



CASES NOS. A15 (IV) AND A24
FULL TRIBUNAL
AWARD NO. 590-A15(IV)/A24-FT

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

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	28 DEC 1998
	تاریخ ۱۳۷۷ / ۱۰ / ۷

PARTIAL AWARD

Appearances:

For the Claimant : Mr. M.H. Zahedin-Labbaf,
Deputy Agent of the Government of
the Islamic Republic of Iran,
Dr. Ali Akbar Riyazi,
Legal Adviser to the Agent,
Prof. James Crawford,
Counsel to the Agent,
Prof. Bruno Ristau,
Counsel to the Agent,
Mr. Behzad Nabavi,
Dr. Mohammad Ekhteraei Sanai,
Mr. Parviz Mamaghani,
Witnesses.

For the Respondent : Mr. D. Stephen Mathias,
Agent of the United States of
America,
Dr. Sean Murphy,
Deputy Agent of the United States
of America,

Mr. Michael Hertz,
Chief Counsel for the Respondent,
Ms. Joan Hartman,
Counsel for the Respondent,
Prof. Fred L. Morrison,
Counsel for the Respondent,
Mr. Mark Joelson,
Party Representative,
Mr. Ronald Bettauer,
Assistant Legal Adviser,
U.S. Department of State,
Ms. Lisa Grosh,
Attorney-Adviser,
U.S. Department of State,
Ms. Sally Rider,
Attorney-Adviser,
U.S. Department of State,
Mr. Lloyd Cutler,
Mr. David Anderson,
Mr. William Lake,
Witnesses.

Table of Contents

		<u>Para.</u>
I.	INTRODUCTION	1
II.	PROCEEDINGS	5
III.	ADMISSION OF DOCUMENTS	11
	A. <u>THE ISSUES</u>	11
	B. <u>THE TRIBUNAL'S DECISION</u>	17
	1. <u>"Opposition of the United States to Iran's Request for an Order Requiring the United States to Stay the McKesson Lawsuit"</u>	17
	2. <u>The United States Submission of the 23 June 1997 Memorandum Opinion of the United States District Court for the District of Columbia in Foremost-McKesson, Inc. v. Islamic Republic of Iran</u>	18
IV.	FACTS AND CONTENTIONS	21
	A. <u>CASE NO. A15 (IV)</u>	21
	1. <u>Factual Background</u>	21
	2. <u>The Claims</u>	32
	a. <u>Claim A</u>	32
	b. <u>Claim B</u>	33
	c. <u>Claim D</u>	34
	d. <u>Claim E</u>	35
	e. <u>Claim F</u>	36
	f. <u>Claim G</u>	37
	g. <u>Claim H</u>	38
	B. <u>CASE NO. A24</u>	39
	1. <u>Factual Background</u>	39
	2. <u>The Claim</u>	48
V.	JURISDICTION	49
VI.	MERITS	50
	A. <u>CASE NO. A15 (IV)</u>	50
	1. <u>Claim A</u>	50
	a. <u>Iran's Position</u>	50
	b. <u>The United States Position</u>	59
	c. <u>The Tribunal's Decision</u>	70
	(1) <u>The Scope of the United States Obligation to Terminate Litigation and Claims</u>	71
	(a) <u>The Meaning of General Principle B</u>	71
	(b) <u>Termination of Claims</u>	81
	(c) <u>Waiver</u>	84

	(d)	<u>Termination of Litigation in United States Courts: Suspension</u>	87
	i)	<u>The United States obligation to terminate litigation</u>	87
	ii)	<u>Evaluation of the suspension method against the background of the Algiers Declarations</u>	92
	iii)	<u>Conclusion</u>	101
	(e)	<u>Timing of the Termination Obligations of the United States</u>	104
	(2)	<u>Counterclaims</u>	111
2.		<u>Claim B</u>	116
	a.	<u>The Parties' Positions</u>	119
	b.	<u>The Tribunal's Decision</u>	123
3.		<u>Claim D</u>	126
	a.	<u>The Parties' Positions</u>	126
	b.	<u>The Tribunal's Decision</u>	130
4.		<u>Claim E</u>	134
	a.	<u>The Parties' Positions</u>	134
	b.	<u>The Tribunal's Decision</u>	140
5.		<u>Claim F</u>	146
	a.	<u>The Parties' Positions</u>	146
	b.	<u>The Tribunal's Decision</u>	158
6.		<u>Claim G</u>	165
	a.	<u>The Parties' Positions</u>	165
	b.	<u>The Tribunal's Decision</u>	173
7.		<u>Claim H</u>	178
	a.	<u>The Parties' Positions</u>	178
	b.	<u>The Tribunal's Decision</u>	184
B.		<u>CASE NO. A24</u>	189
	1.	<u>Iran's Position</u>	189
	2.	<u>The United States Position</u>	194
	3.	<u>The Tribunal's Decision</u>	198
	a.	<u>The Foremost/OPIC lawsuit during the period from 11 April 1986 until 1 April 1988</u>	198
	b.	<u>The Foremost/OPIC lawsuit from 1 April 1988 onward</u>	206
VII.		<u>AWARD</u>	214

I. INTRODUCTION

1. At issue in these two consolidated Cases ("the Cases") is the United States obligation under the Algiers Declarations¹ to terminate litigation initiated by United States nationals against Iran. These Cases revolve around General Principle B of the General Declaration ("General Principle B"), which obliges the United States, through the procedures provided in the Claims Settlement Declaration,

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

2. In Case No. A15(IV), Iran contends that the Executive Order and certain of the Treasury Regulations that were issued by the United States after 19 January 1981 to implement the United States obligation to terminate litigation violated the United States obligations under the Algiers Declarations, in particular, the United States obligations under General Principle B. Iran asserts eight claims, termed A through H, alleging eight breaches by the United States of General Principle B. Specifically, Iran contends that the United States breached its obligations: (a) by suspending some judicial proceedings in United States courts, instead of terminating all litigation (including counterclaims) of United States nationals against Iran ("Claim A"); (b) by failing to terminate claims in United States courts arising from contracts containing forum selection clauses

¹ Declaration of the Government of the Democratic and Popular Republic of Algeria ("General Declaration"), 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 and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"), both dated 19 January 1981, reprinted in 1 Iran-U.S. C.T.R. 3-12.

requiring litigation to be brought before Iranian courts ("Claim B"); (c) by failing to nullify injunctions obtained by United States nationals in United States courts that enjoined United States banks from honoring calls made by Iran on certain standby letters of credit ("Claim C"); (d) by failing to prohibit further litigation in United States courts after the date of the Algiers Declarations ("Claim D"); (e) by failing to forbid United States nationals from engaging in litigation against Iran in courts outside the United States ("Claim E"); (f) by failing to nullify attachments on Iranian assets that were in existence prior to 14 November 1979, the date the President of the United States issued Executive Orders freezing Iranian assets in the United States ("Claim F"); (g) by failing to nullify post-14 November 1979 attachments in a sufficiently prompt fashion ("Claim G"); and (h) by failing to nullify judgments obtained by United States nationals in United States courts ("Claim H").

3. In Case A15(IV), Iran essentially requests that the United States be ordered to terminate all legal proceedings in United States courts involving claims and counterclaims of United States nationals against Iran and to compensate Iran for the damages Iran allegedly incurred in connection with litigation that the United States should have terminated either on 19 January 1981 or shortly thereafter.

4. In Case No. A24, Iran claims that the United States allowed a case that was decided by the Tribunal, Foremost Tehran, et al. and Islamic Republic of Iran, et al., Award No. 220-37/231-1 (11 Apr. 1986), to be revived and to proceed in a United States court as Foremost-McKesson, Inc. v. Islamic Republic of Iran, Civ. No. 82-0220-TAF (D.D.C.), and it thereby breached its obligation under the Algiers Declarations to prohibit relitigation of claims already decided by the Tribunal. Iran requests that the United States be ordered to terminate the lawsuit pending in the United States court and to compensate Iran for all damages that Iran incurred in defending against that lawsuit.

II. PROCEEDINGS

5. On 25 October 1982, Iran presented its Statement of Claim in Case No. A15, and on 5 August 1988, Iran presented its Statement of Claim in Case No. A24. On 15 October 1991, Iran submitted a request for consolidation of Cases Nos. A15(IV) and A24. By Orders of 18 November 1991, the Tribunal consolidated the two Cases for joint proceedings and decision. Accordingly, the Tribunal allowed the Parties to submit final consolidated submissions in these Cases. Iran presented its consolidated submission on 16 February 1993, and the United States submitted its consolidated response thereto on 12 November 1993. Iran responded to that submission with a further submission of 31 March 1994, to which the United States replied with a submission of 1 July 1994.

6. By Order of 16 October 1992, the Tribunal limited the present proceedings to the consideration of the legal and factual basis of the United States liability. In this connection, the Tribunal requested Iran to include in its final consolidated submission a list of cases in which Iran believed it had been wrongfully compelled to respond to litigation in United States courts. The Tribunal further stated that the amount of damages to compensate the losses, if any, incurred by Iran would be determined in subsequent proceedings.

7. On 16 February 1993, Iran submitted a "Request for an Immediate Order to Stay the Foremost Lawsuit, Civil action No. 82-0220, Subject of Case A/24 in the United States." By Decision of 18 May 1993 (Decision No. DEC 116-A15(IV) & A24-FT), the Tribunal denied this request.

8. The Hearing in these Cases was held on 13-15 September 1995 in the Peace Palace, The Hague.

9. On 22 February 1996, pursuant to settlement agreements between the Islamic Republic of Iran and the United States of

America, the Tribunal issued a Partial Award on Agreed Terms (Award No. 568-A13/A15(I and IV:C)/A26(I, II, and III)-FT), which terminated, inter alia, Claim C in Case No. A15(IV). Accordingly, the subjects of this Award are Iran's Claims A, B and D through H in Case No. A15(IV) and Iran's claim in Case No. A24.

10. On 10 May 1996, Iran presented a "Request for an Order Requiring the United States to Stay the Foremost-OPIC Proceedings in the United States." By Decision of 11 October 1996 (Decision No. DEC 125-A15(IV) & A24-FT), the Tribunal denied this request.

III. ADMISSION OF DOCUMENTS

A. THE ISSUES

11. As noted, on 10 May 1996, Iran asked the Tribunal to stay the Foremost-McKesson proceedings in the United States. See supra, para. 10. By Order of 17 May 1996, the Tribunal invited the United States to comment on Iran's request for stay. On 7 June 1996, the United States submitted a document entitled "Opposition of the United States to Iran's Request for an Order Requiring the United States to Stay the McKesson Lawsuit." On 10 June 1996, Iran objected to the United States Opposition, asserting that it "embodie[d] factual and legal arguments which [were] of no direct relevance to Iran's Request" and represented "unauthorized and improper post-hearing submissions directed at the very issue of the U.S. liability" in Case No. A24. Iran urged the Tribunal to consider the United States submission "merely as an opposition to the Request and give no effect whatsoever to its contents as far as the issue of liability [in Case No. A24] [was] concerned."

12. On 20 June 1996, the Tribunal issued a Communication to the Parties, informing them that it denied Iran's Request for stay of the Foremost-McKesson proceedings in the United States. The Tribunal further noted that, "with respect to the issue of

the preclusive effect of its awards, the Tribunal's jurisdiction and authority may not be impinged upon and that the awards and decisions of this Tribunal must prevail over judgments of courts of the Islamic Republic of Iran and the United States of America." The Tribunal asked the United States to forward a copy of its Communication to the Parties to the United States District Court for the District of Columbia.

13. On 26 August 1996, Iran submitted a document entitled "Reiteration of the Request to disregard the [United States Opposition of 7 June 1996] to the extent going beyond an Opposition to Iran's Stay Request." In this submission, Iran responded to the substance of the United States Opposition and renewed its request that the Tribunal not admit that document.

14. On 23 June 1997, the United States District Court for the District of Columbia issued its decision in Foremost-McKesson, Inc. v. Islamic Republic of Iran. By letter of 30 June 1997, the United States proffered a copy of the District Court's Memorandum Opinion to the Tribunal.

15. On 22 July 1997, Iran submitted a document (i) reiterating its request that the Tribunal reject the 7 June 1996 "Opposition of the United States to Iran's Request for an Order Requiring the United States to Stay the McKesson Lawsuit" and (ii) requesting that the Tribunal not admit the United States submission of 30 June 1997 proffering the 23 June 1997 Memorandum Opinion of the United States District Court for the District of Columbia in Foremost-McKesson, Inc. v. Islamic Republic of Iran. With respect to the latter issue, Iran argued, *inter alia*, that the District Court's Memorandum Opinion represented a "covert attempt to evade the preclusive effect of the Tribunal's Award" in Foremost Tehran, *supra*, para. 4. Iran also argued that the United States should not be allowed, by submitting that Opinion, "to alter the legal status . . . the Tribunal was asked to decide upon, as existing at the close of the Hearing." If the Tribunal admits either that Opinion or the United States 7 June 1996

Opposition, Iran asserted, then Iran should be permitted to "file detailed comments on those documents." On 11 August 1997, the United States presented a response to Iran's 22 July 1997 submission.

