.¹¹³²

2130. As noted, in the Dumont Letter,¹¹³³ Mr. Dumont concluded that: (i) it could be expected that, by 19 January 1981, the Transworld Housing Units would have suffered damage exceeding 50 percent of their value; and (ii) by October 1983, "major damages" of more than 75 percent of the value of those housing units should be considered.¹¹³⁴ Mr. Dumont confirmed those conclusions in his testimony at the Hearing.

Claim for Loss of Use of Assets

2131. The United States alleges that Iran has offered no evidence for any compensable loss of use relating to the G-7 Materials. Specifically, the United States contends that Iran has failed to provide: (i) evidence that there was demand for the G-7 Materials at the relevant times; (ii) evidence that replacement equipment was unavailable; (iii) documentation showing the

¹¹³⁰ See *supra* para. 1998.

¹¹³¹ See *id.*

¹¹³² See *id.*

¹¹³³ See *supra* para. 1999.

¹¹³⁴ See *id.*

actual income generated by the G-7 Materials; or (iv) any evidence of the actual damage suffered by MORT.

2132. In support of its position, the United States relies on the hearing testimony of Mr. Arthur Lavigne, one of the authors of the LBC Report. According to Mr. Lavigne, Mr. Salami failed to consider, or document, any of the above elements in his assessment.

2133. In this context, the United States points to Mr. Salami's statement at the Hearing that, not having been provided with any documentation, he had to "look at it in an abstract way."

2134. For these reasons, the United States contends that Iran's claim for loss of use of assets is without any basis and must be rejected.

Claims for "Additional Costs"

2135. The United States asserts that the bulk of Iran's claims for travel expenses and legal costs is not supported by any evidence. The United States notes the acknowledgment by Mr. Salami in his report that "no evidence regarding incurrence of the said costs ha[s] been presented to [him]."

2136. The United States also points to statements by Mr. Mahmoudi, who acknowledged that he could not locate more documents to substantiate those costs.

2137. According to the United States, in order to recover the alleged costs from the United States, Iran had to preserve and submit documentary evidence. Consequently, the United States is of the view that Iran's failure to prove its losses should "bar any recovery" and requests the Tribunal to reject Iran's claim.

Mitigation of Damages

2138. Concerning mitigation of damages, the United States presents arguments similar to those it presented in connection with Claim G-8.¹¹³⁵ In brief, the United States asserts that MORT failed to take reasonable steps to mitigate its losses, namely, it failed to: (i) ship the G-7 Materials to Iran prior to 14 November 1979; (ii) contact the property holder in order to request that it take precautionary measures; (iii) implement the 1981 Settlement Agreement

¹¹³⁵ See *supra* paras. 2009-2012.

with the Port of Vancouver; and (iv) purchase replacement parts for the damaged Morgan Rock-Crushing Equipment or replacements for the Transworld Housing Units. Further, the United States asserts that, rather than promptly implementing the 1981 Settlement Agreement with the Port of Vancouver, MORT expressed its intention to continue to store the property there until at least 31 March 1982.

2139. Consequently, the United States contends that Iran's claim for damages should be rejected because Iran has not proven that its losses were unavoidable.

(ii) *The Tribunal's Decision*

1) *Claim for Diminution of Asset Values Due to Deterioration*

Transworld Housing Units

2140. As an initial matter, the Tribunal must determine the degree of deterioration that the Transworld Housing Units suffered between January 1979, when they were delivered to the Port of Vancouver, and 31 December 1983, the date on which they were shipped to Iran. As noted, Iran asserts that the Transworld Housing Units had deteriorated by 50 percent by 31 December 1983 as a result of prolonged storage in inadequate conditions. In support, Iran relies on the testimonies of Messrs. Baghdadi, Mahmoudi, and Mousavi.¹¹³⁶

2141. The Tribunal notes that Mr. Dumont, the expert witness presented by the United States,¹¹³⁷ concluded in the Dumont Letter that: (i) it could be expected that, by 19 January 1981, the Transworld Housing Units in Vancouver could have suffered damage exceeding 50 percent of their value; and (ii) by October 1983, "major damages" of more than 75 percent of the value of those housing units should be considered.¹¹³⁸

2142. Iran's estimate of the deterioration suffered by the Transworld Housing Units by 31 December 1983 is thus more conservative than that of the expert witness on whose testimony the United States relies. In these circumstances, the Tribunal sees no reason not to accept the estimate put forward by Iran and its expert witnesses and, accordingly, concludes

¹¹³⁶ See *supra* para. 2099.

¹¹³⁷ See *supra* para. 1998.

¹¹³⁸ See *supra* para. 1999.

that, by 31 December 1983, the Transworld Housing Units had deteriorated by 50 percent. Consequently, based on the original purchase price of USD 9,469,850,¹¹³⁹ the Tribunal further concludes that, by that date, the Transworld Housing Units had suffered damages totaling USD 4,734,925. In order to apportion the share of those damages to be borne by each Party, the Tribunal must determine the degree of deterioration that the Transworld Housing Units had suffered by early 1981.

2143. The Parties disagree on this point. Relying on the testimony of its expert witness, Iran claims that the Transworld Housing Units underwent no significant deterioration during 1979. In support, Mr. Billingham pointed to the housing units' quality components, their robust design, 10-year minimum design life, 12-month manufacturer's warranty, and the fact that they were made of kiln-dried timber.¹¹⁴⁰ Further, Mr. Rahmati, who had seen the Transworld Housing Units several times between December 1981 and late 1983, asserted that, between January 1982 and October 1983, the Transworld Housing Units had deteriorated significantly, and that they had been in a much better condition in 1981.¹¹⁴¹

2144. The United States, by contrast, alleges that the Transworld Housing Units had deteriorated considerably already prior to 19 January 1981. In support, the United States relies on the testimony of its expert witnesses,¹¹⁴² and it further notes that MORT asserted in Case No. B67 that a deterioration of 40 percent had occurred.

2145. There is no contemporaneous evidence on record documenting the physical condition of the Transworld Housing Units in 1981. Mr. Rahmati never inspected those items, and, in any event, his testimony is too vague to form the basis for any reliable conclusion by the Tribunal on the physical condition of the housing units in 1981.

2146. Further, none of the Parties' expert witnesses actually viewed the Transworld Housing Units at any point in time. Their conclusions as to the condition of those items in 1981 are widely divergent and irreconcilable, as well as unsupported by contemporaneous evidence. In

¹¹³⁹ See *supra* para. 440.

¹¹⁴⁰ See *supra* paras. 1958-1959.

¹¹⁴¹ See *supra* para. 1962.

¹¹⁴² See *supra* paras. 2126-2127, 2129-2130.

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 1981 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.

2151. Consequently, based on the original purchase price of the Morgan Rock-Crushing Equipment delivered to the Port of Vancouver, that is, USD 3,527,803,¹¹⁴⁶ the Tribunal determines that, by mid-1985, the Morgan Rock-Crushing Equipment had suffered damages totaling USD 2,469,462.

2152. For the reasons stated earlier in this Partial Award, however, the Tribunal is not prepared to hold that the Morgan Rock-Crushing equipment had already deteriorated to that extent by December 1983, when it was shipped to Iran from the Port of Vancouver. The Tribunal is persuaded, however, that the Morgan Rock-Crushing Equipment sustained additional physical damage during transport to Iran.¹¹⁴⁷

2153. Further, based on the record before it, as noted, the Tribunal cannot draw any conclusions as to whether the deterioration mostly occurred before or after 19 January 1981. Consequently, absent any reliable evidence allowing a precise apportionment, the Tribunal finds it reasonable to conclude that the 70-percent total deterioration of the Morgan Rock-Crushing Equipment occurred at an even rate between January 1979, the date the Tribunal has selected as the date of its delivery to the Port of Vancouver, and mid-1985, when Mr. Parchami first observed it in Khuzestan.¹¹⁴⁸ On this basis, the Tribunal holds that the Morgan Rock-Crushing Equipment deteriorated at an annual rate of 10.9 percent over a period of almost six and one-half years.

2154. In view of the above, the Tribunal holds that Iran must bear the damages due to deterioration of the Morgan Rock-Crushing Equipment occurring during the following periods: (i) from January 1979 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; and (ii) from mid-January 1984¹¹⁴⁹ until mid-1985.

¹¹⁴⁶ See *supra* paras. 440 & 484.

¹¹⁴⁷ See *supra* para. 2029.

¹¹⁴⁸ See *supra* para. 2030.

¹¹⁴⁹ As noted above in relation to Claim G-8, the Tribunal selects this date as a matter of convenience, given its conclusion as to the 40/60-percent apportionment between the Port of Vancouver and New Orleans, respectively, of the Morgan Rock-Crushing Equipment purchased by MORT under Purchase Order No. 87-2101-1. See *supra* paras. 484 & 543. As noted, the Morgan Rock-Crushing Equipment stored with the Port of Vancouver in Washington State was shipped to Iran in late 1983, while the Morgan Rock-Crushing Equipment stored with Gulf Ports in New Orleans was shipped to Iran in February 1984. See *supra* paras. 460 & 526.

2155. The United States, for its part, is liable to Iran for damages due to the deterioration of the Morgan Rock-Crushing Equipment occurring after 1 March 1981 until mid-January 1984.¹¹⁵⁰ Based on the even deterioration rate of 10.9 percent per year, the Tribunal finds that the damages due to the deterioration of the Morgan Rock-Crushing Equipment amount to USD 765,533. Accordingly, the Tribunal awards this amount to Iran.

2) *Claim for Loss of Use of Assets*

2156. On this head of claim, Iran seeks damages MORT allegedly incurred due to having been deprived of the use of the G-7 Materials during the relevant period from 19 January 1981, the date on which Iran asserts the United States' breach of the Algiers Declarations commenced, until December 1983, when the G-7 Materials were shipped to Iran. Mr. Salami clarifies that such damages include compensation for the rental income that the G-7 Materials could have generated during the relevant period and for expenses that MORT incurred to rent replacement equipment.¹¹⁵¹

2157. Iran, however, has offered no evidence as to whether, during the relevant period, the G-7 Materials would have generated any revenue or profits. Nor has it offered any evidence as to whether, during that period, MORT incurred additional costs to replace the G-7 Materials, or whether replacement assets were even available to it.

2158. Mr. Salami evaluates the damage MORT allegedly incurred due to the loss of use of the G-7 Materials using his net-capital-yield method.¹¹⁵²

2159. There is no evidence, however, that the capital-yield rates chosen by Mr. Salami bear any relation to the potential profit that the G-7 Materials could have generated during the relevant period, and Mr. Salami himself conceded during his testimony before the Tribunal that he had not been provided with any documentation and had to "look at it in an abstract way."¹¹⁵³

¹¹⁵⁰ See *supra* note 1061.

¹¹⁵¹ See *supra* para. 1976.

¹¹⁵² See *supra* paras. 1977-1978.

¹¹⁵³ See *supra* para. 2133.

2160. Therefore, the Tribunal's finding in Claim G-8, according to which Mr. Salami's net-capital-yield method does not meet the Tribunal's criteria for the substantiation of claims for the loss of use of tangible assets,¹¹⁵⁴ applies with equal force in the present Claim.

2161. In light of the foregoing, for reasons similar to those stated in connection with Claim G-8, the Tribunal holds that the damages claimed by Iran as compensation for the loss of use of the G-7 Materials are unduly speculative. Accordingly, in line with Tribunal precedent, the Tribunal dismisses Iran's loss-of-use claim for failure of proof.¹¹⁵⁵

3) *Claims for "Additional Costs"*

Storage Costs

2162. As an initial matter, the Tribunal holds that the United States is not liable to Iran for any storage costs relating to the G-7 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. Therefore, the United States is liable to Iran only for the storage costs MORT incurred after that date until 31 December 1983, the date on which the G-7 Materials were shipped to Iran. Unlike in Claim G-8,¹¹⁵⁶ no invoice issued by the holder for storage charges is on record. The Tribunal finds that the best evidence of the monthly storage costs incurred by MORT for the G-7 Materials is the affidavit of Mr. Mahmoudi, in which he indicates that the storage charges for October and November 1983 amounted to USD 82,000. Iran's expert witness, Mr. Salami, bases his calculation on the information in Mr. Mahmoudi's affidavit. It is on this basis that the Tribunal holds that the total storage costs MORT incurred after 1 March 1981 until 31 December 1983, the period for which the Tribunal finds the United States finds to be liable in damages, was USD 1,394,000. Consequently, the Tribunal awards this amount to Iran.

¹¹⁵⁴ See *Sedco, Inc. and National Iranian Oil Co. et al.*, Award No. 309-129-3 (7 July 1987), reprinted in 15 IRAN-U.S. C.T.R. 23 (*supra* para. 2037)

¹¹⁵⁵ See *supra* note 1069.

¹¹⁵⁶ See *supra* para. 2040.

MORT's Travel Expenses

2163. The Tribunal has already addressed this head of claim in connection with Claim G-8 and awarded Iran USD 50,000 for travel expenses incurred by MORT representatives in relation to the recovery of the G-7 and G-8 Materials in Washington State, New Orleans, and Houston.¹¹⁵⁷

MORT's United States Legal Fees and Expenses

2164. In support of Iran's claim of USD 70,000 for legal fees and expenses allegedly charged to MORT by its United States attorneys for assisting with the recovery of the G-7 Materials, Mr. Salami stated that he had been provided with evidence of payment only with respect to legal fees and expenses charged by the law offices of Morrison, Dunn, Carney, Allen & Tongue, Portland, Oregon, in the amount of USD 1,935.98. Iran concedes that its claim for legal fees and expenses is largely based on estimates.

2165. The Tribunal finds that the documents presented by Iran are adequate to show payments made by Iran to Morrison, Dunn, Carney, Allen & Tongue totaling USD 1,935.98 for services rendered in relation to the recovery of the G-7 Materials. These documents consist of, *inter alia*: (i) a letter dated 24 August 1983 from the Iranian Bureau of International Legal Services, Washington, D.C., to Morrison, Dunn, Carney, Allen & Tongue, referencing an enclosed check for USD 1,625.98,¹¹⁵⁸ and (ii) a check for USD 310, dated 27 December 1983, issued by the Iranian Interest Section to Morrison, Dunn, Carney, Allen & Tongue.

2166. In view of the above, the Tribunal finds that, beyond its claim for USD 1,935.98, Iran's claim for legal fees and expenses is unduly speculative. Consequently, the Tribunal awards USD 1,935.98 to Iran.

¹¹⁵⁷ See *supra* para. 2053.

¹¹⁵⁸ While the check itself is not in evidence, Morrison, Dunn, Carney, Allen & Tongue acknowledged receipt of the USD 1,625.98 payment from the Iranian Bureau of International Legal Services in a statement of services rendered dated 29 August 1983.

The Tribunal's Overall Conclusions on Iran's Claims for "Additional Costs"

2167. In sum, the Tribunal awards Iran a total of USD 1,395,935.98 on its claims for "additional costs."¹¹⁵⁹

4) *Mitigation*

2168. The Tribunal has extensively examined the issue of mitigation in relation to Claim G-8.¹¹⁶⁰ The Tribunal finds that the reasoning it set forth in that connection applies, *mutatis mutandis*, in Claim G-7.

2169. In brief, for reasons similar to those stated in the context of Claim G-8, the Tribunal accepts that, during the period immediately following the conclusion of the Algiers Declarations, it was reasonable for MORT to take some time to gather information concerning the G-7 Materials. Further, the Tribunal finds that it would not be justified to characterize MORT's inaction following the 18 November 1981 settlement agreement with the Port of Vancouver as a failure to mitigate because, in the Tribunal's view, MORT in the circumstances had reason to be cautious and to hesitate as to what action was prudent and safe.¹¹⁶¹

2170. Moreover, in line with the Tribunal's findings in Claim G-8, it would not have been reasonable to expect that MORT settle the pre-1981 storage charges it owed the Port of Vancouver promptly after 19 January 1981, so as to halt the accrual of damages after this date and with a view to securing the immediate release of the G-7 Materials by the Port of Vancouver, as argued by the United States. Among other things, it was by no means certain that, even if MORT had paid the accrued storage charges, the Port of Vancouver would have released the G-7 Materials promptly.¹¹⁶² In addition, the Clark County tax lien, imposed in July 1981 and lifted only sometime in 1983, would still have prevented MORT from taking possession of the G-7 Materials.

¹¹⁵⁹ The Tribunal has already awarded Iran compensation for MORT's travel expenses related to the G-7 Materials in connection with the Tribunal's decision of Claim G-8. *See supra* paras. 2051-2053.

¹¹⁶⁰ *See supra* para. 2065 *et seq.*

¹¹⁶¹ *See supra* paras. 2071-2074.

¹¹⁶² *See supra* para. 2070.

2171. In view of the above, and for reasons similar to those stated in relation to Claim G-8, the Tribunal does not accept the argument that Iran has failed to mitigate the damages for which it now seeks to be compensated in Claim G-7.

5) *The Tribunal's Total Award on Claim G-7*

2172. In conclusion, the Tribunal awards Iran a total of USD 4,833,868.98 on Claim G-7.¹¹⁶³

(5) *Claim G-13 (MORT/Shipside Packing Co.)*

(a) *Introduction*

2173. 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.”¹¹⁶⁴ The Tribunal has found that the G-13 Materials 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 items.¹¹⁶⁵ For reasons similar to those stated in connection with Claims G-8 and G-7, 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 G-13 Materials to Iran. Thus, the United States is liable in damages to Iran for its breach of the General Declaration.

2174. According to its Summary Table of Claims, in Claim G-13, Iran seeks a total of USD 1,511,933, broken down as follows: (1) USD 1,332,549 in damages allegedly resulting from the loss of use of the G-13 Materials; and (2) USD 179,384 in alleged additional payments to recover the G-13 Materials. Iran seeks interest on all amounts.

¹¹⁶³ See *supra* paras. 2148, 2155 & 2167.

¹¹⁶⁴ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

¹¹⁶⁵ See *supra* para. 576.

(b) *The Parties' Contentions*

(i) *Iran's Contentions*

Claim for Loss of Use

2175. On this head of claim, Iran seeks damages MORT allegedly incurred due to having been deprived of the use of the G-13 Materials from 19 January 1981, the date on which Iran asserts the United States' breach of the Algiers Declarations commenced, until January 1984, when the G-13 Materials were shipped to Iran. Iran bases its claim on Mr. Salami's assessment of the losses Iran allegedly suffered as a result of the late shipment of the G-13 Materials to Iran. As noted, Mr. Salami prepared a written valuation report and appeared as an expert witness for Iran at the Hearing.

2176. In assessing the loss suffered by MORT, Mr. Salami uses his net-capital-yield method, as he did in Claims G-7 and G-8.¹¹⁶⁶ According to Mr. Salami's methodology, the damage is assessed by applying the expected rate of return on investment of capital equivalent to the sum that MORT used to purchase the assets. Mr. Salami calculates this rate of return based on the average rate of United States Treasury bonds from 1981 through 1984, to which he adds a risk factor to account for the different types of assets.

2177. The capital-yield rate between 1981 and 1983 was, according to Mr. Salami, 22 percent for the G-13 Materials. According to Iran, this higher capital-yield rate takes into account a higher risk factor compared to that of the G-8 and G-7 Materials because the working life of the G-13 Materials is only five to seven years.

2178. In light of these considerations, Iran submits that the damages due to loss of use of the G-13 Materials between 19 January 1981 and January 1984 amount to USD 1,332,549.

Claims for "Additional Costs"

2179. Iran's second head of damages consists of a claim for "additional costs" resulting from the settlement of unpaid storage charges with Shipline and the re-crating and packaging of the G-13 Materials, which MORT allegedly incurred to recover the G-13 Materials. According to Iran, but for the United States' breach of its Paragraph 9 obligation, the G-13 Materials would

¹¹⁶⁶ See *supra* paras. 1977 & 2109.

have been returned to MORT without it having to incur those costs. Iran calculates its damages for “additional costs” as of 19 January 1981.

2180. Iran claims for storage costs relating to the G-13 Materials incurred after 19 January 1981. Iran calculates this claim based on the USD 168,000 MORT paid to Shipline under the 6 January 1984 settlement agreement,¹¹⁶⁷ from which Iran deducts the amount of storage costs incurred prior to 19 January 1981, allegedly USD 33,092. Accordingly, Iran seeks USD 134,908 in storage costs.

2181. Iran further seeks the amount MORT paid to Shipline for repackaging the G-13 Materials prior to shipment to Iran in January 1984. On the basis of a recapitulation of expenses incurred with regard to the MORT Claims attached to Mr. Mahmoudi’s affidavit, Iran claims USD 44,476.

2182. Consequently, Iran’s claim for additional costs totals USD 179,384.

Mitigation of Damages

2183. In response to arguments by the United States concerning mitigation of damages, Iran advances arguments similar to those it made in Claims G-7 and G-8.¹¹⁶⁸ Iran contends that, if the Tribunal finds that MORT had a duty to mitigate its damages in this Claim, then, MORT in fact did attempt to discharge that duty by entering into the January 1984 settlement agreement with Shipline.

2184. Thus, according to Iran, there is no basis for finding that it has breached any duty to mitigate losses in this Claim.

(ii) The United States’ Contentions

2185. As a general matter, the United States contends that Iran has failed to provide any evidentiary support for compensation in Claim G-13. According to the United States, Iran, as the Claimant, bears the burden of proving its losses with some degree of reliability and specificity. The United States emphasizes that Iran must, not only show that it suffered damages, but also establish with precision what its losses were.

¹¹⁶⁷ See *supra* paras. 562-563.

¹¹⁶⁸ See *supra* paras. 1988-1990 & 2117-2118.

Claim for Loss of Use

2186. The United States asserts that neither Iran nor Iran's expert witness, Mr. Salami, has proffered any evidence of the damages Iran seeks on its claim for the loss of use of the G-13 Materials. Specifically, the United States argues that Iran has failed to provide: (i) evidence that there was demand for the G-13 Materials at the relevant times, such as leasing or rental inquiries; (ii) evidence that replacement equipment was unavailable; (iii) documentation showing the actual income generated by the G-13 Materials; or (iv) any evidence of the actual damage suffered by MORT. The United States does not accept the proposition, put forward by Iran, that evidence was not available in Iran. According to the United States, rather, Iran has failed to retrieve and present it to the Tribunal.

2187. In support of its position, the United States relies on the hearing testimony of Mr. Lavigne. As noted, Mr. Lavigne testified that Mr. Salami failed to consider, or document, in his assessment any of the elements required in order to substantiate a claim for loss of use of assets.¹¹⁶⁹

2188. Mr. Lavigne testified that Mr. Salami's net-capital-yield method might be used in a loss-of-use analysis, but only if it were demonstrated that the chosen capital-yield rates appear sensible compared to the profit that would be generated by the asset in question.¹¹⁷⁰

2189. In conclusion, the United States contends that Iran's claim for the loss of use of the G-13 Materials concerns a theoretical loss based on a notional calculation and does not relate to actual lost revenues. Thus, the United States submits that this head of claim is wholly speculative in nature and should be dismissed.

Claims for "Additional Costs"

2190. The United States contends, generally, that, for each of the claimed "additional costs," Iran must prove: (i) that it would not have incurred the cost except for the United States' breach of the Algiers Declarations; and (ii) the amount of the cost incurred. The United States maintains that Iran has failed to make these showings for most of the claimed "additional costs."

¹¹⁶⁹ See *supra* para. 2001.

¹¹⁷⁰ See *supra* para. 2002.

2191. With regard to the amounts claimed by Iran for repackaging the G-13 Materials for shipment in January 1984 and the post-19 January 1981 storage costs, the United States makes arguments similar to those it made in Claims G-7 and G-8.

Mitigation of Damages

2192. The United States contends that, even if Iran could prove its alleged losses, it may not recover damages that it reasonably could have avoided through mitigation. In this connection, the United States makes arguments similar to those it made in Claims G-8 and G-7.

2193. The United States concludes that, because MORT failed to take reasonable steps to mitigate the claimed losses, Iran may not recover on this Claim.

(c) *The Tribunal's Decision*

(i) *Claim for Loss of Use*

2194. On this head of claim, Iran seeks damages MORT allegedly incurred due to having been deprived of the use of the G-13 Materials from 19 January 1981, the date on which Iran asserts the United States' breach of the Algiers Declarations commenced, until January 1984, when the G-13 Materials were shipped to Iran.

2195. Iran, however, has proffered no evidence as to whether, during the relevant period, the G-13 Materials would have generated any revenue or profits. Nor has it proffered any evidence as to whether, during that period, MORT incurred additional costs to replace the G-13 Materials, or whether replacement assets were even available to it. Iran relies, instead, on the testimony of Mr. Salami, who, using his net-capital-yield method, assesses the damages by applying an expected rate of return on investment of capital equivalent to the sum that MORT paid to purchase the G-13 Materials.¹¹⁷¹

2196. According to Tribunal practice, lost profits may be awarded provided that a claimant is able to establish with a sufficient degree of certainty that such profits would have accrued.¹¹⁷²

¹¹⁷¹ See *supra* paras. 1977-1978.

¹¹⁷² See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, paras. 55 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 209; *Dadras Int'l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 267 (7 Nov. 1995), reprinted in 31 IRAN-U.S. C.T.R. 127, 200.

The Tribunal has rejected claims for lost profits where the damages claimed were unduly speculative.¹¹⁷³ Further, in *Sedco, Inc. v. National Iranian Oil Co.*, the Tribunal established criteria for the substantiation of claims for the loss of use of tangible assets.¹¹⁷⁴

2197. Against this background, the Tribunal finds that Iran's claim for the loss of use of the G-13 Materials does not meet the criteria established in the Tribunal's practice for the substantiation of this kind of claim. Although Mr. Salami acknowledges the relevance of the criteria established by the Tribunal in *Sedco, Inc. v. National Iranian Oil Co.* for purposes of analyzing a claim for loss of revenue, he fails to verify Iran's claim for loss of use of the G-13 Materials against those criteria. Importantly, Mr. Salami failed to show whether the G-13 Materials would have been capable of generating any profits during the relevant period. Further, at the Hearing, Mr. Salami testified that he was unaware whether MORT had ever tried to buy any replacements for the G-13 Materials.

2198. In light of the foregoing, the Tribunal holds that the damages claimed by Iran as compensation for the loss of use of the G-13 Materials are unduly speculative. Consequently, in line with Tribunal precedent, the Tribunal dismisses Iran's claim for loss of use for failure of proof.

(ii) *Claims for "Additional Costs"*

Storage Costs

2199. 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

¹¹⁷³ See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 58 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 210 (dismissing a claim for lost profits because the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit); *Seismograph Service Corp. et al. and Islamic Republic of Iran et al.*, Award No. 420-443-3, paras. 306-307 (22 Dec. 1988), reprinted in 22 IRAN-U.S. C.T.R. 3, 80-81 (partially dismissing a claim for lost profits because the profit margin claimed by the Claimant was exaggerated deeming it purely speculative); *Dadras Int'l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 276 (7 Nov. 1995), reprinted in 31 IRAN-U.S. C.T.R. 127, 203-4 (dismissing a claim for lost profits for failure of proof because the damages claimed were unduly speculative, and the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit).

¹¹⁷⁴ See *supra* para. 2037.

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.

2200. 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 Shipperside in the 6 January 1984 settlement agreement.¹¹⁷⁵ In the settlement agreement, MORT agreed to pay Shipperside USD 168,000 for storage and related charges from 1 May 1980 through 31 December 1983. Consequently, MORT agreed to pay Shipperside 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.

Repackaging Costs

2201. The Tribunal holds that, but for the United States' breach of its Paragraph 9 obligation, which was the principal cause of the delay in shipment of the G-13 Materials to Iran, those items would have been returned to MORT without it having to incur re-packaging costs. The G-13 Materials were stored under a roofed warehouse in Baltimore. The Tribunal finds that it is very unlikely that, between the second half of 1978, when the items were delivered to Shipperside,¹¹⁷⁶ and 1 March 1981, the original export packaging of the G-13 Materials would have suffered any significant deterioration, and, thus, that the G-13 Materials would have required any significant measure of export re-packing and re-crating at that time. Consequently, the Tribunal holds that Iran does not have to bear any of the total costs of re-packaging those items. Article Three of the 6 January 1984 settlement agreement between MORT and Shipperside provided for representatives of MORT to "inspect the property and to observe the packing and preparation work to be performed by Shipperside," indicating that, by that date, the G-13 Materials needed to be re-packed as a consequence of the delay in shipment.

2202. The only available evidence on record of the costs that MORT incurred for the re-packing and re-crating of the G-13 Materials is the recapitulation of expenses attached to Mr. Mahmoudi's affidavit. This document indicates that the costs of re-packaging the

¹¹⁷⁵ See *supra* para. 562.

¹¹⁷⁶ See *supra* para. 551.

G-13 Materials located in Baltimore amounted to USD 44,476. This amount seems reasonable to the Tribunal.

2203. Accordingly, the Tribunal awards Iran USD 44,476 for re-packaging costs relating to the G-13 Materials.

The Tribunal's Overall Conclusions on Iran's Claims for "Additional Costs"

2204. In sum, the Tribunal awards Iran a total of USD 178,099.10 on its claims for "additional costs."¹¹⁷⁷

(iii) Mitigation

2205. The Tribunal has extensively examined the issue of mitigation in relation to Claim G-8.¹¹⁷⁸ The Tribunal finds that the reasoning it set forth in that connection applies, *mutatis mutandis*, in Claim G-13, as it also did in Claim G-7. In brief, for reasons similar to those stated in the context of Claim G-8, the Tribunal accepts that, during the period immediately following the conclusion of the Algiers Declarations, it was reasonable for MORT to take some time to gather information concerning the G-13 Materials. After receiving information on the status and the location of the bulk of the G-13 Materials through HNTB-Iran's telex of 17 August 1981,¹¹⁷⁹ MORT entered into settlement negotiations with Shipline, which eventually led to the 6 January 1984 settlement agreement. The Tribunal has considered whether the time elapsed between the initial negotiations between Shipline and MORT in November 1981 and the signing of the settlement agreement on 6 January 1984 signifies a failure by MORT to take action to mitigate its damages. The Tribunal finds that such a conclusion would not be justified because, in the circumstances, MORT had reason to be cautious and to hesitate as to what action was prudent and safe.¹¹⁸⁰ After the signing of the settlement agreement with Shipline on 6 January 1984, MORT acted expeditiously and arranged for the transfer of the G-13 Materials to Iran by the end of January 1984.

¹¹⁷⁷ See *supra* paras. 2200 & 2203.

¹¹⁷⁸ See *supra* para. 2065 *et seq.*

¹¹⁷⁹ See *supra* para. 555.

¹¹⁸⁰ See *supra* paras. 2071-2074.

2206. Moreover, in line with the Tribunal's findings in Claims G-8 and G-7, it would not have been reasonable to expect that MORT settle the pre-1981 storage charges it owed Shipperside promptly after 19 January 1981, so as to halt the accrual of damages after this date and with a view to securing the immediate release of the G-13 Materials by Shipperside, as argued by the United States.¹¹⁸¹

2207. In light of the above, and for reasons similar to those stated in relation to Claim G-8, the Tribunal finds that MORT did not passively sit back, but took a number of reasonable steps, albeit hesitant and slower than a commercial actor familiar with United States law and practice might have acted, aimed at solving the problems. For these reasons, the Tribunal does not accept the argument that Iran has failed to mitigate the damages for which it now seeks to be compensated in Claim G-13.

(iv) The Tribunal's Total Award on Claim G-13

2208. In conclusion, the Tribunal awards Iran a total of USD 178,099.10 on Claim G-13.

*(6) Contentions of the Parties and Expert Witness Evidence
Common to the Claims Concerning Aircraft Parts*

2209. This section will summarize the contentions of the Parties and expert witness evidence that is common to the four claims concerning aircraft parts in respect of which the Tribunal must make a determination in relation to reparation.¹¹⁸²

(a) Introduction

2210. Iran submits that it initially quantified its claims on the basis of the estimated cost of replacing the aircraft parts and, where it did not have evidence of the actual replacement cost, it "offered conservative estimates of the market value of the properties as of January 1981 as a proxy for the replacement cost of these items."

2211. In advance of the Hearing, Iran also instructed Mr. James Gilbey, "a chartered accountant specializing in valuations" with Mazars LLP, to prepare valuations of each of Iran's claims concerning aircraft parts "in order to demonstrate the reasonableness of its replacement

¹¹⁸¹ See *supra* paras. 2070 & 2170.

¹¹⁸² Claim Supp (2)-55 (Iran Air/Plessey), Claims G-11 and Supp. (2)-67 (Iran Air and Aseman/U.S. Customs, Claim G-131 (Air Taxi/Piedmont), and Claim Supp. (2)-56 (Iran Air/Airesearch)).

costs estimate” or “the reasonableness of Iran’s original claim,” as the case may be, in light of criticisms by the United States and its expert witness, Mr. Doran McClellan of PwC. Mr. Gilbey did not submit an expert report but appeared as a witness for Iran at the Hearing. Mr. Gilbey was instructed to “provide his views on what would be a reasonable estimate for the price of purchasing the properties at issue in January 1981” (*i.e.*, their replacement value) for each of the aircraft parts claims. He was also instructed to “consider the fair market value of the parts that were allegedly withheld from Iran,” taking into account the condition of the property being valued. Following the Hearing, Iran also presented all of Mr. Gilbey’s valuations as alternative claims in Iran’s Summary Table of Claims.

2212. As noted above, the United States presented Mr. Doran McClellan as its damages expert witness for Iran’s aircraft parts claims. Mr. McClellan is a certified appraiser and stated that he has been performing valuations of aircraft parts for over 30 years. Mr. McClellan also previously submitted a report in relation to each of the aircraft parts claims. With the possible exception of Claims G-11 and Supp. (2)-67, as discussed below,¹¹⁸³ Mr. McClellan was only instructed to evaluate Iran’s damages claims, including those based on Mr. Gilbey’s evidence at the Hearing.

(b) *The Parties’ Contentions*

(i) *Iran’s Contentions*

1) *Replacement Value*

2213. In support of its claims for the replacement value of the aircraft parts, Iran submits that it was “perfectly foreseeable that if deprived of aircraft parts, replacement parts would have to be purchased, otherwise Iran Air and Aseman could not have operated their fleet.”

2214. In relation to the Iran Air claims in particular, Iran also submits that it was necessary for Iran Air to replace all of the aircraft parts at issue for safety reasons and to mitigate its losses as “[w]ithout the relevant parts, the airworthiness of Iran Air[’s] fleet would have been affected.” Iran also submits that when aircraft parts were replaced, Iran Air had to pay more than it did in the late 1970s due to inflation and the fact that new suppliers “often charged [Iran Air] very high prices” because of Iran’s situation at that time. In this regard, Iran relies on the

¹¹⁸³ See *infra* para. 2289.

affidavit and hearing testimony of: (i) Mr. Ali Bakhsh Ahmadi, who worked from 1975 until 2007 in Iran Air's foreign supplies department which is responsible for the purchase and repair of spare parts;¹¹⁸⁴ and (ii) the affidavit of Mr. Saeed Mazlaghani, who was the head of Iran Air's export department from 1976 to 1994.

2215. Turning to the expert witness evidence on Iran's claims for the replacement value of the aircraft parts, Mr. Gilbey stated that he would normally "wish to confirm the amount spent by Iran in replacing [the] parts" and would do so with reference to "purchase orders and evidence of payment." However, where he was not "able to confirm whether or not the parts were replaced or the price or cost that Iran incurred in replacing those parts," Mr. Gilbey explained that he assessed the replacement value on the assumption that Iran would have replaced the part in question with a new part and thus did not "factor in anything for the actual physical condition of the asset."

2216. When conducting his assessments of the "as new" replacement value of the aircraft parts, Mr. Gilbey states that he considered the guidance provided in the valuation standard IVS 220 issued by the International Valuation Standards Council, which addresses the valuation of "plant and equipment and tangible property." He concluded that of the valuation approaches discussed in that standard, it was most appropriate to use the cost approach, for which the starting point is the original value of the aircraft parts. Mr. Gilbey also stated that he was instructed to use a valuation date of January 1981 for his assessments.

2217. In order to assess the original value of the aircraft parts, Mr. Gilbey stated that he used the cost recorded in purchase orders or other documents, where available. However, when such evidence of the original cost was not available, Mr. Gilbey stated that he estimated their original value by grossing up the value of their repair costs, in respect of which guidance had been provided, *inter alia*, in the affidavit of Mr. Mazlaghani. Specifically, Mr. Gilbey relied on Mr. Mazlaghani's statement that "if the repair cost for a part exceeds 40% of its new model, it will not be sent for repair." Mr. Ahmadi confirmed at the Hearing that this statement was consistent with his experience at Iran Air.

2218. Mr. Gilbey further explained that once he had identified or estimated the original value of the aircraft parts, he indexed that value to his valuation date of 19 January 1981 using the

¹¹⁸⁴ See *supra* para. 586.

Producer Price Index (by commodity) for “Aircraft and aircraft equipment” (WPU142), which is published by the United States Bureau of Labor Statistics (“Aircraft and Aircraft Equipment Producer Price Index”). Mr. Gilbey also stated that he indexed the original value of the aircraft parts from the beginning of January 1978 where the information about the original purchase date(s) was not available.

2219. Mr. Gilbey also considered whether the value of the aircraft parts would have been affected by technological obsolescence. In this regard, he considered that the technical life of all of the aircraft parts would be 12 years on the basis of “what a number of companies describe as the useful economic life of assets,” which he stated was “disclosed in the financial statements of a number of major airlines.” As to the rate of depreciation, he considered that the technological obsolescence of aircraft parts could be modelled using a “reverse S curve” because “they will hold their value to begin with a little bit longer but then decrease in value quite quickly as new technology is advanced.” Where the date of the original sale was not available, he applied his adjustment for technological obsolescence from January 1978.

2220. Mr. Gilbey explained that he did not think that “the extent to which technological obsolescence would have impacted the assets between 1978 and . . . the beginning of January 1981 [*i.e.*, his valuation date] . . . would be great” but nevertheless accounted for technological obsolescence by providing a range of values to the Tribunal. For the upper end of his ranges of values, Mr. Gilbey did not take into account technological obsolescence and for the lower end, he did. The specific adjustments that Mr. Gilbey used to determine the lower values in his ranges, where provided, have been set out below in relation to the relevant Claims. These adjustments were presented to the Tribunal as percentages to be applied to the original value at a particular date along the curve used by Mr. Gilbey.

2221. Finally, Mr. Gilbey stated that he sought to “benchmark [his] findings and confirm [his] conclusions” for each of the aircraft parts claims through his own research and discussions with an aviation expert witness, Mr. Peter Bull, who is the managing director of Horizon Aerospace in the UK.

2) *Fair Market Value*

2222. Iran submits that if “the Tribunal decide[s] that Iran . . . could only claim for the actual properties in their state of repair and condition,” the Tribunal should rely on Mr. Gilbey’s assessment of the fair market value of the aircraft parts as at 19 January 1981.

2223. Mr. Gilbey explained that his assessment of the fair market value was reached by applying a discount of 35 percent to his assessment of their “as new” replacement value to account for their condition, “recognizing the fact that the asset is not new.” Mr. Gilbey explained that this assumption was based on the affidavit of Mr. R. C. Moore, then the president of Certified Aircraft Parts, a reseller of aircraft parts, which was submitted in Case No. B61.

2224. Iran also stated that it assumed items were unrepaired absent direct evidence to the contrary. Mr. Gilbey stated that he valued such items “as if they were repaired” by subtracting the relevant repair costs. In this regard, Mr. Gilbey stated that he considered Mr. Moore’s testimony that “an indicative value for unrepaired parts [is 25 percent].” Mr. Gilbey also notes, however, that Mr. Moore did not consider it appropriate to apply “such a blanket percentage” when the extent of the required repair works is different. Iran explained that where Mr. Gilbey did not have evidence of the repair costs, he assumed that they would be 20 percent of their original value.

2225. Finally, Mr. Gilbey presented alternative assessments of the fair market value for which he estimated the original value of the aircraft parts on the basis of an assumption that Iran would not have sent a part for repair unless the repair costs were over 20 percent (*i.e.*, rather than 40 percent) of its original value. In this regard, Iran submitted that “it may be assumed that [the repair] cost will be somewhere between 1% and 40% of that part’s original price, or an average 20% of the cost of those parts purchased as new.”

(ii) *The United States’ Contentions*

1) *Replacement Value*

2226. The United States submits that all of Iran’s claims for the replacement value of aircraft parts must fail because Iran has submitted no evidence that the aircraft parts were actually replaced.

2227. The United States also submits that, by seeking the value in 1981 of new aircraft parts, Iran is effectively requesting upgrades of the parts for which it seeks the replacement value.

2228. Turning to the expert witness evidence, Mr. McClellan agreed with Mr. Gilbey that the appropriate method to value aircraft parts is the cost approach but stated that where evidence

of the original value of the parts is not available,¹¹⁸⁵ it is more appropriate to use the market approach.

2229. As to the application of the cost approach, Mr. McClellan disagreed with Mr. Gilbey's method of estimating the original value of the parts by grossing up the repair costs. Mr. McClellan stated that this approach yielded inconsistent results and was "more of a guesstimate rather than a rule of thumb." For Mr. McClellan, repair costs are only an "indication of condition" and not "an indication or a method to build an index and cost approach method." Likewise, on the basis of Mr. McClellan's testimony, the United States argues that Mr. Gilbey's methodology of estimating the original value of the aircraft parts "is unreliable and sometimes leads to absurd results." The United States also submits that Iran's failure to adequately prove the original value of the aircraft parts means that there is no basis upon which a replacement value or fair market value analysis may be conducted.

2230. Mr. McClellan did however agree with several other aspects of Mr. Gilbey's methodology. For instance, although in his report Mr. McClellan suggested using the Marshall Valuation Services index for aircraft parts manufacturing, Mr. McClellan stated that it was reasonable for Mr. Gilbey to use the Aircraft and Aircraft Equipment Producer Price Index to index the original value of the parts to the valuation date. In addition, Mr. McClellan did not appear to take issue with Mr. Gilbey's assumptions as to the date (*i.e.*, January 1978) from which the index should be applied when the date of the original sale was not available.

2231. Finally, Mr. McClellan did not consider it necessary to take into account technological obsolescence for the aircraft parts at issue in these Claims, with the apparent exception of one of the three actuators at issue in Claim Supp (2)-55 (Iran Air/Plessey). He explained that "[t]echnological obsolescence refers to things that for some technology reason, advancement in technology, the part has been changed," and that, in addition to technological obsolescence, the cost approach also involves taking into account physical depreciation and economic obsolescence, suggesting that these elements should be considered separately. Notwithstanding Mr. McClellan's apparent views on technological obsolescence, the United States submitted that "Mr. Gilbey's . . . technological obsolescence factors could be used," and that "[t]he experts agree on [that] point."

¹¹⁸⁵ This is the case for Claim Supp. (2)-55, Claim G-131, and Claim Supp. (2)-56.

2) *Fair Market Value*

2232. The United States submits that, “where the Tribunal concludes that a reasonable replacement cost has not been established, the most Iran can recover is direct damages in the form of the fair market value as of the date of breach.” However, the United States also submits that Iran’s claims can only be based on their fair market value if Iran had advanced evidence of their original acquisition cost. In the alternative, if the Tribunal accepts the original value of the aircraft parts relied on by Iran, the United States submits that the Tribunal could use a combination of the approaches advocated by Mr. Gilbey and Mr. McClellan to assess their fair market value.

2233. As noted above, as part of his methodology for assessing the fair market value of the items, Mr. Gilbey assumed that a repaired part would retain 65 percent of its original value, so he applied a deduction of 35 percent to his assessment of the “as new” value.¹¹⁸⁶ In this regard, Mr. McClellan observed that the range of values that is normally applied in the industry is 50 to 65 percent, and that Mr. Gilbey’s 65 percent is therefore at the top end of that range. Notwithstanding Mr. McClellan’s observation, the United States submitted that “Mr. Gilbey’s . . . 35 percent deduction to arrive at the value of an overhauled part could be used,” and, as above, that “[t]he experts agree on [this] point.”

2234. As also noted above, Mr. Gilbey valued unrepaired items as if they were repaired by deducting the repair costs and, due to the variation in repair costs, did not consider it appropriate to apply Mr. Moore’s qualified blanket assumption that repaired items retain only 25 percent of their original value.¹¹⁸⁷ The United States, however, contended that unrepaired parts should be valued “in a state of disrepair.” In this regard, Mr. McLellan opined that due to the variation in repair costs, he could not see how one could “build reliable curves on repair[ed] parts” and said he would apply the “common rule of thumb in the industry” that “an unrepaired part, with its paperwork, maybe has a value of 10-25 percent of its cost.”

2235. Mr. McClellan further opined that, if Mr. Gilbey’s approach is accepted, the repair costs should be indexed to the date of breach.

¹¹⁸⁶ See *supra* para. 2223.

¹¹⁸⁷ See *supra* para. 2224.

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

(a) *Introduction*

2236. 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.”¹¹⁸⁸ The Tribunal finds, and the United States concedes,¹¹⁸⁹ that, in the circumstances, Section 535.333 of the Unlawful Treasury Regulations was the principal cause of the non-transfer to Iran of the three actuators that Iran Air had sent to Plessey for repair prior to 14 November 1979 – and, ultimately, the principal cause of their sale by Plessey in 1988 or 1989 to recover part of an outstanding debt. Thus, the United States is liable in damages to Iran for its breach of the General Declaration.

2237. According to its Summary Table of Claims, Iran seeks damages on the basis of one of four alternative valuations of the three actuators:

- (i) between USD 60,828 and USD 66,797, which Iran submits is the as new replacement value at 19 January 1981, calculated on the basis of an assumption that Iran Air would not send parts for repair if the repair costs were more than 20 percent of the original value of the parts;
- (ii) between USD 31,650 and USD 34,711, which Iran submits is the fair market value as at 19 January 1981, calculated on the basis of an assumption that Iran Air would not send parts for repair if the repair costs were more than 20 percent of the original value of the parts;
- (iii) between USD 11,881 and USD 13,030, which Iran submits is the fair market value as at 19 January 1981, calculated on the basis of an assumption that Iran Air would not send parts for repair if the repair costs were more than 40 percent of the original value of the parts; and

¹¹⁸⁸ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

¹¹⁸⁹ *See supra* para. 793.

- (iv) USD 9,111, which Iran submits is the price for which Plessey informed the State Department that the three actuators were sold.¹¹⁹⁰

2238. Iran also seeks interest on the amount awarded.

(b) *The Parties' Contentions*

(i) *Iran's Contentions*

1) *Replacement value*

2239. Mr. Gilbey did not have evidence of the original value of the three actuators at issue in this Claim. Accordingly, he derived his estimates of their original value from the statement in Plessey's 1 March 1983 telex to Iran Air that the total repair costs were USD 9,893.45, using the methodology described above.¹¹⁹¹

2240. Mr. Gilbey also stated that he identified the value of the actuators as at the time of his testimony on the basis of their part numbers, which gave him comfort that his estimate of the original value was appropriate.

2241. When presented with evidence that two of the three actuators had been upgraded as well as repaired, Mr. Gilbey testified that he did not take into account the upgrade cost because he had only been provided with a single value for the cost of the upgrade and the cost of the repair, so he was unable to distinguish between the two. Mr. Gilbey also confirmed that because the repair and upgrade costs for two of the actuators were different, his estimate of their original cost was necessarily also different, notwithstanding the fact that they bore the same part numbers. However, Mr. Gilbey defended his approach as "the most reasonable and sensible approach to take."

2242. Given that evidence of the original value of the aircraft parts at issue in this Claim was not available, Mr. Gilbey indexed the original value of the aircraft parts from the beginning of January 1978.

¹¹⁹⁰ See *supra* para. 792.

¹¹⁹¹ See *supra* para. 2217.

2243. Mr. Gilbey also took into account technological obsolescence from January 1978 for the reasons stated above.¹¹⁹² The Tribunal understands that the lower end of the range of values presented by Mr. Gilbey for this Claim corresponds to a one-time deduction of nine percent for technological obsolescence. However, Iran also states that Mr. Gilbey considered that “at a maximum, technological obsolescence would have affected the value of [the three actuators] by 5%.” Iran further submitted that, “given that the items at issue were civil aviation parts, still in use in 1981, technological obsolescence is unlikely to have affected the value of the parts by 1981 by this much [*i.e.*, by 5 percent].”

2244. Thus, based on the assumption that Iran would not have sent a part for repair unless the repair costs were over 20 percent of its original value, Mr. Gilbey estimated that the value of the three actuators “as new” as at 19 January 1981 was between USD 60,828 and USD 66,797, depending on the extent to which technological obsolescence would have impacted their value.

2) *Fair Market Value*

2245. For the reasons stated above, Mr. Gilbey made his assessments of the fair market value of the three actuators by: (i) applying a discount of 35 percent to account for their condition; and (ii) deducting the repair costs for the two actuators that had not been repaired as of 1 March 1983, *i.e.*, USD 8,651.45.

2246. Thus, based on the assumption that Iran would not have sent a part for repair unless the repair costs were over 40 percent of its original value, in Mr. Gilbey’s opinion, the fair market value of the three actuators as at 19 January 1981 was between USD 11,881 and USD 13,030, depending on the extent to which technological obsolescence would have impacted their value.

2247. Based on the assumption that Iran would not have sent a part for repair unless the repair costs were over 20 percent of its original value, in Mr. Gilbey’s opinion, the fair market value of the parts as at 19 January 1981 was between USD 31,650 and USD 34,711, depending on the extent to which technological obsolescence would have impacted their value.

¹¹⁹² See *supra* paras. 2219-2220.

3) *Proceeds of the Sale of the Actuators in 1988 or 1989*

2248. As noted above, in the alternative, Iran seeks USD 9,111, the price at which Plessey indicated that it sold the three actuators in 1988 or 1989.¹¹⁹³ According to Iran, Mr. Gilbey's assessments of Iran's losses in respect of this Claim are "much higher" than Iran's initial claim of USD 9,111 and, as such, Iran's initial claim can be characterized as a "conservative estimate."

(ii) *The United States' Contentions*

1) *Replacement Value*

2249. The United States submits that there is no evidence of a transaction by which Iran Air purportedly replaced the three actuators.

2250. The United States also argues that the valuation date for this Claim should be 9 September 1982, *i.e.*, the date on which Plessey refused to transfer the three actuators due to the Unlawful Treasury Regulations.

2251. As noted above, Mr. McClellan disagreed with Mr. Gilbey's method of estimating the original value of the parts by grossing up the repair costs and observes that this method resulted in different values for two of the actuators at issue in this Claim with the same part number and a higher value for the actuator that had suffered more damage.

2) *Fair Market Value*

2252. The United States submits that Iran's damages for the three actuators could have been based on their fair market value on the date of the United States' breach only if Iran had advanced evidence of their original acquisition cost.

2253. As also noted above, Mr. Gilbey deducted the quoted repair costs from his valuation to account for the fact that two of the actuators had not been repaired.¹¹⁹⁴ In this regard, Mr. McClellan testified that it is not known whether the parts at issue in this Claim were repaired as of the valuation date, and that, without this information, it would be reasonable to

¹¹⁹³ See *supra* paras. 792 & 2237.

¹¹⁹⁴ See *supra* para. 2245.

value the parts on the basis of the assumption that they were in an unrepaired state and thus retained only 10-25 percent of their original value.

3) *Proceeds of the Sale of the Actuators in 1988 or 1989*

2254. Mr. McClellan stated in his report that Iran had provided “no support” for its initial claim of USD 9,111, which as noted above was based on the value for which Plessey stated that it had sold the three actuators, as reported in its letter to the State Department of 1 June 1989. Mr. McClellan also stated in his report that Iran’s initial claim “fail[ed] to account for the typical required servicing or any adjustment to the parts related to their condition, extended or long-term storage, improper preservation procedures, and non-use.” Mr. McClellan further stated that the amount owed to Plessey for repairs should also be adjusted to the valuation date before it is deducted from the amount claimed. Nevertheless, the United States stated that it would accept this amount as an appropriate estimate of Iran’s damages because it was based on “a market price.”

(c) *The Tribunal’s Decision*

2255. The Tribunal notes that it has not been presented with any evidence of the actual cost of replacing the three actuators at issue in this Claim. In any event, the Tribunal finds that the appropriate measure of Iran’s damages resulting from the United States’ breach of the Algiers Declarations is the fair market value of the three actuators on 26 February 1981.

2256. The Tribunal notes that it has been presented with evidence that two of the actuators were in an unrepaired condition on 1 March 1983 (*i.e.*, the date of Plessey’s telex to Iran Air) and that the third actuator had been repaired and was ready to be shipped. The Tribunal will therefore assess the fair market value of the three actuators considering their physical condition, including their state of repair, on 26 February 1981, making the best possible use of the available evidence.

2257. As an initial matter, the Tribunal does not find that the price for which Plessey sold the three actuators in 1989 is a reliable basis for assessing their fair market value on 26 February 1981. The only evidence on record relating to that sale is Plessey’s letter of 1 June 1989 to the State Department, simply advising that, in the exercise of its right to limit its damages, Plessey had sold the three actuators “in a commercially reasonable manner” for

USD 9,111.¹¹⁹⁵ Thus, the conditions of that sale are unknown – for example, whether the sale occurred in the context of an auction and, if so, whether there were multiple bidders, whether Plessey was among them, and whether the three actuators had been the subject of an independent appraisal prior to the auction. In addition, it is not known if Plessey had informed Iran Air of the sale.

2258. The Tribunal considers that the cost approach is the appropriate method for assessing the fair market value of the aircraft parts at issue in this Claim.¹¹⁹⁶ In accordance with this approach, one takes as a starting point the original value of the aircraft parts, indexes that value and accounts for depreciation to 26 February 1981 in order to arrive at an estimated replacement value for the aircraft parts. Thereafter, to assess the fair market value, one applies appropriate deductions to the estimated replacement value to account for the physical state of the aircraft parts on 26 February 1981, including whether the aircraft parts were in a repaired or unrepaired state.

2259. The Tribunal has not been presented with evidence of the original cost of the three actuators. In these circumstances, the Tribunal will estimate their original value making the best possible use of evidence that is available to it. After having considered the arguments of the Parties and their expert witnesses, the Tribunal concludes that, in light of the limited information before it, the most reasonable approach is to estimate the original value of the three actuators on the basis of their repair costs, as proposed by Iran's expert witness, Mr. Gilbey.¹¹⁹⁷ It is reasonable to assume, first, that the repair costs of an aircraft part are related to the overall value of the part as repaired, and, second, that the repair costs of an aircraft part would be lower than the part's market value, as Mr. McClellan confirmed during his testimony.

2260. The Tribunal is convinced¹¹⁹⁸ by the testimonies of Messrs. Mazlaghani and Ahmadi that Iran Air generally would not send an item for repair if its repair cost exceeded 40 percent of the price of a new part.¹¹⁹⁹ Thus, the Tribunal accepts that the repair cost of an aircraft part would range between one and 40 percent of the price of a corresponding new aircraft part. For

¹¹⁹⁵ See *supra* para. 792.

¹¹⁹⁶ See *supra* paras. 2216-2228.

¹¹⁹⁷ See *supra* para. 2217.

¹¹⁹⁸ See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, n.153 (2 July 2014).

¹¹⁹⁹ See *supra* para. 2217.

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 32,815.54.

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 12,991.80.

Conclusion

2269. The Tribunal awards Iran USD 12,991.80 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.

2271. According to its Summary Table of Claims, Iran seeks damages on the basis of one of two alternative valuations of the 17 aircraft parts originally at issue:

- (i) between USD 15,456 and USD 24,673, which Iran submits is their fair market value; and
- (ii) USD 79,591, which Iran submits is their replacement value.

2272. Iran also seeks interest on the amount awarded.

(b) The Contentions of the Parties

(i) Iran's Contentions

1) Replacement Value

2273. Iran's claim for the replacement value of the 17 aircraft parts, *i.e.*, for USD 79,591, is based on purchase orders and other documents dated between 1982 and 1986. Mr. Gilbey testified that he reviewed the evidence of replacement purchases submitted by Iran and was satisfied that Iran's claim for USD 79,591 represents the "cost that Iran incurred in buying identical parts . . . until 1982 or 1983, after January 1981."

2274. In response to the United States' suggestion that the replacement purchases cited by Iran were not for the parts at issue in this Claim because of the time period between the date the parts were withheld by United States Customs and the dates on the purchase orders, Iran has explained, with reference to Mr. Ahmadi's testimony, that Iran Air was not able to replace missing stock immediately because it was not possible for it to trade with United States companies. According to Mr. Ahmadi, Iran was also unable to obtain the certificates necessary to use the parts because those could only be obtained from the United States' Federal Aviation Authority at that time.

2275. Iran also explains, again on the basis of Mr. Ahmadi's testimony, that "it was very difficult for Iran Air to buy replacement parts," and that "[o]ften parts were only sold to it when its aircraft was AOG [*i.e.*, 'aircraft on ground'] . . . inoperable." However, Iran disputes the United States' characterization of all of the purchases of replacement parts from Lufthansa as having been made in emergency situations (with "highly inflated" prices) when an aircraft was AOG. For instance, Iran observes that the 22 November 1982 invoice it relies upon for the

replacement cost of the two rate gyros (part no. 2585801) states “[p]lease ship to Iran Air Frankfurt for forwarding to Tehran, Iran,” which indicates that the aircraft in question were not grounded abroad as a result of their need for the parts. Iran also refers to evidence that, in Iran’s view, shows that all of the parts listed on that order were indeed shipped to Tehran. Iran further argues that the United States has accepted, by way of its acceptance of Iran’s claim for the replacement cost of a part replaced in 1983,¹²⁰⁶ that Iran’s planes were “not rendered AOG immediately as of 1981.”

2276. Finally, Iran submits that the United States’ concerns about the timing of the replacement purchases would be addressed through the dates from which interest is applied.

2) *Fair Market Value*

2277. To determine the original value of the 17 aircraft parts for the purposes of his fair market value assessment, Mr. Gilbey stated that he relied on purchase orders for 13 of the 17 aircraft parts.¹²⁰⁷ For the other four aircraft parts,¹²⁰⁸ Mr. Gilbey indicated that he relied on the prices listed in an attachment to a letter dated 28 November 1996 from Mr. Houshang Khalili, an Iran Air employee following the auction of the parts. Mr. Khalili indicates in this letter that the prices listed in the attachment represent the value of the parts, for a total of USD 30,283. Mr. Gilbey stated that he was comfortable with this approach because, with one exception amounting to a difference of USD 200, the values presented by Mr. Khalili were less than the price indicated on the available purchase orders.

2278. To index the original value of the aircraft parts, Mr. Gilbey stated that he applied the Aircraft and Aircraft Equipment PPI, introduced above, from January 1977 to 19 January 1981. While Mr. Gilbey acknowledged that he had evidence of the original purchase dates, and that some of the purchase orders dated back to 1975, he explained that he used January 1977 for all 17 of the aircraft parts because he “tried to adopt a reasonable and prudent approach.”

2279. Finally, Iran rejects the United States’ argument, discussed below, that the value declared by Iran on the airway bills when the aircraft parts were shipped to the United States

¹²⁰⁶ See *infra* para. 2286.