16. On 18 September 1997, Iran submitted a twelve-page document, providing a "more elaborate treatment" of the reasons why, in Iran's view, the 23 June 1997 Memorandum Opinion of the United States District Court failed to accord preclusive effect to the Tribunal's award in Foremost Tehran. To its submission, Iran appended a table, entitled "Outline of the U.S. Court's Inconsistent Decisions," identifying seven instances in which the District Court Opinion allegedly failed to respect the final and binding character of the Tribunal's prior award. On 30 September 1997, the United States provided a substantive response to Iran's 18 September 1997 submission.

B. THE TRIBUNAL'S DECISION

1. "Opposition of the United States to Iran's Request for an Order Requiring the United States to Stay the McKesson Lawsuit"

17. The United States submitted its Opposition document in compliance with the Tribunal's Order of 17 May 1996 asking the United States to comment on Iran's request for stay of the Foremost-McKesson proceedings before the United States District Court. In its filings of 10 June and 26 August 1996, Iran had the opportunity to respond, and did respond, to the substance of the United States Opposition. Thus, even if that document contained submissions that went beyond the scope of the Tribunal's Order of 17 May 1996, as argued by Iran, its admission would neither prejudice Iran, nor disrupt the fair and orderly conduct of these proceedings. Consequently, the Tribunal admits the United States Opposition.

2. The United States Submission of the 23 June 1997 Memorandum Opinion of the United States District Court for the District of Columbia in Foremost-McKesson, Inc. v. Islamic Republic of Iran

18. As reflected in the Tribunal's Communication to the Parties of 20 June 1996, see supra, para. 12, one of the issues in Case No. A24 is whether the United States courts, in their treatment of the Foremost-McKesson proceedings, have accorded preclusive effect to the Tribunal's award in Foremost Tehran -- in other words, whether those courts have respected the final and binding nature of that award. The Memorandum Opinion rendered by the United States Court for the District of Columbia on 23 June 1997 is important evidence that is directly relevant to the Tribunal's determination of this issue. The Tribunal is mindful that the District Court Opinion might be appealed and, therefore, that the resolution of the issue at hand might have to await the end of the appeals. This, however, is no reason for the present Award to ignore proceedings completed to date in the United States courts.

19. Moreover, Iran offered comments on the District Court Opinion and explained in detail why it believes that the Opinion fails to respect the final and binding character of the Tribunal's award in Foremost Tehran. See supra, para. 16. Thus, Iran had a full opportunity to present its views on the matter.

20. In light of the foregoing, the Tribunal admits the United States submission of 30 June 1997, proffering the 23 June 1997 Memorandum Opinion of the United States District Court for the District of Columbia in Foremost-McKesson, Inc. v. Islamic Republic of Iran.

IV. FACTS AND CONTENTIONS²A. CASE NO. A15 (IV)1. Factual Background

21. On 14 November 1979, in the aftermath of the seizure of the United States Embassy in Tehran, the President of the United States issued Executive Order No. 12170, which blocked the transfer of Iranian assets subject to the jurisdiction of the United States or in the possession or control of persons subject to the jurisdiction of the United States. The United States Department of the Treasury subsequently issued a series of "Iranian Assets Control Regulations" implementing Executive Order No. 12170 (31 C.F.R. Part 535). Section 535.504 of the Regulations, as amended on 4 December 1979, authorized judicial proceedings against Iran, but not the "entry of any judgment or of any decree or order of similar or analogous effect. . . ." Section 535.418 of 19 December 1979 clarified that the general authorization for judicial proceedings contained in Section 535.504 included "pre-judgment attachment."

22. Subsequently, United States nationals filed hundreds of claims against Iran in United States and foreign courts. In many of these cases, the claimants obtained judicial attachments on Iranian assets that had been blocked and frozen by the United States President's 14 November 1979 Executive Order. A large number of suits involved outstanding standby letters of credit that had been called by Iranian banks.

23. In the fall of 1980, Iran and the United States began negotiations, conducted through Algerian intermediaries, with a view to resolving the crisis between the two countries. Iran's conditions for resolving the crisis were formulated by the

² More details regarding certain facts and contentions will be given, as appropriate, in connection with the merits of the claims, infra.

Majlis, the Iranian Parliament, on 2 November 1980, in a Resolution stating Iran's position concerning the release of the members the United States diplomatic staff detained in the United States Embassy in Tehran. This Resolution constituted the basis of the Iranian position throughout the negotiations and is referred to in the Preamble of the General Declaration.³ The third of the conditions listed in the Resolution, in particular, refers to questions at issue in these Cases. The Majlis requested the following:

The cancellation and annulment of all economic and fiscal decisions and measures against the Islamic Republic of Iran, the implementation of all requisite administrative and legal measures for the cancellation and annulment of all claims of any sort or kind of the American government and American agencies and companies against Iran, the implementation of all requisite administrative and legal measures to ensure that no new legal, penal, or financial claim of any kind be raised by any official or non-official natural or juridical persons of the American government and/or by American agencies and companies. And, should any claim be raised in any court against Iran and Iranian nationals in connection with the Iranian Islamic revolution, the seizure of the American conspiracy center, and those arrested therein, and a decision against Iran or Iranian nationals be rendered, the American government undertakes and guarantees to be answerable therefor and undertakes and guarantees to pay the damages and reparations arising therefrom.

24. From the outset, the United States made clear that claims could be removed from the United States courts only by the establishment of an alternative arrangement to ensure their settlement. This was stated by Deputy Secretary of State Christopher in his meeting with the Algerian Foreign Minister on 10 November 1980. In its initial written response to Iran's conditions dated 11 November 1980, the United States accepted,

³ This Resolution, together with the United States' first and second written responses of 11 November and 3 December 1980, respectively, and Iran's written response of 21 December 1980, may be found in 3 A. Lowenfeld, Trade Controls for Political Ends DS-809, et seq. (2nd ed. 1983).

in principle, the Majlis' Resolution as the basis for ending the crisis and declared itself to be prepared, inter alia, to do the following:

In order to bring about the cancellation of all judicial orders and attachments relating to the capital and assets of Iran within U.S. jurisdiction, the United States is prepared to deliver . . . a copy of a signed Presidential declaration committing the United States to join with the Government of Iran in a claims settlement procedure which will lead to the cancellation of such orders and attachments as rapidly as possible.

The United States also declared itself to be prepared to deliver a copy of "a signed Presidential declaration committing the United States to withdraw all claims pending against Iran in the International Court of Justice and to refrain from pursuing any other claims for financial damages" resulting from the seizure of the United States Embassy. Furthermore, the United States declared itself to be prepared to

join with the Government of Iran in a claims settlement procedure which will lead to the cancellation and annulment of all claims asserted by U.S. nationals, including U.S. companies, and by agencies, instrumentalities and controlled entities of the U.S. Government against Iran.

25. In reply to a message from Iran requesting answers to nine questions delivered through the Algerian intermediaries, a second American response, dated 3 December 1980, stated in its Comment 2:

[I]t is understood that Iran is willing to pay all of its legitimate debts to U.S. persons and institutions and that it wishes to terminate all related litigation. Accordingly, the United States agrees, in the context of the safe return of the hostages, to terminate all legal proceedings in U.S. courts involving claims of U.S. persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein and to prohibit all future litigation by U.S. persons and institutions

based on existing claims against Iran, when Iran agrees to submit all existing claims of U.S. persons and institutions [except those referred to in paragraph 11 of the General Declaration] to an international claims settlement process for the determination and payment of such claims. This process would include binding third party arbitration of any claim not settled by mutual agreement.

26. The Iranian response of 21 December 1980 to the proposals contained in the United States communication of 3 December 1980 stated, inter alia, the following:

Since the Government of the Islamic Republic of Iran undertakes to settle its bona fide debts to American persons or institutions, the Iranian Government accepts that the claims of American entities and citizens against Iran, and the claims of Iranian nationals and institutions, be settled, in the first stage through agreement between the parties and, failing such agreement, through arbitration acceptable to the respective parties.

27. On 19 January 1981, Iran and the United States adhered to the Algiers Declarations. The provisions of the Declarations that arguably may be relevant to the present claims are the following:

a. General Principle B of the General Declaration. That Principle, which mirrors the language of Comment 2 of the second American response of 3 December 1980, provides:

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

attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

b. Paragraphs 6, 8, and 9 of the General Declaration, which set forth the obligations of the United States to act to bring about the transfer of all Iranian deposits and securities in United States banking institutions in the United States, all other Iranian financial assets and all other Iranian properties;

c. Article I of the Claims Settlement Declaration, which provides:

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

d. Article II, paragraph 1, of the Claims Settlement Declaration, which defines which claims of nationals of Iran and of the United States are within the jurisdiction of the Tribunal;

e. Article IV, paragraph 1, of the Claims Settlement Declaration, which states that "[a]ll decisions and awards of the Tribunal shall be final and binding"; and

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

28. As part of a series of actions by the United States aimed at implementing its obligations under the Algiers Declarations, on 24 February 1981, the President of the United States issued Executive Order No. 12294 ("Executive Order 12294"), which provides in pertinent part:

. . . .

Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of [the Claims Settlement Declaration] and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.

. . . .

Section 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.

Section 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award, including any interest awarded by the Tribunal.

. . . .

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

The United States Department of the Treasury subsequently amended the Iranian Asset Control Regulations to implement Executive Order 12294.

29. In the meantime, within days of the signing of the Algiers Declarations, the United States Department of Justice filed Statements of Interest in each case against Iran in United States courts of which it was then aware. The Statements of Interest advised the courts of the conclusion of the Algiers Declarations and notified them that the Declarations and the implementing actions taken by the Executive Branch would "substantially affect the attachments of Iranian assets and claims by or against the Government of Iran." The Department of Justice requested that all proceedings in each case be stayed until 26 February 1981.

30. On or after 26 February 1981, the United States filed a second Statement of Interest in the cases against Iran in United States courts of which it was then aware. The United States advised the courts that Iran and the United States had agreed to settle claims of United States nationals against Iran through binding arbitration. It further advised the courts that, to implement the Algiers Declarations, President Carter had terminated attachments against the Iranian assets blocked by his 14 November 1979 Executive Order and that President Reagan had suspended those claims against Iran "that may be within the Tribunal's jurisdiction." Accordingly, the United States requested that the courts (1) stay litigation of those claims that were arguably within the Tribunal's jurisdiction and (2) vacate the attachments against Iranian assets.

31. Several United States plaintiffs in actions against Iran challenged the lawfulness of the United States President's suspension of their claims and nullification of their judicial attachments. In June 1981, the Supreme Court of the United

States accepted Dames & Moore v. Regan as the case in which to decide those issues. On 2 July 1981, the Supreme Court rendered an opinion sustaining the United States President's actions. See Dames & Moore v. Regan, et al. 453 U.S. 654 (1981). Shortly thereafter, the United States filed a further Statement of Interest in lawsuits against Iran, calling the courts' attention to the Supreme Court's opinion and renewing its request that the courts stay litigation of claims against Iran that might be presented to the Tribunal. The United States asserts that, in those cases where the plaintiffs argued that Dames & Moore v. Regan did not apply to them, the United States filed specialized Statements of Interest pointing out the breadth of the Supreme Court's decision and asking that the courts apply it.

2. The Claims

a. Claim A

32. In this claim, Iran contends that the United States has breached General Principle B by failing to terminate all litigation in United States courts involving claims of United States nationals against Iran that arose before 19 January 1981. As noted, General Principle B obliged the United States "to terminate [,through the procedures provided in the Claims Settlement Declaration,] all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises." Iran contends that, rather than terminating those legal proceedings, the United States, through Executive Order 12294, has limited itself to suspending some of them. In addition, Iran maintains that the United States has breached General Principle B by permitting cases dismissed by the Tribunal for want of jurisdiction to be revived in United States courts and by allowing United States nationals to assert counterclaims or set-offs in cases brought by Iran in United States courts.

b. Claim B

33. This claim centers on the last clause of Article II, paragraph 1, of the Claims Settlement Declaration, which excludes from the Tribunal's jurisdiction "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position." Iran contends that the United States has breached its obligations under the Algiers Declarations by failing to terminate litigation against Iran in United States courts involving claims arising from contracts with forum selection clauses referring disputes to the Iranian courts.

c. Claim D

34. This claim arises from Section 1 of Executive Order 12294, which provides that "[n]othing in this action precludes the commencement of an action [in a United States court] after the effective date of this Order for the purpose of tolling the period of limitations for the commencement of such action." Iran contends that this provision violates General Principle B's requirement that the United States "prohibit all further litigation" of claims of United States nationals against Iran in United States courts.

d. Claim E

35. In this claim, Iran contends that the United States has breached General Principle B by failing to prohibit litigation initiated by United States nationals against Iran in courts outside the United States.

e. Claim F

36. On 19 January 1981, as part of a series of actions taken to implement the Algiers Declarations, the President of the United States issued Executive Orders which nullified attachments of Iranian assets obtained by United States nationals in United States courts after 14 November 1979, the date on which the President had ordered the freezing of Iranian assets.⁴ These Executive Orders left in place attachments obtained by United States nationals prior to 14 November 1979. At issue in this claim is whether the United States was obliged under General Principle B to nullify also such pre-14 November 1979 attachments. Iran argues that it was.

f. Claim G

37. In this claim, Iran contends that the United States has breached the Algiers Declarations by failing to nullify in a sufficiently prompt fashion attachments obtained by United States nationals against Iran in United States courts after 14 November 1979.

g. Claim H

38. In this claim, Iran contends that the United States has violated the Algiers Declarations by failing to nullify judgments that United States nationals obtained against Iran in United States courts before the date of the Algiers Declarations. Iran relies on General Principle B, which requires the United States "to terminate all legal proceedings . . . [and] to nullify all . . . judgments obtained therein."