¹²⁰⁷ Parts Nos. 831G-250-20R (1 regulator), 2800-1 (1 regulator), SEL-OC3A (1 indicator), 9-113-09-A (1 module), 152BL702A (1 indicator), 39-353 (2 valves), F61CO226M2 (2 valves), 2585801 (2 rate gyros), 891778-02 (1 bottle), and 10-3071-4 (1 F.F. power supply).

¹²⁰⁸ Parts Nos. 10-60552-94P7 (2 switches), 124645 (1 valve), and 10470-2 (1 pump).

should be used as the basis for a reasonable approximation of their fair market value as at 19 January 1981. According to Iran, the Tribunal should not rely on these values because no custom duties are due in relation to repair and return items, and Iran may not have even been obliged to report the value of the items or their repairs, as the case may be, at the time they were shipped. Iran further submits that this would explain why Mr. Ahmadi was “so unconcerned about the values Iran Air historically declared to US Customs.”

(ii) *The United States’ Contentions*

1) *Replacement Value*

2280. The United States submits that Iran’s primary claim of USD 79,591 for the replacement value should be rejected because, with one exception, Iran has not established that the purchase orders relied on by Iran “are really the replacement purchases for the properties in this case” because “[t]hey were made too late . . . or they are plainly emergency purchases from other airlines rather than purchases made in the ordinary course of Iran Air’s affairs.”

2281. In particular, the United States observes that ten of alleged replacement parts were acquired from Lufthansa, which is “[n]ot a parts supplier or an original equipment manufacturer.” The United States argues that these purchases were not normal purchases because Mr. Ahmadi had stated that when a part was needed and an aircraft was AOG as a result, a premium had to be paid to acquire the necessary part. Mr. McClellan opined that replacement parts bought under such circumstances were typically priced at three to 15 times the regular price and considered the prices reflected in the Lufthansa invoices to be “excessive.” The United States recalls that Mr. Ahmadi testified that “all of the Lufthansa purchases were AOG” and, on this basis, submits that the Lufthansa purchases were not “reasonable replacement purchases.”

2282. The United States also rejects Iran’s contention, described above,¹²⁰⁹ that at least some of the Lufthansa purchases were not made under AOG conditions because there was evidence that the parts were being shipped to Tehran. For the United States, this evidence merely shows that the aircraft, once repaired, would be flying back to Tehran.

¹²⁰⁹ See *supra* para. 2275.

2283. The United States also observes that three of the other purchase orders relied on by Iran were from 1985 and 1986, *i.e.*, several years after the date of the United States' alleged breach, indicating that they cannot be for the relevant replacement parts in view of Mr. Ahmadi's testimony that replacement purchases were made quickly. Thus, the United States submits that these purchase orders must relate to other purchases made by Iran Air for the same part.

2284. The United States also submits that the Tribunal should only rely on Iran's evidence of the replacement costs if it believes that "no other purchases took place for those parts, that no other invoices ever existed." However, the United States submits that the Tribunal should not do so in light of Mr. Ahmadi's statement that "cost information on every single part" was maintained, which for the United States suggests that Iran presented only the highest price from its files to the Tribunal. Relatedly, the United States submits that the worldwide market for new and used spare parts was available to Iran by 1981, and that Iran should not be compensated for purchasing new parts where used parts were also available. Mr. McClellan likewise testified that spare parts for "early series Boeing aircraft" were widely available in 1981.

2285. The United States also questions the veracity of Mr. Khalili's evidence of certain of the purported replacement purchases because he was a lawyer for Iran Air, not a valuation expert or someone who worked in Iran Air's spare parts department.

2286. However, the United States accepts that the evidence relied upon by Iran for the purchase in 1983 of a regulator (part no. 28000-1) is reliable and that, as a result, the replacement cost (*i.e.*, DM 2,990 or USD 1,225.90) for that part is compensable.

2) *Fair Market Value*

2287. The United States submits that, because Iran has failed to prove that it entered into reasonable replacement transactions, the Tribunal should only award damages based on the fair market value of the aircraft parts. The Tribunal assumes that this statement does not apply to the regulator (part no. 2800-1), for which the United States has accepted Iran's evidence as to its replacement cost in 1983.

2288. The United States contends that the only reliable and relevant information on record for the other parts is the value declared by Iran on the airway bills when the aircraft parts were

shipped, and that these values “may suffice as the most reasonable approximation available [of their fair market value],” once indexed to the valuation date. The United States submits that the Tribunal should adopt these values because: (i) Iran Air was required by law to provide a currently accurate estimate of the value of the parts being sent to the United States; (ii) at least the valuations for the airway bills “appear to have been [prepared by] the technicians and engineers in Iran Air’s warehouses;” and (iii) Mr. Mazlaghani contemporaneously certified that these valuations were accurate.¹²¹⁰ On these bases, the United States submits that the Tribunal should disregard Mr. Ahmadi’s testimony that the customs values did not reflect the actual values of the aircraft parts. Mr. McClellan also observes that overall, these customs values are 15 percent of the amounts which Iran claims to be the original acquisition costs of the aircraft parts.

2289. Finally, unlike for the other aircraft parts claims, the United States did provide an alternative valuation of Iran’s damages. Mr. McClellan did not testify as to these values, but the United States suggests that they were calculated according to Mr. Gilbey’s methodology using the customs values as a basis and Mr. McClellan’s approach to the repair costs (*i.e.*, that a repaired item is worth only 10-25 percent of its original value). For a valuation date of 19 January 1981, and not including the two aircraft parts that were on loan or the aircraft part for which the United States has accepted Iran’s evidence of the replacement cost, the United States submits that the fair market value of the 14 remaining aircraft parts is between USD 4,227 and USD 10,568, depending on the adjustment made for the fact that the parts have been repaired.

¹²¹⁰ The United States notes that the standard declaration read as follows:

The shipper certifies the particulars on the face hereof are correct, agrees to the conditions on the reverse hereof, accepts that the carrier’s liability is limited as stated in [paragraph] 4(c) on the reverse hereof and accepts such value unless a higher value for carriage is declared on the face hereof subject to an additional charge and insofar as any part of the consignment contains restricted articles, such part is properly described by name and is in proper condition for carriage by air. Likewise, Article 221 of the Iranian Customs Act imposes a similar requirement, namely that the owner of a commodity must declare the value of that commodity for export which is then verified by customs officials.

(c) *The Tribunal's Decision*

(i) *Replacement Value*

2290. With regard to Iran's primary claim for USD 79,591 as the alleged actual replacement value of the 17 aircraft parts at issue in this Claim, the Tribunal has been presented with purchase orders and other documents dated between 1982 and 1986.¹²¹¹ The Tribunal notes that the alleged replacement costs of the two aircraft parts on loan amount to USD 3,776.

2291. After carefully reviewing the available documents, the Tribunal considers that they cannot serve as a reliable basis for the calculation of the compensation to which Iran is entitled. Due to the significant time that elapsed between when the aircraft parts were withheld by United States Customs and the purchases reflected in these documents, the Tribunal does not accept that Iran's contention, *i.e.*, that the purchases were made in order to replace the aircraft parts at issue in this Claim, has been proven. As noted by the United States, some of the documents date from 1985 and 1986, others from 1983, *i.e.*, three to six years after the aircraft parts had been sent for repair in October and November 1979.

2292. Furthermore, the Tribunal is convinced that the majority of the alleged replacement purchases involved purchases from Lufthansa in circumstances where the aircraft in question was grounded on account of the need for a replacement part. The Tribunal accepts Mr. McClellan's testimony that purchases made in such circumstances would be more expensive than normal purchases. The Tribunal also accepts Mr. McClellan's testimony that the relevant aircraft parts would have been readily available on the market.

2293. In these circumstances, the Tribunal rejects Iran's claim on the basis of the alleged actual replacement costs.

2294. Finally, the Tribunal notes, as a matter of principle, that, even if it were to accept that the documents available are evidence of the replacement of the specific aircraft parts withheld by United States Customs, ordering compensation by way of reimbursing the costs indicated therein would result in compensation considerably higher than the actual loss caused by the breach. The loss that resulted from the withholding of the aircraft parts was the loss of used parts in need of repair. The costs of replacement by presumably new parts, most of which were

¹²¹¹ See *supra* para. 2273.

purchased at inflated prices many years later, cannot be characterized as damage caused by the United States' breach.

2295. The Tribunal takes note of the Respondent's acceptance of the replacement costs claimed (*i.e.*, DM 2990) for one of the 15 aircraft parts that remain at issue in this Claim, a regulator with part no. 28000-1. However, since the Tribunal has just stated as a matter of principle that the costs of replacement do not constitute the direct damage caused by the United States' breach in this Claim, it would seem arbitrary now to allocate replacement costs for one aircraft part on the basis of the Respondent's acceptance thereof.

2296. In view of the above, the Tribunal finds that the damages due to Iran should be based on the fair market value of the 15 aircraft parts on 26 February 1981.

(ii) *Fair Market Value*

2297. With regard to the United States' argument that the amounts indicated on the airway bills should serve as the basis for the Tribunal's assessment of the fair market value, the Tribunal notes, first, that the values indicated on the airway bills and shipping invoices on record differ significantly from the values indicated on the available original purchase orders. By way of example, one of the valves (part no. 39-353) was purchased for USD 2,456.43 in 1974 but was valued at USD 800 on the airway bill. The Tribunal also notes Iran's explanation that, as the aircraft parts at issue were due to be returned to Iran, there were no custom duties payable. Accordingly, the Tribunal accepts that the values indicated on the airway bills had no importance for the senders and, hence, no particular attention would have been paid to the values mentioned on the forms either for United States Customs or Iran Air. As persuasively explained in Mr. Mazlaghani's affidavit, the values reflected on airway bills are based on the price fixed by the technical section and warehouses. The export department would then add a sentence to the effect that the price was declared for customs purposes only. The Tribunal is thus convinced¹²¹² that the values indicated on the airway bills and shipping invoices do not serve as a reliable approximation of the fair market value of the aircraft parts and cannot serve as a basis for the compensation due to Iran.

¹²¹² See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, n.153 (2 July 2014).

2298. The Tribunal considers that the cost approach is an appropriate method for assessing the value of the aircraft parts and will make an assessment of the fair market value of those aircraft parts considering their physical condition, including their state of repair, on 26 February 1981, making the best possible use of the available evidence. The Parties agree that at that time the aircraft parts in question were used and in unrepaired condition.

2299. The Tribunal will thus take the original value of the aircraft parts as a starting point, index that cost using the Aircraft and Aircraft Equipment PPI, and make an adjustment to account for technological obsolescence to arrive at an assessment of the replacement cost for the parts as of 26 February 1981. Thereafter, the Tribunal will make the appropriate adjustments to account for the physical state of the aircraft parts on 26 February 1981, including an estimate of the repair costs, in order to assess their fair market value.

2300. As to the original value of the aircraft parts, the Tribunal has been presented with original purchase orders or invoices for 11 of the 15 aircraft parts¹²¹³ but has been unable to identify purchase orders for the remaining four aircraft parts.¹²¹⁴ For nine of these 11 parts, the values provided by Mr. Khalili are either identical to or lower than the documented price. For the other two parts, the value provided by Mr. Khalili was marginally above the documented price.¹²¹⁵ On this basis, the Tribunal considers that it can rely on the prices given by Mr. Khalili as a conservative approximation of the original value of the aircraft parts where direct evidence of the original cost is not available. The total of the prices provided by Mr. Khalili for these four parts is USD 9,704. For the other 11 of the 15 aircraft parts, the Tribunal will use the available evidence of their original cost, which reflects a total original cost of USD 20,049.86. Thus, the Tribunal will use USD 29,753.96 as its estimate of the original value of the 15 aircraft parts.

2301. Having reached an estimate of the original value of the 15 aircraft parts, the next step is to assess their replacement value as of 26 February 1981 by applying the appropriate index

¹²¹³ This evidence is available for the 11 aircraft parts bearing the following part numbers: 28000-1 (1 regulator), 10-60552-94p7 (2 switches), 39-353 (2 valves), F61CO226M2 (2 valves), 10470-2 (1 pump), 2585801 (2 rate gyros), and 891778-02 (1 bottle).

¹²¹⁴ The Tribunal has not been provided with evidence of the original cost of the four aircraft parts bearing the following part numbers: 831G-250-20R (1 regulator), SEL-OC3A (1 indicator), 9-113-09-A (1 module), and 152BL 702A (1 indicator). The purchase order relied on by Iran as “Evidence of purchase of U.CAEE indicator (Part No. SEL-OC3A)” was illegible, and thus the Tribunal was unable to identify the part and cost in question.

¹²¹⁵ The original cost of the two rate gyros (part no. 2585801) was USD 860, and the price given by Mr. Khalili for those parts was USD 882.

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 42,055.67.

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 14,719.48) 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 12,616.70).

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 14,719.48.

(iii) *Conclusion*

2307. In view of the above, the Tribunal awards Iran USD 14,719.48 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.

2310. Iran also seeks interest on the amount awarded. The Tribunal notes that in its Summary Table of Claims, Iran did not include its claim for a minimum of USD 50,000 for loss of use of the four aircraft that it submits were grounded due to the non-return of certain of the 148 aircraft parts and destroyed by Iraqi missiles as a result. Nevertheless, as this claim was discussed at the Hearing, the Tribunal has dealt with it below.

(b) *The Parties' Contentions*

(i) *Iran's Contentions*

1) *Replacement Value*

2311. Iran states that it has not been able to obtain evidence of the original purchase price of the 148 aircraft parts. Consequently, Iran relies on an estimate prepared by Mr. Shirazi, introduced above,¹²¹⁹ which he testified was calculated by averaging the prices at which the same parts had been purchased in the past and could be purchased at the time he prepared his estimate. Mr. Shirazi estimated that "the cost of the parts purchased as new in 1978" would have been approximately USD 120,700.

2312. While Mr. Shirazi provided an estimate of the replacement value of the 148 aircraft parts on 19 January 1981 by applying "indexation based on the international rate of inflation," Iran also submitted that indexation of the original value of the parts could also be performed on the basis of the Aircraft and Aircraft Equipment PPI.¹²²⁰ Using the former, which he states was 11.28 percent for 1979 and 13.48 percent for 1980, Mr. Shirazi estimated that the replacement value as at 19 January 1981 of the 148 aircraft parts would have been USD 152,421. Using the latter, Iran submits that the replacement value as at 19 January 1981 of the 148 aircraft parts would have been USD 162,776, but Iran did not present this alternative valuation of its claim for the replacement value in its Summary Table of Claims.

2313. To assess Iran's claim for the replacement value of the 148 aircraft parts based on Mr. Shirazi's estimate described above, Mr. Gilbey's starting point was Mr. Shirazi's estimate of their original value in 1978. Mr. Gilbey stated that he consulted with Mr. Bull, introduced above,¹²²¹ to evaluate Mr. Shirazi's estimate. On the basis of this consultation, Mr. Gilbey

¹²¹⁹ See *supra* para. 606.

¹²²⁰ See *supra* para. 2218.

¹²²¹ See *supra* para. 2221.

concluded that, of the 148 aircraft parts, the “high value parts . . . are really the propellers.” While he was not able to identify the price of the 17 propellers in 1981, Mr. Gilbey stated that he was able to identify their price in 2013 (between USD 15,000 and USD 40,000) on the basis of the price list issued by their manufacturer, Hartzell. Mr. Gilbey stated that less than half of the price of the 17 propellers today was “significantly over” Mr. Shirazi’s estimate of the replacement value of the 148 aircraft parts as at 19 January 1981. Mr. Gilbey also stated that he also performed a similar analysis for the other parts at issue in this Claim.

2314. Iran stated that Mr. Gilbey’s assessment of replacement value on the basis of the methodology described above insofar as indexing and depreciation is concerned was between USD 148,419 and USD 162,776, depending on the extent to which technological obsolescence would have impacted their value.

2) *Fair Market Value*

2315. Iran considers that, as of the Notice of Sale of Personal Property, dated 27 March 1981,¹²²² 130 of the 148 aircraft parts had been repaired, overhauled, or cleaned on account of notations “OH” (overhauled), “RP” (repaired), “IR” (irreparable), and “CL&LB” (cleaned and lubed) on the corresponding list of parts. However, notwithstanding Mr. Shirazi’s testimony that Aseman would normally prepare multiple copies of, *inter alia*, repair orders, no such documents are on record.

2316. On the basis of this testimony and the notation in Iran’s hearing presentation that Mr. Gilbey’s assessment was for “FMV (Repaired),” the Tribunal assumes that Mr. Gilbey deducted 35 percent from his assessment of the replacement value of the parts as at 19 January 1981, set out above, to account for the fact that on that date, the 148 aircraft parts were not new.

2317. Thus, in Mr. Gilbey’s opinion, the fair market value of the parts as at 19 January 1981 was between USD 96,472 and USD 105,805, depending on the extent to which technological obsolescence would have impacted their value.

¹²²² See *supra* para. 611.

3) *Loss of Use*

2318. Under this head of damages, Iran claims an amount of USD 50,000 relating to its Fairchild Aircraft FH-227 fleet (four planes), which was grounded in a base in Abadan due to the non-return of the 148 aircraft parts at issue in this Claim. According to Iran, the non-return of the 148 aircraft parts caused Aseman's inability to transfer the four aircraft elsewhere, which led to their eventual destruction by Iraqi missiles during the Iran-Iraq war. According to Mr. Shirazi's testimony, had Iran been able to transfer the aircraft elsewhere, Iran could have generated revenue from them.

2319. When explaining how he had arrived at the USD 50,000 figure, Mr. Shirazi testified that, "at the time, we calculated that if the aircraft were operational for one year, they could have produced that amount of income for us, and that is where we got to that figure of 50,000." Mr. Shirazi added that his estimate was based on prior experience that had shown that those planes could generate an annual revenue close to USD 50,000. Furthermore, Mr. Shirazi testified that the said amount did not include any deductions for associated expenses.

(ii) *The United States' Contentions*

1) *Replacement Value*

2320. The United States submits that Iran's primary claim for the replacement value should be rejected because Iran cannot prove that the replacement transactions it relies upon have actually taken place.

2321. Mr. McClellan testified that the 148 aircraft parts at issue in this Claim would have been available for purchase in the spare parts market worldwide. With reference to Mr. Shirazi's testimony, the United States also argues that Aseman did not seek to develop relationships with other suppliers or attempt to make any replacement purchases.

2322. The United States also suggests that Mr. Shirazi's estimate of the original value of the 148 aircraft parts, and therefore both his and Mr. Gilbey's assessments on the value as at 19 January 1981, is unreliable because no supporting documentation was provided. Mr. McClellan also criticizes Mr. Shirazi's use of an inflation rate, rather than an asset-specific index, to bring his estimate of the original value of the parts forward to the valuation date.

2) *Fair Market Value*

2323. The United States contends that the proper measure of direct damages for the 148 aircraft parts is their fair market value on the date of the United States' breach. However, the United States also submits that, in the absence of reliable evidence of the original cost of the 148 aircraft parts, any award of damages based on an assessment of their fair market value using Mr. Shirazi's estimate of their original value would be speculative.

2324. Notwithstanding the above, Mr. McClellan's response to Mr. Gilbey's methodology for his assessment of the fair market value of the 148 aircraft parts has been described above.

2325. In relation to this Claim specifically, the United States notes that Iran has not produced evidence of the actual repair costs for the 148 aircraft parts, even if Aseman kept such records. As for the other aircraft parts claims, the United States thus submits that the Tribunal should accept Mr. McClellan's assumption that an unrepaired part would retain only 10-25 percent of its original value.

3) *Loss of Use*

2326. The United States contends that Iran's claim for damages due to loss of use should be rejected for four reasons. First, the United States argues that the attack on the Abadan airport, where the planes were allegedly grounded, took place at the beginning of the Iran-Iraq war in 1980; thus, the planes would have been destroyed before the Algiers Declarations were concluded and before any breach by the United States could have occurred. Second, according to the United States, Iran did not take any steps to mitigate its losses. Third, the United States maintains that the grounding of these planes was not foreseeable since other spare parts would have been available. And, fourth, the United States argues that Iran's claim does not meet the requirements established by this Tribunal in *Sedco, Inc. v. National Iranian Oil Co.* for claims of loss of use. In his report, Mr. McClellan also criticizes this aspect of Iran's claim because, *inter alia*, Iran has not provided "[i]nformation regarding the subject aircraft history, such as flight logs, operational status, and regularity of use" and "[c]ontracts, tickets, or other documents to show how, if at all, the aircraft earned or would have earned income for Iran."

(c) *The Tribunal's Decision*

(i) *Fair Market Value*

2327. The Tribunal notes that it has not been presented with any evidence of the actual cost of replacing the 148 aircraft parts at issue in this Claim. In any event, The Tribunal finds that the appropriate measure of Iran's damages resulting from the United States' breach of the Algiers Declarations is the fair market value of the 148 aircraft parts on 26 February 1981. The Tribunal has been provided with evidence that most but not all of the 148 aircraft parts at issue in this Claim were repaired by 26 February 1981. The Tribunal will now analyze the available evidence to determine whether it can assess the fair market value of those aircraft parts on 26 February 1981, considering the methodology proposed by the Parties' expert witnesses.

2328. The Tribunal considers that the cost approach is therefore an appropriate method for assessing the value of the 148 aircraft parts. The starting point of the cost approach is the original price of the parts. In case that information is not available, the Tribunal would be prepared to estimate the original price of the parts based on their repair cost as it has done in respect of Claim Supp. (2)-55 above.¹²²³ In the present Claim, however, there is no contemporaneous documentary evidence on record of either the original cost of the 148 aircraft parts or their repair costs.¹²²⁴

2329. In the absence of that information, Iran and its expert witness, Mr. Gilbey, relied on the testimony of Mr. Shirazi, who testified that he had estimated the original purchase price of the 148 aircraft parts using data of purchases in Aseman's records at different points in time to calculate an average price of the parts.¹²²⁵ Mr. Shirazi stated that he provided the documents and records he had used and relied on for his calculations to Iran's counsel at the time he prepared his affidavit, but neither he nor Iran proffered either the records or excerpts thereof or any other documents that would have allowed the United States and the Tribunal to verify his calculations. As for the other aircraft parts claims, Iran resorted to the expert witness testimony of Mr. Gilbey to support the reasonableness of Mr. Shirazi's estimate of the replacement value as at 19 January 1981, and therefore the underlying original value of the 148 aircraft parts.

¹²²³ See *supra* paras. 2259-2261.

¹²²⁴ See *supra* para. 2311.

¹²²⁵ See *id.*

While Mr. Gilbey testified that, in light of the current prices of 17 propellers among the 148 aircraft parts, the estimate provided by Mr. Shirazi seemed reasonable,¹²²⁶ he also conceded that it would be “very, very difficult, if not impossible” to provide a “meaningful valuation” of the propellers in 1981 using current prices (*i.e.*, by performing a “regressive valuation technique” over a 30-year period). The Tribunal assumes that the same would apply to the other 131 aircraft parts at issue in this Claim, if current pricing information were available.

2330. In the Tribunal’s view, the absence of primary documentation, such as the records consulted by Mr. Shirazi to make his calculations or excerpts thereof, is problematic. It is undisputed that, at some point, these documents were in possession of, or at least available to, Iran and his witness, Mr. Shirazi. However, Iran has failed to produce any such documents, choosing to rely solely on the testimony of Mr. Shirazi as the underlying basis for all of its alternative claims. As to Mr. Gilbey, he conceded that it was very difficult, if not impossible, to verify the reasonableness of the estimate given by Mr. Shirazi based on the information available.¹²²⁷

2331. Furthermore, the Tribunal has considered the possibility of resorting to the price for which Piedmont sold the 148 aircraft parts in April 1981 in order to check the reasonableness of Mr. Shirazi’s price estimation. However, without any evidence of the auction price, there is no reliable basis for assessing the fair market value of the 148 aircraft parts on 26 February 1981. According to Piedmont’s letter of 10 September 1990 to OFAC,¹²²⁸ the auction of the 148 aircraft parts was held on 14 April 1981, Piedmont was the only bidder, and Aseman’s debt was, subsequently, removed in its entirety from Piedmont’s books. However, the fact that that debt, the amount of which is not evidenced on record, was completely removed from Piedmont’s books does not allow the Tribunal to conclude that the auction price met the amount of the debt. Furthermore, Mr. Shirazi alluded at the Hearing to a telex, which is not on record, in which Piedmont advised Aseman that the 148 aircraft parts sold for USD 47,000.

2332. In light of the above, the Tribunal concludes that Iran has not produced evidence adequate to estimate the original value of the 148 aircraft parts. The impossibility of estimating the original value of the aircraft parts in a reliable manner leaves the Tribunal with no means

¹²²⁶ See *supra* para. 2313.

¹²²⁷ See *supra* para. 2329.

¹²²⁸ See *supra* para. 630.

to assess their fair market value on 26 February 1981. Therefore, the Tribunal dismisses Iran's claim for direct damages in relation to the 148 aircraft parts at issue in this Claim.

(ii) *Loss of Use*

2333. Under this head of claim, Iran seeks damages allegedly incurred by Aseman as a consequence of having been deprived of the use of the 148 aircraft parts, namely the loss of use derived from having four planes grounded as a result of the non-transfer of the spare parts at issue in this Claim. However, Iran has not established that the alleged destruction of the four grounded aircrafts took place after the signing of the Algiers Declarations and the accrual of the United States' transfer obligation.

2334. Moreover, as delineated earlier in this Partial Award,¹²²⁹ in the Tribunal's practice, lost profits may be awarded, provided that the claimant, as a threshold matter, is able to establish to the Tribunal's satisfaction that profits would have in fact accrued.¹²³⁰ The Tribunal has held that any alleged loss of profit must be shown with a sufficient degree of certainty, and it has rejected claims that were too speculative.¹²³¹ The Tribunal recalls here the criteria used in *Sedco, Inc. v. National Iranian Oil Co.* when deciding the loss-of-use claim in that case.¹²³²

2335. Against this background, the Tribunal finds that Iran's claim for loss of use of the 148 aircraft parts does not meet the criteria established in this Tribunal's practice for the substantiation of this kind of claim. Iran merely relies on the testimonies of Mr. Shirazi and Mr. Mohammed Hossein Alirezaei, who assert, without any evidentiary support, that Aseman

¹²²⁹ See *supra* paras. 2034-2039.

¹²³⁰ See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, paras. 55 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 209; *Dadras Int'l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 267 (7 Nov. 1995), reprinted in 31 IRAN-U.S. C.T.R. 127, 200.

¹²³¹ See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 58 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 210 (dismissing a claim for lost profits because the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit); *Seismograph Service Corp. et al. and Islamic Republic of Iran et al.*, Award No. 420-443-3, paras. 306-307 (22 Dec. 1988), reprinted in 22 IRAN-U.S. C.T.R. 3, 80-81 (partially dismissing a claim for lost profits because the profit margin claimed by the Claimant was exaggerated deeming it purely speculative); *Dadras Int'l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 276 (7 Nov. 1995), reprinted in 31 IRAN-U.S. C.T.R. 127, 203-4 (dismissing a claim for lost profits for failure of proof because the damages claimed were unduly speculative, and the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit).

¹²³² See *supra* para. 2037.

suffered damages for loss of use totaling USD 50,000.¹²³³ Apart from this unsupported testimony, Iran has proffered no evidence showing: (i) that replacement purchases could not be made; (ii) how long such a replacement would have taken; (iii) that the 148 aircraft parts would have generated any revenue; and (iv) how much that revenue would have amounted to.

2336. The Tribunal therefore finds that the damages claimed by Iran as compensation for loss of use have not been established with a sufficient degree of certainty and, thus, are unduly speculative. Consequently, Iran's claim for loss of use is dismissed for failure of proof.

(iii) *Conclusion*

2337. In light of the foregoing, the Tribunal dismisses all of Iran's claims for damages in Claim G-131.

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

(a) *Introduction*

2338. 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.”¹²³⁴ The Tribunal has found that the aircraft parts at issue in Claim Supp. (2)-56 were 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.¹²³⁵ 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 aircraft parts at issue to Iran. Thus, the United States is liable in damages to Iran for its breach of the General Declaration.

2339. According to its Summary Table of Claims, Iran seeks damages on the basis of one of four alternative valuations of the rotary actuator and two fan assemblies:

- (i) between USD 42,607 and USD 46,729, which Iran submits is the as new replacement value at 19 January 1981, calculated on the basis of an assumption

¹²³³ See *supra* paras. 2318-2319. Mr. Alirezaei worked in the “shipping and receiving” department of Air Taxi at the times here relevant. He provided an affidavit and appeared as a witness for Iran at the Hearing.

¹²³⁴ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. 112, 139.

¹²³⁵ See *supra* para. 753.

that Iran Air would not send parts for repair if the repair costs were more than 20 percent of the original value of the parts;

- (ii) USD 37,048, which Iran submits is a “conservative estimate[] of the market value” as at 19 January 1981;
- (iii) between USD 21,376 and USD 23,444, *i.e.*, the fair market value as at 19 January 1981 calculated on the basis of an assumption that Iran Air would not send parts for repair if the repair costs were more than 20 percent of the original value of the parts; and
- (iv) between USD 7,529 and USD 8,257, *i.e.*, the fair market value as at 19 January 1981 calculated on the basis of an assumption that Iran Air would not send parts for repair if the repair costs were more than 40 percent of the original value of the parts.

2340. Iran also seeks USD 3,686.30 as compensation for the legal fees and expenses that Iran Air incurred in relation to the March 1987 settlement agreement with Garrett, the successor to Airesearch.¹²³⁶ Iran further seeks interest on the amount awarded.

(b) The Parties’ Contentions

(i) Iran’s Contentions

1) Replacement Value

2341. Mr. Gilbey did not have the evidence of the original cost of the rotary actuator and two fan assemblies at issue in this Claim, so Iran explained that he derived his estimate of the original value from the repair costs (*i.e.*, USD 4,400 for the rotary actuator, and USD 1,310 and USD 1,220 for the two fan assemblies, respectively).

2342. Mr. Gilbey testified that he applied indexation from the beginning of January 1978 for this Claim because the original purchase date was not available. Likewise, Mr. Gilbey applied his adjustment for technological obsolescence from January 1978 for this Claim, equivalent to a one-time adjustment of nine percent.

¹²³⁶ See *supra* para. 724

2343. Applying this methodology, Mr. Gilbey concluded that the estimated value of the rotary actuator and two fan assemblies “as new” as at 19 January 1981 was between USD 42,607 and USD 46,729, depending on the extent to which technological obsolescence would have impacted their value.

2) *Fair Market Value*

2344. Iran stated that it “has no knowledge of how the repair items were treated when they reached Airesearch or during the period in which they would have been blocked.”

2345. Based on the assumption that Iran Air would not have sent a part for repair unless the repair costs were over 40 percent of its original value, in Mr. Gilbey’s opinion, the fair market value of the rotary actuator and two fan assemblies as at 19 January 1981 was between USD 7,529 and USD 8,257, depending on the extent to which technological obsolescence would have impacted their value. Mr. Gilbey’s alternative valuation, assuming that Iran Air would not have sent a part for repair unless the repair costs were 20 percent of its original value, was between USD 21,376 and USD 23,444, again depending on the extent to which technological obsolescence would have impacted their value.

3) *Legal Fees and Expenses*

2346. Iran also claims damages for the legal fees and expenses that Iran Air incurred in relation to the 1987 settlement agreement in connection with the properties at issue in this Claim. Iran submits that “[t]he dispute [between Iran Air and Garrett] related to repair spare parts w[as] ultimately settled following a legal action taken by Iran Air in the United States.” Iran further submits that “Iran would not have had to incur these legal fees but for the United States’ breach, as it would have otherwise received its property shortly after January 1981.” As support for its claim, Iran relies on an invoice for legal fees and expenses from its attorneys Condon & Forsyth, dated 31 October 1986, for the amount of USD 3,686.30.

(ii) *The United States’ Contentions*

1) *Replacement Value*

2347. The United States disputes that Iran is entitled to the replacement value of the rotary actuator and two fan assemblies in this Claim. According to the United States, as a result of the March 1987 settlement agreement between Iran Air and Garrett, the successor to

Airesearch, Iran waived any right it may have had to receive the properties at issue, or their value in lieu. The United States also observes that the March 1987 settlement agreement specifically lists the three repair order numbers corresponding to the parts at issue in this Claim.

2348. Moreover, the United States notes that the record of this Claim contains three airway bills showing the customs values of the rotary actuator and two fan assemblies, as declared by Iran, in 1978. According to the United States, these airway bills show that the rotary actuator was valued by Iran at USD 400, one of the fan assemblies at USD 600, and the other fan assembly at USD 300, for a total value of USD 1,300. The United States submits that the values declared on these airway bills contradict Iran's claim for damages of between USD 7,529 and USD 46,729, given that Iran itself considered that the properties were only worth USD 1,300 in 1978.

2349. Mr. McClellan further testified that the aircraft parts at issue in this Claim would have been widely available in the marketplace in 1981 because they were from planes that were in the "ageing or maturing phases."

2) *Fair Market Value*

2350. In the alternative, should the Tribunal find that Iran is entitled to compensation for the properties at issue in this Claim, the United States submits that the proper measure of direct damages for the aircraft parts is their fair market value on the date of the United States' breach.

3) *Legal Fees and Expenses*

2351. The United States submits that Iran's claim for legal fees and expenses should be rejected because "there is no causal connection between Iran Air's incurring legal fees and expenses and any United States breach of an obligation under Paragraph 9." According to the United States, Iran is not entitled to damages for these legal fees and expenses because "Iran's lawsuit was contractual in nature for money damages against [Garrett]." The United States further contends that the legal fees and expenses incurred were unconnected with the breach of any obligation by the United States because Iran "never requested or demanded shipment of the . . . repaired parts" in its claim against Garrett. Moreover, the United States contends that Iran has not provided evidence showing actual payment of the invoice.

(c) *The Tribunal's Decision*

1) *Claims based on Replacement Value and Fair Market Value*

2352. The Tribunal considers two factors to be crucial to the disposition of this Claim. First, Articles 1 and 4 of the March 1987 settlement agreement concluded between Iran Air and Garrett, Airesearch's successor, specifically listed, among others, the three repair orders with numbers corresponding to the rotary actuator and two fan assemblies at issue in this Claim. According to Articles 3 and 4 of the settlement agreement, Garrett paid Iran Air a sum of USD 5,000, and Iran Air agreed to waive any rights to parts, money, or interest alleged to be owed for those specific parts.¹²³⁷ Relatedly, the Tribunal has held above that the breach by the United States of its Paragraph 9 obligation in relation to the aircraft parts at issue in this Claim ended when the settlement agreement was signed because the aircraft parts ceased to be Iranian properties as a result thereof.¹²³⁸

2353. Second, the Tribunal observes that Iran claims only direct damages in the form of the replacement value or the fair market value of the aircraft parts at issue in this Claim as at 19 January 1981. Iran makes no claim for consequential damages relating to the decrease in value of the aircraft parts; it only claims consequential damages relating to legal fees and expenses incurred in relation to the settlement agreement.

2354. The Tribunal considers that, in the settlement agreement, Iran received compensation of USD 5,000 in lieu of the delivery of the items listed in that settlement agreement, which included the rotary actuator and two fan assemblies at issue in this Claim. Having received compensation in lieu of receiving the items, Iran cannot now seek double recovery by claiming the replacement value or the fair market value of the rotary actuator and two fan assemblies from the United States. Iran has made no other claim in relation to these aircraft parts. The Tribunal therefore dismisses Iran's claim for direct damages in relation to the properties at issue in this Claim.

¹²³⁷ *See id.*

¹²³⁸ *See supra* para. 749.

2) *Legal Fees and Expenses*

2355. The Tribunal next turns to Iran's claim for legal fees and expenses incurred in connection with the properties at issue in this Claim, in the amount of USD 3,686.30.

2356. As support for its claim, Iran relies on an invoice dated 31 October 1986, from its attorneys Condon & Forsyth. As noted above, Iran asserts that the work being invoiced for was in relation to the settlement agreement between Iran Air and Garrett, and that these legal fees and expenses would not have been incurred but for the United States' breach.¹²³⁹ The assertion by Iran that the work carried out by Iran Air's attorneys led to the March 1987 settlement agreement has not been contested by the United States.

2357. The Tribunal considers that the properties at issue in this Claim would not have been in the jurisdiction of the United States had the breach of Paragraph 9 not occurred. Although the orders relating to properties at issue in this Claim were not the subject of the claim filed by Iran Air against Garrett, which led to the settlement agreement, it has not been disputed that the settlement agreement was the result of Iran Air's decision to file that claim, and that the repair orders concerning the properties at issue in the present Claim would not have been included in the settlement agreement had the United States not committed a breach of its Paragraph 9 obligation. Therefore, the Tribunal finds that Iran is entitled to compensation for the legal fees and expenses set out in the 31 October 1986 invoice.

2358. These considerations lead the Tribunal to the conclusion that Iran is entitled to compensation of USD 3,686.30 for the legal fees and expenses incurred in relation to the settlement agreement.

3) Conclusion

2359. Based on the foregoing, the Tribunal awards Iran a total of USD 3,686.30 for this Claim.

¹²³⁹ See *supra* para. 2346.

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

(a) *Introduction*

2360. 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.”¹²⁴⁰ The Tribunal has found that the United States breached its Paragraph 9 obligation by failing to take all reasonable steps to ensure that Exide transferred the G-105 Items to Iran.¹²⁴¹ The Tribunal finds that this failure by the United States was the principal cause of the non-transfer of the G-105 Items to Iran. Thus, the United States is liable in damages to Iran for its breach of the General Declaration.

2361. According to its final pleadings, in Claim G-105, Iran seeks USD 29,063.90 in compensation for United States’ failure to arrange for the transfer of the G-105 Items, which consisted of 325 dry-charged batteries, six battery chargers, and 26 drums of electrolyte. Iran seeks interest on any amount awarded. Iran has abandoned initial claims for consequential damages for loss of use and replacement costs “because it is not in a position to fully document them.”

(b) *The Parties’ Contentions*

(i) *Iran’s Contentions*

Value of the Items and Deterioration

2362. In reply to the argument of the United States that the G-105 Items would have rapidly deteriorated in value, Iran contends that the United States has not submitted any evidence to prove this assertion.

2363. Iran states, rather, that the documentary evidence in this Claim suggests that the G-105 Items would have retained their value. According to Iran, the purchase order, dated 13 November 1977, shows that the G-105 Items were durable and well-packed, since the purchase price included an amount for export packing.

¹²⁴⁰ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

¹²⁴¹ See *supra* para. 870.

2364. Iran notes, further, that the 325 batteries were dry charged, which means that they would have been packed in airtight packaging before being packed for shipment. Similarly, according to Iran, the electrolyte for the batteries was stored separately in poly-lined steel drums before being packed for export to protect its contents from damage or leakage. According to Iran, electrolytes stored in this way can be stored for many years.

2365. Relying on evidence provided by Dr. Michael McDonagh, who worked as technical director at several large battery manufacturers and appeared as a witness for Iran at the Hearing, Iran asserts that dry-charged batteries are usually transported without the acid present and are only assembled at their destination in order to ensure that the storage time does not affect their condition. The packaging for shipment would also usually prevent damage occurring during transport. In Mr. McDonagh's view, the batteries at issue would have been in very good condition on 1 April 1980, when they were received by Quaker Packaging,¹²⁴² and even in January 1981.

2366. In relation to the chargers, Iran notes that they were all guaranteed for continuous operation up to 40 degrees Celsius according to the purchase order, which indicates that they were made of durable materials.

2367. According to Iran, the cargo handler's receipt dated 1 April 1980, stating that the shipment was received "wet & damaged,"¹²⁴³ gives no indication as to the condition of the G-105 Items themselves, and the cargo handler does not appear to have inspected or tested the equipment. Iran asserts, further, that there is also no indication as to which and how many G-105 Items had been affected by wetness or damage.

2368. Iran asserts that even the United States' expert witness, Mr. Mark Brown of PwC, estimated that the G-105 Items would have a useful life of up to ten years.¹²⁴⁴ According to Iran, Mr. Brown, however, apparently abandoned this assessment of the useful life of the G-105 Items in light of Mr. Rossi's opinion concerning the condition of those items.

2369. Iran asserts that if the equipment was in good condition when it arrived in Philadelphia, as Iran maintains, then, the United States' original position, set out in its 17 September 1984

¹²⁴² See *supra* para. 836.

¹²⁴³ See *id.*

¹²⁴⁴ See *infra* para. 2378.

report to the Tribunal on Iranian tangible properties, that it had been “returned to inventory” is more likely to reflect the truth than its present position, according to which the batteries had been destroyed before 19 January 1981.

2370. In response to the United States’ assertion that the G-105 Items had suffered considerable depreciation by January 1981, Iran contends that the United States should have received an estimate from Exide of the fair market value of the G-105 Items in both the 1980 and 1982 census. According to Iran, the United States contention that the value of the G-105 Items was zero at the critical date is based solely on the allegation that the property had been destroyed prior to 19 January 1981.¹²⁴⁵ Iran contends that, instead, the evidence shows that the property would have retained its value up to and beyond 1981.

Shipping Costs

2371. In response to the United States’ argument that Iran’s claim should be reduced to account for shipping costs, Iran contends that the KWPA had already paid those costs and should not have to pay them twice. Furthermore, it is Iran’s understanding that costs of export packing and shipment should be included in the compensation. Relying on the International Financial Reporting Standard No. 16, Iran states that the value of an asset would include any costs directly attributable to bringing the asset to the location where it was intended to operate.

2372. Iran therefore maintains its claim for compensation of USD 29,063.90.

(ii) The United States’ Contentions

2373. Relying on evidence given by Mr. Rossi,¹²⁴⁶ the United States maintains that Exide did not retain the batteries and charging equipment from 1980 onwards but rather “disposed of” those items. According to the United States, Exide completed performance of its contractual obligations by manufacturing, packing, and shipping the ordered goods to Iran. As a result, Exide was entitled to the full USD 29,083.93 payment that it received.

¹²⁴⁵ See *supra* para. 841.

¹²⁴⁶ See *id.*

Value of the Items and Deterioration

2374. The United States asserts that the batteries would certainly have been useless upon their return to the port of Philadelphia. According to Mr. Rossi, the contact with wet conditions would have seriously damaged the chargers, and the damage to the steel drums could have led to a chemical reaction affecting the electrolyte's usefulness. Mr. Rossi noted that the G-105 Items were supposed to have arrived at their final destination in the United States much more quickly than the 18 months he states that it actually took. Relying on Mr. Rossi's 13 April 1984 letter¹²⁴⁷ and his testimony, the United States maintains that the G-105 Items had been disposed of – either thrown away or scrapped – soon after they arrived in Philadelphia in their wet and damaged condition in 1980, well before the Algiers Declarations.

2375. In the United States' view, therefore, either there is no property that falls to be valued by the Tribunal, or the property that does fall to be valued was significantly damaged.

2376. The United States disputes that Iran can claim for the full amount of ESB's 12 December 1978 invoice, *i.e.*, USD 29,063.93. Based on Mr. Brown's 2010 report and his testimony at the Hearing, the United States asserts that it would be incorrect to use the invoice price as a proxy for the fair market value of the G-105 Items. According to the United States, the value of the G-105 Items was affected by inflation and other market factors; further, the batteries and chargers had suffered deterioration, which would also need to be accounted for.

2377. According to Mr. Brown, export packing, freight forwarding, and insurance costs would have to be deducted from the fair market value, because those costs are essentially ancillary goods and services. The next step after ascertaining the historical costs is to apply an index to measure the change in price over time. The appropriate index would be the United States Bureau of Labor Statistics Producer Price Index specific to batteries and related commodities. Mr. Brown states that, in this instance, the date of indexing would be the date of the order, which is 13 November 1977, as it was the point in time when the price was agreed.

2378. The third step, according to Mr. Brown, would be to make a deduction to account for depreciation, which Iran has not done. Mr. Brown considers that it would be reasonable to assume up to ten years of useful life for the G-105 Items from the date of production until the end of service. However, in this Claim, based on the specific evidence of the condition of the

¹²⁴⁷ See *supra* para. 840.

property as of January 1981, in Mr. Brown's view, as of that date: (i) 100 percent depreciation would be applicable; and (ii) the fair market value of the G-105 Items would be zero. Mr. Brown did not make any assessment of the scrap value of the G-105 Items.

Shipping Costs

2379. Relying on Mr. Brown's assessment, the United States notes that the amount claimed by Iran also includes amounts for shipping, packing, and insurance charges, as set out on ESB's invoice. According to the United States, such charges are not part of the fair market value of a tangible piece of property, nor is it an accepted valuation method to include shipping costs in the market value of an item.

(iii) The Tribunal's Decision

2380. The Tribunal has held that the G-105 Items were in existence and within the jurisdiction of the United States on 19 January 1981.¹²⁴⁸ Further, the Tribunal has found that there is insufficient evidence to conclude that those items had been destroyed by 13 April 1984, the date of Exide's letter to the State Department.¹²⁴⁹

2381. The Tribunal must now determine the date of valuation of the G-105 Items for purposes of assessing the compensation due to Iran on this Claim. In this context, the Tribunal holds that the date of valuation is the earliest date by which the Tribunal estimates that the United States, after learning about the G-105 Items, could have done everything it reasonably could to satisfy its Paragraph 9 obligation to take steps to ensure that the G-105 Items would be transferred to Iran. The Tribunal holds that such date is 30 September 1983, one month after the filing of Iran's Reply to the United States Statement of Defense.¹²⁵⁰

2382. As a starting point, the Tribunal must determine the original value of the G-105 Items. The Tribunal has been presented with an invoice from ESB dated 12 December 1978, which specifies the historical cost of the G-105 Items as of that date. According to that invoice, 325 dry-charged Exide batteries cost USD 58.10 each, the total price for the batteries thus being USD 18,882.50; the other items were priced as follows: five Exide battery chargers cost USD 2,720, one charger cost USD 1,236.50, and 26 steel drums of 15 gallons of electrolyte

¹²⁴⁸ See *supra* para. 867.

¹²⁴⁹ See *supra* para. 869.

¹²⁵⁰ See *supra* para. 868.

cost USD 858. The total price of the G-105 Items was therefore USD 23,697; this amount corresponds to the original value of those items.

2383. ESB's invoice lists, separately, the charges for shipping, packing, and insurance. The Tribunal holds that those costs cannot be recovered by Iran because, as persuasively explained by Mr. Brown, those costs are not part of the actual value of the G-105 Items; rather they are ancillary goods and services.

2384. The Tribunal further agrees with Mr. Brown that the original value of the G-105 Items, USD 23,697, must be indexed from the date on which the price was agreed, 13 November 1977 (the date of the order) to 30 September 1983, the date of the United States' breach, in accordance with the Producer Price Index (by commodity) for storage batteries (WPU117901). The Tribunal thus applies that Index and arrives at an amount of USD 28,517.

2385. From that amount, the Tribunal must deduct an adequate percentage to account for depreciation. Contrary to the opinion of the United States and its expert witness, the Tribunal is not convinced that the G-105 Items would have been so severely damaged that their value would have been zero on the valuation date. In the Tribunal's view, it is more accurate to assume that, despite the long period at sea and the notation on Quaker Packaging's 1 April 1980 "cargo receipt" that the shipment had been received "wet & damaged" – a remark that may actually have been made with reference to packaging – the G-105 Items would still have had a useful life of ten years. The rate of depreciation of the G-105 Items should therefore be calculated on that basis.

2386. The Tribunal accordingly holds that the fair market value to which Iran is entitled in compensation for the G-105 Items is USD 14,972 (rounded) and awards this amount to Iran.

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

(a) *Introduction*

2387. 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.”¹²⁵¹ The Tribunal has found that the United States breached its Paragraph 9 obligation with respect to the Chogha Mish Artifacts.¹²⁵² The Chogha Mish Artifacts would not have been within the jurisdiction of the United States had the United States not committed a breach of its Paragraph 9 obligation.¹²⁵³ Consequently, the Chogha Mish Artifacts would not have become subject to the attachment proceedings in the *Rubin* Litigation in 2003, and Iran would not have incurred legal costs in defending those items in the attachment proceedings, had that breach not occurred. Thus, the United States is liable in damages to Iran for its breach of the General Declaration.

2388. According to its Summary Table of Claims, in Claim G-32, Iran seeks the return of the items collectively known as the “Chogha Mish Artifacts” or, alternatively, compensation for the value of the property as determined by a Tribunal-appointed expert. Iran also seeks consequential damages for: (1) loss of use of the Chogha Mish Artifacts, in the amount of USD 1,608,571 for loss of use between 19 January 1981 and November 2014, and further loss of use from November 2014, or, alternatively, compensation as assessed by a Tribunal-appointed expert; and (2) legal fees and expenses incurred, in the amount of USD 864,079.13.

2389. The Tribunal notes that on 22 April 2015, the Chogha Mish Artifacts were returned to Iran.¹²⁵⁴

(b) The Parties’ Contentions

(i) Iran’s Contentions

Return of the Chogha Mish Artifacts

2390. As its primary relief, Iran seeks the return of the Chogha Mish Artifacts; alternatively, Iran seeks compensation for the value of the Chogha Mish Artifacts as determined by a Tribunal-appointed expert. The Chogha Mish Artifacts were returned to Iran by the Oriental Institute, with the assistance of the United States, on 22 April 2015.¹²⁵⁵

¹²⁵¹ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

¹²⁵² See *supra* paras. 1140-1144.

¹²⁵³ See *supra* para. 1140.

¹²⁵⁴ See *supra* para. 1143.

¹²⁵⁵ See *id.*

Loss of Use

2391. Iran claims for consequential losses arising from the revenue that would have been earned by the Iranian Cultural Heritage Organization and by Iran had the artifacts been in its possession. According to Iran, the artifacts have “scientific value which make these artifacts valuable and important to Iran, and thus a source of revenue.” Iran relies on the affidavit of Dr. Haj Seyed Javadi and the testimony of Dr. Mohammed Reza Zahedi regarding the scientific value of the Chogha Mish Artifacts and their importance.

2392. Iran submits that “the uniqueness of the artifacts, their scientific and archeological value, their importance to academia and their role in contributing to humanity’s understanding of the cradle of civilization in Ancient Persia and Mesopotamia and also in particular the role of the Chogha Mish Artifacts in our understanding of the development of written communication” make the Chogha Mish Artifacts invaluable. In support of its submission as to the uniqueness and value of the Chogha Mish Artifacts, Iran proffered the affidavit of Dr. Mohammad Haj Seyed Javadi, expert in Archaeological Affairs with the Iranian Cultural Heritage Organization. In Dr. Javadi’s opinion, the Chogha Mish Artifacts are unique and incomparable to other similar seals because they are “different from a historical perspective,” and “each artistic and archaeological work has its own special identity and is not comparable with another relic.” Nonetheless, Dr. Javadi agreed that the Chogha Mish seals would have little or no value except for archaeological analysis and study but underlined the value that the possibility of scientific study attaches to an object. According to Dr. Javadi, the Bastan Museum would have earned certain additional revenue had the Chogha Mish Artifacts been available for exhibit.

2393. Iran contends that the loss of revenue as a result of the loss of use of the Chogha Mish Artifacts falls into three categories: “[i] lost revenue from museum ticket sales; [(ii)] lost revenue from specific services offered to researchers; and [(iii)] lost revenue from the sales of publications by the Cultural Heritage Organization.”

Lost Revenue from Museum Ticket Sales

2394. In relation to the lost revenue from museum ticket sales, Iran avers that the Iranian Cultural Heritage Organization would have sent the Chogha Mish Artifacts to the Haft Tappeh and Shoosh museums in Khuzestan, which are located on the important archaeological sites and which are “popular tourist destinations.” Revenue from these museums would have

included revenue from visitors to the museums when they reopened after the Iran-Iraq war in 1986.

2395. In calculating its consequential damages arising from lost revenue from museum ticket sales, Iran relies on the calculation of its expert witness, Dr. Mohammed Reza Zahedi, the head of the Department of Tangible Cultural Property at the Iranian Cultural Heritage Organization. Iran contends that, between 1986 and 2001, there were an average of 10,000 Iranian and foreign visitors to the Shoosh museum per annum. The average ticket price for that period was 3,000 rials, amounting to average ticket revenue of 30 million rials per year, for 15 years between 1986 and 2001. In 2001, there was a surge of interest across Iran for its ancient history due to various programs sponsored by the Iranian Cultural Heritage Organization. Between 2001 and 2014, therefore, the number of visitors at the Shoosh museum increased to an average of about 15,000 visitors per year, producing revenue of around 75 million rials per year for the 13-year period. Iran therefore submits that the total ticket revenue for the Shoosh museum from 1986 to 2014 was about 1.425 billion rials. Based on calculations made by Dr. Zahedi, Iran submits that “the museum attendance and the ticket revenue would have increased by approximately 1 percent had the Chogha Mish Artifacts been put on display at the Haft Tappeh and the Shoosh Museums.”

2396. Iran’s expert witness, Dr. Zahedi, described the importance of the Chogha Mish site and its relevance to contemporary Iranian society and described the plans that the Iranian Cultural Heritage Organization had for the Chogha Mish Artifacts. Dr. Zahedi calculated the figures for the lost revenue from museum ticket sales, noting that his calculations are based on revenue statistics, and on his own research. Dr. Zahedi noted that he reviewed documents relating to lost revenue from ticket sales and publications sales from the various museums, which were in a database and made available to the central headquarters of the Iranian Cultural Heritage Organization, although not entered in the record of the present Cases. In response to questions from the Tribunal, Dr. Zahedi also noted that the calculation of lost revenue for ticket sales as one percent of the total ticket sales was “in fact related to the number of the artifacts that would be put on display” in the Shoosh and Haft Tappeh museums. Mr. Zahedi explained that, when special artifacts such as the Cyrus Cylinder were returned and put on display at the Bastan Museum, the museum saw a significant increase in visitor numbers. According to Mr. Zahedi, upon its return from the British Museum, the Cyrus Cylinder drew 400,000 visitors to the Bastan Museum.

2397. Iran further contends that the Haft Tappeh museum sees on average 8,000 visitors per year from 1986-2001, with an average ticket price of 3,000 rials per ticket. From 2001-2014, the Haft Tappeh museum sold an average of 10,000 tickets per year at a price of 5,000 rials per ticket. This results in a total of 1.010 billion rials revenue over the period 1986-2014, “of which an additional 1 percent is estimated that would have been earned had the Chogha Mish Artifacts been on public display as part of the Haft Tappeh museum.”

2398. In rebuttal, Iran notes that the expert witnesses appearing on behalf of the United States did not dispute Iran’s claim that the availability of the Chogha Mish Artifacts in Iran would have enabled Iran to earn some form of revenue which it would otherwise not have earned. Iran also notes that one of the expert witnesses appearing on behalf of the United States had never been to the Haft Tappeh or Shoosh museums, and that, although he disputed Iran’s projected museum attendance figures, he did not profess enough current knowledge on whether the interest Iranians had for their cultural heritage was increasing, thereby leading to greater museum attendance. Iran also rejects criticism leveled by one of the expert witnesses appearing on behalf of the United States as to Iran’s methodology for calculating lost profits for museum attendance, noting that the expert witness only testified that he would need more information in order to calculate lost profits for museum attendance and did not dispute the basis of Iran’s claim that the artifacts could have generated revenue from additional ticket sales.

2399. Iran therefore submits that these lost revenues would equal to an estimated loss of 10.1 million rials of lost ticket sales for the Haft Tappeh Museum and an additional 14.2 million from the lost ticket sales for the Shoosh Museum, with a total estimate of 24.35 million rials in lost museum ticket sales.

Lost Revenue from Images Provided to Researchers

2400. According to Iran’s estimates, five researchers would purchase approximately 40 specialist images from the museums per annum, at an average profit to the museums of 5,000 rials per image. In rebuttal, Iran again notes that the expert witness presented by the United States did not dispute the fact that researchers would purchase specialized images, and therefore that there was no question that Iran had suffered losses in this regard. Iran therefore submits that these lost revenues would equal to a loss of 34 million rials for the period between 1986-2014.

Lost Revenue from Sales of Publications

2401. According to Iran, due to the non-return of the Chogha Mish Artifacts, the Iranian Cultural Heritage Organization was unable to produce at least two specialist publications on the topic of the Chogha Mish discoveries. In reliance on calculations made by Dr. Zahedi, Iran estimates that, had the books been published, they would have sold approximately 2,000 copies each, at a sale price of approximately 20,000 rials. Iran submits that 50 percent of the sale price of the books would have constituted revenue earned by the Iranian Cultural Heritage Organization. Dr. Zahedi, however, in response to a question by the Tribunal, noted that 10-20 percent of the publications are provided for free, whereas 70-80 percent are sold. In rebuttal, Iran also notes that neither one of the expert witnesses presented by the United States disputed the basis of Iran's claim, despite disagreeing with the assumptions adopted by Dr. Zahedi, the expert witness presented by Iran. For Iran, therefore, the fact that Iran suffered a loss was certain, and the Tribunal need only quantify that loss, not determine whether it was possible. Iran therefore submits that these lost revenues would equal to a loss of 40 million rials.

2402. Thus, according to Iran, the total amount of lost revenue it suffered as a result of the United States' failure to arrange for the transfer of the Chogha Mish Artifacts totals 112.6 million rials as of November 2014. At the exchange rate the Tribunal previously applied, which is 70 rials per United States dollar as at the date of the breach, which Iran maintains was January 1981, Iran therefore claims the amount of USD 1,608,571 in compensation for lost revenue between 1986 and 2014.

Legal Fees and Expenses

2403. Iran submits that, as a result of the United States' breach of its Paragraph 9 obligation, the Chogha Mish Artifacts remained in the United States and became subject to the attachment proceedings in the *Rubin* Litigation in 2003. Iran argues that it incurred legal fees and expenses 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 its artifacts. According to Iran, it would not have been subject to the discovery order in the *Rubin* Litigation had it not been forced to appear to defend the Chogha Mish and the Persepolis collections. Since the Chogha Mish collection would not have been within the jurisdiction of the United States on the date that it was attached had it not been for the United States' breach

of its Paragraph 9 obligation, Iran submits that it is entitled to damages resulting from such legal fees and expenses incurred.

2404. Iran rejects any argument by the United States that Iran must establish that the *Rubin* Litigation was more expensive than it would have been if the Persepolis collection only had appeared on the original citation. For Iran, the correct question regarding causation relates to the value of the Chogha Mish Artifacts as understood by the *Rubin* plaintiffs and the availability of the Chogha Mish Artifacts for attachment in the United States. Iran notes that, had the plaintiffs in the *Rubin* Litigation intended to attach only the Persepolis tablets, the attachment against the Chogha Mish Artifacts would not have been maintained. Therefore, Iran submits that the *Rubin* plaintiffs targeted both the Persepolis and Chogha Mish collections equally and jointly, and the legal fees and expenses arising from the proceedings are joint and common costs and should be allocated equally.

2405. According to evidence submitted by Iran, these legal fees and expenses were charged to Iran by its United States attorneys from July 2006 until the termination of the attachment proceedings, as follows: (i) USD 863,268.96 between July 2006 and July 2012, of which USD 710,391.01 was charged by Berliner Corcoran & Rowe LLP and USD 152,877.95 by MoloLamken LLP; (ii) USD 658,949.45 between August 2012 and September 2014, which was charged by MoloLamken LLP; and (iii) USD 183,201.17 between November 2014 and June 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.