⁴ By Executive Order 12170 of 14 November 1979, the United States President blocked the transfer of Iranian assets subject to the jurisdiction of the United States or in the possession or control of persons subject to the jurisdiction of the United States. See supra, para. 21.

B. CASE NO. A24

1. Factual Background

39. On 16 November 1981, Foremost Tehran, Inc., Foremost Shir, Inc., Foremost Iran Corp., Foremost Foods, Inc., and Foremost McKesson, Inc. (collectively "Foremost") and Overseas Private Investment Company ("OPIC")⁵ presented a claim to the Tribunal, alleging, inter alia, that Iran, through agencies that it controlled, had expropriated Foremost's 31 percent interest in Sherkat Sahami Labaniat Pasteurize Pak ("Pak Dairy"), an Iranian joint stock company. Foremost and OPIC sought compensation from Iran for the insured portion of Foremost's investment in Pak Dairy and for the insured portion of Foremost's share in any unpaid dividends declared before the date of the alleged expropriation. The case was assigned No. 37.

40. On 12 January 1982, Foremost presented a further claim to the Tribunal for the expropriation of its interest in Pak Dairy. By this claim, Foremost sought compensation for the portion of dividends and equity in Pak Dairy of which Foremost was the sole owner and in which OPIC held no beneficial interest. The case was assigned No. 231.

⁵ By insurance contract with OPIC, an agency of the United States government, executed at the time of the initial investment, Foremost obtained insurance covering 64 percent of its 31 percent interest in Pak Dairy against expropriation. Pursuant to settlement agreements dated 29 July 1980 and 3 August 1981, OPIC paid compensation to Foremost for the alleged expropriation of Foremost's equity interest in Pak Dairy and for the non-payment of declared dividends, in accordance with the limited coverage provided for in the insurance contract. Pursuant to the settlement agreements, Foremost retained legal title to all of the shares it owned in Pak Dairy, while transferring to OPIC the beneficial interest in those shares that were insured and for which OPIC paid insurance benefits to Foremost. See Foremost Tehran, et al. and Islamic Republic of Iran, et al., Award No. 220-37/231-1, at 14-15 (11 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 238.

41. On 22 January 1982, Foremost and OPIC filed a complaint against Iran in the United States District Court for the District of Columbia for the purpose of tolling the relevant statute of limitations, in accordance with Section 1 of Executive Order 12294. The case is known as Foremost-McKesson, Inc. v. Islamic Republic of Iran, Civ. No. 82-0220-TAF (D.D.C.) ("Foremost/OPIC lawsuit"). Foremost and OPIC sought compensation for the expropriation of the insured portion of Foremost's 31 percent interest in Pak Dairy and for the insured portion of its share in any unpaid dividends declared before the date of the alleged expropriation.

42. On 11 April 1986, the Tribunal issued its Award in Cases Nos. 37 and 231.⁶ It found that Iran's interference with the substance of Foremost's rights in Pak Dairy "did not, by 19 January 1981 . . . amount to an expropriation." Foremost, at 31, 10 Iran-U.S. C.T.R. 250. Consequently, the Tribunal dismissed Foremost's expropriation claim. The Tribunal, however, held that the level of interference with Foremost's rights constituted "other measures affecting property rights." Accordingly, it awarded Foremost a total of U.S.\$902,835, plus interest, for unpaid cash dividends declared in 1979 and 1980. See id. at 32-33, 10 Iran-U.S. C.T.R. 251-52.

43. On 1 April 1988, Foremost (now known as McKesson Corporation) and OPIC filed a Motion for Partial Summary Judgment against Iran before the United States District Court for the District of Columbia, thereby reviving the lawsuit that had been initiated in 1982 for the purpose of tolling the statute of limitations. In their Motion, Foremost and OPIC stated that they were seeking to "revive the lawsuit and to narrow the issues presented in the [1982] Complaint. . . ." They further stated:

Plaintiffs fully accept, as they must, the conclusion of the majority of the arbitral panel [of the Iran-

⁶ Foremost Tehran, et al., supra, note 5 (hereinafter "Foremost").

United States Claims Tribunal] to the effect that there had been no expropriation as of January 19, 1981. Since the Tribunal determined that the expropriation claim had not ripened within the time period submitted to its jurisdiction, it did not purport to rule on the merits of a post-January 19, 1981 expropriation claim. This issue is now suitable for hearing and disposition by this Court. . . .

Accordingly, Foremost and OPIC urged the District Court to find that "Iran is liable to Foremost for the unlawful expropriation, in October 1981, of Foremost's equity interest in Pak Dairy" and that it "is also liable to Foremost for the expropriation of the dividend for the year 1980 declared by Pak Dairy in 1981 and paid to Iranian shareholders but not to Foremost."

44. On 13 December 1990, Foremost and OPIC filed a Motion for Leave to Amend their 1982 complaint before the District Court. Specifically, they sought to amend the complaint to increase the amount of damages to include Foremost's full 31 percent ownership interest in Pak Dairy as well as to state an alternative theory of recovery (Iran's tortious interference with Foremost's rights as a minority shareholder in Pak Dairy). In addition, Foremost and OPIC sought to exclude the dividends awarded to Foremost by the Tribunal in its 1986 Award from their claim for recovery of dividends owed up to the date of the alleged expropriation. The District Court granted Foremost's Motion.

45. On 23 June 1997, the United States District Court for the District of Columbia issued its decision in the Foremost/OPIC lawsuit, holding that Iran's interference with Plaintiffs' shareholder rights in Pak Dairy had ripened into an expropriation by April 1982. In the Memorandum Opinion stating the reasons for this conclusion, the District Court discussed, at the outset, the effect of the Tribunal's decision in Foremost on the Foremost/OPIC lawsuit. The District Court, noting that the Algiers Declarations provide that the Tribunal's decisions are "final and binding," stated that

[u]nder the Accords, then, the Court may not revisit the Claims Tribunal's conclusion that no expropriation occurred as of January 19, 1981, nor may it reconsider the factual basis for the Claims Tribunal's conclusion. . . . In addition, the Court may not take issue with the legal principles applied by the Tribunal; Article V of the Claims Settlement Declaration states that 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."

46. The District Court went on to say that it was not bound by the Tribunal's findings concerning events that occurred after 19 January 1981, as those events represented "matters not consigned to [the Tribunal's] discretion by the arbitration agreement." The Court added: "To the limited extent the Tribunal mentioned post-cutoff events, . . . it did so in order to evaluate whether an expropriation had occurred as of January 19, 1981." The Court then stated that it was its responsibility to examine the post-cutoff events before it and to determine whether an expropriation of Foremost's equity interest in Pak Dairy had occurred after 19 January 1981; in making that determination, it could consider events occurring before that date, "as determined by the Tribunal."

47. In establishing whether such an expropriation occurred, the District Court, as an initial matter, recalled certain of the Tribunal's findings in the Foremost award concerning events that took place before 19 January 1981. It then proceeded to examine events that occurred after that date. It reached the following conclusion:

Given the Claims Tribunal's binding determination that the evidence of an expropriation was "finely balanced" as of January 19, 1981, there is no question in the Court's mind that the interference with McKesson's shareholder rights ripened into an expropriation after that date. The Court finds that the "more or less irreversible deprivation" of McKesson's property, see Tribunal Award at 29, constituting an expropriation

occurred by April of 1982. By that time, McKesson had not received its dividends for a fourth consecutive year, McKesson had no voice in the management of the company since October of 1981, and McKesson had received no shareholder communications from Pak Dairy since it had requested them to be sent in October of 1981.

2. The Claim

48. In this claim, Iran contends that the United States has breached its obligations under the Algiers Declarations by allowing Foremost and OPIC to file a complaint in the United States District Court for the District of Columbia in 1982 identical to the statement of claim submitted before this Tribunal in Cases Nos. 37 and 231, and by allowing the same lawsuit to be revived in 1988 and to proceed before the District Court.

V. JURISDICTION

49. The Tribunal's jurisdiction over these consolidated Cases is undisputed. The Parties disagree about the interpretation of the Algiers Declarations and about the obligations they impose on the United States. This dispute, pursuant to Paragraph 17 of the General Declaration, thus clearly falls within the Tribunal's jurisdiction.

VI. MERITS

A. CASE NO. A15 (IV)1. Claim Aa. Iran's Position

50. Iran contends that the United States has breached its obligations under the Algiers Declarations by failing to terminate all legal proceedings in United States courts involving claims of United States nationals against Iran that arose prior to 19 January 1981. Iran asserts that General Principle B required the United States to terminate all such proceedings. Yet, the United States has, instead, merely suspended some of them through Executive Order 12294. In addition, the United States has permitted cases dismissed by the Tribunal for want of jurisdiction to be revived in United States courts. Iran contends, moreover, that the United States has also breached General Principle B by allowing United States nationals to assert counterclaims or set-offs in judicial proceedings brought by Iran in United States courts.

51. At the outset, Iran points out that General Principle B distinguishes between the United States obligation to terminate "all legal proceedings" of United States nationals against Iran in the United States and its obligation to terminate the "claims" involved in those proceedings. Iran asserts that the termination of "legal proceedings" by the United States was to occur immediately upon the signing of the Declarations, while the termination of "claims" was to occur at a later stage, either through settlement by the parties concerned or through binding arbitration before the Tribunal.

52. Iran asserts that the plain language of General Principle B clearly obliges the United States to terminate, and not simply suspend, all litigation against Iran in United States

courts. In this connection, Iran points to the language in General Principle B which states that it was the purpose of both High Contracting Parties to "terminate" all litigation and that the United States agreed to "terminate" all legal proceedings in United States courts involving claims of United States nationals against Iran. Iran observes that a treaty 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." Article 31, paragraph 1, of the 1969 Vienna Convention on the Law of Treaties.⁷ And the ordinary meaning of "terminate," Iran contends, is "to end," "to finish," or "to cancel." Consequently, mere suspension of claims that may be within the Tribunal's jurisdiction does not satisfy the United States obligation to terminate them.

53. Iran states, further, that in General Principle B "all" litigation means "all," and not only litigation that falls within the Tribunal's jurisdiction. In response to an argument by the United States, Iran asserts that there is no link between the United States termination of litigation obligation and the United States undertaking, in General Principle B, to accomplish this end "[t]hrough the procedures provided in the [Claims Settlement Declaration]." Nowhere in the Algiers Declarations is there a provision that makes "the performance of the former obligation contingent upon the implementation of the latter."

54. According to Iran, claims of United States nationals outstanding on 19 January 1981 that do not fall within the Tribunal's jurisdiction are forever extinguished. In this connection, Iran notes that it was the United States that drafted the Algiers Declarations. Thus, in accordance with the rule in dubio contra proferentem, the United States failure to include certain categories of claims within the jurisdictional limits set by Article II, paragraph 1, of the Claims Settlement Declaration

⁷ Vienna Convention on the Law of Treaties, 23 May 1969, U.N. Doc. A/CONF.39/27, 8 I.L.M. 679 (1969).

must be construed as a waiver of those claims by the United States.

55. Iran argues, moreover, that the mere suspension of litigation, whereby claims are maintained on the dockets of United States courts pending their resolution by the Tribunal, also conflicts with Article VII, paragraph 2, of the Claims Settlement Declaration, which provides that "[c]laims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court." Suspended cases, Iran asserts, remain within the jurisdiction of the courts on whose dockets they appear.

56. Iran maintains that, because the ordinary meaning of General Principle B is clear, the Tribunal need not examine the negotiating history of the Algiers Declarations for guidance in interpreting that Principle. Iran further maintains, however, that if the Tribunal were to examine that history, the Tribunal would find that it confirms Iran's interpretation of General Principle B, since the only condition that the United States attached to the termination of all legal proceedings of United States nationals against Iran in the United States was the establishment of this Tribunal, a condition that Iran accepted.

57. Iran contends that, because the United States failed to terminate all litigation against Iran in United States courts, Iran has been compelled to continue legal representation in that litigation, thereby incurring legal fees and court costs. Accordingly, as part of the relief requested, Iran seeks to be compensated for legal costs it allegedly incurred in monitoring and defending against the claims and counterclaims that the United States should have terminated by 19 January 1981. Iran disputes the United States position that the steps Iran took were voluntary and unnecessary. Iran contends that, faced as it was

with a breach of the Algiers Declarations, Iran was entitled to take all reasonable steps in order to protect its interests.