2406. Iran submits that its United States attorneys have advised that “the legal costs incurred by Iran for the Chogha Mish Artifacts in particular are half of the total legal costs incurred in the *Rubin* proceedings.” Indeed, counsel for Iran in the *Rubin* Litigation has also written to state that

Iran was forced to appear in this litigation in the first instance to assert the immunities of two artifact collections, the Persepolis and Chogha Mish Collections. As a result of Iran’s appearance to defend those two collections, it was subjected to a general assets discovery order and the ensuing litigation in the Seventh Circuit and U.S. Supreme Court. Accordingly, the fees and costs incurred in analyzing and defending the Seventh Circuit’s judgment are joint

and common costs of defending the Persepolis and Chogha Mish Collections that should be allocated evenly.

After the Supreme Court denied certiorari on June 25, 2012, we have continued to defend against Plaintiffs' attempt to attach and execute upon *both* the Persepolis and Chogha Mish Collections. Once again, the fees and costs incurred in defending against both collections' attachment and execution are joint and common costs that should be allocated evenly. (Emphasis in the original.)

2407. Four letters were submitted by Iran in support of an equal allocation of the legal fees and expenses between the Persepolis and the Chogha Mish collections. The first is a letter dated 12 July 2012 from Iran's attorneys Berliner, Concoran & Rowe LLP, noting that, from the time Iran entered an appearance before United States courts in July 2006 until 21 July 2008, Iran litigated various motions seeking to declare immune the Persepolis and the Chogha Mish collections. According to the same letter, approximately 35 percent of the time spent by the attorneys during this period went to litigating disputes directly related to the Chogha Mish Artifacts, at a cost of USD 147,392.67. During the same period, 30 percent of the time spent by the attorneys went to litigating whether Iran had to provide discovery regarding all of its assets in the United States. Since Iran would not have been subject to that discovery proceeding had it not appeared to defend the two collections, including the Chogha Mish Artifacts, Berliner, Concoran & Rowe LLP considers half the costs attributable to the discovery proceedings is "fairly allocated to [the] defense of the Chogha Mish Collection." Therefore, in the period July 2006 to 21 July 2008, Berliner, Concoran & Rowe LLP consider that a total of USD 210,560.96, or 50 percent of the fees incurred during this period, should be allocated to the defense of the Chogha Mish Artifacts.

2408. The same letter of 12 July 2012 discussed the allocation of legal costs in the period between 21 July 2008 and 25 June 2012. In this period, Iran noted an appeal of two District Court orders relating to the assertion of sovereign immunity over the Persepolis and Chogha Mish collections and to the discovery of all of Iran's assets in the United States. Iran also had to attend a petition filed by the *Rubin* plaintiffs before the United States Supreme Court seeking a writ of certiorari relating to the Seventh Circuit's ruling on discovery. Again, Berliner, Concoran & Rowe LLP state that, had Iran not been forced to appear in the litigation to assert the immunities of the Persepolis and the Chogha Mish collections, it would not have been subjected to the ensuing litigation related thereto. Therefore, Berliner, Concoran & Rowe

consider that USD 154,222.81, or 50 percent of the fees incurred during this period, should be allocated to the defense of the Chogha Mish Artifacts.

2409. The second letter, dated 14 August 2012, is from Iran's attorneys, MoloLamken LLP. In this letter, MoloLamken LLP affirm that approximately USD 76,388.98, "or half of our total fees, is properly attributed to defending the Chogha Mish Artifacts." The letter noted that MoloLamken LLP were retained by Iran on 31 January 2011 and, from that moment, acted for Iran in the *Rubin* Litigation "in the first instance to assert the immunities of two artifact collections, the Persepolis and Chogha Mish Collections." MoloLamken stated that, as a result of Iran's appearance to defend those two collections, it became subject to the discovery order on its assets and the ensuing litigation in the Seventh Circuit and United States Supreme Court. Therefore, "the fees and costs incurred in analyzing and defending the Seventh Circuit's judgment are joint and common costs of defending the Persepolis and Chogha Mish Collections, and half of those costs, or a total of \$74,172.47, is fairly allocated to [the] defense of the Chogha Mish Collection." Likewise, half of the costs relating to the Supreme Court's denial of certiorari, a product of the District Court's decision requiring Iran to appear to defend the immunity of the two collections, would be "properly assessable to defending the immunity of the Chogha Mish Collection." This amounts to USD 2,216.51. MoloLamken LLP therefore concluded that approximately USD 76,388.98, which is half of the total fees, is properly attributed to defending the Chogha Mish Artifacts up to and including 30 June 2012.

2410. The third letter, dated 20 October 2014, is from MoloLamken LLP, and related to costs incurred in the *Rubin* Litigation between July 2012 and September 2014. It stated that "approximately \$334,289.73, or half of the total fees and expenses on these invoices, is properly attributed to defending the Chogha Mish Artifacts."

2411. The fourth letter, dated 26 May 2016, is also from MoloLamken LLP, and relates to costs incurred in the *Rubin* Litigation between October 2014 and 22 April 2015. It referred to reasons given in the above letter dated 20 October 2014 and stated again that half of the total fees and expenses between October 2014 and 22 April 2015 "is properly attributed to defending the Chogha Mish Artifacts."

2412. Iran rejects the three defenses that the United States makes in relation to Iran's claim for consequential losses, namely, that: (i) Iran has not established that the losses were proximately caused by the United States or were reasonably foreseeable; (ii) Iran's damages

claims are imprecise or speculative; and (iii) Iran is claiming damages and interest for impermissible time periods.

2413. As to the first defense, Iran submits that there is no break in the chain of causation, since the evidence does not show inaction from Iran; rather, despite repeated efforts on Iran's part to seek the return of its properties, the United States remained inactive and in breach of its Paragraph 9 obligation. Moreover, Iran contends that "a risk may be sufficiently proximate even if it is not directly foreseeable, so long as it is within the scope of the risk allocated to the wrongdoer." Iran also submits that the legal fees and expenses it incurred in the *Rubin* Litigation were entirely foreseeable, since the United States was aware of the *Rubin* plaintiffs and others holding judgments against Iran, who were seeking to enforce over Iranian assets. Indeed, Iran notes that such persons had already tried to attach Iranian properties in various proceedings, and the United States had appeared as an intervener in those proceedings.

2414. As to the United States' second defense, that Iran's claims are imprecise and unproven, Iran notes that the Tribunal has "adopted a range of methodologies in order to provide a fair and reasonable calculation of damages." Iran moreover rejects the United States' argument that the Tribunal has applied a higher evidentiary standard to cases involving claims for legal fees and expenses than to other claims. Iran agrees that it has the burden of proof to establish the legal fees and expenses but contends that the Tribunal has not "set an exceptionally high standard," as the United States has argued. In any case, Iran submits that it has met the standard of proof necessary, and that the estimated loss of its revenue is "fair and reasonable in the circumstances." Iran also rejects the United States' argument that the 50 percent apportionment of legal fees and expenses in the *Rubin* Litigation for the Chogha Mish Artifacts is arbitrary. Iran rejects the United States' contention that the Chogha Mish Artifacts were of less significance than the Persepolis artifacts, since "the United States courts treated the two collections equally, it did not treat the two collections differently simply because of the number of artifacts and their alleged significance."

2415. In response to the United States' third defense, relating to the time period for legal fees and expenses that Iran is seeking, Iran argues that it was correct in seeking damages for its legal fees and expenses within "the overall and ongoing *Rubin* attachment proceedings," rather than legal fees and expenses only for certain phases within those proceedings, as the United States argues should be the case.

(ii) *The United States' Contentions*

Loss of Use

2416. The United States presents three primary arguments against Iran's claim for damages as a result of the loss of use of the Chogha Mish Artifacts, namely: (i) that Iran's claims for lost profits were raised for the first time at the Hearing; (ii) Iran's claim for loss of use is inconsistent; and (iii) Iran's claims for loss of use are neither supported by the record nor based on sound methods and assumptions. Therefore, the United States argues that Iran's claims for damages as a result of loss of use should be dismissed.

2417. The United States' first argument is that Iran's claims for lost profits were raised for the first time at the Hearing and that, as a consequence, the United States did not have an opportunity to address the claims prior to the Hearing.

2418. Second, the United States notes that the claims presented for lost museum ticket revenue, lost publishing revenue, and lost revenue from image sales are "drastically different from the claims Iran put forth in the written stage of the proceedings, and have no support in the documentary record of this case." According to the United States, these claims should be dismissed because it did not previously have an opportunity to address them, and, in any case, the "drastic difference between the old and the new claims [presented by Iran] calls into question whether there really was ever firm plans to use these artifacts." Moreover, the United States points to inconsistencies between Dr. Javadi's affidavit and Iran's submissions at the Hearing. The United States points out that, in his affidavit, Dr. Javadi stated that Iran's "plan was to use the artifacts to attract new foreign visitors to the Iran Bastan Museum, and to loan the artifacts out for participation in foreign exhibitions." However, at the Hearing, Iran stated that its plan instead had been to "send the artifacts to the provincial museums in Sh[oo]sh and Haft Tappeh, and apparently not to do foreign exhibitions at all."

2419. For the United States, this discrepancy in the apparent plans of Iran for the Chogha Mish Artifacts is also evidenced by the different plans for publications on the Chogha Mish Artifacts. The United States notes that Dr. Javadi's affidavit discussed plans for publications that would earn Iran USD 1,000 per annum between 1981 and 2004, or about USD 23,000 in total. However, in his oral testimony, Dr. Zahedi discussed Iran's plans to publish two books, which "would allegedly lead to profits of 40 million rials, which at the exchange rate Iran argues for here, 70 to 1, would amount to profits of USD 571,000 for two books." The United

States submits that Dr. Zahedi's testimony contradicted Dr. Javadi's affidavit, and that this contradiction "calls into question whether there was an organized plan for publications about these artifacts. It also calls into question the assumption that all of the books that are published will earn the same healthy rate of return."

2420. Third, the United States submits that Iran's claims are insupportable, either as a matter of evidence or methodology. The United States notes that Iran asserts that, had the Chogha Mish Artifacts been returned to Iran in 1981, the Shoosh and Haft Tappeh museums would have earned an additional one percent of revenue each year from 1986 to 2014, a total of over 24 million rials. The United States contends that, when Iran's expert witness, Dr. Zahedi, was asked by the Tribunal to confirm the method by which he arrived at the conclusion of an additional one percent of revenue per annum, his answers were inconsistent. The United States points out that Dr. Zahedi's one percent figure was not based on historical data or statistical analysis, but rather on the assumption that the Chogha Mish Artifacts, had they been displayed at the museums, would have taken up about one percent of the floor space of the museums. The United States moreover submits that Dr. Zahedi "seemed to believe that the increase in visitors to the museum would have been temporary and not sustained."

2421. In order to rebut the expert witness evidence presented on behalf of Iran by Dr. Zahedi and Dr. Javadi, the United States presented expert witness evidence in the form of an affidavit from Dr. T. Cuyler Young, Jr., and oral testimony by Dr. Michael Danti at the Hearing.

2422. Dr. Young, Director Emeritus of the Royal Ontario Museum in Toronto, Canada, and Professor Emeritus of Near Eastern Archaeology in the Department of Near and Middle Eastern Studies of the University of Toronto, testified in his affidavit that he had studied the 109 Chogha Mish items at issue in Claim G-32. In his opinion, none of the objects are "archaeologically unusual." Moreover, Dr. Young testified that he was familiar with the collections of the Bastan Museum, and knew that the "museum has in its possession a great many superb examples of such sealings from the Late Uruk Period." According to Dr. Young, the Chogha Mish Artifacts in Claim G-32 have little or no value except for purposes of archaeological analysis and study, and even this would be true of only a limited number of the artifacts at issue. Dr. Young affirmed that the Chogha Mish Artifacts would have neither value for museum display, nor any significant commercial value on the antiquities market.

2423. Dr. Danti, a near Eastern archaeologist and professor at the University of Pennsylvania, Bryn Mawr College in Pennsylvania, and Boston University, examined the Chogha Mish Artifacts, the affidavits of Dr. Young and Dr. Javadi, and the publication record on Chogha Mish produced by the Oriental Institute. According to Dr. Danti, the Chogha Mish Artifacts were ordinary, utilitarian, and highly fragmentary material. Dr. Danti did not consider the Chogha Mish Artifacts suitable for exhibition in a museum. Dr. Danti also disagreed with the comparison made by Dr. Zahedi between the Chogha Mish Artifacts and the Cyrus Cylinder, noting that the Cyrus Cylinder “is probably one of the most famous artifacts from the ancient Near East,” whereas the Chogha Mish collection is “a typical study collection that would generally be kept in the basement of archeological museums and brought out for pedagogical or teaching purposes.”

2424. Dr. Danti conceded that he had not been to the Haft Tappeh or Shoosh museums. However, referring to the one percent calculation made by Dr. Zahedi in relation to lost museum ticket sales, Dr. Danti testified that he did not understand Dr. Zahedi’s method for calculating projected museum attendance figures, and that, in his opinion, Dr. Zahedi’s figures were unsupported. In relation to the loss of earnings from possible publications resulting from the Chogha Mish Artifacts, Dr. Danti testified that he was “unaware of profits generated from archeological monographs or publications of this nature.” He gave the example of a book he authored, which he took five years to produce at a cost of USD 150,000, and for which he receives annual royalty checks of amounts between USD 10-15. In relation to the lost sales of specialist images of the Chogha Mish Artifacts, Dr. Danti testified that the study of the Protoliterate period “is by its very nature a very small limited field.” He estimates that there are perhaps five to ten scholars in the world actually focused on that specialty at any given time that may be requesting images of the material. Moreover, according to Dr. Danti, most scholars would request accurate scale drawings instead of photographs, since photographs would not be appropriate for study. Therefore, Dr. Danti testified that, in his opinion, Dr. Zahedi’s testimony about the research value of the artifacts and museum attendance figures was unsupported.

2425. The United States also relied on the testimony of its damages expert, Mr. Martens, at the Hearing. Mr. Martens testified that Dr. Zahedi’s calculations were for alleged lost revenue, when only lost profits could have been calculated. Mr. Martens noted that Dr. Zahedi failed to make deductions for the cost of sales or services that were being rendered. In relation to the calculations for lost revenue from the potential sales of museum tickets, Mr. Martens’s opinion

was that the one percent increase in revenue testified to by Dr. Zahedi was never supported. Indeed, according to Mr. Martens, based on the information available, it would have been impossible to calculate lost profits related to museum ticket sales using the methodology that Dr. Zahedi described. In relation to the calculations for lost profits from possible publications, Mr. Marten testified that Dr. Zahedi failed to take into account the ten to 20 percent of books that were given away for free and another ten percent that might not have been sold. Mr. Martens testified that, based on the information made available to him, he would not be able to calculate lost profits of the two hypothetical books that were to have been based on the Chogha Mish Artifacts. In relation to the claim for losses related to the images to be provided to researchers, Mr. Martens testified that he was able to reconcile himself with the calculation made by Dr. Zahedi. However, Mr. Martens noted that Dr. Zahedi had likewise calculated lost revenue without deductions for the costs associated with generating that revenue, rather than lost profits. Moreover, Mr. Martens testified that he could not verify the number of researchers who would need access to such pictures.

2426. The United States therefore submits that Dr. Zahedi's calculations as to lost revenue from museum ticket sales are unsound and that, in fact, the Chogha Mish Artifacts at issue in Claim G-32 were not suitable for display in a museum at all. The United States moreover emphasizes that the Bastan Museum in Tehran already has artifacts from the Chogha Mish site that are suitable for exhibition, and that "presumably Iran could have presented visitor data from those exhibitions if indeed the foot traffic was as high as has been suggested." The United States submits that, therefore, Iran's claims for lost visitor funds cannot be sustained.

2427. The United States also submits that the Tribunal should dismiss Iran's claim for lost profits from sales of publications on the topic of Chogha Mish discoveries. The United States observes that "there is absolutely no documentary evidence to support the sales figures or profit margins Mr. Zahedi testified to." Moreover, the United States contends that Dr. Zahedi made no adjustments in his calculations in order to account for the fact that, as he testified, ten to 20 percent of the books would have been given away free of charge. The United States concedes that neither of its expert witnesses disputed the possibility that there could be books published on the Chogha Mish Artifacts. However, the United States notes that Iran did not respond to the United States' main argument that such books typically do not turn a profit and "certainly not something like the USD 573,000 Iran claims in this case for just two books."

2428. In relation to Iran's claim for lost revenue from specialized image sales to researchers, the United States submits that, according to its expert witness Dr. Danti, very few researchers in the world would likely have interest in these artifacts, and that they would typically work with illustrations and sketches rather than photographs. Moreover, the United States contends that Dr. Zahedi's figures for lost revenue from the specialized image sales do not take into account the costs associated with the production and sale of such images.

2429. Therefore, the United States submits that Iran has not proven its consequential damages in Claim G-32, and that, as a consequence, the Tribunal should dismiss Iran's damages claims for loss of use.

Legal Fees and Expenses

2430. The United States submits that Iran's claims for consequential damages resulting from the legal fees and expenses incurred in the *Rubin* Litigation are unsupported and should be dismissed. The United States contends that, to succeed on its claim, Iran must establish causation, that is, that, "but for the alleged [United States] breach, it would not have incurred the loss." In other words, the United States asserts, "Iran must establish that the Rubin litigation was \$765,924 more expensive than it would have been had only the Persepolis collection appeared on that original citation." The United States observes that, rather than calculating the alleged legal fees and expenses incurred as a result of the United States' breach of its Paragraph 9 obligation, Iran simply posited that half of the legal fees and expenses incurred in the *Rubin* Litigation should be borne by the United States. In the opinion of the United States, this is not supported by the evidence, since the legal fees and expenses incurred by Iran involve work performed for both the *Rubin* Litigation and for a number of other legal matters and issues, the latter of which, according to the United States, "would have been performed even absent a [United States] breach."

2431. The United States categorizes the legal fees and expenses claimed by Iran into three categories: (i) fees claimed that are for cases other than the *Rubin* Litigation, cases unrelated to the Chogha Mish Artifacts, or for completely unrelated legal matters; (ii) fees claimed that are for work relating solely to the Chogha Mish Artifacts and related issues; and (iii) other fees.

2432. In relation to the first category of fees, those relating to cases unrelated to the *Rubin* Litigation or the Chogha Mish Artifacts, the United States submits that those billings must be excluded from any award. By way of example, the United States points to entries in the

evidence for legal fees and expenses for work done on a separate litigation in Boston that also involves the Rubin plaintiffs and legal fees and expenses for work done in relation to the Herzfeld collection. For the United States, there is no justification for the Tribunal to order that the United States pay those legal fees and expenses, which have no causal relationship to any breach.

2433. In relation to the second category of fees, for work done that related solely to the Chogha Mish Artifacts and related issues, the United States submits that, from the legal invoices, the Tribunal is able to clearly determine the hours expended on issues or briefs unique to the Chogha Mish Artifacts. The United States concedes that, “if the non-transfer were found by the Tribunal to have occurred due to a breach of [P]aragraph 9 . . . such breach could be viewed as having caused Iran to incur those costs. As such, those fees would be included in their entirety in any fee award.”

2434. In relation to the third category, which encompasses all other fees, the United States argues that certain fees may have been caused by the non-transfer of the Chogha Mish Artifacts and others by the other collections of artifacts at issue in the *Rubin* Litigation. For the United States, in relation to this category of fees, it is not possible to determine, on the face of the invoices entered into evidence, whether the work done was due to the presence of the Chogha Mish Artifacts in the *Rubin* Litigation. The United States recalls that the Tribunal, when faced with a similar causation question, has held:

Only if one were to reach the conclusion that both tortious (or obligation-breaching) and non-tortious (or obligation-compliant) conduct of the same person would have led to the same result, one might question that the tortious (or obligation-breaching) conduct was *condicio sine qua non* of the loss the claimant seeks to recover.¹²⁵⁶

The United States argues that, on the facts of Claim G-32, the alleged United States breach cannot be considered *conditio sine qua non*, because a substantial portion of the legal fees and

¹²⁵⁶ *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 52 (2 July 2014). The Tribunal notes that the passage from Award No. 602-A15(IV)/A24-FT quoted by the United States is inapposite in the present Claim. The quoted passage refers to an “obligation-breaching . . . and . . . obligation-compliant . . . conduct of the same person” that leads to the same result (or loss), whereas, in the present Claim, only the obligation-breaching conduct of the United States with respect to the Chogha Mish Artifacts is at issue.

expenses Iran claims would have been incurred regardless of whether the breach with respect to the Chogha Mish Artifacts had occurred.

2435. For the United States, the legal fees and expenses properly considered to be related to the Chogha Mish Artifacts are far less than Iran claims, because 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 and Chogha Mish collections.

2436. According to the United States, “any appropriate award then turns on the legal questions at stake in each stage of the Rubin Litigation and its causal connection to the non-return of the Chogha Mish [A]rtifacts.” In that context, the United States divides the *Rubin* Litigation into four phases: (1) the question of asset immunity (2006-2008), for a claim of USD 285,482.25; (2) the questions of whether a third party had standing to raise the immunity of Iran’s property, and whether Iran could be subject to general asset discovery after its appearance in District Court (2006-2008, in parallel with phase 1), for a claim of USD 121,181.18; (3) the appeal concerning the general sovereign immunity issues on standing and discovery (2008-2012), for a claim of USD 449,460.56; and (4) the return of the case to trial court for litigation, and the appeal, on the question of the asset immunity of the Persepolis, Herzfeld, and Chogha Mish collections (2012-September 2014), for a claim of USD 673,915.48. The United States contends that Iran would have entered phase 1 even if the action had been brought only against the Persepolis and/or the Herzfeld collection, and that phases 2 and 3 had, in any case, no causal connection to any breach by the United States with regard to the Chogha Mish Artifacts. Therefore, Iran would not be entitled to damages for costs resulting from those first three phases.

2437. The United States moreover contends that the Tribunal should determine which legal fees and expenses Iran would have incurred as a result of an alleged breach by the United States in relation to the Chogha Mish Artifacts, and not simply engage in a “standard apportionment exercise.” According to the United States, the evidence does not prove that any breach by the United States would have led Iran to incur the legal fees and expenses in phases 1 and 4. Therefore, the United States submits that Iran’s claim is highly inflated and would in the best case amount to less than the 50 percent claimed by Iran, even for phases 1 and 4.

2438. In any case, the United States argues that the principal reason that the action was brought in the *Rubin* Litigation was to enforce the *Rubin* plaintiffs' judgment against Iran by executing against the Persepolis collection, a property with an immeasurably greater value than that of the Chogha Mish Artifacts. Indeed, the United States observes that the *Rubin* plaintiffs' filing in relation to the citation in Illinois court made no mention of the Chogha Mish Artifacts. Therefore, the United States contends that, even if the Chogha Mish Artifacts had been returned to Iran in 1981, the *Rubin* Litigation would have proceeded and the *Rubin* plaintiffs would have sought to execute their judgment against the Persepolis collection in May 2004." Based on these arguments, the United States submits that the Tribunal should not conclude that half the legal fees and expenses incurred by Iran in the *Rubin* Litigation are attributable to a United States breach of its Paragraph 9 obligation with regard to the Chogha Mish Artifacts.

(c) *The Tribunal's Decision*

(i) *Return of the Chogha Mish Artifacts*

2439. As noted above, the Chogha Mish Artifacts were returned in their entirety to Iran on 22 April 2015.¹²⁵⁷ Iran's first request for relief in this Claim has therefore been met as of that date, and the Tribunal need not consider the Parties' respective arguments on the point.

(ii) *Loss of Use*

2440. The Tribunal next turns to Iran's claims for consequential damages as a result of the loss of use of the Chogha Mish Artifacts, specifically: (i) the alleged lost revenue from potential museum ticket sales; (ii) the alleged lost revenue from images provided to researchers; and (iii) the alleged lost revenue from potential publications on the Chogha Mish Artifacts.

2441. As a preliminary point, the Tribunal agrees with the expert witness presented by the United States, Mr. Martens, that Iran made a fundamental error in its calculations by failing to make deductions for the costs associated with generating the alleged revenues. Any potential revenue that would have accrued to Iran on the basis of the Chogha Mish Artifacts must be adjusted to take into account the fact that Iran would have had certain costs in generating that revenue. Were the Tribunal to decide that Iran would have been entitled to recover the

¹²⁵⁷ See *supra* para. 1143.

consequential losses on this head, Iran would have been entitled to the net profit which the Chogha Mish Artifacts would have produced.¹²⁵⁸

2442. In relation to Iran's claims for lost revenue, the Tribunal recalls its earlier decisions that lost profits may be awarded, provided that a claimant is able to establish, to the Tribunal's satisfaction, that such profits would have accrued.¹²⁵⁹ The Tribunal found that any alleged loss of profit must be shown with a sufficient degree of certainty, and claims that were too speculative would be rejected.¹²⁶⁰ In *Sedco, Inc. v. National Iranian Oil Co.*, when deciding a loss-of-use claim, the Tribunal took into consideration four criteria, namely: (i) whether the item at issue could have been replaced by the claimant immediately; (ii) the amount of time it would have taken to replace the item; (iii) the income that would have been generated by the use of the item; and (iv) the specific amount of income that would have been generated.¹²⁶¹ Moreover, in *Sedco*, the Tribunal considered the specific facts of the case to determine whether: (i) the claimant could, in fact, have earned a profit from the item had he been in possession of it; and (ii) the claimant's evidence supporting its claimed profit was "compelling" in the light of the amount of profit "actually earned" on comparable operations.¹²⁶²

¹²⁵⁸ See, e.g., *Sapphire International Petroleum Ltd. v. National Iranian Oil Co.*, Award (15 Mar. 1963), 13 ICLQ 1011, 1015.

¹²⁵⁹ See *supra* paras. 2034-2039. See also, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, paras. 55 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 191, 209; *Dadras Int'l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 267 (7 Nov. 1995), reprinted in 31 Iran-U.S. C.T.R. 127, 200

¹²⁶⁰ See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 58 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 191, 210 (dismissing a claim for lost profits because the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit); *Seismograph Service Corp. et al. and Islamic Republic of Iran et al.*, Award No. 420-443-3, paras. 306-307 (22 Dec. 1988), reprinted in 22 Iran-U.S. C.T.R. 3, 80-81 (partially dismissing a claim for lost profits because the profit margin claimed by the Claimant was exaggerated deeming it purely speculative); *Dadras Int'l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 276 (7 Nov. 1995), reprinted in 31 Iran-U.S. C.T.R. 127, 203-4 (dismissing a claim for lost profits for failure of proof because the damages claimed were unduly speculative, and the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit).

¹²⁶¹ *Sedco, Inc. and National Iranian Oil Co. et al.*, Award No. 309-129-3 (7 July 1987), reprinted in 15 IRAN-U.S. C.T.R. 23. See *supra* para. 2037.

¹²⁶² *Sedco, Inc.*, Award No. 309-129-3, para. 85, 15 IRAN-U.S. C.T.R. at 53.

Alleged Lost Profits on Potential Museum Ticket Sales

2443. In relation to Iran's claim for lost profits on potential museum ticket sales, Dr. Zahedi's calculation methodology does not meet the criteria established in *Sedco, Inc. v. National Iranian Oil Co.* for four reasons.

2444. First, there is conflicting evidence from the expert witnesses presented by the Parties as to the display quality of the Chogha Mish Artifacts. The Tribunal agrees with Iran's expert witnesses, Dr. Javadi and Dr. Zahedi, that the Chogha Mish Artifacts are unique and of a certain cultural value to Iran and the Iranian people. However, the uniqueness and cultural value of archeological items may not translate into display quality. Although Dr. Javadi and Dr. Zahedi both testified that the Chogha Mish Artifacts would have been put on display at various museums, the expert witnesses presented by the United States, Dr. Young and Dr. Danti, disagreed. According to the United States' expert witnesses, the Chogha Mish Artifacts would have been useful only for pedagogical purposes and were certainly not of the quality to display in a museum. The Tribunal finds that there is conflicting evidence as to whether the Chogha Mish Artifacts are indeed of the quality necessary in order to be displayed in a museum and, therefore, whether their return to Iran could have led to potential profits from museum ticket sales as a result of their display.

2445. Second, the Tribunal notes that Dr. Zahedi's calculation that the return and display of the Chogha Mish Artifacts at the Haft Tappeh and Shoosh Museums would have accounted for one percent of the museums' ticket sales. That one percent, by Dr. Zahedi's admission, is based on the proportion that the Chogha Mish Artifacts would have constituted as part of the entire display collection of the Haft Tappeh and Shoosh Museums. The Tribunal recalls that the United States' expert witnesses, Dr. Danti and Mr. Martens, disagreed with the calculation methodology used by Dr. Zahedi to arrive at his one percent figure. The Tribunal finds itself unpersuaded by Dr. Zahedi's testimony. The one percent figure advanced by Dr. Zahedi is completely speculative, since Iran has failed to provide any relevant evidence to prove that the Chogha Mish Artifacts would have, indeed, accounted for one percent of the ticket sales of the Haft Tappeh and Shoosh Museums. The proportion that the Chogha Mish Artifacts would have constituted as part of the Museums' display collections, or the floor space that the Chogha Mish Artifacts would have taken in each of the Museums, is irrelevant to the calculation of potential profits from museum ticket sales. Although Dr. Zahedi testified that his figures were also based on his own research and on statistics of museum ticket sales available to the Iranian Cultural

Heritage Organization, the research and statistics were not submitted by Iran to the Tribunal. The Tribunal therefore cannot make any reasoned conclusion on the accuracy or relevance of these sources of information.

2446. Third, the Tribunal finds that the comparison made between the potential profits derived from the return of the Cyrus Cylinder and that of Chogha Mish is not apposite and irrelevant to proving consequential losses in this Claim. In support of Iran's claim that the return of the Chogha Mish Artifacts would have accounted for one percent of the ticket sales of the Haft Tappeh and Shoosh Museums, Dr. Zahedi testified that the return of the Cyrus Cylinder to the Bastan Museum, and its display, brought 400,000 visitors. The Tribunal does not doubt Dr. Zahedi's testimony in this regard. However, as Dr. Danti testified, the Cyrus Cylinder "is probably one of the most famous artifacts from the ancient Near East," whereas the Chogha Mish Artifacts constitute a typical study collection that would generally be kept in the basement of archeological museums. The Tribunal finds therefore that there can be no comparison between the Cyrus Cylinder and the Chogha Mish Artifacts and, indeed, no comparison between the public interest that the Cyrus Cylinder would attract as opposed to the Chogha Mish Artifacts. Moreover, the Cyrus Cylinder was displayed at the Bastan Museum in the capital city of Tehran, whereas, according to Iran, the Chogha Mish Artifacts were intended for display at the regional site museums of Haft Tappeh and Shoosh. The Tribunal finds that there can be no comparison between the visitor numbers to an exhibit of significance such as the Cyrus Cylinder in Iran's capital city and the visitor numbers expected for an exhibit of much less significance such as the Chogha Mish Artifacts in two regional site museums. In any case, the Tribunal observes that Iran has presented no evidence as to the actual visitor numbers at the Bastan Museum during the exhibition of the Cyrus Cylinder, apart from Dr. Zahedi's opinion at the Hearing.

2447. Fourth, as pointed out by the United States, the Tribunal notes that the testimonies given by Iran's two expert witnesses are contradictory. In his affidavit, Dr. Javadi testified that the Chogha Mish Artifacts would have been put on display at the Bastan Museum; at the Hearing, Dr. Zahedi testified as to the plans of the Iranian Cultural Heritage Organization to display the Chogha Mish Artifacts at the Haft Tappeh and Shoosh Museums. The Tribunal is inclined to agree with the United States that this inconsistency in the alleged plans that the Iranian Cultural Heritage Organization had for the Chogha Mish Artifacts "calls into question whether there really was ever firm plans to use these artifacts."

2448. These considerations lead the Tribunal to the conclusion that it is unclear whether Iran could have in fact earned a profit from museum ticket sales had it been in possession of the Chogha Mish Artifacts. The Tribunal moreover finds that the basis on which Dr. Zahedi made his calculations for the alleged lost profits is unsound. Thus, the Tribunal rejects as unconvincing and speculative Iran's submission that it is entitled to one percent of the alleged museum ticket sales as compensation for loss of use of the Chogha Mish Artifacts.

Alleged Lost Profits on Potential Sales of Images to Researchers

2449. The same considerations that apply to the alleged lost profits on museum ticket sales apply equally to Iran's claims for alleged lost profits on potential sales of images to researchers. The Tribunal observes that Dr. Zahedi's calculations were again for alleged lost revenues, without deduction for the cost of producing the images for sale. Iran estimates that five researchers would purchase approximately 40 specialist images from the museums per annum, at an average profit to the museums of 5,000 rials per image. Iran has provided no evidence to show that its estimates are correct. Nor has Iran provided evidence of similar sales, such as, for example, any such sales made by the Bastan Museum. Moreover, Dr. Danti estimates that there are perhaps five to ten scholars in the world actually focused on that specialty at any given time, and therefore this field of study is so small and specialized that it is unlikely to support a continuous stream of profit as Iran submits. The Tribunal also notes that Mr. Martens, the expert witness appearing on behalf of the United States, testified that he could not verify the number of researchers who would need access to such pictures.

2450. In light of the above, the Tribunal rejects Iran's claim for alleged lost profits from potential sales of images to researchers as speculative and unconvincing.

Alleged Lost Profits on Potential Publications

2451. Likewise, the Tribunal finds itself drawing the same conclusions in regard to Iran's claim for alleged lost profits on potential publications on the Chogha Mish Artifacts.

2452. The Tribunal notes the discrepancy between the affidavit of Dr. Javadi and the testimony of Dr. Zahedi at the Hearing. According to Dr. Javadi, the potential publications would have earned Iran USD 1,000 per annum between 1981 and 2004, or about USD 23,000 in total. On the other hand, Dr. Zahedi testified that the two books Iran intended to publish would allegedly lead to "profits of 40 million rials, which at the exchange rate Iran argues for

here, 70 to 1, would amount to profits of USD 571,000 for two books.” The vast difference between the two figures presented by Iran’s expert witness leads the Tribunal to agree with the United States that there was likely no organized plan to publish the books, and therefore any potential profit to be gained was entirely speculative.

2453. Moreover, the Tribunal agrees with Mr. Martens that Dr. Zahedi’s calculations are in any case incorrect, because Dr. Zahedi failed to take into account the cost associated with the production of these publications, the possibility that some of the publications would remain unsold, and the fact that, according to his own testimony, between ten and 20 percent of the publications are generally given away at no charge. The Tribunal also finds persuasive Dr. Danti’s testimony that a book he authored, which he took five years to produce at a cost of USD 150,000, provides him with an annual royalty return between USD 10-15.

2454. In consideration of the above, the Tribunal rejects Iran’s claim for alleged lost profits from potential publications on the Chogha Mish Artifacts as speculative and unconvincing.

Conclusion

2455. In light of the foregoing, the Tribunal holds that the damages claimed by Iran as compensation for the loss of use of the Chogha Mish Artifacts are unduly speculative. Accordingly, in line with Tribunal precedent, the Tribunal dismisses Iran’s loss-of-use claim for failure of proof.¹²⁶³

(iii) Legal Fees and Expenses

2456. According to evidence submitted by Iran, these legal fees and expenses were charged to Iran by its United States attorneys from July 2006 until the termination of the *Rubin* attachment proceedings, as follows: (i) USD 863,268.96 between July 2006 and July 2012, of which USD 710,391.01 was charged by Berliner Corcoran & Rowe LLP and USD 152,877.95

¹²⁶³ See, e.g., *William J. Levitt and Islamic Republic of Iran et al.*, Award No. 297-209-1, para. 58 (22 Apr. 1987), reprinted in 14 IRAN-U.S. C.T.R. 191, 210 (dismissing a claim for lost profits because the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit); *Petrolane, Inc. et al. and Islamic Republic of Iran et al.*, Award No. 518-131-2, paras. 109-10 (14 Aug. 1991), reprinted in 27 IRAN-U.S. C.T.R. 64, 101 (dismissing a claim for lost profits because the claimant had not proven that the lead time for obtaining replacement equipment was twelve months, or that the claimant could have rented the expropriated equipment at a profit); *Dadras Int’l et al. and Islamic Republic of Iran et al.*, Award No. 567-213/215-3, para. 276 (7 Nov. 1995), reprinted in 31 IRAN-U.S. C.T.R. 127, 203-4 (dismissing a claim for lost profits for failure of proof because the damages claimed were unduly speculative, and the claimant had not established with a sufficient degree of certainty that the project would have resulted in a profit).

by MoloLamken LLP; (ii) USD 658,949.45 between August 2012 and September 2014, which was charged by MoloLamken LLP; and (iii) USD 183,201.16 between November 2014 and June 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 June 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 June 2015. Half of those legal fees and expenses equals USD 852,709.75 (rounded). Accordingly, the Tribunal awards this amount to Iran.

(iv) Overall Conclusion

2464. In conclusion, the Tribunal awards Iran a total of USD 852,709.75 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.

2466. As stated earlier in this Partial Award, the Tribunal is convinced that,¹²⁶⁴ in May 1990, Dr. Lay shipped both the matrix samples and the extracted fossils in his possession to the Iranian Interest Section.¹²⁶⁵ Further, the Tribunal has held 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. This breach terminated on 13 June 1989, when the State Department wrote to Dr. Lay, reiterating its request for proof of shipment, and commenced actively and persistently to pursue the matter.¹²⁶⁶

(b) *The Parties' Contentions*

2467. Iran did not submit any evidence of damages in this Claim, nor did it lay out a precise methodology for either valuing the items at issue or assessing "other losses." As noted, Iran requests that the Tribunal appoint an independent expert to assess the evidence and determine the value of the matrices and the extracted fossils.

2468. The United States contends that, in light of Iran's failure to submit any valuation evidence in this Claim, there is no basis for Iran now to request that the Tribunal appoint an expert.

(c) *The Tribunal's Decision*

2469. By finding that, in May 1990, Dr. Lay shipped both the matrix samples and the extracted fossils in his possession to the Iranian Interest Section, the Tribunal has necessarily dismissed Iran's claim for the value of those items, including any scientific value. Iran's request that the Tribunal appoint an expert to assess the evidence and determine the value of the matrices and the fossils is therefore moot.

2470. Iran has not submitted any evidence that it incurred "other losses" between 1 March 1985 until 13 June 1989, the period during which the United States was in breach of its Paragraph 9 obligation to take steps to ensure that the matrices and extracted fossils in

¹²⁶⁴ See *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, n.153 (2 July 2014).

¹²⁶⁵ See *supra* paras. 1180-1182.

¹²⁶⁶ See *supra* para. 1188.

Dr. Lay's possession would be transferred to Iran. To the extent that Iran's request for the appointment of an independent expert also relates to the assessment of alleged "other losses," it is denied. "[T]he question whether to appoint an expert need only be reached in a case where the party requesting the appointment has sufficiently substantiated its claims or defense."¹²⁶⁷

2471. Accordingly, the Tribunal dismisses in its entirety Iran's request for compensation in Claim G-115.

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

(a) *Introduction*

2472. 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."¹²⁶⁸ The Tribunal has found that, with the exception of item 1 of Purchase Order No. KC-790009 and item 17 of Purchase Order No. KC-790067, the G-172 Items 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 obligations under the General Declaration with respect to those items.¹²⁶⁹ 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 G-172 Items to Iran. Thus, the United States is liable in damages to Iran for its breach of the General Declaration with respect to those items.

2473. According to its Summary Table of Claims, in Claim G-172, Iran seeks a maximum of USD 19,931.51 as compensation for the value of the G-172 Items, which were purchased under three different Purchase Orders. More specifically: (i) for Purchase Order No. KC-790004, Iran claims USD 560, allegedly representing the price of the five items ordered, or USD 550.38, representing, in Iran's view, the value of the items according to the April 1980 List;¹²⁷⁰ (ii) for Purchase Order No. KC-790009, Iran claims USD 11,048.40, representing the price of the 12 items ordered, or USD 10,984.88, representing, in Iran's view, the value of the items according

¹²⁶⁷ *Rockwell Int'l Systems, Inc. and Islamic Republic of Iran et al.*, Award No. 438-430-1, para. 80 (5 Sept. 1989), reprinted in 23 IRAN-U.S. C.T.R. 150, 168

¹²⁶⁸ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

¹²⁶⁹ See *supra* para. 1378.

¹²⁷⁰ See *supra* para. 1222.

to the April 1980 List; and (iii) for Purchase Order No. KC-790067, Iran claims USD 7,740.65, representing the price of the items ordered, or USD 8,396.25, representing, in Iran's view, the value of the items according to the April 1980 List.

(b) *The Parties' Contentions*

(i) *Iran's Contentions*

2474. As a general matter, Iran contends that, on its Claims involving Kharg ("Kharg Claims"), Iran claims for damages and not for the invoice prices of the disputed items as such. Iran considers the purchase or invoice price to be a reasonable indication of the value of those items, especially given that purchases were made relatively close to the date of valuation, which, according to Iran, is 19 January 1981. According to Iran, this is a conservative approach since most items were purchased in mid-1979 at a time of high inflation. Thus, even if the items had lost some value by January 1981, this loss would be offset by the fact that no indexation has been applied. Iran maintains that, in any event, there is little evidence of any significant diminution in value.

2475. According to Iran, the purported transfers or sales of disputed items to third parties, on the other hand, do not represent normal bargains,¹²⁷¹ and, therefore, under valuation standards, they cannot be used to determine a fair market value of any kind.

2476. Iran asserts that, if the invoice prices are not considered as a reasonable indication of the value of the items at issue in the Kharg Claims, then a cost approach would normally be appropriate in valuing those items, as proposed by the United States' valuation expert witness;¹²⁷² such approach would take the value of the original transaction and seek to reproduce the value at the valuation date. Iran considers that shipping costs, discounts, and premiums should be taken into account in a cost-approach valuation.

¹²⁷¹ See *supra* para. 1348.

¹²⁷² See *infra* para. 2482.

Purchase Order No. KC-790004 (Flanges and Fittings)

2477. As noted, Purchase Order No. KC-790004, Iran claims USD 550.38, which represents the total amount billed by Midland for the five items of that purchase order,¹²⁷³ or USD 560, the amount indicated in Kharg's telex of 14 June 1979 to AIOC,¹²⁷⁴ representing, in Iran's view, the price of the five items ordered. In support of its Claim, Iran refers, *inter alia*, to the following evidence: (i) Purchase Order No. KC-790004, issued on 6 July 1979, indicating a purchase price of USD 504.05 for the five items;¹²⁷⁵ and (ii) the 14 June 1979 telex from Kharg to AIOC, which preceded that Purchase Order and included the following reference: "KC-790004 flanges, fittings Dhrs. 560.00";¹²⁷⁶ and (iii) the April 1980 List, recording an invoiced amount of USD 550.38 for the items of Purchase Order KC-790004.¹²⁷⁷

Purchase Order No. KC-790009 (Valves)

2478. As noted, under Purchase Order No. KC-790009, Iran claims USD 11,048.40, representing the total price of 12 items of that purchase order,¹²⁷⁸ or USD 10,984.88, representing the invoiced amount recorded on the April 1980 List for items of Purchase Order No. KC-790009 in storage in Houston.¹²⁷⁹ In support of its claim, Iran refers, *inter alia*, to the following evidence: (i) an extract from Purchase Order No. KC-790009, indicating that the total price of the 12 disputed items was USD 11,048.40;¹²⁸⁰ (ii) the 14 June 1979 telex from Kharg to AIOC, which preceded that Purchase Order and included the following reference: "KC-790009 gate valves Dhrs. 14,071.66 (est.)";¹²⁸¹ and (iii) the April 1980 List.

¹²⁷³ See *supra* para. 1343.

¹²⁷⁴ See *supra* note 648.

¹²⁷⁵ See *supra* para. 1342.

¹²⁷⁶ *Supra* note 648.

¹²⁷⁷ See *supra* para. 1344.

¹²⁷⁸ See *supra* para. 1351.

¹²⁷⁹ See *supra* para. 1353.

¹²⁸⁰ See *supra* para. 1351.

¹²⁸¹ See *supra* note 650.

Purchase Order No. KC-790067 (Valves)

2479. As noted, Iran claims USD 7,740.65, representing the original price of the nine items of Purchase Order No. KC-790067 at issue in this Claim,¹²⁸² or USD 8,396.25, representing the invoiced amount recorded on the April 1980 List for items of Purchase Order No. KC-790067 in storage in Houston.¹²⁸³ In support of its claim, Iran refers, *inter alia*, to the following evidence: (i) the four invoices issued by Midland between 27 June and 8 August 1979, billing Kharg a total of USD 7,740.65 for the nine items at issue;¹²⁸⁴ (ii) the three checks, issued between 24 July and 23 August 1979, through which Kharg paid those invoices;¹²⁸⁵ and (iii) the April 1980 List.

(ii) The United States' Contentions

2480. The United States relies mainly on a report of 15 November 2010 prepared by its expert witness, Mr. Martens, and Mr. Martens's testimony at the Hearing.

2481. As a general matter, Mr. Martens stated that Iran's Claims involving Kharg ("Kharg Claims") were, effectively, for the purchase price of the items in dispute. According to Mr. Martens, however, the purchase price of those items is not necessarily an accurate reflection of their fair market value as of the valuation date.

2482. Mr. Martens considered that the appropriate method for valuing the items at issue in the Kharg Claims is the cost approach, pursuant to which the historical cost of an item would be indexed, using an appropriate index to determine the item's reproduction cost new; then, an appropriate depreciation factor would be applied to that cost to estimate the fair market value of the item. He further stated that Iran had failed to make the necessary adjustments to the historical cost figures. In particular, he noted that, in some cases, Iran had failed to account for depreciation and to exclude shipping costs and discounts from the historical costs.

2483. In keeping with the cost approach, Mr. Martens based his calculation on the amount thus identified and chose an index that he considered the most closely aligned with the underlying assets that were being valued. He based his calculations generally on the Producer

¹²⁸² See *supra* paras. 1360-1361.

¹²⁸³ See *supra* para. 1362.

¹²⁸⁴ See *also supra* para. 1361.

¹²⁸⁵ See *id.*

Price Indices maintained by the United States Bureau of Labor Statistics. Mr. Martens explained that, as a general matter, he would index from the date a particular item was invoiced.

2484. For the G-172 Items, Mr. Martens selected the Producer Price Index (by commodity) for “Machinery and Equipment: General Purpose Machinery and Equipment” (WPS114).

2485. In calculating the depreciation factor, Mr. Martens assumed a 20-year useful life for most of the items at issue in the Kharg Claims, where consumables, spare parts, and miscellaneous nuts and bolts are at issue, effectively determining a linear deterioration of those assets over time.

2486. While Mr. Martens proposed an overall fair market value for all the items at issue in the Kharg Claims, he did not propose a specific fair market value for the G-172 Items.

(c) The Tribunal’s Decision

2487. The Tribunal has found that, with the exception of item 1 of Purchase Order No. KC-790009 and item 17 of Purchase Order No. KC-790067, all G-172 Items were either sold back to Midland or sold to Sagebrush by AIOC on or after 26 February 1981.¹²⁸⁶ Accordingly, the Tribunal has held that the United States has breached its obligations under the General Declaration with respect to the Remaining G-172 Items, and that the date of the United States’ breach is 26 February 1981, the date of the Unlawful Treasury Regulations.¹²⁸⁷ The Tribunal thus proceeds to the valuation of the Remaining G-172 Items as of that date.¹²⁸⁸

2488. The Tribunal agrees with the Parties that the cost approach is the appropriate method for determining the fair market value of the items at issue in the Kharg Claims on the valuation date,¹²⁸⁹ 26 February 1981.¹²⁹⁰ In this context, the Tribunal considers that the prices at which items were sold or sold back to vendors after 19 January 1981 did not necessarily reflect their

¹²⁸⁶ See *supra* paras. 1373-1374.

¹²⁸⁷ See *supra* paras. 1377-1378. See also *supra* paras. 488, 547, 576, 598, 632, 796, 1419, 1754, 1768, 1781.

¹²⁸⁸ See *supra* para. 1374.

¹²⁸⁹ Iran’s position, more specifically, is that the cost approach would normally be an appropriate method of valuation if the invoice prices are not considered as a reasonable indication of the value of the items in dispute. See *supra* para. 2476.

¹²⁹⁰ See *supra* para. 1378. See also *supra* paras. 488, 547, 576, 598, 632, 796, 1419, 1754, 1768, 1781.

fair market value. The Tribunal further considers that occasional discounts on the invoiced prices of items should be taken into account in assessing their fair market value.

2489. In carrying out a valuation based on the cost approach, the Tribunal must, as a first step, determine the original purchase price of the item to be valued, having due regard to all the relevant evidence.¹²⁹¹

2490. In the Kharg Claims, the evidence that is particularly relevant to establishing the original purchase price of an item includes: (i) purchase orders; (ii) vendor invoices; (iii) checks proving payment by Kharg; and (iv) the April 1980 List, recording the invoiced amounts of the items held in storage in Houston in that month.

2491. The Tribunal attaches substantial relevance to the April 1980 List insofar as it represents a contemporaneous document generated *in tempore non suspecto*, *i.e.*, before the critical date of the Algiers Declarations. The creator of the April 1980 List, AIOC, Kharg's purchasing agent, was charged with collecting purchased items in Houston with a view to shipping them to Iran. It can be assumed that AIOC was administering this task in good faith as a professional agent who, in that capacity, had no reason to either deflate or inflate the prices of the items on its inventory list. Furthermore, it can be assumed that AIOC had at its disposal the complete information about those items. In the Tribunal's view, therefore, the April 1980 List represents a reliable basis for assessing the original purchase price of the items to be valued. The Tribunal will corroborate the information contained therein, to the extent possible, with other evidence on record, such as purchase orders, invoices, proof of payment, and the like.

2492. The next step in the Tribunal's assessment of the fair market value of a disputed item on 26 February 1981 is to estimate the item's replacement cost as of that date by indexing the original purchase price of the item from the date of purchase to February 1981.¹²⁹² The Tribunal holds that, for the Remaining G-172 Items, the appropriate index to be applied in this exercise is that which has been identified by Mr. Martens, and unchallenged by Iran, namely, the Producer Price Index (by commodity) for "Machinery and Equipment: General Purpose

¹²⁹¹ See *supra* paras. 2258, 2328.

¹²⁹² See *supra* para. 2258.

Machinery and Equipment” (WPS114) (“Machinery and Equipment Producer Price Index”).¹²⁹³

2493. Further, to assess the fair market value of a disputed item as of 26 February 1981, the Tribunal must make appropriate deductions from the estimated replacement value to account for the depreciation that occurred between the date of purchase and 26 February 1981. In this context, the Tribunal accepts that, in calculating the depreciation factor, it is reasonable to assume a useful life of 20 years for most of the items at issue in the Kharg Claims, including the Remaining G-172 Items, as proposed by Mr. Martens.¹²⁹⁴

2494. Finally, in order to be fully compensated for the damage caused by the United States’ breach of the Algiers Declarations,¹²⁹⁵ Iran must be awarded the costs that it paid for the shipment of items within the United States, where evidence of such costs is on record.

2495. The Tribunal now turns to the assessment of the fair market value of the Remaining G-172 Items under each of the Purchase Orders at issue.

Purchase Order No. KC-790004 (Flanges and Fittings)

2496. Between 25 July and 17 August 1979, Midland issued four invoices covering all five items of Purchase Order No. KC-790004 and billing Kharg a total of USD 550.38 (including some USD 45 in shipping costs). Kharg paid this amount through checks issued in August and September 1979.¹²⁹⁶ The April 1980 List records an invoiced amount of USD 550.38 relating to those five items.¹²⁹⁷

2497. In light of this evidence,¹²⁹⁸ the Tribunal holds that the original purchase price for the purpose of determining the fair market value of the items of Purchase Order No. KC-790004 was USD 505.38 (the Tribunal arrives at this amount by deducting the shipping costs paid by Iran, USD 45, from the total invoiced amount, USD 550.38).

¹²⁹³ See *supra* para. 2484.

¹²⁹⁴ See *supra* para. 2485.

¹²⁹⁵ See *supra* para. 1791 *et seq.*

¹²⁹⁶ See *supra* para. 1343.

¹²⁹⁷ See *supra* para. 1344.

¹²⁹⁸ See *supra* paras. 2489-2491.

2498. Having determined the historical cost of those items, the Tribunal proceeds next to assess their fair market value as of 26 February 1981. As noted, in making that assessment, the Tribunal will first estimate the replacement cost of the items as of that date.¹²⁹⁹ Assuming that their purchase date was 6 July 1979, the date of the Purchase Order,¹³⁰⁰ and adjusting the original purchase price of the items upward by 18.49 percent to account for the change in the Machinery and Equipment Producer Price Index between July 1979 and February 1981,¹³⁰¹ the Tribunal estimates that the replacement cost of the items of Purchase Order No. KC-790004 as of 26 February 1981 was USD 598.82.

2499. As a final step in assessing the fair market value of those items, the Tribunal must adjust their estimated replacement cost downward to account for the items' depreciation between 6 July 1979, the date of purchase, and 26 February 1981, the valuation date. Assuming a useful life of 20 years for the Remaining G-172 Items,¹³⁰² the Tribunal holds that, between those two dates, the items of Purchase Order No. KC-790004 depreciated by a rate of 8.24 percent.

2500. Accordingly, the fair market value of the items of Purchase Order No. KC-790004 as of 26 February 1981 was USD 549.48. Further, in order to be fully compensated for the damage caused by the United States' breach of the Algiers Declarations, Iran is also entitled to the costs that it paid for the shipment of those items within the United States, which the Tribunal assumes to have remained at USD 45.¹³⁰³ On its Claim relating to the items of Purchase Order No. KC-790004, however, Iran seeks a maximum of USD 560.¹³⁰⁴ Consequently, the Tribunal awards Iran USD 560 for those items.

Purchase Order No. KC-790009 (Valves)

2501. Through Purchase Order No. KC-790009 of 27 July 1979, AIOC ordered from Midland 12 items of valves priced at USD 11,048.40.¹³⁰⁵ On 17 and 31 August 1979, respectively, Midland issued two invoices, billing Kharg a total of USD 5,778.65 for nine out of those 12

¹²⁹⁹ See *supra* para. 2492.

¹³⁰⁰ See *supra* para. 1342.

¹³⁰¹ See *supra* para. 2492.

¹³⁰² See *supra* para. 2493.

¹³⁰³ See *supra* para. 2497.

¹³⁰⁴ See *supra* para. 2473.

¹³⁰⁵ See *supra* para. 1351.

items of valves;¹³⁰⁶ the record does not contain copies of any invoices Midland issued for the three remaining items of valves under Purchase Order No. KC-790009. Kharg paid the USD 5,778.65 (plus USD 186.23 Midland had billed for shipping) through checks issued on 1 September and 23 October 1979.¹³⁰⁷

2502. The April 1980 List records an invoiced amount of USD 10,984.88 relating to items of Purchase Order No. KC-790009 that were in storage in Houston in that month.¹³⁰⁸

2503. The Tribunal has found that, on 15 December 1980, AIOC shipped item 1 of Purchase Order No. KC-790009 (“Item 1”) to its affiliate Gulf of Suez Petroleum Company Egypt.¹³⁰⁹ Purchase Order No. KC-790009 priced Item 1 at USD 1,668 (which corresponds to the amount that Midland billed Kharg for Item 1 on 17 August 1979).

2504. In light of this evidence, and in line with its evidentiary considerations, *supra*,¹³¹⁰ the Tribunal considers that the April 1980 List is a well-founded starting point for determining the original purchase price of the items of Purchase Order No. KC-790009 that AIOC sold back to Midland or sold to Sagebrush on or after 26 February 1981 (“Sold KC-790009 Items”).¹³¹¹ To arrive at the original purchase price of those items, the Tribunal deducts from USD 10,984.88, the invoiced amount recorded on the 1980 April List for Purchase Order No. KC-790009: (i) USD 1,668, the purchase price of Item 1 (which AIOC had shipped to Gulf of Suez Petroleum Company Egypt in December 1980); and (ii) USD 186.23, the costs invoiced by Midland and paid by Kharg for shipment of the items within the United States,¹³¹² which costs the Tribunal assumes were included in the invoiced amount recorded on the 1980 April List. Accordingly, the Tribunal holds that the original purchase price of the Sold KC-790009 Items was USD 9,130.65.

2505. Having determined the historical cost of the Sold KC-790009 Items, the Tribunal next proceeds to assess their fair market value as of 26 February 1981. As noted, in making that

¹³⁰⁶ See *supra* para. 1352.

¹³⁰⁷ See *id.*

¹³⁰⁸ See *supra* para. 1353.

¹³⁰⁹ See *supra* para. 1373.

¹³¹⁰ See *supra* paras. 2489-2491.

¹³¹¹ See *supra* para. 2487.

¹³¹² See *supra* para. 2501.

assessment, the Tribunal will first estimate the replacement cost of the items as of that date. Assuming that the purchase date of the Sold KC-790009 Items was 27 July 1979, the date of Purchase Order No. KC-790009,¹³¹³ and adjusting the original purchase price of those items upward by 18.49 percent to account for the change in the Machinery and Equipment Producer Price Index between July 1979 and February 1981,¹³¹⁴ the Tribunal estimates that the replacement cost of the Sold KC-790009 Items as of 26 February 1981 was USD 10,818.90.

2506. As a final step in assessing the fair market value of those items, the Tribunal must adjust their estimated replacement cost downward to account for the items' depreciation between 27 July 1979, the date of purchase, and 26 February 1981, the valuation date. Assuming a useful life of 20 years for the Remaining G-172 Items,¹³¹⁵ the Tribunal holds that, between those two dates, the Sold KC-790009 Items depreciated by a rate of 7.96 percent.

2507. Accordingly, the fair market value of the Sold KC-790009 Items as of 26 February 1981 was USD 9,957.71. Further, in order to be fully compensated for the damage caused by the United States' breach of the Algiers Declarations, Iran is also entitled to the costs that it paid for the shipment of those items within the United States, which the Tribunal assumes to have remained at USD 186.23. Accordingly, the Tribunal awards Iran a total of USD 10,143.94 for the Sold KC-790009 Items.

Purchase Order No. KC-790067 (Valves)

2508. Through Purchase Order No. KC-790067, dated 25 June 1979, AIOC ordered items of valves from Midland. Only a portion of that order, namely, items 1, 2, 6, 7, 12, 13, 15, 16, and 17 of Purchase Order No. KC-790067, are at issue in this Claim.¹³¹⁶ Between 27 June and 8 August 1979, Midland issued four invoices under Purchase Order No. KC-790067, billing Kharg a total of USD 7,740.65 for items 1 (for one unit out of two ordered), 2, 6, 7, 12, 13, 15, 16, and 17 (including USD 11.65 in UPS charges for shipping within the United States).¹³¹⁷ Kharg paid these four invoices through three checks issued between 24 July and

¹³¹³ See *supra* para. 1351.