58. Finally, concerning the timing of the United States obligation to terminate legal proceedings, Iran argues that this obligation arose immediately upon the conclusion of the Algiers Declarations, although a de minimis delay of a few weeks would have been acceptable to Iran. In principle, however, the United States should have terminated legal proceedings as soon as the Declarations came into operation.

b. The United States Position

59. The United States rejects Iran's interpretation of the Algiers Declarations. The United States contends that General Principle B required it to terminate only the litigation arising from claims that fell within the Tribunal's jurisdiction. Because it could not be known at the outset of the arbitral process which claims would be determined by the Tribunal to be within its jurisdiction, the United States argues that it had to devise some mechanism to prevent the claims that would ultimately be rejected by the Tribunal on jurisdictional grounds from being barred in United States courts by the statutes of limitation applicable in the United States. The most appropriate mechanism was the suspension of litigation, as set forth in Executive Order 12294. The United States asserts that this procedure was the functional equivalent of dismissal: all litigation against Iran was terminated, but cases were allowed to remain on the dockets in an inactive status so that they could be revived if the Tribunal determined that it had no jurisdiction over them.

60. The United States contends that the plain language of General Principle B explicitly links the United States termination obligation to claims within the Tribunal's jurisdiction. The first sentence of General Principle B, the United States urges, explicitly describes the United States termination

obligation as coextensive with the arbitral jurisdiction of the Tribunal: "[i]t is the purpose of both parties . . . to terminate all litigation . . . and to bring about the settlement and termination of all such claims through binding arbitration."

61. The second sentence of General Principle B, the United States continues, confirms the link between termination of litigation and the jurisdiction of the Tribunal in that it provides that litigation will be terminated only "[t]hrough the procedures provided in the [Claims Settlement Declaration]." According to the United States, by tying the United States termination obligation to the procedures in the Claims Settlement Declaration, General Principle B limits the scope of that obligation to those claims that can be settled by negotiation or by arbitration pursuant to the Claims Settlement Declaration -- that is, claims within the Tribunal's jurisdiction as defined in Article II, paragraph 1, thereof.

62. The United States agrees with Iran that General Principle B explicitly distinguishes between the termination of "legal proceedings" of United States nationals against Iran in United States courts and the termination of the "claims" at issue in those proceedings. The United States contends that all "legal proceedings" were in fact terminated in 1981, by means of Executive Order 12294, which suspended all claims that may be presented to the Tribunal and denied them any legal effect in United States courts so long as they were suspended. With respect to the termination of the claims that were thus suspended, the United States points out that, pursuant to the final clause of General Principle B, they are to be terminated only "through binding arbitration" before the Tribunal, at the end of the arbitration process, and it contends that Executive Order 12294 ensures compliance with that obligation by stating, in Section 4, that "[a] determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes."

63. The United States next contends that Iran's interpretation of General Principle B is inconsistent with other parts of the Algiers Declarations. The United States first points out that, in the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran,⁸ Iran "affirmed its intention to pay all its debts and those of its controlled institutions." *Id.* paragraph 2. Iran's argument that claims that do not fall within the Tribunal's jurisdiction are waived conflicts with its promise to pay all its debts to United States claimants.

64. The United States argues, moreover, that Iran's interpretation also conflicts with General Principle A of the General Declaration, in which the United States undertook to restore the financial position of Iran, in so far as possible, to that which existed prior to 14 November 1979. The United States asserts that it did not agree to place Iran in a better financial position by waiving whole ranges of claims.

65. Continuing, the United States contends that Iran's interpretation of General Principle B would render other provisions of the Algiers Declarations superfluous. Paragraph 11 of the General Declaration, for example, provides that the United States will "withdraw" all claims pending against Iran before the International Court of Justice and that it will "bar and preclude" the prosecution against Iran of "any pending or future claim" arising out of specified events related to the United States Embassy incident and the Islamic Revolution.⁹

⁸ 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 January 1981, reprinted in 1 Iran-U.S. C.T.R. 13.

⁹ Paragraph 11 of the General Declaration reads in full:

Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will promptly withdraw all claims now
(continued...)

According to the United States, if General Principle B did indeed require the termination of all claims against Iran in United States courts, regardless of the existence of jurisdiction before the Tribunal, as argued by Iran, then Paragraph 11 of the General Declaration would be superfluous, because the claims described therein would already be covered by the termination of claims obligation in General Principle B.

66. The United States also contends that Iran's interpretation of General Principle B conflicts directly with Article VII, paragraph 2, of the Claims Settlement Declaration, which states merely that claims shall "be considered excluded" from the jurisdiction of the United States courts and then only as of the date of their filing with the Tribunal. The United States asserts that this provision does not require that a claim should be "physically dismissed" as of the date of its filing with the Tribunal.

67. Concerning the negotiating history, the United States asserts that this history shows that the United States did not intend to forfeit nonarbitrable claims and that Iran understood and accepted this position.

⁹(...continued)

pending against Iran before the International Court of Justice and will thereafter bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this Declaration related to (A) the seizure of the 52 United States nationals on November 4, 1979, (B) their subsequent detention, (C) injury to the United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran. The United States will also bar and preclude the prosecution against Iran in the courts of the United States of any pending or future claim asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.

68. As to damages, the United States contends that Iran has failed to identify any cases in which it was wrongfully required to respond to litigation in United States courts in cases arguably falling within the Tribunal's jurisdiction. Consequently, because Iran has suffered no injury, Iran's claim should be dismissed for lack of proof.

69. The United States concedes that between January and July 1981, some litigation against Iran in the United States continued. It points out, however, that the issues litigated related almost exclusively to the validity of the Algiers Declarations under the United States Constitution. The United States denies that it should compensate Iran for any costs Iran incurred in connection with these cases, since both High Contracting Parties anticipated that the validity of the Algiers Declarations would be challenged in United States courts. It is clear from the Algiers Declarations, the United States contends, that the Parties estimated that it would take about six months to resolve this litigation. According to the United States, this is demonstrated, in particular, by the fact that the General Declaration, in Paragraph 6, gave the United States six months from the date of the Declarations to effect the transfer of Iranian assets subject to attachments in United States courts.¹⁰ The United States thus concludes that it had six months within which to terminate litigation against Iran. Consequently, any

¹⁰ Paragraph 6 of the General Declaration reads in full:

6. Commencing with the adherence by Iran and the United States to this Declaration and the Claims Settlement Agreement attached hereto, and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing Security Account specified in that Agreement 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.

legal costs incurred by Iran during this six-month period would not constitute a violation of General Principle B.

c. The Tribunal's Decision

70. This claim presents three broad issues. First, what is the scope of the United States obligations under the Algiers Declarations with respect to the termination of claims and termination of legal proceedings in United States courts; in other words, what claims and what legal proceedings were to be terminated and when were they to be terminated? Second, did the United States breach its obligations by implementing them through Executive Order 12294; that is, by suspending claims which may be presented to the Tribunal pending their resolution by the Tribunal and by denying them any legal effect in any legal proceeding in United States courts during such period of suspension? Third, did Executive Order 12294 violate the obligations of the United States by allowing counterclaims or set-offs by United States nationals in legal proceedings subsequently commenced by Iran?

(1) The Scope of the United States Obligation to Terminate Litigation and Claims

(a) The Meaning of General Principle B

71. As noted, Iran asserts that General Principle B obliged the United States to terminate with prejudice all legal proceedings in United States courts involving claims of United States nationals against Iran that were outstanding on 19 January 1981, regardless of whether those claims were within the Tribunal's jurisdiction. Iran asserts, moreover, that the United States suspension of legal proceedings did not satisfy General Principle B's requirement to terminate them. Accordingly, Iran seeks a

declaratory award finding that the United States has breached its obligations pursuant to General Principle B; compelling the United States to terminate all legal proceedings in United States courts involving claims of United States nationals against Iran; and ordering the United States to reimburse Iran for the expenses Iran incurred in monitoring and defending against claims and counterclaims that the United States should have terminated on or about 19 January 1981, with the amount of these damages to be determined at a later stage of the proceedings.

72. The United States denies that it breached its obligations under the Algiers Declarations and also denies that Iran is entitled to any part of the relief sought. The United States contends that General Principle B required the United States to terminate only those claims that fell within the Tribunal's jurisdiction; this means that its termination obligation did not extend to claims falling outside that jurisdiction. As to the suspension of claims provided for in Executive Order 12294, the United States contends that this was a necessary and appropriate device that ensured that the claims the Tribunal dismissed for want of jurisdiction would not inadvertently be barred by the statute of limitations. The United States maintains that by depriving all suspended claims of legal effect in any action in United States courts and by providing that a decision on the merits of any such claim by the Tribunal operates as a final resolution and discharge of the claim, the United States has complied with its obligations.

73. The task of the Tribunal is to ascertain the content and scope of the obligations undertaken by the United States in the Algiers Declarations with respect to termination of claims and litigation of United States nationals against Iran in United States courts. "The means to be employed in the process of interpretation of an international agreement [of the nature of the Algiers Declarations] are set out in the Vienna Convention on the Law of Treaties." 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. Article 31, paragraph 1, of the Convention provides:

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.

74. As an initial matter, the Tribunal agrees with the Parties that General Principle B distinguishes between (i) an obligation of the United States to terminate "litigation" and "legal proceedings" by United States nationals against Iran in United States courts and (ii) an obligation of the United States to terminate the "claims" at issue in those proceedings. This conclusion is supported by the plain language of the second sentence of General Principle B, which obliges the United States, inter alia, "to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises" and "to bring about the termination of such claims through binding arbitration." These two related but distinct obligations are at issue in this claim.

75. Thus, General Principle B requires the United States to satisfy its termination obligation in two steps: first, through termination of legal proceedings (or litigation) by United States nationals against Iran in United States courts; and second, through termination of the claims at issue in those legal proceedings "through binding arbitration" before this Tribunal. The phrase "through binding arbitration" indicates that a claim will be terminated only after its resolution by the Tribunal on the merits. This conclusion is also supported by the language of the first sentence of General Principle B, which states that it is the purpose of both Parties, within the framework of the Algiers Declarations, "to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims

through binding arbitration." (Emphasis added.) Settlement of a claim, by definition, requires its resolution on the merits.¹¹

76. Turning to the structure of General Principle B, it should be noted that the first sentence of that Principle states one of the purposes envisaged by the Parties to the Algiers Declarations, namely, the termination of all litigation as between the government of each Party and the nationals of the other and the settlement and termination of all such claims through binding arbitration. This purpose is qualified by the reference to "the framework" and "the provisions" both of the General Declaration and the Claims Settlement Declaration. The second sentence of General Principle B, on the other hand, neither confines itself to elaborating on the said purpose nor does it, contrary to the first sentence, concern both States. Rather, it lays out rules of conduct which, in the circumstances, must be distinguished from a mere purpose and which, moreover, are addressed to only one of the two High Contracting Parties, the United States.

77. Despite these distinguishing features, the two sentences are part and parcel of the same principle. Thus, they must be read as a whole. In particular, the second sentence of General Principle B cannot be divorced from the first sentence because it translates the purpose stated in the first sentence into a concrete obligation, or a series of concrete obligations, of the United States. These obligations, the second sentence provides, are to be performed "[t]hrough the procedures provided in the [Claims Settlement Declaration]."

78. It is undisputed that there is litigation and there are claims that remain outside these procedures. Certain claims fall outside the Tribunal's jurisdiction by virtue of express exclusions contained in the Declarations. For example, Article II,

¹¹ Black's Law Dictionary (5th ed. 1979) defines the term "settlement," inter alia, as the "[a]ct or process of adjusting or determining."

paragraph 1, of the Claims Settlement Declaration bars from the Tribunal's jurisdiction certain claims against Iran, described in Paragraph 11 of the General Declaration, that arise out of specified events related to the seizure of the United States Embassy in Tehran and to the Islamic Revolution. See supra, note 9. Other claims fall outside the Tribunal's jurisdiction because they do not fit within the jurisdictional parameters set by Article II, paragraph 1, of the Claims Settlement Declaration. For example, the Tribunal may not entertain claims that arose after 19 January 1981; claims not arising out of debts, contracts, expropriations or other measures affecting property rights; and claims by persons who do not qualify as Iranian or United States nationals, as the case may be. One of the primary issues in this Claim A is precisely the fate of claims that do not fall within the Tribunal's jurisdiction: by agreeing, in General Principle B, to terminate "all" legal proceedings in United States courts involving claims of United States nationals against Iran, did the United States waive claims that the Parties excluded from the Tribunal's jurisdiction and extinguish them, as argued by Iran? This is simply another way of asking what the scope is of the United States obligation to terminate legal proceedings and claims of United States nationals against Iran in the United States.