¹³¹⁴ See *supra* para. 2492.

¹³¹⁵ See *supra* para. 2493.

¹³¹⁶ See *supra* para. 1360.

¹³¹⁷ See *supra* para. 1361.

23 August 1979. Records of payments by Kharg in evidence indicate that Midland had billed Kharg a further USD 655.60 for items of Purchase Order No. 790067 for which Iran asserts no claim.¹³¹⁸

2509. The April 1980 List records an invoiced amount of USD 8,396.25 relating to items of Purchase Order No. KC-790067 that were in storage in Houston in that month.¹³¹⁹ This amount comprises: (i) the USD 7,740.65 that Midland billed Kharg for the nine items at issue in this Claim (namely, items 1, 2, 6, 7, 12, 13, 15, 16, and 17 of Purchase Order No. KC-790067); and (ii) the USD 655.60 that Midland billed Kharg for items of that Purchase Order for which Iran asserts no claim.¹³²⁰

2510. The Tribunal has found that, on 15 December 1980, AIOC shipped item 17 of Purchase Order No. KC-790067 (“Item 17”) to its affiliate Gulf of Suez Petroleum Company Egypt.¹³²¹ Midland’s 27 June 1979 invoice¹³²² shows that Kharg was billed USD 1,804 for Item 17.

2511. To arrive at the original purchase price of the items of Purchase Order No. KC-790067 that AIOC sold back to Midland or sold to Sagebrush on or after 26 February 1981 (“Sold KC-790067 Items”),¹³²³ the Tribunal deducts from USD 7,740.65, the amount Midland billed Kharg for items 1, 2, 6, 7, 12, 13, 15, 16, and 17 of Purchase Order No. KC-790067: (i) USD 1,804, the amount Midland billed Kharg for Item 17 (which AIOC had shipped to Gulf of Suez Petroleum Company Egypt in December 1980); and (ii) USD 11.65, the costs invoiced by Midland and paid by Kharg for shipment of the items within the United States.¹³²⁴ Accordingly, the Tribunal holds that the original purchase price of the Sold KC-790067 Items was USD 5,925.

2512. Having determined the historical cost of the Sold KC-790067 Items, the Tribunal next proceeds to assess their fair market value as of 26 February 1981. As noted, in making that assessment, the Tribunal will first estimate the replacement cost of the items as of that date.

¹³¹⁸ See *supra* para. 1361 & note 658.

¹³¹⁹ See *supra* para. 1362.

¹³²⁰ See *supra* para. 2508.

¹³²¹ See *supra* para. 1373.

¹³²² See *supra* para. 2508.

¹³²³ See *supra* para. 2487.

¹³²⁴ See *supra* para. 2501.

Assuming that the purchase date of the Sold KC-790067 Items was 25 June 1979, the date of Purchase Order No. KC-790067,¹³²⁵ and adjusting the original purchase price of those items upward by 19.56 percent to account for the change in the Machinery and Equipment Producer Price Index between June 1979 and February 1981,¹³²⁶ the Tribunal estimates that the replacement cost of the Sold KC-790067 Items as of 26 February 1981 was USD 7,083.93.

2513. As a final step in assessing the fair market value of those items, the Tribunal must adjust their estimated replacement cost downward to account for the items' depreciation between 25 June 1979, the date of purchase, and 26 February 1981, the valuation date. Assuming a useful life of 20 years for the Remaining G-172 Items,¹³²⁷ the Tribunal holds that, between those two dates, the Sold KC-790067 Items depreciated by a rate of 8.4 percent.

2514. Accordingly, the fair market value of the Sold KC-790067 Items as of 26 February 1981 was USD 6,488.88. Further, in order to be fully compensated for the damage caused by the United States' breach of the Algiers Declarations, Iran is also entitled to the costs that it paid for the shipment of those items within the United States, which the Tribunal assumes to have remained at USD 11.65.¹³²⁸ Accordingly, the Tribunal awards Iran a total of USD 6,500.53 for the Sold KC-790067 Items.

Overall Conclusion

2515. In light of the foregoing, the Tribunal awards Iran a total of USD 17,204.47 on Claim G-172.

(15) *Claim G-174 (Kharg/Sagebrush Pipeline Supply Co. & Process Sales, Inc.)*

(a) *Introduction*

2516. 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

¹³²⁵ See *supra* para. 1360.

¹³²⁶ See *supra* para. 2492.

¹³²⁷ See *supra* para. 2493.

¹³²⁸ See *supra* para. 2508.

suffers losses as a result thereof.”¹³²⁹ The Tribunal has found that the G-174 Sagebrush Items 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 obligations under the General Declaration with respect to those items.¹³³⁰ (The Tribunal has dismissed Iran’s Claim relating to the G-174 Process Sales Items.¹³³¹) 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 G-174 Sagebrush Items to Iran. Thus, the United States is liable in damages to Iran for its breach of the General Declaration with respect to those items.

2517. According to its Summary Table of Claims, in Claim G-174, Iran seeks a maximum of USD 883.83 as compensation for the G-174 Sagebrush Items. Those items were purchased from Sagebrush under two different Purchase Orders, namely, KC-790099 and KC-790034. More specifically: (i) for Purchase Order No. KC-790099, Iran claims USD 312.92, representing, in Iran’s view, the value of the items of that Purchase Order according to the April 1980 List,¹³³² or USD 255.49, allegedly representing the price of the items of that Purchase Order;¹³³³ and (ii) for Purchase Order No. KC-790034, Iran claims USD 570.91, the total amount that Sagebrush billed Kharg under the Purchase Order.¹³³⁴

(b) *The Parties’ Contentions*

(i) *Iran’s Contentions*

2518. Iran’s general arguments relating to the valuation of the items in dispute in the Kharg Claims have been outlined above.¹³³⁵

¹³²⁹ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

¹³³⁰ See *supra* paras. 1396 & 1418.

¹³³¹ See *supra* paras. 1400 & 1427-1428.

¹³³² See *supra* para. 1398.

¹³³³ See *supra* para. 1397.

¹³³⁴ See *id.*

¹³³⁵ See *supra* paras. 2474-2476.

Purchase Order No. KC-790099 (Sagebrush)

2519. As noted, under Purchase Order No. KC-790099, Iran seeks USD 312.92, representing the invoiced amount recorded on the April 1980 List for items of Purchase Order No. KC-790099 in storage in Houston,¹³³⁶ or USD 255.49, the amount that Sagebrush billed Kharg under that Purchase Order.¹³³⁷

2520. In support of its claim, Iran refers, *inter alia*, to the following evidence: (i) Purchase Order No. KC-790099, indicating that the total price of the items ordered was USD 251.92; and (ii) the April 1980 List.

Purchase Order KC-790034 (Sagebrush)

2521. As noted, under Purchase Order No. KC-790034, Iran seeks USD 570.91, the total amount that Sagebrush billed Kharg under the Purchase Order.¹³³⁸

2522. In support of its claim, Iran refers, *inter alia*, to the following evidence: (i) the invoice from Sagebrush, dated 17 July 1979, billing Kharg USD 533 for five items of flanges under Purchase Order No. KC-790034;¹³³⁹ (ii) the invoice from Sagebrush, dated 19 July 1979, billing Kharg USD 37.91 for the shipping costs related to those items;¹³⁴⁰ and (iii) Sagebrush's letter of 23 March 1981, offering AIOC USD 533 for the items of Purchase Order No. KC-790034.¹³⁴¹

(ii) The United States' Contentions

2523. The United States' general arguments concerning the valuation of the items in dispute in the Kharg Claims have been outlined *supra*.¹³⁴²

¹³³⁶ See *supra* para. 1398.

¹³³⁷ See *supra* para. 1397.

¹³³⁸ See *id.*

¹³³⁹ See *id.*

¹³⁴⁰ See *id.*

¹³⁴¹ See *supra* para. 1399 (d).

¹³⁴² See *supra* paras. 2480-2485.

2524. In indexing the historical costs of the G-174 Sagebrush Items, Mr. Martens applied the Producer Price Index (by commodity) for “Metals and Metal Products: Miscellaneous Metal Products” (WPU108) (“Miscellaneous Metal Products Producer Price Index”).

2525. While Mr. Martens proposed an overall fair market value for all the items at issue in the Kharg Claims, he did not propose a specific fair market value for the G-174 Sagebrush Items.

(c) *The Tribunal’s Decision*

2526. The Tribunal has found that the United States has breached its obligations under the General Declaration with respect to G-174 Sagebrush Items, and that the date of the United States’ breach is 26 February 1981, the date of the Unlawful Treasury Regulations.¹³⁴³ The Tribunal thus proceeds to the determination of the fair market value of the G-174 Sagebrush Items as of that date. In making that determination, the Tribunal will apply the cost approach, following the steps delineated above.¹³⁴⁴

Purchase Order No. KC-790099 (Sagebrush)

2527. The total price of Purchase Order No. KC-790099 was USD 251.92.¹³⁴⁵ Through two invoices issued on 12 and 17 July 1979, respectively, Sagebrush billed Kharg a total of USD 255.49, including shipping costs amounting to USD 3.57, for the items of that Purchase Order, which amount Kharg paid by checks issued in August 1979.¹³⁴⁶ The April 1980 List records an invoiced amount of USD 312.92 relating to those items.¹³⁴⁷

2528. In light of this evidence, and in line with its evidentiary considerations, *supra*,¹³⁴⁸ the Tribunal considers that the April 1980 List is a well-founded starting point for determining the original purchase price of the items of Purchase Order No. KC-790099.¹³⁴⁹ To arrive at the

¹³⁴³ See *supra* paras. 1418-1419. See also *supra* paras. 488, 547, 576, 598, 632, 796, 1378, 1754, 1768, 1781.

¹³⁴⁴ See *supra* paras. 2488-2493.

¹³⁴⁵ See *supra* para. 1396.

¹³⁴⁶ See *supra* para. 1397.

¹³⁴⁷ See *supra* para. 1398.

¹³⁴⁸ See *supra* paras. 2489-2491.

¹³⁴⁹ See *supra* para. 2487.

original purchase price of those items, the Tribunal deducts USD 3.57, the costs invoiced by Sagebrush and paid by Kharg for shipment of the items within the United States (which costs the Tribunal assumes were included in the invoiced amount recorded on the 1980 April List),¹³⁵⁰ from USD 312.92, the invoiced amount recorded on the 1980 April List for Purchase Order No. KC-790099. Accordingly, the Tribunal holds that the original purchase price of the Sold KC-790009 Items was USD 309.35.

2529. Having determined the historical cost of the items of Purchase Order No. KC-790099, the Tribunal proceeds next to assess their fair market value as of 26 February 1981. As noted, in making that assessment, the Tribunal will first estimate the replacement cost of those items as of that date by indexing the original purchase price of the items from the date of purchase to February 1981.¹³⁵¹ The Tribunal holds that, for the G-174 Sagebrush Items, the appropriate index to be applied in this exercise is that which has been identified by Mr. Martens, and unchallenged by Iran, namely, the Miscellaneous Metal Products PPI.¹³⁵² Assuming that the purchase date of the items of Purchase Order No. KC-790099 was 22 June 1979, the date of the Purchase Order,¹³⁵³ and adjusting the original purchase price of the items upward by 14.36 percent to account for the change in the Miscellaneous Metal Products Producer Price Index between June 1979 and February 1981, the Tribunal estimates that the replacement cost of the items of Purchase Order No. KC-790099 as of 26 February 1981 was USD 353.77.

2530. As a final step in assessing the fair market value of those items, the Tribunal must adjust their estimated replacement cost downward to account for the items' depreciation between 22 June 1979, the date of purchase, and 26 February 1981, the valuation date. Assuming a useful life of 20 years for the G-174 Sagebrush Items,¹³⁵⁴ the Tribunal holds that, between those two dates, the items of Purchase Order No. KC-790099 depreciated by a rate of 8.43 percent.

2531. Accordingly, the fair market value of the items of Purchase Order No. KC-790099 as of 26 February 1981 was USD 323.95. Further, in order to be fully compensated for the damage caused by the United States' breach of the Algiers Declarations, Iran is also entitled to the costs

¹³⁵⁰ See *supra* para. 2527.

¹³⁵¹ See *supra* para. 2492.

¹³⁵² See *supra* para. 2524.

¹³⁵³ See *supra* para. 1396.

¹³⁵⁴ See *supra* para. 2493.

that it paid for the shipment of those items within the United States, which the Tribunal assumes to have remained at USD 3.57.¹³⁵⁵ On its Claim relating to the items of Purchase Order No. KC-790099, however, Iran seeks a maximum of USD 312.92.¹³⁵⁶ Accordingly, the Tribunal awards Iran USD 312.92 for those items.

Purchase Order KC-790034 (Sagebrush)

2532. On 17 and 19 July 1979, Sagebrush issued two invoices, billing Kharg under Purchase Order No. KC-790034, as follows: (i) USD 533 under invoice No. 7-24034 for five items of flanges; and (ii) USD 37.91 under invoice No. 7-24082 for the shipping costs related to those items.¹³⁵⁷

2533. The April 1980 List records an invoiced amount of USD 102.77 relating to the items of Purchase Order No. KC-790034.¹³⁵⁸ This entry, however, appears to be erroneous: the USD 102.77, in fact, relates to one of the amounts that Sagebrush had billed Kharg under Purchase Order No. KC-790099.¹³⁵⁹

2534. In light of this evidence, and in line with its evidentiary considerations, *supra*,¹³⁶⁰ the Tribunal holds that the original purchase price of the items of Purchase Order No. KC-790034 was USD 533, that is, the amount that Sagebrush invoiced Kharg under invoice No. 7-24034 for those items.

2535. Having determined the historical cost of the items of Purchase Order No. KC-790034, the Tribunal proceeds next to assess their fair market value as of 26 February 1981. As noted, in making that assessment, the Tribunal will first estimate the replacement cost of those items as of that date by indexing the original purchase price of the items from the date of purchase to February 1981.¹³⁶¹ The Tribunal has held that, for the G-174 Sagebrush Items, the appropriate

¹³⁵⁵ See *supra* para. 2527.

¹³⁵⁶ See *supra* para. 2519.

¹³⁵⁷ See *supra* para. 1397.

¹³⁵⁸ See *supra* para. 1398.

¹³⁵⁹ See *supra* para. 1397.

¹³⁶⁰ See *supra* paras. 2489-2491.

¹³⁶¹ See *supra* para. 2492.

index to be applied in this exercise is the Miscellaneous Metal Products PPI.¹³⁶² Assuming that the purchase date of the items of Purchase Order No. KC-790034 was 22 June 1979, the date of the Purchase Order,¹³⁶³ and adjusting the original purchase price of the items upward by 14.36 percent to account for the change in the Miscellaneous Metal Products Producer Price Index between June 1979 and February 1981, the Tribunal estimates that the replacement cost of the items of Purchase Order No. KC-790034 as of 26 February 1981 was USD 609.53.

2536. As a final step in assessing the fair market value of those items, the Tribunal must adjust their estimated replacement cost downward to account for the items' depreciation between 22 June 1979, the date of purchase, and 26 February 1981, the valuation date. Assuming a useful life of 20 years for the G-174 Sagebrush Items,¹³⁶⁴ the Tribunal holds that, between those two dates, the items of Purchase Order No. KC-790034 depreciated by a rate of 8.43 percent.

2537. Accordingly, the fair market value of the items of Purchase Order No. KC-790034 as of 26 February 1981 was USD 558.15. Further, in order to be fully compensated for the damage caused by the United States' breach of the Algiers Declarations, Iran is also entitled to the costs that it paid for the shipment of those items within the United States, which the Tribunal assumes to have remained at USD 37.91.¹³⁶⁵ On its Claim relating to the items of Purchase Order No. KC-790034, however, Iran seeks a maximum of USD 570.91. Accordingly, the Tribunal awards Iran USD 570.91 for those items.

Overall Conclusion

2538. In light of the foregoing, the Tribunal awards Iran a total of USD 883.83 on Claim G-174.

¹³⁶² See *supra* para. 2529.

¹³⁶³ See *supra* para. 1396.

¹³⁶⁴ See *supra* para. 2493.

¹³⁶⁵ See *supra* para. 2532.

(16) *Claim 1996-E/F (Kharg/Wilson Industries, Inc.)*

(a) *Introduction*

2539. 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.”¹³⁶⁶ The Tribunal has found that the items purchased by Kharg from Wilson Industries under Purchase Orders Nos. KC-780456 and KC-790054 – the KC-780456 Items and the KC-790054 Items, respectively – and Items 5, 7, and 11-16 of Purchase Order No. KC-790123 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 obligations under the General Declaration with respect to those items.¹³⁶⁷ 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 KC-780456 Items, the KC-790054 Items, and Items 5, 7, and 11-16 of Purchase Order No. KC-790123 to Iran – and, ultimately, of their resale to Wilson Industries. Thus, the United States is liable in damages to Iran for its breach of the General Declaration with respect to those items.

2540. According to its Summary Table of Claims, in Claim 1996-E/F, Iran seeks USD 12,378.04 as compensation for the value of the items purchased by Kharg under Purchase Orders Nos. KC-780456, KC-790054, and KC-790123. More specifically: (i) for Purchase Order No. KC-780456, Iran claims USD 4,240.02, allegedly representing the price of the KC-780456 Items;¹³⁶⁸ (ii) for Purchase Order No. KC-790054, Iran claims USD 7,513.89, allegedly representing the price of the KC-790054 Items;¹³⁶⁹ and (iii) for Purchase Order No. KC-790123, Iran claims USD 624.13, allegedly representing the price of the KC-790123 Items.¹³⁷⁰

¹³⁶⁶ Award No. 529, para. 73, 28 IRAN-U.S. C.T.R. at 139.

¹³⁶⁷ See *supra* paras. 1754, 1768, 1781 & 1785.

¹³⁶⁸ See *supra* para. 1740.

¹³⁶⁹ See *supra* para. 1757.

¹³⁷⁰ See *supra* para. 1771.

(b) *The Parties' Contentions*(i) *Iran's Contentions*

2541. Iran's general arguments relating to the valuation of the items in dispute in the Kharg Claims have been outlined *supra*.¹³⁷¹

Purchase Order No. KC-780456

2542. As noted, under Purchase Order No. KC-780456, Iran seeks USD 4,240.02, representing the amount that Wilson Industries billed Kharg for the KC-780456 Items.¹³⁷² In support of its claim, Iran refers, *inter alia*, to the following evidence: (i) the check for USD 4,240.02 that Kharg issued in favor of Wilson Industries on 2 September 1979;¹³⁷³ and (ii) the invoice issued by Wilson Industries on 16 March 1981, billing Kharg USD 4,240.02 for the KC-780456 Items.¹³⁷⁴

Purchase Order No. KC-790054

2543. As noted, under Purchase Order No. KC-790054, Iran seeks USD 7,513.89, the price that Wilson Industries quoted for the KC-790054 Items in July 1979.¹³⁷⁵ In support of its claim, Iran refers, *inter alia*, to the following evidence: (i) Wilson Industries' 18 July 1979 "Quotation No. H1-61-85461-9H," pricing the KC-790054 Items at USD 7,513.89;¹³⁷⁶ and (ii) the check for USD 7,513.89 that Kharg issued in favor of Wilson Industries on 2 September 1979.¹³⁷⁷

Purchase Order No. KC-790123

2544. As noted, under Purchase Order No. KC-790123, Iran seeks USD 624.13, representing the amount that Wilson Industries billed Kharg for the KC-790123 Items.¹³⁷⁸ In support of its

¹³⁷¹ See *supra* paras. 2474-2476.

¹³⁷² See *supra* para. 1743 (c).

¹³⁷³ See *supra* para. 1741.

¹³⁷⁴ See *supra* para. 1743 (c).

¹³⁷⁵ See *supra* para. 1759 (a).

¹³⁷⁶ See *id.*

¹³⁷⁷ See *supra* para. 1757.

¹³⁷⁸ See *supra* para. 1771.

claim, Iran refers, *inter alia*, to the following evidence: (i) Wilson Industries' 25 July 1979 pro-forma invoice, billing Kharg USD 624.13 for the KC-790123 Items;¹³⁷⁹ (ii) the check for USD 624.13 that Kharg issued in favor of Wilson Industries on 3 September 1979;¹³⁸⁰ and (iii) the 2 December 1980 AIOC "Vendee Material Status Report," indicating that, by 18 October 1979, all KC-790123 Items had been received by AIOC's packer in Houston.¹³⁸¹

(ii) *The United States' Contentions*

2545. The United States' general arguments relating to the valuation of the items in dispute in the Kharg Claims have been outlined *supra*.¹³⁸²

2546. In indexing the historical costs of the KC-780456 Items and the KC-790054 Items, Mr. Martens applied the Producer Price Index (by commodity) for "Metals and Metal Products: Hand and Edge Tools" (WPS1042) ("Hand and Edge Tools Producer Price Index"). In indexing the historical costs of the KC-790123 Items, Mr. Martens applied the Producer Price Index (by commodity) for "Metals and Metal Products: Bolts, Nuts, Screws, Rivets, and Washers" (WPS1081) ("Bolts, Nuts, Screws, Rivets, and Washers Producer Price Index").

2547. While Mr. Martens proposed an overall fair market value for all the items at issue in the Kharg Claims, he did not propose a specific fair market value for the items at issue in Claim 1996-E/F.

(c) *The Tribunal's Decision*

2548. The Tribunal has found that the United States has breached its obligations under the General Declaration with respect to the KC-780456 Items, the KC-790054 Items, and Items 5, 7, and 11-16 of Purchase Order No. KC-790123, and that the date of the United States' breach is 26 February 1981, the date of the Unlawful Treasury Regulations.¹³⁸³ The Tribunal thus proceeds to the determination of the fair market value of those items as of that date. In making

¹³⁷⁹ *See id.*

¹³⁸⁰ *See id.*

¹³⁸¹ *See supra* para. 1773 (a).

¹³⁸² *See supra* paras. 2480-2483 & 2485.

¹³⁸³ *See supra* paras. 1754, 1768 & 1781. *See also supra* paras. 488, 547, 576, 598, 632, 796, 1378, 1419.

that determination, the Tribunal will apply the cost approach, following the steps delineated above.¹³⁸⁴

Purchase Order No. KC-780456

2549. The total price of Purchase Order No. KC-780456 was USD 4,240.02.¹³⁸⁵ On 2 September 1979, Kharg issued a check in favor of Wilson Industries in payment of that amount.¹³⁸⁶ The evidence further shows that, after 26 February 1981, AIOC sold the KC-780456 Items back to Wilson Industries for USD 4,240.02, which amount Wilson Industries paid in October 1981.¹³⁸⁷

2550. In light of this evidence, and in line with its evidentiary considerations, *supra*,¹³⁸⁸ the Tribunal holds that the original purchase price of the KC-780456 Items was USD 4,240.02.

2551. Having determined the historical cost of the KC-780456 Items, the Tribunal proceeds next to assess their fair market value as of 26 February 1981. As noted, in making that assessment, the Tribunal will first estimate the replacement cost of those items as of that date by indexing the original purchase price of the items from the date of purchase to February 1981.¹³⁸⁹ The Tribunal holds that, for the KC-780456 Items, the appropriate index to be applied in this exercise is that which has been identified by Mr. Martens, and unchallenged by Iran, namely, the Hand and Edge Tools PPI.¹³⁹⁰ Assuming that the purchase date of the KC-780456 Items was 1 September 1979,¹³⁹¹ and adjusting the original purchase price of the items upward by 21.61 percent to account for the change in the Hand and Edge Tools Producer Price Index between September 1979 and February 1981, the Tribunal estimates that the replacement cost of the KC-780456 Items as of 26 February 1981 was USD 5,156.29.

¹³⁸⁴ See *supra* paras. 2488-2493.

¹³⁸⁵ See *supra* paras. 1740 & 1743 (c).

¹³⁸⁶ See *supra* para. 1741.

¹³⁸⁷ See *supra* paras. 1743 (g)-(i) & 1750.

¹³⁸⁸ See *supra* paras. 2489-2491.

¹³⁸⁹ See *supra* para. 2492.

¹³⁹⁰ See *supra* para. 2546.

¹³⁹¹ See *supra* para. 1740 and note 846.

2552. As a final step in assessing the fair market value of those items, the Tribunal must adjust their estimated replacement cost downward to account for the items' depreciation between 1 September 1979, the date of purchase, and 26 February 1981, the valuation date.¹³⁹² Assuming a useful life of 20 years for the KC-780456 Items,¹³⁹³ the Tribunal holds that, between those two dates, the KC-780456 Items depreciated by a rate of 7.46 percent.

2553. Accordingly, the fair market value of the KC-780456 Items as of 26 February 1981 was USD 4,771.63. On its Claim relating to those items, however, Iran seeks a maximum of USD 4,240.02.¹³⁹⁴ Accordingly, the Tribunal awards Iran USD 4,240.02 for the KC-780456 Items.

Purchase Order No. KC-790054

2554. The total price of the 48 KC-790054 Items was USD 7,513.89, as indicated in Wilson Industries' Quotation of 18 July 1979 for Purchase Order No. KC-790054.¹³⁹⁵ On 2 September 1979, Kharg issued a check in favor of Wilson Industries in payment of that amount.¹³⁹⁶ The April 1980 List records an invoiced amount of USD 6,910.43 relating to KC-790054 Items in storage in Houston.¹³⁹⁷

2555. The evidence further shows that, after 26 February 1981, AIOC sold back to Wilson Industries the overwhelming bulk, but not all, of the KC-790054 Items – more specifically, AIOC sold back 44 out of 48 such items.¹³⁹⁸ This evidence consists primarily of the AIOC “Material Transfer” form of 4 June 1981, indicating that 44 items of Purchase Order No. KC-790054 had been returned to Wilson Industries by ADS.¹³⁹⁹

2556. The documents on record, however, are of little or no assistance to the Tribunal in ascertaining the precise original purchase price of those 44 items. While Wilson Industries'

¹³⁹² See *supra* para. 2493.

¹³⁹³ See *id.*

¹³⁹⁴ See *supra* para. 2542.

¹³⁹⁵ See *supra* para. 1759 (a).

¹³⁹⁶ See *supra* para. 1757.

¹³⁹⁷ See *supra* para. 1758.

¹³⁹⁸ See *supra* paras. 1759 (e) & 1766.

¹³⁹⁹ See *supra* para. 1759 (e).

Quotation of 18 July 1979 records the purchase prices of all 48 KC-790054 Items (except for item 18¹⁴⁰⁰), it is impossible to ascertain from AIOC's 4 June 1981 "Material Transfer" form which of the 48 KC-790054 Items listed on that Quotation were returned to Wilson Industries; equally, it is impossible to determine whether all ordered units of each of the 44 items listed on the 4 June 1981 "Material Transfer" form were returned to Wilson Industries or only a portion of those ordered units.¹⁴⁰¹ Taking these circumstances into account, and in line with its evidentiary considerations, *supra*,¹⁴⁰² the Tribunal determines that the best available evidence for estimating the original purchase price of the 44 KC-790054 Items that AIOC sold back to Wilson Industries is the April 1980 List. On that basis, the Tribunal holds that the original purchase price of those 44 items is USD 6,910.43, the amount recorded on the April 1980 List.¹⁴⁰³

2557. Having determined the historical cost of the 44 KC-790054 Items that AIOC sold back to Wilson Industries, the Tribunal proceeds next to assess their fair market value as of 26 February 1981. As noted, in making that assessment, the Tribunal will first estimate the replacement cost of those items as of that date by indexing the original purchase price of the items from the date of purchase to February 1981.¹⁴⁰⁴ The Tribunal holds that, for the KC-790054 Items, the appropriate index to be applied in this exercise is that which has been identified by Mr. Martens, and unchallenged by Iran, namely, the Hand and Edge Tools PPI.¹⁴⁰⁵ Assuming that the purchase date of the KC-780456 Items was 1 September 1979,¹⁴⁰⁶ and adjusting the original purchase price of the items upward by 21.61 percent to account for the change in the Hand and Edge Tools Producer Price Index between September 1979 and February 1981, the Tribunal estimates that the replacement cost of the 44 KC-790054 Items that AIOC sold back to Wilson Industries as of 26 February 1981 was USD 8,403.77.

2558. As a final step in assessing the fair market value of those items, the Tribunal must adjust their estimated replacement cost downward to account for the items' depreciation between

¹⁴⁰⁰ See *supra* note 871.

¹⁴⁰¹ See *supra* note 873.

¹⁴⁰² See *supra* paras. 2489-2491.

¹⁴⁰³ See *supra* para. 2554.

¹⁴⁰⁴ See *supra* para. 2492.

¹⁴⁰⁵ See *supra* para. 2546.

¹⁴⁰⁶ See *supra* para. 1757 and note 869.

1 September 1979, the date of purchase, and 26 February 1981, the valuation date.¹⁴⁰⁷ Assuming a useful life of 20 years for the KC-790054 Items,¹⁴⁰⁸ the Tribunal holds that, between those two dates, the KC-790054 Items depreciated by a rate of 7.46 percent.

2559. Accordingly, the fair market value of the 44 KC-790054 Items that AIOC sold back to Wilson Industries as of 26 February 1981 was USD 7,776.85. On its Claim relating to the KC-790054 Items, however, Iran seeks a maximum of USD 7,513.89.¹⁴⁰⁹ Accordingly, the Tribunal awards Iran USD 7,513.89 for the 44 KC-790054 Items that AIOC sold back to Wilson Industries.