79. In determining what this scope is, the Tribunal cannot overlook the language in the second sentence of General Principle B, which states that the termination by the United States of "all" litigation against Iran is to occur "[t]hrough the procedures provided in the [Claims Settlement Declaration]." See supra, para. 77. Thus, the second sentence of General Principle B expressly ties the United States obligation to terminate litigation to "the procedures provided" in the Claims Settlement Declaration. There is no reason to regard this qualifying language as meaningless or irrelevant in understanding the word "all." Rather, this language must be taken into account in interpreting the word "all." It would otherwise be unclear why the Parties included those words in the text of General Principle

B -- and with a certain insistence at that. The only plausible answer is that the Parties intended for this language to have operative effect.

80. What then are the "procedures provided in the [Claims Settlement Declaration]" through which the termination of claims and litigation against Iran in United States courts must occur? The Tribunal holds that these procedures are embodied in the following provisions of the Claims Settlement Declaration: (a) Article I, which obliges the two state Parties to promote the settlement of the claims described in Article II; (b) Article II, which defines the types of claims that shall be resolved by arbitration before this Tribunal; (c) Article IV, paragraph 1, which provides that all decisions and awards of the Tribunal shall be final and binding; and (d) Article VII, paragraph 2, which provides, inter alia, that "[c]laims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court." All of these provisions relate to the settlement and adjudication of claims that are within the Tribunal's jurisdiction. There are no other provisions in the Claims Settlement Declaration that relate to the "termination" of claims and litigation.

(b) Termination of Claims

81. Based on the foregoing, the Tribunal concludes that what was referred to by "procedures provided in the [Claims Settlement Declaration]" in the second sentence of General Principle B was the arbitration mechanism before the Tribunal as set out in that Declaration. It follows that any claims which, under the terms of the Claims Settlement Declaration, cannot be resolved on the merits by the Tribunal are not within the scope of the termination obligation imposed on the United States by General Principle B; this is because those claims cannot possibly

be terminated "[t]hrough the procedures provided in the [Claims Settlement Declaration]."

82. Thus, the United States termination obligation under General Principle B does not cover claims that fall outside the jurisdiction of the Tribunal. The dismissal of a claim on jurisdictional grounds does not fulfil the purpose set out by the Parties in General Principle B -- that is, that claims as between the government of one Party and the nationals of the other be settled and terminated "through binding arbitration." Settlement and termination of a claim through binding arbitration means resolution of that claim on the merits. Otherwise, there would have been no point in the Parties' referring claims to this Tribunal. This conclusion implies that the United States obligation to terminate a claim arises only once the claim has been decided on the merits by the Tribunal.

83. The question remains, however, as to what obligation is imposed on the United States by Article VII, paragraph 2, of the Claims Settlement Declaration, which provides that "[c]laims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court." This provision is important because only the Tribunal is competent to determine which of the claims referred to it are within its jurisdiction, and that determination often has been made only many years after a claim was filed with the Tribunal. Article VII, paragraph 2, by requiring that all filed claims be considered excluded from the jurisdiction of courts after they are referred to the Tribunal, implicitly recognizes that such claims may also be pending in other courts while it explicitly obligates the parties to deem them not subject to the jurisdiction of such other courts by ensuring that the claims not proceed unless and until the Tribunal determines that they are outside its jurisdiction. Consequently, until the Tribunal determines its jurisdiction with respect to a filed claim, Article VII, paragraph 2, of the Claims

Settlement Declaration places on the United States an obligation to halt proceedings in its courts with respect to that claim. See infra, paras. 87, et seq.

(c) Waiver

84. The Tribunal has concluded that the language in General Principle B qualifying the United States obligation to terminate claims must be given operative effect. See supra, paras. 79-82. There is only one hypothesis in which the qualifying language of that Principle would have no effect: if the United States had agreed that all claims submitted to the Tribunal be waived as of the time of such submission. A waiver expressed in such terms would evidently include claims not within the Tribunal's jurisdiction and arguably would prevail over the qualifying and limiting language contained in General Principle B. For the following reasons, however, the Tribunal holds that, other than the claims referred to in Paragraph 11 of the General Declaration, the United States did not waive any of its nationals' claims against Iran.

•
85. Termination of municipal litigation and submission to arbitration as set forth in General Principle B cannot be mistaken for, or identified with, a waiver of any claims. The claims continue to exist, although the nationals no longer have at their disposal any domestic court procedures to pursue their claims. Closing the road to municipal courts cannot, in itself, amount to a waiver. Moreover, nothing in the Algiers Declarations allows for the conclusion that the United States intended to waive any of its nationals' claims. Indeed, rather than providing for a waiver of claims, General Principle B provides a specific mechanism to deal with them.

86. Nor does the negotiating history of the Algiers Declarations lend any support to the proposition that the United States waived claims of its nationals other than those described

in Paragraph 11 of the General Declaration.¹² In the second American response of 3 December 1980, discussed supra, at para. 25, the United States, in Comment 2, stated:

[T]he United States agrees, in the context of the safe return of the hostages, to terminate all legal proceedings in U.S. courts involving claims of U.S. persons and institutions against Iran and its state enterprises . . . when Iran agrees to submit all existing claims of U.S. persons and institutions [except those referred to in Paragraph 11 of the General Declaration] to an international claims settlement process for the determination and payment of such claims. This process would include binding third party arbitration of any claim not settled by mutual agreement. (Emphasis added.)

Thus, in December 1980, the United States informed Iran that it would agree to the termination of all legal proceedings against Iran in the United States if -- and only if -- all claims involved in those proceedings would be submitted to this Tribunal. The United States made clear that those claims were to be resolved on the merits, either through settlement by the parties or through binding arbitration before this Tribunal. This position, clearly, cannot be squared with the proposition that the United States waived any of its nationals' claims. And nothing in the negotiating history of the Algiers Declarations suggests that the United States, prior to the signing of the Declarations, changed the position it had taken on 3 December 1980. Furthermore, it appears that Iran acquiesced in the United States position. In its response of 21 December 1980, Iran stated:

Since the Government of the Islamic Republic of Iran undertakes to settle its bona fide debts to American persons or institutions, the Iranian Government accepts that the claims of American entities and

¹² Of course, recourse to the preparatory work is not strictly necessary, because the Tribunal has already reached its conclusion based on the plain language of General Principle B. Preparatory work is a "supplementary means of interpretation." Article 32 of the Vienna Convention on the Law of Treaties. Nonetheless, it serves here to confirm the conclusion that the United States did not waive any of its nationals' claims.

citizens against Iran, and the claims of Iranian nationals and institutions, be settled, in the first stage through agreement between the parties and, failing such agreement, through arbitration acceptable to the respective parties. (Emphasis added.)

(d) Termination of Litigation in United States Courts:
Suspension

i) The United States obligation to terminate litigation

87. The second sentence of General Principle B requires the United States to "terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises." Further, Article VII, paragraph 2, of the Claims Settlement Declaration requires the United States to consider claims referred to the Tribunal excluded from the jurisdiction of United States courts "as of the date of filing of such claims with the Tribunal." Finally, Article I of the Claims Settlement Declaration requires the High Contracting Parties to encourage negotiated settlement of claims and requires that claims not settled by negotiation be brought to the Tribunal. It is clear from those provisions and from the preparatory work of the Algiers Declarations that the High Contracting Parties agreed that the Tribunal would be a substitute forum for deciding specified claims asserted against a State Party by nationals of the other State Party.

88. It is also clear from the above provisions and from the negotiating history of the Algiers Declarations that a claim may not be litigated in courts of the United States (or of Iran) while the same claim is pending before the Tribunal. First, neither Iran nor the United States agreed to any such parallel litigation. The language of General Principle B leaves no doubt in this respect. Second, Article VII, paragraph 2, of the Claims Settlement Declaration requires the States Parties to ensure that

claims that have been filed with the Tribunal are not litigated in their respective courts. See supra, para. 83.

89. The Tribunal holds that the Algiers Declarations oblige the United States to terminate all legal proceedings initiated by United States nationals against Iran in United States courts involving claims that arguably fall within the Tribunal's jurisdiction. A contrary finding would render the second sentence of General Principle B as well as Article I and Article VII, paragraph 2, of the Claims Settlement Declaration meaningless. The Tribunal has found that General Principle B requires the United States to terminate only claims that fall within the Tribunal's jurisdiction. See supra, para. 82. Thus, in conformity with that finding, the United States obligation to terminate legal proceedings, as delineated hereabove, ceases with regard to legal proceedings involving claims that have been dismissed by the Tribunal for lack of jurisdiction.

90. In the history of each claim, whether or not that claim ultimately is found by the Tribunal to be within its jurisdiction, there must always be a period during which there is no litigation related to that claim proceeding in the United States. With respect to claims that the Tribunal finds are outside its jurisdiction, that period ends when the Tribunal renders its jurisdictional decision; those claims can thereafter be litigated in United States courts. By contrast, claims that the Tribunal has decided are within its jurisdiction cannot be revived in domestic courts.

91. Thus, a timing difficulty becomes apparent: it cannot be known in advance over which claims the Tribunal ultimately will take jurisdiction. Nevertheless, by acceding to General Principle B, the United States undertook to "terminate" all legal proceedings against Iran in United States courts. This choice of words by the High Contracting Parties carries substantial weight. Iran was entitled to expect that legal proceedings against it in United States courts would in fact be terminated.

In interpreting the Algiers Declarations, the Tribunal cannot ignore the express terms agreed upon by the Parties, nor can it replace those terms with others that would unavoidably change the original meaning.

ii) Evaluation of the suspension method against the background of the Algiers Declarations

92. On 24 February 1981, the President of the United States issued Executive Order 12294, which provides for the suspension of all claims that may be presented to the Tribunal and directs that "[d]uring the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States." Thus, the United States chose to implement its obligation to terminate all domestic litigation against Iran through the suspension mechanism provided for in Executive Order 12294. The Tribunal will consider whether the choice of this mechanism was consistent with the United States obligations under the Algiers Declarations.

93. In interpreting a treaty, the Tribunal has consistently applied Article 31 of the Vienna Convention on the Law of Treaties and has searched "for the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." See supra, para. 73. It is appropriate to note at the outset that according to their ordinary meaning, the terms "termination" and "suspension" imply different rights and obligations and, consequently, different legal effects. The two terms designate distinct legal notions. Therefore, "suspension" of litigation, from both a conceptual and grammatical viewpoint, does not conform to the language of General Principle B, which speaks of "termination" of litigation.

94. The conceptual difference between these two terms is readily recognizable. Generally, "termination" implies that the activity being terminated is brought to an end. "Suspension,"

on the other hand, implies a temporary cessation of activity. The United States could satisfy its obligations under the Algiers Declarations only by doing what those Declarations said, namely, by "terminating" all litigation against Iran in United States courts involving claims that arguably fell within the Tribunal's jurisdiction.¹³ Thus, on its face, "suspension" could be seen to produce a legal effect different from that produced by "termination."

95. However, the findings made supra, in paras. 93-94, do not suffice to conclude that the United States violated its obligation to terminate litigation against Iran in United States courts. The Tribunal must analyze the matter further. Obligations under General Principle B are, generally speaking, obligations of "result," rather than of "conduct" or "means." Although it could be said that the United States, by suspending the litigation rather than terminating it, failed to comply with its obligations under the Algiers Declarations, the Tribunal cannot confine itself to a strictly literal or grammatical interpretation of those Declarations but must also test the method chosen by the United States -- suspension of claims pursuant to Executive Order 12294 -- against the object and purpose of those Declarations. The answer to the question whether suspension fulfilled the function of termination depends on practice. Thus, the test is in factual evidence.

96. Unless otherwise agreed by treaty, general international law permits a state to choose the means by which it implements its international obligations within its domestic jurisdiction. See Islamic Republic of Iran and United States of America, Decision No. DEC 62-A21-FT, para. 15 (4 May 1987), reprinted in 14 Iran-U.S. C.T.R. 324, 331. Nonetheless, a state's freedom with respect to the choice of the means for implementing an international obligation is not absolute. The means chosen must

¹³ Of course, as noted supra, in para. 89, the termination obligation ceases with respect to those claims dismissed by the Tribunal for lack of jurisdiction.

be adequate to satisfy the state's international obligation, and they must be lawful. The internal law of a state must conform to that state's international obligations, including those assumed in an international agreement. Consequently, a state must choose a method of implementation that gives full effect to those obligations. Further, a state "may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Article 27 of the Vienna Convention on the Law of Treaties. A state that assumes an international obligation must be presumed to know what that obligation entails and how it must be carried out.

97. The Tribunal has no need to consider alternative or hypothetical solutions that were or might have been at the disposal of the United States in order to implement its obligations under the Algiers Declarations. The Tribunal is aware of, and takes into account, the dilemma faced by the United States: the need to comply with the obligation to terminate litigation without extinguishing claims that did not fall within the Tribunal's jurisdiction.

98. There is no reason to doubt that the United States acted in good faith when it suspended, rather than terminated, the litigation. By suspending the litigation and declaring that the suspended "claims shall have no legal effect in any action now pending in any [United States] court," Section 1 of Executive Order 12294, the United States took a step in the right direction. Whether suspension of litigation, in practice, achieved the same result as termination is another matter.

99. Section 1 of Executive Order 12294 is silent on the termination of the litigation. The impact of that Section on actual termination is not clear, and one may well ask whether that approach effectively terminated the proceedings, in accordance with General Principle B. Depriving claims of "legal effect in any action now pending in any court of the United States" may not have been sufficient to preclude further

procedural steps -- and thus, under certain circumstances, litigation -- in those courts. The Tribunal holds that by adopting the suspension mechanism provided for in Executive Order 12294, the United States adhered to its obligations under the Algiers Declarations only if, in effect, the mechanism resulted in a termination of litigation as required by those Declarations. This issue will be addressed in a subsequent phase of these proceedings.

100. The Tribunal assumes that the interpretive statements contained in the foregoing paragraphs represent, by themselves, a partial satisfaction to Iran.

iii) Conclusion

101. During the Hearings in this Case, Iran proffered a list of legal proceedings in the United States in which Iran claims to have been wrongfully compelled to participate. The Tribunal will examine these facts in the second phase of the proceedings in this Case. If, as a result of such examination, the Tribunal concludes that Iran was reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts subsequent to 19 July 1981 in any litigation in respect of claims described in Article II, paragraph 1, of the Claims Settlement Declaration or in respect of claims filed with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction, then the Tribunal will find that the United States has not complied with its obligations under General Principle B of the General Declaration and under Article I and Article VII, paragraph 2, of the Claims Settlement Declaration. In that event, the United States will be required to compensate Iran for any expenses that Iran was caused to incur as a result of making appearances or filing documents in United States courts after 19 July 1981 in any litigation in respect of claims described hereabove.

102. The extent of Iran's participation in United States courts, and the expenses associated therewith, depended on the circumstances of each case. The Tribunal expects Iran to show in the second phase of these proceedings what expenses it incurred with respect to each specific case and what was the particular justification for the specific sums it spent. Iran will be expected to produce factual evidence of the losses it suffered as a result of its making appearances or filing documents in United States courts subsequent to 19 July 1981 in the prudent defense of its interests with respect to the claims described supra, in para. 101. The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of the monitoring of the suspended claims and invites both parties to address the question of whether Iran should be compensated for those losses.

103. The Tribunal will not award any damages related to, or arising from, Iran's participation in United States court litigation during the six-month period following the signing of the Algiers Declarations. See infra, para. 110. Nor will it award any damages related to, or arising from, Iran's participation in cases regarding the validity and constitutionality of the Algiers Declarations under United States law.

(e) Timing of the Termination Obligations of the United States

104. The Tribunal next turns to the timing of the United States termination obligations under the Algiers Declarations. In this connection, it should be recalled that the Algiers Declarations imposed on the United States obligations relating both to claims and to litigation. See supra, para. 74. The question thus arises as to when these obligations accrued.

105. The obligation to terminate claims extends only to those claims found by the Tribunal to fall within its jurisdiction. It is clear, therefore, that this obligation cannot mature

until the Tribunal has decided a claim on the merits. The timing of the United States obligations with respect to litigation, however, is different.

106. Iran argues that the obligation to terminate litigation arose immediately upon the conclusion of the Algiers Declarations, although a de minimis delay of a few weeks would have been acceptable to Iran. In principle, however, the United States should have terminated legal proceedings as soon as the Declarations came into operation. See supra, para. 58. Concerning the termination of the claims at issue in those legal proceedings, Iran agrees that it was to occur either through settlement by the parties involved or resolution by the Tribunal. The United States argues, in contrast, that it had six months from the date of the Algiers Declarations within which to halt proceedings in United States courts in cases against Iran. This is because both High Contracting Parties anticipated that the validity of the Algiers Declarations would be challenged in United States courts, and it is clear from the Algiers Declarations that they estimated that it would take about six months to resolve this litigation. See supra, para. 69.

107. The Algiers Declarations set forth no express deadlines for carrying out the obligations they imposed on the United States with respect to terminating legal proceedings in United States courts. Article VII, paragraph 2, of the Claims Settlement Declaration requires the United States to consider claims excluded from the jurisdiction of United States courts "as of the date of filing of such claims with the Tribunal." Thus, one might understand that the United States obligation to terminate legal proceedings came into existence only when the particular claim at issue in the proceeding was filed with the Tribunal. But a similar obligation is also implicated by Article I of the Claims Settlement Declaration, which requires the two Governments to encourage negotiated settlement and requires that claims not settled by negotiation be brought to the Tribunal. Permitting litigation to continue until the day a claim is filed with the

Tribunal seems inconsistent with those obligations under Article I. Thus, in the absence of an express deadline, the Tribunal relies on the general treaty interpretation principle of good faith, which requires the conclusion that the United States was obliged to terminate, within a reasonable period of time, legal proceedings and litigation against Iran in United States courts that were arguably within the jurisdiction of the Tribunal and that consequently should be referred to the Tribunal. The Tribunal therefore must consider what, under the circumstances, would be such a reasonable period.

108. In considering what would be a reasonable time during which the United States was required to fulfil its obligations, it is useful to look to the express time limits that the Declarations imposed regarding other related obligations. Article I of the Claims Settlement Declaration provides for a six to nine-month period during which Iran and the United States would promote the settlement of outstanding claims falling within the Tribunal's jurisdiction pursuant to Article II of the Claims Settlement Declaration. Article I provides that "[a]ny such claims not settled within [that period] shall be submitted" to the Tribunal. In the Tribunal's view, a similar period logically would constitute a reasonable time frame for terminating the corresponding United States litigation of such outstanding claims.

109. Similarly, a six-month period is foreseen in Paragraph 6 of the General Declaration as the time that might be required for the return to Iran of Iranian deposits and securities in United States banks. See supra, note 10. The Tribunal is persuaded that the six-month delay in the transfer of funds in United States banks was required because many of them were subject to attachments which, like the litigation at issue here, required United States court action to release. Given the separation of powers between the different branches of government in the United States, neither the release of judicial attachments nor the termination of legal proceedings could be accomplished

by Executive Order 12294 alone; both required United States court compliance with that Executive Order. The Tribunal is satisfied that such compliance could be assured only after the Executive Order's constitutionality was established by the Supreme Court of the United States.

110. Based on the above indicia in the Algiers Declarations concerning timing, the Tribunal concludes that a six-month period after the signing of the Algiers Declarations was a reasonable time within which the United States was to terminate legal proceedings and litigation of United States nationals against Iran in United States courts. Consequently, any litigation continuing during that six-month period does not constitute a violation of the Algiers Declarations entailing the responsibility of the United States.

(2) Counterclaims

111. The final issue in Claim A is whether the United States violated the Algiers Declarations by allowing United States nationals to bring counterclaims against Iran in United States courts. Section 6 of Executive Order 12294 provides that "[n]othing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending or hereafter commenced by the Government of Iran. . . ." See supra, para. 28. Thus, Executive Order 12294 allows the assertion of such counterclaims in United States courts, even if they would fall within the Tribunal's jurisdiction.

112. Iran argues that, by allowing United States nationals to assert counterclaims or claims for set-off against Iran in United States court proceedings, the United States has breached its obligation under General Principle B to terminate all litigation by United States nationals against Iran in United States courts. If United States nationals had claims against

Iran, Iran contends, they should have submitted those claims to the Tribunal without waiting to be sued by Iran in the United States.

113. The United States responds that it would be unfair to allow Iran to present claims against United States nationals in United States courts after the deadline for the filing of claims before the Tribunal, while preventing United States nationals from asserting counterclaims in reply to such claims. The United States argues that the Algiers Declarations relieve Iran of the obligation to defend itself against involuntary litigation in United States courts which falls within the Tribunal's jurisdiction; nothing in the Declarations, however, requires the United States to grant Iran a favored position by precluding the assertion of counterclaims in litigation that Iran itself voluntarily chose to commence in United States courts.

114. It is clear from General Principle B and from Articles I and II of the Claims Settlement Declaration that claims that would have been within the jurisdiction of the Tribunal and were not settled by negotiation were to be presented to the Tribunal, and that if a claimant chose not to present such a claim to the Tribunal, he was not to be permitted thereafter to raise it in United States courts. Although the existence of the Security Account ensured that the vast majority of claims deemed meritorious by claimants would be presented to the Tribunal, the Tribunal does not doubt that there were some claims not filed with the Tribunal because of concern by the claimants about possible counterclaims by Iran. By including Section 6 in the Executive Order, the United States, in effect, encouraged such claimants not to come to the Tribunal, and thus failed to comply with its obligations under General Principle B and Article I of the Claims Settlement Declaration.

115. Iran seeks an award of damages for legal fees and court costs incurred in defending against such counterclaims. The Tribunal shall make its determinations as to the nature and the

amount of the damages incurred by Iran, if any, in a subsequent proceeding. See supra, para. 102.

2. Claim B

116. Iran contends that the United States has breached General Principle B as well as Article II, paragraph 1, and Article VII, paragraph 2, of the Claims Settlement Declaration by suspending, rather than terminating, litigation involving claims arising from contracts with forum selection clauses referring disputes to Iranian courts.

117. The Tribunal has found that the Algiers Declarations obliged the United States to terminate all legal proceedings commenced by United States nationals against Iran in United States courts involving claims that arguably fell within the Tribunal's jurisdiction and that such obligation ceases with respect to any claim once that claim has been dismissed by the Tribunal for lack of jurisdiction. See supra, para. 89. The Tribunal has further found that "termination" is not synonymous with "suspension," but has deferred its decision as to whether by suspending all litigation against Iran in United States courts involving such claims, the United States has violated its obligations under the Algiers Declarations. Before making this decision, the Tribunal first must examine whether in each specific case, suspension of litigation had the same effect as termination. That examination belongs to the second phase of these proceedings. See supra, para. 99. The remaining issue is whether the United States has breached the Algiers Declarations by allowing cases that the Tribunal had found to be excluded from its jurisdiction by the type of Iranian forum selection clause referred to in the exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration to be revived in United States courts subsequent to the dismissal of the claim by the Tribunal for lack of jurisdiction.

118. The provision at the heart of this claim is the last clause of Article II, paragraph 1, of the Claims Settlement Declaration. It excludes from the Tribunal's jurisdiction "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position." The question is whether this language means that such claims must be brought in Iranian courts or whether it merely means that such claims may not be heard by the Tribunal.

a. The Parties' Positions

119. Iran contends that pursuant to the Algiers Declarations, the United States is obliged to terminate all litigation in United States courts involving claims based on contracts with Iranian forum selection clauses, whether or not these claims fall within the Tribunal's jurisdiction. Thus, Iran argues, it was improper for the United States merely to suspend such litigation and allow its revival in United States courts after dismissal by the Tribunal for lack of jurisdiction. According to Iran, the purpose of the exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration was to preserve the jurisdiction of Iranian courts. Thus, if these claims are allowed to return to United States courts after having been dismissed by the Tribunal for lack of jurisdiction, the purpose of excluding them from the Tribunal's jurisdiction to begin with would be defeated.

120. Iran seeks a declaratory award finding that, by failing to prohibit legal proceedings commenced by United States nationals against Iran in United States courts involving claims arising from contracts with Iranian forum selection clauses, the United States has violated General Principle B as well as Article II, paragraph 1, and Article VII, paragraph 2, of the Claims Settlement Declaration; requiring the United States to terminate

all legal proceedings in United States courts involving claims based on contracts with Iranian forum selection clauses; and ordering the United States to compensate Iran for the damages it suffered as a result of the United States breach, including the legal fees and court costs that Iran incurred in monitoring and defending against those claims after 19 January 1981.

121. The United States denies liability. It points out that under General Principle B, it is required to terminate only claims that are within the Tribunal's jurisdiction; it argues that there is no reason to treat claims involving Iranian forum selection clauses differently than any other claims not within the Tribunal's jurisdiction. If the Tribunal accepts jurisdiction over a forum selection clause claim, that claim will be terminated through arbitration before the Tribunal. If the Tribunal declines jurisdiction over such a claim, then the litigation related thereto may be resumed in any court where it otherwise could have been brought -- including a United States court, where proceedings would begin with a determination of the enforceability of the forum selection clause.

122. The United States asserts that it never expected that United States nationals would be able to take their claims to Iranian courts given the changed circumstances subsequent to the date on which the contracts containing the forum selection clauses had been concluded. As a result, the United States notes, it insisted on inserting the word "binding" in the exclusion clause in Article II, paragraph 1, of the Claims Settlement Declaration in the hope that the Tribunal would later determine that the changed circumstances rendered the forum selection clauses unenforceable. The United States points out that, although it asked the Tribunal to make that determination, the Tribunal held that the Algiers Declarations did not authorize it to do so, and consequently it did "not reach the question as to whether changes in Iran may have any impact on the enforceability of forum selection clauses in contracts." Halliburton Company, et al. and Doreen/IMCO, et al., Interlocutory Award No.