Purchase Order No. KC-790123

2560. The total price of the 16 KC-790123 Items was USD 624.13, as indicated in Wilson Industries' pro-forma invoice of 25 July 1979 under Purchase Order No. KC-790123.¹⁴¹⁰ On 3 September 1979, Kharg issued a check in favor of Wilson Industries in payment of that amount.¹⁴¹¹ The April 1980 List records an invoiced amount of USD 624.13 for the KC-790123 Items.¹⁴¹²

2561. The Tribunal has found that, after 26 February 1981, AIOC sold back to Wilson Industries eight out of the 16 KC-790123 Items, namely, Items 5, 7, and 11-16, and that, consequently, the United States has breached its obligations under the General Declaration with regard to those eight items.¹⁴¹³ Wilson Industries' pro-forma invoice of 25 July 1979 priced Items 5, 7, and 11-16 at some USD 203.¹⁴¹⁴

¹⁴⁰⁷ See *supra* para. 2493.

¹⁴⁰⁸ See *id.*

¹⁴⁰⁹ See *supra* para. 2543.

¹⁴¹⁰ See *supra* para. 1771.

¹⁴¹¹ See *id.*

¹⁴¹² See *supra* para. 1772.

¹⁴¹³ See *supra* paras. 1780-1781. The Tribunal has dismissed Iran's Claim on Purchase Order No. KC-790123 insofar as it relates to the remaining eight KC-790123 Items, namely, Items 1-4, 6, and 8-10 of that Purchase Order. See *supra* paras. 1783-1784.

¹⁴¹⁴ Some of the cents figures on the copy of the 25 July 1979 pro-forma invoice in evidence are illegible.

2562. In light of this evidence, and in line with its evidentiary considerations, *supra*,¹⁴¹⁵ the Tribunal holds that the original purchase price of Items 5, 7, and 11-16 was USD 203.

2563. Having determined the historical cost of Items 5, 7, and 11-16, the Tribunal proceeds next to assess their fair market value as of 26 February 1981. As noted, in making that assessment, the Tribunal will first estimate the replacement cost of those items as of that date by indexing the original purchase price of the items from the date of purchase to February 1981.¹⁴¹⁶ The Tribunal holds that, for Items 5, 7, and 11-16, the appropriate index to be applied in this exercise is that which has been identified by Mr. Martens, and unchallenged by Iran, namely, the Bolts, Nuts, Screws, Rivets, and Washers PPI.¹⁴¹⁷ Assuming that the purchase date of Items 5, 7, and 11-16 was 1 September 1979,¹⁴¹⁸ and adjusting the original purchase price of the items upward by 9.73 percent to account for the change in the Bolts, Nuts, Screws, Rivets, and Washers Producer Price Index between September 1979 and February 1981, the Tribunal estimates that the replacement cost of Items 5, 7, and 11-16 as of 26 February 1981 was USD 222.75.

2564. As a final step in assessing the fair market value of those items, the Tribunal must adjust their estimated replacement cost downward to account for the items' depreciation between 1 September 1979, the date of purchase, and 26 February 1981, the valuation date.¹⁴¹⁹ Assuming a useful life of 20 years for the KC-790123 Items,¹⁴²⁰ the Tribunal holds that, between those two dates, the KC-790123 Items depreciated by a rate of 7.46 percent.

2565. Accordingly, the fair market value of Items 5, 7, and 11-16 as of 26 February 1981 was USD 206.13, which amount the Tribunal awards to Iran.

¹⁴¹⁵ See *supra* paras. 2489-2491.

¹⁴¹⁶ See *supra* para. 2492.

¹⁴¹⁷ See *supra* para. 2546.

¹⁴¹⁸ See *supra* para. 1771 and note 883.

¹⁴¹⁹ See *supra* para. 2493.

¹⁴²⁰ See *id.*

Overall Conclusion

2566. Based on the foregoing, the Tribunal awards Iran a total of USD 11,960.04 on Claim 1996-E/F.

V. INTEREST

A. *Iran Is Entitled to Pre- and Post-Award Interest*

2567. The Tribunal holds that Iran is entitled to pre- and post-award interest on the amounts owed to it by the United States under this Partial Award in order to fully compensate Iran for damages suffered due to delay in payment.¹⁴²¹

2568. The Tribunal has considered the Parties' submissions in respect of the type of interest (*i.e.*, simple or compound) and rate of interest but finds that the circumstances of the present Cases do not warrant a departure from its most recent practice. Accordingly, the 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.¹⁴²²

2569. Post-award interest shall be calculated on the same basis as pre-award interest for the period of non-payment of the amounts awarded to Iran for its Individual Claims. Post-award interest shall run on the total amount awarded (*i.e.*, the total of the amounts awarded to Iran for its Individual Claims, plus the aggregate pre-award interest on those amounts) from the date of this Partial Award. Unless the Tribunal explicitly determines otherwise, the principle that post-award interest shall run from the date of this Partial Award shall not be affected by any proceedings that may be instituted pursuant to Articles 35-37 of the Tribunal Rules. Further, any such proceedings related to specific matters in this Partial Award do not justify not honoring the portions of this Partial Award that are not affected by such proceedings.

2570. For the claims in respect of which the United States has been given a period in which it may locate and arrange for the transfer of the properties in question to Iran, post-award

¹⁴²¹ See, *e.g.*, *Islamic Republic of Iran and United States of America*, Award No. 602-A15(IV)/A24-FT, para. 282 (2 July 2014); *Atomic Energy Organization of Iran and United States of America*, Award No. 246-B7-1 (15 Aug. 1986), reprinted in 12 IRAN-U.S. C.T.R. 25, 28.

¹⁴²² See *Islamic Republic of Iran*, Award No. 602-A15(IV)/A24-FT, para. 288.

interest shall run from the date of this Partial Award but shall not be payable in the event the United States locates and arranges for the transfer of the properties in question.

B. Calculation of Pre-Award Interest

1. Claim G-18 (Ministry of Culture and Arts/Forough)

2571. 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 USD 5,286,583.61 in damages for its Claim G-18.¹⁴²³ The Tribunal holds that pre-award interest on that amount shall run from 14 October 2013, *i.e.*, the date of Mr. Keane's testimony at the Hearing and the date at which the Tribunal has assessed the damages due to Iran. Accordingly, 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 USD 1,368,135.11 in pre-award interest on this Claim. Post-award interest on the awarded pre-award interest amount shall run from the date of this Partial Award.

2. Claim Supp. (2)-12 (National Iranian Radio and Television/Kamran Mashayekhi)

2572. 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 for its Claim Supp. (2)-12:

- USD 139,000 in the event that the 1780 Giuseppe Gagliano violin is not transferred to Iran;¹⁴²⁴
- USD 155,000 in the event that the 1738 Nicolò Gagliano violin is not transferred to Iran;¹⁴²⁵
- USD 643,000 in the event that the 1774 Nicolò Gagliano cello is not transferred to Iran;¹⁴²⁶
- USD 26,250 in the event that the 1804 Joanes Gagliano viola is not transferred to Iran;¹⁴²⁷

¹⁴²³ *See supra* para. 1873.

¹⁴²⁴ *See supra* para. 1927.

¹⁴²⁵ *See id.*

¹⁴²⁶ *See id.*

¹⁴²⁷ *See id.*

- USD 12,375 in the event that the two bows are not transferred to Iran.¹⁴²⁸

2573. The Tribunal holds that pre-award interest on those amounts shall run from 14 October 2013, *i.e.*, the date of Mr. Keane's valuations, which have been accepted by the Tribunal. Accordingly, in the event that the claimed instruments and bows are not transferred to Iran within four months of the date of this Partial Award, the Tribunal awards Iran pre-award interest on this Claim as follows:

- USD 35,972.34 in the event that the 1780 Giuseppe Gagliano violin is not transferred to Iran;¹⁴²⁹
- USD 40,113.04 in the event that the 1738 Nicolò Gagliano violin is not transferred to Iran;¹⁴³⁰
- USD 166,404.42 in the event that the 1774 Nicolò Gagliano cello is not transferred to Iran;¹⁴³¹
- USD 6,793.34 in the event that the 1804 Joanes Gagliano viola is not transferred to Iran;¹⁴³²
- USD 3,202.57 in the event that the two bows are not transferred to Iran.¹⁴³³

Post-award interest on awarded pre-award interest amounts shall run from the date of this Partial Award.

3. Claim G-8 (MORT/Gulf Ports Crating Co.)

a) *Claim for Diminution of Asset Values Due to Deterioration*

(1) Porta-Kamp Housing Units

2574. The Tribunal has awarded Iran USD 658,600 on Iran's claim for damages due to the deterioration of the Porta-Kamp Housing Units occurring between 2 March 1981 and 15 February 1984.¹⁴³⁴ The Tribunal holds that pre-award interest on that amount shall run from

¹⁴²⁸ See *supra* para. 1931.

¹⁴²⁹ See *supra* para. 1927.

¹⁴³⁰ See *id.*

¹⁴³¹ See *id.*

¹⁴³² See *id.*

¹⁴³³ See *supra* para. 1931.

¹⁴³⁴ See *supra* para. 2023.

24 August 1982, the mid-point between those two dates. Accordingly, the Tribunal awards Iran USD 1,663,087.23 in pre-award interest on this head of claim.

(2) Morgan Rock-Crushing Equipment

2575. The Tribunal has awarded Iran USD 1,148,300 on Iran's claim for damages due to the deterioration of the Morgan Rock-Crushing Equipment occurring between 2 March 1981 and 15 January 1984.¹⁴³⁵ The Tribunal holds that pre-award interest on that amount shall run from 8 August 1982, the mid-point between those two dates. Accordingly, the Tribunal awards Iran USD 2,907,150.61 in pre-award interest on this head of claim.

b) *Claims for "Additional Costs"*

(1) Storage and Repackaging Costs and Costs of Disposal of Unsalvageable Porta-Kamp Housing Units

2576. The Tribunal has awarded Iran a total of USD 939,091 on Iran's claims for reimbursement of storage costs, repackaging costs, and costs of the disposal of the unsalvageable Porta-Kamp Housing Units.¹⁴³⁶ 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 939,091 from 1 January 1984. Accordingly, the Tribunal awards Iran a total of USD 2,220,348.79 in pre-award interest on this head of claim.

(2) MORT's Travel Expenses

2577. The Tribunal has awarded Iran USD 50,000 on Iran's claim for reimbursement of MORT's travel expenses.¹⁴³⁷ 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 50,000 from 1 January 1984. Accordingly, the Tribunal awards Iran a total of USD 118,217.98 in pre-award interest on this head of claim.

¹⁴³⁵ See *supra* paras. 2031-2032.

¹⁴³⁶ See *supra* paras. 2040, 2049 & 2050.

¹⁴³⁷ See *supra* para. 2053.

(3) MORT's United States Legal Fees and Expenses

2578. The Tribunal has awarded Iran a total of USD 21,411.55 on Iran's claim for reimbursement of fees and expenses MORT paid to its United States attorneys.¹⁴³⁸ This amount comprises USD 11,411.55 charged by Mr. Harrel Gordon Tillman,¹⁴³⁹ MORT's attorney in Houston, and USD 10,000 for amounts charged by other United States law firms retained by MORT.¹⁴⁴⁰

2579. The two invoices on record that total the USD 11,411.55 charged by Mr. Tillman do not bear the dates on which they were issued. For the purposes of this Partial Award, the Tribunal assumes that: (i) the invoice for USD 8,570 for services rendered during the periods 24 August-15 September and 22 September-15 November 1983¹⁴⁴¹ was issued on 1 December 1983; and (ii) the invoice for USD 2,841.55 for services rendered from 15 November 1983 to 2 February 1984¹⁴⁴² was issued on 15 February 1984. In the absence of evidence to the contrary, the Tribunal presumes that those two amounts were applied to the advance payments that MORT had made to Mr. Tillman¹⁴⁴³ on the dates on which the invoices were issued. Accordingly, the Tribunal awards pre-award interest on those two amounts from the dates of the respective invoices.

2580. Concerning the date from which pre-award interest shall run on the USD 10,000 awarded for amounts charged to MORT by other United States law firms, the Tribunal notes that Iran has sought interest on its claims for additional costs from January 1984. The Tribunal agrees that this is a reasonable date from which pre-award interest should run on these claims. Accordingly, the Tribunal awards pre-award interest on USD 10,000 from 1 January 1984.

2581. In sum, the Tribunal holds that pre-award interest on the total of USD 21,411.55 awarded on this head of claim shall run as follows:

¹⁴³⁸ See *supra* para. 2058.

¹⁴³⁹ See *supra* para. 2056.

¹⁴⁴⁰ See *supra* para. 2057.

¹⁴⁴¹ See *supra* para. 2054.

¹⁴⁴² See *id.*

¹⁴⁴³ See *supra* note 1076.

- 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.

4. Claim G-7 (MORT/Port of Vancouver)
 - a) *Claim for Diminution of Asset Values Due to Deterioration*
 - (1) Transworld Housing Units

2585. The Tribunal has awarded Iran USD 2,672,400 on Iran's claim for damages due to the deterioration of the Transworld Housing Units occurring between 2 March 1981 and 31 December 1983.¹⁴⁴⁹ The Tribunal holds that pre-award interest on that amount shall run from 1 August 1982, the mid-point between those two dates. Accordingly, the Tribunal awards Iran USD 6,773,329.89 in pre-award interest on this head of claim.

- (2) Morgan Rock-Crushing Equipment

2586. The Tribunal has awarded Iran USD 765,533 on Iran's claim for damages due to the deterioration of the Morgan Rock-Crushing Equipment occurring between 2 March 1981 and 15 January 1984.¹⁴⁵⁰ The Tribunal holds that pre-award interest on that amount shall run from 8 August 1982, the mid-point between those two dates. Accordingly, the Tribunal awards Iran USD 1,938,099.56 in pre-award interest on this head of claim.

- b) *Claims for "Additional Costs"*

- (1) Storage Costs

2587. The Tribunal has awarded Iran a total of USD 1,394,000 on Iran's claim for reimbursement of storage costs relating to the G-7 Materials.¹⁴⁵¹ 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 1,394,000 from 1 January 1984. Accordingly, the Tribunal awards Iran a total of USD 3,295,917.23 in pre-award interest on this head of claim.

¹⁴⁴⁹ See *supra* para. 2148.

¹⁴⁵⁰ See *supra* para. 2155.

¹⁴⁵¹ See *supra* para. 2162.

(2) MORT's United States Legal Fees and Expenses

2588. The Tribunal has awarded Iran USD 1,935.98 on Iran's claim for reimbursement of fees and expenses MORT paid to its United States attorneys, Morrison, Dunn, Carney, Allen & Tongue, in relation to the G-7 Materials.¹⁴⁵²

2589. The evidence presented allows the Tribunal readily to determine with a sufficient degree of accuracy the dates on which MORT paid the USD 1,935.98 to Morrison, Dunn, Carney, Allen & Tongue. This evidence includes, in particular: (i) a letter dated 24 August 1983 from the Iranian Bureau of International Legal Services to Morrison, Dunn, Carney, Allen & Tongue, referencing an enclosed check for USD 1,625.98;¹⁴⁵³ and (ii) a check for USD 310, dated 27 December 1983, issued by the Interests Section of the Islamic Republic of Iran to Morrison, Dunn, Carney, Allen & Tongue.¹⁴⁵⁴

2590. Consequently, the Tribunal holds that pre-award interest on the total of USD 1,935.98 awarded on this head of claim shall run as follows:

- on USD 1,625.98, from 24 August 1983;¹⁴⁵⁵
- on USD 310, from 27 December 1983.¹⁴⁵⁶

2591. Accordingly, the Tribunal awards Iran a total of USD 4,640.30 in pre-award interest on this head of claim.

5. Claim G-13 (MORT/Shipside Packing Co.)

a) *Claim for Storage Costs*

2592. The Tribunal has awarded Iran USD 133,623.10 on Iran's claim for storage costs.¹⁴⁵⁷ As explained above, the Tribunal has calculated a monthly rate for the storage costs on the basis of the 31 January 1984 settlement agreement and has calculated the total storage costs on this basis for the period from 1 March 1981 to 31 January 1984. The Tribunal decides that

¹⁴⁵² See *supra* para. 2166.

¹⁴⁵³ See *supra* para. 2165.

¹⁴⁵⁴ See *id.*

¹⁴⁵⁵ See *supra* para. 2589.

¹⁴⁵⁶ See *id.*

¹⁴⁵⁷ See *supra* para. 2200.

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 Shiplside 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 Shiplside. 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 12,991.80 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 36,125.11 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 14,719.48 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 40,929.11 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 40,191.57 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 852,709.75 on this Claim. This amount represents the legal fees and expenses charged by Iran's United States attorneys between July 2006 and June 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.

June 2015 from the assumed date of payment by Iran.¹⁴⁶⁷ Accordingly, the pre-award interest on the awarded USD 852,709.75, 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-Apr, June)	48,933.41	1 April 2015	10,335.77
Total	852,709.75		299,053.34

2599. Accordingly, the Tribunal awards Iran USD 299,053.34 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.

Accordingly, the Tribunal awards Iran a total of USD 47,838.89 in pre-award interest on this Claim.

12. Claim G-174 (Kharg/Sagebrush Pipeline Supply Co. & Process Sales, Inc.)

2601. The Tribunal has awarded Iran USD 883.83 as the fair market value of the items at issue.¹⁴⁷⁰ 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. Accordingly, the Tribunal awards Iran a total of USD 2,457.59 in pre-award interest on this Claim.

13. Claim 1996-E/F (Kharg/Wilson Industries, Inc.)

2602. The Tribunal has awarded Iran USD 11,960.04 as the fair market value of the items at issue.¹⁴⁷¹ 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. Accordingly, the Tribunal awards Iran a total of USD 33,256.19 in pre-award interest on this Claim.

14. Overall Conclusion on Pre-Award Interest

2603. 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 USD 1,368,135.11 in pre-award interest.

2604. On Claim Supp. (2)-12, in the event that the claimed instruments and bows are not transferred to Iran within four months of the date of this Partial Award, the Tribunal awards Iran pre-award interest on this Claim as follows:

- USD 35,972.34 in the event that the 1780 Giuseppe Gagliano violin is not transferred to Iran;
- USD 40,113.04 in the event that the 1738 Nicolò Gagliano violin is not transferred to Iran;

¹⁴⁷⁰ See *supra* para. 2538.

¹⁴⁷¹ See *supra* para. 2566.

- 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 20,227,973.39.

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 29,115,971.69 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 8,887,998.30, the total of the amounts found due and owing to Iran on those Claims under this Partial Award, and USD 20,227,973.39, 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.

In addition, on Claim Supp. (2)-12, the Tribunal awards Iran pre-award interest as follows:

- USD 35,972.34 in the event that the 1780 Giuseppe Gagliano violin is not transferred to Iran;
- USD 40,113.04 in the event that the 1738 Nicolò Gagliano violin is not transferred to Iran;
- 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.

2610. Further, the Tribunal awards Iran simple post-award interest at the successive prevailing prime bank lending rates in the United States for the period of non-payment of this Partial Award.

VIII. AWARD

2611. In view of the foregoing,

THE TRIBUNAL DETERMINES AS FOLLOWS:

A. *General Issues*

- 1) The Tribunal affirms its decision in *Islamic Republic of Iran and United States of America*, Award No. 529-A15-FT (6 May 1992), that the term “all Iranian properties” in Paragraph 9 means tangible properties that were solely owned by Iran or its entities.
- 2) In order to apply the decision taken by the Tribunal in *Islamic Republic of Iran and United States of America*, Award No. 529-A15-FT (6 May 1992), that the term “Iranian properties” refers to properties solely owned by Iran, the Tribunal must determine, for goods sold, whether legal title to the properties claimed in the present Cases had been transferred to Iran as of 19 January 1981.
- 3) In order to determine whether, in a specific case, legal title to an individual item of property claimed in the present Cases had been transferred to Iran as of 19 January 1981, thereby bringing that item of property within the scope of the

term “Iranian properties” in Paragraph 9, the Tribunal applies, where identifiable, the relevant domestic law governing passage of title.

- 4) The relevant domestic law governing passage of title to an individual item of property claimed in the present Cases must be established in accordance with general principles of private international law.
- 5) The *lex rei sitae* is a general principle of private international law, and the substantive law governing passage of title to an individual item of property claimed in the present Cases must be identified pursuant to that principle.
- 6) The United States’ obligation under Paragraph 9 arose on 19 January 1981.
- 7) In cases where the Unlawful Treasury Regulations are not regarded as the cause for the non-transfer of Iranian properties to Iran, the Tribunal carried out a claim-by-claim analysis, in light of the specific circumstances of each of the Individual Claims, in order to determine when the United States should have taken steps, upon indication from Iran, to ensure that the holders of Iranian properties would transfer such properties to Iran.
- 8) In principle, whether the United States has fulfilled its obligation to take steps to ensure that holders of Iranian properties within its jurisdiction would transfer them to Iran depends on: (i) whether Iran had provided the holders with the required direction, that is, information necessary for them to effect the transfer; and (ii) whether Iran had provided the required indication to the United States, that is, whether it had informed the United States that holders were not transferring Iranian properties that should have been transferred pursuant to the transfer directive contained in Executive Order No. 12281. Whether in a specific case Iran’s direction to a holder or indication to the United States was in fact unnecessary or futile must be determined in each of the Individual Claims based on the evidence presented.
- 9) The Tribunal did not in the abstract define what constitutes adequate direction by Iran to holders, or what constitutes indication by Iran to the United States. Nor did it attempt to describe the manner in which the United States was to “arrange . . . for the transfer” of properties to Iran. The Tribunal, rather,

determined these questions in the context and specific circumstances of each of the Individual Claims. In so doing, the Tribunal made a claim-by-claim inquiry into whether the United States did everything it reasonably could have done to satisfy its Paragraph 9 obligation to take steps to ensure that Iranian properties would be transferred to Iran considering the information the United States possessed about the properties that are the subject of Iran's claims.

- 10) Iran's alternative Claim based on Paragraph 8 of the General Declaration is dismissed.
- 11) Iran's alternative Claim based on General Principle A of the General Declaration is dismissed.

B. Individual Claims

- 12) On Claim G-18, the Tribunal finds the United States in breach of its obligation under Paragraph 9 to arrange for the transfer of the Stradivarius to Iran from 31 August 1983, when the United States first learned that the Stradivarius was held by Mr. Forough and located in the United States.

Accordingly, the Tribunal directs the United States to arrange for the transfer of the Stradivarius to Iran within four months of the date of this Partial Award. Thus, the United States shall take steps to ensure that the holder or holders of the Stradivarius will transfer the instrument to Iran within that time period.

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 the amount of Five Million Two Hundred Eighty-Six Thousand Five Hundred Eighty-Three United States Dollars and Sixty-One Cents (USD 5,286,583.61), plus simple pre-award interest from 14 October 2013, in the total amount of One Million Three Hundred Sixty-Eight Thousand One Hundred Thirty-Five United States Dollars and Eleven Cents (USD 1,368,135.11), calculated as specified above.¹⁴⁷²

- 13) On Claim Supp. (2)-12, the Tribunal finds the United States in breach of its obligation under Paragraph 9 to arrange for the transfer of the four Gagliano

¹⁴⁷² See *supra* paras. 2568 & 2571.

instruments and two bows to Iran from 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 directs the United States to arrange for the transfer of the four Gagliano instruments and two bows to Iran within four months of the date of this Partial Award. Thus, the United States shall take steps to ensure that the holder or holders of the four musical instruments and two bows will transfer them to Iran within that time period.

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 the following amounts:

- One Hundred Thirty-Nine Thousand United States Dollars and No Cents (USD 139,000) in the event that the 1780 Giuseppe Gagliano violin is not transferred to Iran;
- One Hundred Fifty-Five Thousand United States Dollars and No Cents (USD 155,000) in the event that the 1738 Nicolò Gagliano violin is not transferred to Iran;
- Six Hundred Forty-Three Thousand United States Dollars and No Cents (USD 643,000) in the event that the 1774 Nicolò Gagliano cello is not transferred to Iran;
- Twenty-Six Thousand Two Hundred Fifty United States Dollars and No Cents (USD 26,250) in the event that the 1804 Joanes Gagliano viola is not transferred to Iran;
- Twelve Thousand Three Hundred Seventy-Five United States Dollars and No Cents (USD 12,375) in the event that the two bows are not transferred to Iran.

In addition, the Tribunal awards Iran pre-award interest as follows, calculated as specified above:¹⁴⁷³

- Thirty-Five Thousand Nine Hundred Seventy-Two United States Dollars and Thirty-Four Cents (USD 35,972.34) in the event that the 1780 Giuseppe Gagliano violin is not transferred to Iran;

¹⁴⁷³ See *supra* paras. 2568 & 2572-2573.

- Forty Thousand One Hundred Thirteen United States Dollars and Four Cents (USD 40,113.04) in the event that the 1738 Nicolò Gagliano violin is not transferred to Iran;
- One Hundred Sixty-Six Thousand Four Hundred Four United States Dollars and Forty-Two Cents (USD 166,404.42) in the event that the 1774 Nicolò Gagliano cello is not transferred to Iran;
- Six Thousand Seven Hundred Ninety-Three United States Dollars and Thirty-Four Cents (USD 6,793.34) in the event that the 1804 Joanes Gagliano viola is not transferred to Iran;
- Three Thousand Two Hundred Two United States Dollars and Fifty-Seven Cents (USD 3,202.57) in the event that the two bows are not transferred to Iran.

- 14) On Claim G-8, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to the G-8 Materials. 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 the following amounts to Iran:

- a. Six Hundred Fifty-Eight Thousand Six Hundred United States Dollars and No Cents (USD 658,600) as damages due to the deterioration of the Porta-Kamp Housing Units occurring after 1 March 1981 until February 1984;
 - b. One Million One Hundred Forty-Eight Thousand Three Hundred United States Dollars and No Cents (USD 1,148,300) as damages due to the deterioration of the Morgan Rock-Crushing Equipment occurring after 1 March 1981 until mid-January 1984;
 - c. One Million One Hundred Forty Thousand Two United States Dollars and Fifty-Five Cents (USD 1,140,002.55) on Iran's claims for "Additional Costs."
- 15) On Claim G-7, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to the G-7 Materials. 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 the following amounts to Iran:

- a. Two Million Six Hundred Seventy-Two Thousand Four Hundred United States Dollars and No Cents (USD 2,672,400) as damages due to the deterioration of the Transworld Housing Units occurring between 2 March 1981 and 31 December 1983;
 - b. Seven Hundred Sixty-Five Thousand Five Hundred Thirty-Three United States Dollars and No Cents (USD 765,533) as damages due to the deterioration of the Morgan Rock-Crushing Equipment occurring between 2 March 1981 and 15 January 1984;
 - c. One Million Three Hundred Ninety-Five Thousand Nine Hundred Thirty-Five United States Dollars and Ninety-Eight Cents (USD 1,395,935.98) on Iran's claims for "Additional Costs."
- 16) On Claim G-13, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to the G-13 Materials. 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 One Hundred Seventy-Eight Thousand Ninety-Nine United States Dollars and Ten Cents (USD 178,099.10) to Iran on Iran's claims for "Additional Costs."
- 17) On Claim Supp. (2)-55, the Tribunal holds that the United States has breached its obligations under the General Declaration with respect to the three actuators at issue in this Claim. 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 Twelve Thousand Nine Hundred Ninety-One United States Dollars and Eighty Cents (USD 12,991.80) 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 Seven Hundred Nineteen United States Dollars and Forty-Eight Cents (USD 14,719.48) 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 Fifty-Two Thousand Seven Hundred Nine United States Dollars and Seventy-Five Cents (USD 852,709.75) to Iran, representing the legal fees and expenses charged by Iran's United States attorneys between July 2006 and June 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 Twenty-Seven Thousand Nine Hundred Seventy-Three United States Dollars and Thirty-Nine Cents (USD 20,227,973.39).

- 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 Fifteen Thousand Nine Hundred Seventy-One United States Dollars and Sixty-Nine Cents (USD 29,115,971.69), 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.

- b. any pending claims that “had not been included in the schedule for the Hearing in the second phase of these proceedings”¹⁴⁷⁶ and that are not addressed in the present Partial Award.
- 33) In light of the procedural history of the present Cases,¹⁴⁷⁷ and to avoid potentially conflicting decisions in the present Cases and Case No. B61, all questions concerning the Unlawful Treasury Regulations, in so far as they relate to Iran’s export-controlled properties at issue in the present Cases, are also separated for later decision. In due course, the Tribunal will issue an Order addressing the procedural steps to be taken in this matter.

¹⁴⁷⁶ *See supra* para. 50.

¹⁴⁷⁷ *See supra* paras. 45-49.

Dated, The Hague,
10 March 2020



Hans van Houtte
President
Concurring



Herbert Kronke



Bruno Simma
Concurring in part,
dissenting in part

In the Name of God

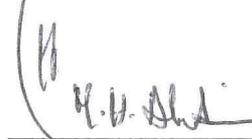


H.R. Nikbakht Fini
Concurring in part,
dissenting in part



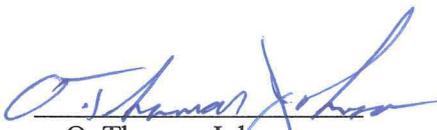
Charles N. Brower
Concurring in part,
dissenting in part

In the Name of God

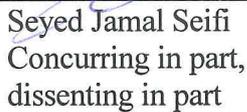


M.H. Abedian Kalkhoran
Concurring in part,
dissenting in part

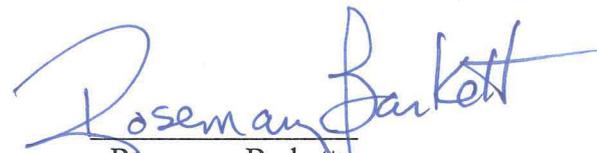
In the Name of God



O. Thomas Johnson
Concurring in part,
dissenting in part



Seyed Jamal Seifi
Concurring in part,
dissenting in part



Rosemary Barkett
Concurring in part,
dissenting in part