ITL 2-51-FT, at 7 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 242, 246 ("Halliburton"). In so holding, the Tribunal did not question the right of national courts to determine the enforceability of choice of forum clauses, and the United States asserts that, if the Tribunal is to be consistent with its holdings in the Halliburton and other forum clause cases, it cannot now hold such clauses to be, in effect, enforceable by denying all non-Iranian fora the right to examine their enforceability. The United States denies that it ever agreed that such clauses would be enforceable, and it asserts that there is nothing in the Algiers Declarations that requires the United States to enforce forum selection clauses in contracts between United States nationals and Iran or its instrumentalities by divesting United States courts of their existing jurisdiction to decide the enforceability of such clauses where the clauses have excluded claims from the jurisdiction of the Tribunal.

b. The Tribunal's Decision

123. In Halliburton, the Tribunal was faced with the question of whether it had jurisdiction to determine the enforceability of forum selection clauses. In that Case, the Tribunal held that

[i]t is not generally the task of this Tribunal, or of any arbitral tribunal, to determine the enforceability of choice of forum clauses in contracts. If the parties wished the Tribunal to determine the enforceability of contract clauses specifically providing for the sole jurisdiction of Iranian courts, it would be expected that they would do so clearly and unambiguously. Thus, the Tribunal would be reluctant to assume such a task in the absence of a clear mandate to do so in the Algiers Declaration.

Halliburton, supra, at 5, 1 Iran-U.S. C.T.R. at 245. See also George W. Drucker, Jr. and Foreign Transaction Co., et al., Interlocutory Award No. ITL 4-121-FT, at 4-5 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 252, 255; Stone & Webster

Overseas Group, Inc. and National Petrochemical Company, et al., Interlocutory Award No. ITL 8-293-FT, at 4 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 274, 276. Thus, in Halliburton and the other cited forum selection clause cases, the Tribunal held that it has no jurisdiction to decide whether forum selection clauses in the contracts at issue in cases before it are valid and enforceable.

124. To hold that the purpose of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration was to protect the sole jurisdiction of the Iranian courts -- or, in other words, that claims that the Tribunal excluded from its jurisdiction because of Iranian forum selection clauses must be brought in Iranian courts -- would amount to holding that Iranian forum selection clauses in claims excluded from the Tribunal's jurisdiction because of the forum clause exclusion are valid and enforceable. But if the Tribunal were so to hold, it would abjure its 1982 decision in the forum selection clause cases, see supra, para. 123, that it has no jurisdiction to determine the enforceability of such clauses. The Parties have not suggested that the Tribunal should reconsider its 1982 decision on that question, and the Tribunal is not disposed to do so.

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

3. Claim D

a. The Parties' Positions

126. Iran contends that the United States has breached General Principle B by permitting its nationals to file suits against Iran in United States courts after the date of the Algiers Declarations. The suits at issue were brought pursuant to Section 1 of Executive Order 12294, which permits lawsuits to be filed for the sole purpose of tolling the statutes of limitation applicable in the United States while the Tribunal determines whether it has jurisdiction over the underlying claims. See supra, para. 28. Iran seeks a declaratory award finding that, by allowing the filing of such suits, the United States violated General Principle B; ordering the United States to bring about the dismissal of such suits and to prohibit all further litigation of claims by United States nationals against Iran in United States courts; and ordering the United States to compensate Iran for the damages it suffered as a result of the United States breach, including the legal fees and court costs that Iran incurred in monitoring and defending against tolling suits filed after 19 January 1981.

127. The United States contends that because General Principle B required it to terminate only the claims of its nationals against Iran that fell within the Tribunal's jurisdiction, it had to devise some mechanism to prevent claims rejected by the Tribunal on jurisdictional grounds from being barred by the applicable statutes of limitation. The mechanism the United States chose was to permit its nationals to initiate suits to toll the limitations period but then to suspend these suits immediately; the cases would remain inactive on the courts' dockets but could be revived if the Tribunal found that it lacked jurisdiction over the underlying claims.

128. The United States argues, further, that under the suspension regime created by Executive Order 12294, it was

unnecessary for Iran to file any responses to suits initiated to toll the limitations period. In support of this argument, the United States points out that in the many instances where Iran filed no answer to such a tolling suit, it suffered no adverse consequences. The United States therefore contends that Iran's claim must fail for lack of proof of damages.

129. Iran contends that because not all of the complaints filed against it in United States courts mentioned whether the underlying claim also had been filed with the Tribunal -- and, thus, whether it was subject to suspension pursuant to Section 1 of Executive Order 12294 -- Iran was forced to respond to these complaints or else it would be exposed to the risk of default judgments. Iran asserts, moreover, that it does not matter whether some of its actions may have turned out in retrospect not to be strictly necessary; since it was faced with a breach of the Algiers Declarations by the United States, it was entitled to take all reasonable measures to protect its interests. Iran argues that because the United States breached the Declarations, it has the burden of proving that Iran's legal expenses were unreasonably incurred.

b. The Tribunal's Decision

130. In the first sentence of General Principle B, the High Contracting Parties set forth as one of their purposes "to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration." In the second sentence of that Principle, moreover, the United States agreed "to prohibit all further litigation" based on claims by United States nationals against Iran. The issue is whether the mechanism provided in Section 1 of Executive Order 12294, permitting United States nationals to initiate suits after the date of the Algiers Declarations for the purpose of tolling

the limitations period, is consistent with the above-quoted provisions in General Principle B.

131. The Tribunal finds that the mechanism chosen by the United States -- allowing the filing of suits to toll the limitations period¹⁴ -- is not permitted by the first sentence of General Principle B. To allow suits to be filed, even for tolling purposes, conflicts, furthermore, with the letter and spirit of the United States undertaking in the second sentence of that Principle "to prohibit all further litigation" based on claims by United States nationals against Iran. It is difficult to deny that such suits represent "further litigation" within the plain meaning of General Principle B. While General Principle B does not forbid that certain means be employed to allow claims outside the Tribunal's jurisdiction to be preserved, the one means it clearly does forbid is the bringing of suits in United States courts after the date of the Algiers Declarations. Tolling the limitations period, by itself, would not conflict with those Declarations; it is the particular method chosen by the United States -- the initiation of litigation in the United States after the date of the Declarations -- that so conflicts.

132. Consequently, the Tribunal holds that by allowing the filing of suits after the date of the Algiers Declarations, even for the limited purpose of tolling the applicable statutes of limitation, the United States did not act consistently with its obligations under General Principle B.

133. The Tribunal shall determine in a subsequent proceeding the nature and the extent of the damages, if any, incurred by Iran as a result of the United States authorizing the filing of tolling suits. Iran will be expected to produce factual evidence of the losses it suffered as a result of its making appearances or filing documents in United States courts subsequent to 19

¹⁴ And then immediately suspending those suits. Suspension of litigation has been discussed supra, at paras. 87, et seq.

January 1981 in the prudent defense of its interests with respect to tolling suits filed after 19 January 1981 asserting claims described in Article II, paragraph 1, of the Claims Settlement Declaration or asserting claims filed with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction. The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of monitoring the tolling suits and invites both parties to address the question of whether Iran should be compensated for those losses. See supra, paras. 101 and 102.

4. Claim E

a. The Parties' Positions

134. At issue in this claim is whether the United States was obliged under the Algiers Declarations to terminate litigation initiated by United States nationals against Iran in courts outside the United States.

135. Iran advances three principal arguments. First, it argues that under the international law principle of espousal of claims, the claims settlement agreement concluded by Iran and the United States extinguished all private claims of their nationals then in existence; that is, that agreement bound each country's nationals absolutely. Hence, once Iran and the United States agreed in General Principle B "to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all claims through binding arbitration," United States nationals were precluded from bringing claims against Iran in any forum other than the Tribunal. While the United States does not have the power to control foreign courts, Iran contends, it does have the power to control the conduct of its citizens abroad. The United States was therefore required to take all necessary steps to

prevent its nationals from suing Iran in fora outside the United States.

136. Second, Iran argues that the clause at the end of the second sentence of General Principle B requiring the United States "to prohibit all further litigation on such claims" necessarily refers to litigation in courts outside the United States. If not, that passage would be superfluous since the first clause of the second sentence of General Principle B already requires the United States to terminate legal proceedings "in United States courts." Iran therefore concludes that "such claims" refers to claims generally defined in General Principle B, and not only to claims asserted in United States courts.

137. Third, Iran argues that Article VII, paragraph 2, of the Claims Settlement Declaration, which states that claims filed with the Tribunal are considered "excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court," obliges the United States to prevent its nationals from pursuing claims against Iran in "any other court," including courts outside the United States.

138. Iran seeks a declaratory award finding that, by failing to prohibit litigation initiated by United States nationals against Iran in courts outside the United States, the United States has breached General Principle B and Article VII, paragraph 2, of the Claims Settlement Declaration, and ordering the United States to compensate Iran for legal expenses and court costs incurred in defending against that litigation as well as for other damages Iran sustained as a result of the United States alleged breach.

139. The United States contends that the plain language of General Principle B obliges it to terminate only litigation in United States courts. General Principle B provides:

Through the procedures provided in the [Claims Settlement Declaration], the United States agrees to termi-

nate 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.

General Principle B says nothing about proceedings in foreign courts. Appealing to the principle expressio unius est exclusio alterius, the United States argues that the specification of an obligation with respect to United States courts excludes such an obligation in other courts.

b. The Tribunal's Decision

140. The critical question is whether, by undertaking "to prohibit all further litigation based on such claims," the United States agreed to terminate litigation in courts outside the United States.

141. As an initial matter, the Tribunal dismisses Iran's argument based on the principle of espousal of claims. The Tribunal has held previously that by entering into the Algiers Declarations, Iran and the United States did not espouse the claims of their nationals. See Islamic Republic of Iran and United States of America (Case No. A21), supra, para. 12, 14 Iran-U.S. C.T.R. at 330.

142. Turning next to the plain language of General Principle B, the Tribunal holds that the term "such claims" in the penultimate clause of General Principle B refers to the preceding clause, which requires the United States "to terminate all legal proceedings in United States courts." Nothing in General Principle B suggests that "such claims" refers to litigation in courts outside the United States or that the United States undertook to terminate such litigation.

143. By expressly referring to "United States courts," General Principle B confines the United States termination obligation to litigation pending in such courts -- in other words, it excludes litigation pending in any other courts. The Tribunal is not prepared to assume that the language of General Principle B could be, or was, understood to accomplish more. The assumption by a state of an obligation to prohibit its nationals from litigating in foreign courts would be an extraordinary measure; if a party were to undertake such an obligation, one would expect it to do so explicitly.

144. Lastly, the Tribunal rejects Iran's argument based on Article VII, paragraph 2, of the Claims Settlement Declaration. That Article provides: "Claims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court." Nothing in this provision obliges the High Contracting Parties to prevent their nationals from pursuing claims in "any other court," as Iran argues. See supra, para. 143. Article VII, paragraph 2, of the Claims Settlement Declaration means that once a claim is filed with the Tribunal, that claim is considered excluded, at least initially, from the jurisdiction of any other court. If the Tribunal takes jurisdiction over the claim, the exclusion becomes permanent. If the Tribunal declines jurisdiction, the claimant may then pursue the claim elsewhere -- in the courts of Iran, of the United States, or of another nation.

145. The Tribunal concludes that General Principle B does not oblige the United States to terminate litigation involving claims of United States nationals against Iran in courts outside the United States. This is the same conclusion reached by the Tribunal in E-Systems, Inc. and Islamic Republic of Iran, et al., Interim Award No. ITM 13-388-FT, at 8 (4 Feb. 1983), reprinted in 2 Iran-U.S. C.T.R. 51, 56. Iran's Claim E is dismissed.

5. Claim F

a. The Parties' Positions

146. As part of a series of actions to implement the Algiers Declarations, on 19 January 1981 the President of the United States issued Executive Orders Nos. 12277 and 12279-12281, which nullified attachments of Iranian assets obtained by United States nationals in United States courts after 14 November 1979, the date on which the President had ordered the freezing of Iranian assets. See supra, para. 21. These Executive Orders left in place attachments obtained by United States nationals before 14 November 1979¹⁵; this, Iran claims, is a breach of the Algiers Declarations.

147. Iran argues that Paragraphs 4-9 of the General Declaration, as well as General Principle B, require the United States to nullify attachments made before 14 November 1979. Paragraphs 4-9 require the United States to arrange for the transfer to Iran of "all Iranian assets" located in the United States on 19 January 1981 or subject to the jurisdiction of the United States on that date. Because those assets could not be moved as long as they were encumbered by judicial attachments, Paragraphs 4-9 of the General Declaration implicitly required the United States to lift attachments that restrained that property. This requirement is made explicit by General Principle B, which obliges the United States to "nullify all attachments and judgments obtained [in United States courts]." General Principle

¹⁵ Section 1-102(b) of each Executive Order provides:

All rights, powers, and privileges relating to the properties [of the Government of Iran] which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST . . . are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

B, Iran contends, does not distinguish between attachments obtained before 14 November 1979 and those obtained thereafter.

148. Iran further argues that maintaining judicial attachments serves no legitimate purpose in cases within the jurisdiction of the Tribunal, because the Security Account guarantees that all Tribunal awards rendered in the claims underlying the attachments will be satisfied.

149. Iran seeks a declaratory award finding that, by failing to nullify attachments obtained by United States nationals against Iran in United States courts before 14 November 1979, the United States has breached General Principle B; directing the United States to nullify all attachments obtained in United States courts in all proceedings involving claims of United States nationals against Iran, including attachments made before 14 November 1979; ordering the United States to compensate Iran for the damages it suffered as a result of the United States breach, including the legal fees and court costs that Iran incurred since 19 January 1981 in connection with pre-14 November 1979 attachment proceedings; awarding damages for the loss of use and the decrease in value of the assets restrained by attachments made before 14 November 1979; and ordering the United States to reimburse Iran for storage costs incurred since 19 January 1981 in connection with restrained assets.

150. The United States denies that the Algiers Declarations required it to nullify attachments that United States claimants had obtained, through normal processes and without Executive Branch license, before the President's freeze of Iranian assets on 14 November 1979. The United States contends that Iran's interpretation of General Principle B amounts to an implausible suggestion that the United States assumed an obligation to nullify all attachments, no matter how old, obtained by United States nationals against Iran in United States courts.

151. The United States argues that General Principle B's requirement that the United States "nullify all attachments" must be interpreted in light of General Principle A, which obliges the United States to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979."¹⁶ In General Principle B, the United States thus agreed to nullify attachments only to the extent that this would fulfill its obligation under General Principle A to restore Iran to the financial position it enjoyed prior to 14 November 1979. The United States did not agree to place Iran in a better financial position by nullifying attachments made before 14 November 1979.

152. In response to this argument, Iran contends that General Principle A cannot reduce the United States obligation to nullify attachments made before 14 November 1979, since that Principle does not require the United States to reproduce Iran's precise financial situation as of 14 November 1979. Iran argues that such restoration can be accomplished only "on an overall basis." This means that if Iran loses in certain areas, it will gain in others.

153. The United States further argues that Paragraph 9 of the General Declaration also confines the United States nullification obligation to attachments made after 14 November 1979, because it provides that the transfer of Iranian properties is "subject to the provisions of U.S. law applicable prior to November 14, 1979." The United States contends that those laws authorized legitimate judicial attachments of Iranian and other properties.

¹⁶ General Principle A reads in full:

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.

154. The United States also relies on the negotiating history of the Algiers Declarations. It contends that during the negotiations, Iran never demanded nullification of attachments obtained before 14 November 1979, and the United States never offered or agreed to assume such an obligation. In particular, the United States points out, the Majlis resolution of 2 November 1980, see supra, para. 23, contained no demand that such attachments be nullified; the resolution, rather, focused on the removal of the effects of the United States President's 14 November 1979 freeze order. The United States alleges that the only restraints on Iranian property that Iran requested the United States to lift were those resulting from that order. The United States asserts that the nullification of attachments made before 14 November 1979 would have left the United States susceptible to lawsuits by United States claimants alleging unconstitutional takings. One would have expected to find some discussion of this potential liability in the negotiating history if the United States had agreed to nullify those attachments.

155. Relying on the affidavit of Roberts B. Owen, the Legal Adviser of the United States Department of State during the relevant period and a member of the United States negotiating team, the United States alleges that during the negotiations Iran was given drafts of the Executive Orders that would implement the Algiers Declarations, which Orders explicitly provided for the nullification only of attachments made after 14 November 1979. Thus, Iran must be deemed to have known that the United States would not nullify pre-14 November 1979 attachments and, by its silence, to have acquiesced in that position. The United States therefore argues that Iran should be estopped from asserting this claim.

156. Iran responds, first, that it never agreed that the Executive Orders issued by the United States on 19 January 1981 form part of the context of the Algiers Declarations; those Executive Orders therefore cannot define the scope of the United States obligation to nullify attachments. Second, Iran argues

that its alleged failure to object to the draft Executive Orders does not estop it from asserting its present claim. Third, Iran contends that the Executive Orders in question could not, and did not, amend or modify the Algiers Declarations.

157. At the Hearing, Iran conceded that during the negotiations, the United States negotiators showed it some draft Executive Orders, but Iran claims never to have agreed to their content. Mr. Behzad Nabavi, the head of the Iranian delegation that negotiated the Algiers Declarations, stated that the draft Executive Orders that the Iranian negotiators received on or about the date of the Algiers Declarations did not mention any date limitation on the nullification of attachments in the United States; he asserted that if those drafts had contained any such limitation, the Iranian negotiators would have objected.

b. The Tribunal's Decision

158. The critical provisions for the resolution of this claim are General Principle A, Paragraphs 4-9 of the General Declaration, and General Principle B. In General Principle A, the United States undertook to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979." General Principle A goes on to provide: "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 [of the General Declaration]."¹⁷

159. In the Tribunal's view, the most logical reading of General Principle A is that the commitment of the United States

¹⁷ Paragraph 9 of the General Declaration, in turn, requires the United States to "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."

to ensure the mobility and free transfer of all Iranian assets within its jurisdiction is expressly tied to, and limited by, the requirement in the same provision that the United States restore Iran's financial position to that existing prior to 14 November 1979.

160. In General Principle B, the United States agreed to terminate all legal proceedings in United States courts involving claims of United States nationals against Iran and "to nullify all attachments . . . obtained therein." The question is whether the United States obligation to nullify "all attachments" covers attachments of Iranian property made both before and after 14 November 1979 or is limited to attachments made after that date.

161. The Tribunal holds that the United States obligation, under General Principle B, to nullify "all attachments" must be interpreted in light of General Principle A, which requires the United States to ensure the free disposition of Iranian assets - - and thus, implicitly, to lift the attachments restraining those assets -- only to the extent necessary to restore Iran's financial position to that existing before 14 November 1979. In Islamic Republic of Iran and United States of America, Interlocutory Award No. ITL 63-A15-FT, para. 24 (20 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 40, 49, the Tribunal stated:

Before the imposition by the United States of economic sanctions in response to the seizure of the American Embassy in Tehran and the detention of United States nationals, Iran had the free disposition of its assets in the United States, subject only to possible attachments in favour of United States or other corporations claiming damages against Iran or to possible set-off by banking institutions. Iran's financial position, therefore, will be restored only when it will have recovered the free disposition of the assets not attached or subject to set-off for the payment of commercial or financial debts.

Thus, if Iranian assets were restrained by attachments on 14 November 1979, those attachments were a component of Iran's financial position at that date. To lift those attachments would

therefore improve Iran's position, rather than merely restore it. Hence, General Principle B should be understood as requiring the United States to nullify only attachments of Iranian property that were obtained by United States nationals in United States courts on or after 14 November 1979.

162. As to Iran's argument that General Principle A cannot reduce the United States obligation to nullify attachments, the Tribunal has already found that General Principle A "must be understood as embodying broad legal commitments" of the Parties, Islamic Republic of Iran, supra, para. 17, 12 Iran-U.S. C.T.R. at 47. There is no reason why the time limitation contained in General Principle A should not be given effect in defining the scope of the United States obligation, under General Principle B, to nullify "all attachments."

163. In making its determination, the Tribunal considers it significant that there is no indication that during the negotiation of the Algiers Declarations Iran ever demanded the nullification of attachments obtained before 14 November 1979. Neither the Majlis resolution of 2 November 1980 nor any of the exchanges that followed explicitly deal with that issue.

164. The Tribunal concludes that the Algiers Declarations do not oblige the United States to nullify attachments obtained by United States nationals against Iran in United States courts before 14 November 1979. Iran's Claim F is denied.

6. Claim G

a. The Parties' Positions

165. On 19 January 1981, the United States issued Executive Orders to implement the Algiers Declarations. These Orders nullified attachments obtained by United States nationals against Iran in United States courts after 14 November 1979. In this

claim, Iran asserts that the United States has violated the Algiers Declarations by failing to take a sufficiently active role in enforcing those Executive Orders so that all attachments were nullified promptly.

166. Iran alleges that some United States courts allowed attachments to remain in place as a result of the United States passivity in implementing those Executive Orders. For example, rather than intervening before the courts as a party, the United States merely filed Statements of Interest in the various lawsuits. As a result, in several instances Iran was forced to appear in court to obtain the nullification of attachments restraining its property.

167. Iran emphasizes that the key question is whether the United States complied with its obligation under General Principle B to nullify all attachments of Iranian assets, not whether the United States did everything in its power to achieve this result.

168. Iran seeks a declaratory award finding that, by failing to establish a mechanism ensuring prompt nullification of attachments obtained by United States nationals against Iran in United States courts, the United States has breached General Principle B; directing the United States to nullify all existing attachments; ordering the United States to compensate Iran for all the damages it suffered as a result of the United States breach, including the legal fees and court costs that Iran incurred in obtaining court orders vacating attachments on Iranian assets; and awarding damages for the loss of use of those assets.

169. The United States denies Iran's allegations and contends that it acted vigorously and promptly to nullify all attachments made after 14 November 1979 on Iranian property. On the date the Algiers Declarations were signed, the President of the United States issued a series of Executive Orders, which

provided for the nullification of all attachments obtained on Iranian property frozen by President Carter's 14 November 1979 Executive Order. Subsequently, on 24 February 1981, the Department of the Treasury issued regulations implementing those Executive Orders. In the United States view, those Executive Orders and implementing regulations were sufficient, by themselves, to allow the transfer to Iran of all Iranian assets that were required to be transferred pursuant to the Algiers Declarations.

170. The United States contends, further, that the Executive Branch took extraordinary measures to ensure that United States courts would vacate all post-freeze attachments before the deadline established in the Declarations for that transfer. In January, February, June, and July of 1981, the Executive Branch filed Statements of Interest in all proceedings pending against Iran in United States courts, including those involving attachments of Iranian assets. In addition, the Executive Branch filed Statements in particular cases where it deemed that those four previous Statements were not sufficient. Moreover, attorneys for the United States appeared at numerous hearings before federal and state courts to explain the terms of the Algiers Declarations and the requirements of the Executive Orders and implementing regulations. The United States maintains that the attachments were lifted as a result of these efforts, regardless of whether Iran took any action in court. Consequently, the United States argues that any legal fees or costs expended by Iran to vacate those attachments were unnecessary and therefore are not compensable.

171. At the Hearing, the United States presented as a witness Mr. David Anderson, the Director of the Federal Programs Branch of the Civil Division of the United States Department of Justice. Mr. Anderson oversaw the implementation of the United States obligations under the Algiers Declarations with regard to litigation, attachments, and judgments against Iran in United States courts. He confirmed the United States statements

described in the foregoing paragraph concerning the steps the United States took to attain the nullification of attachments of Iranian property in United States courts.

172. The United States further asserts that virtually all the attachments were vacated before 20 July 1981. In cases where an attachment was not explicitly vacated by that date, either no property was attached, or the attachment had no legal effect because another lien covered the property and restrained its transfer.

b. The Tribunal's Decision

173. This claim raises two questions. The first is whether the United States took a sufficiently active role in fulfilling its obligation under the Algiers Declarations to nullify attachments of Iranian assets made in United States courts after 14 November 1979. The second is whether the United States succeeded in nullifying those attachments within the period required by the Algiers Declarations.

174. As to the first question, the Algiers Declarations impose on the United States a duty to implement them in good faith and to take steps to ensure their effectiveness. "This good faith obligation leaves a considerable latitude to the States Parties as to the nature of the procedures and mechanisms" applied to fulfill their treaty obligations. Islamic Republic of Iran and United States of America (Case No. A21), supra, para. 15, 14 Iran-U.S. C.T.R. at 331. The issue is whether the steps the United States took were adequate to satisfy this good faith obligation.

175. The evidence shows that the United States devoted extensive resources to carrying out this obligation. Nothing in the evidence suggests that the United States stopped short of doing everything it could pursuant to the procedures of its legal system to have all post-freeze attachments lifted. The Tribunal

therefore holds that the United States has satisfied its good faith obligation in this respect. Consequently, Iran's claim that the United States has failed to take a sufficiently active role in nullifying attachments made after 14 November 1979 is dismissed.

176. Concerning the second question, the United States agreed in General Principle B to "nullify all attachments . . . obtained [in United States courts]." The Tribunal has found that this nullification obligation covered only attachments made on or after 14 November 1979. See supra, para. 161. The issue here is when the United States obligation to nullify such attachments arose. For the same reasons it relied upon when it determined the timing of the United States obligation to terminate litigation against Iran in United States courts, see supra, paras. 108-10, the Tribunal holds that the United States had six months from the date of the signing of the Algiers Declarations within which to nullify all post-freeze attachments of Iranian property. This also was the time-frame within which Iranian deposits and securities in United States banks had to be returned to Iran in accordance with Paragraph 6 of the General Declaration. See supra, note 10.

177. If there were any post-freeze attachments that were still in effect and that actually restrained Iranian assets in the United States after that six-month period had expired, thereby limiting the free disposition of those assets by Iran, then they constitute a violation of the United States obligation to nullify post-freeze attachments in a timely fashion. The Tribunal shall determine in a subsequent proceeding whether any such attachments were still in effect at that date and, if so, the nature and the amount of damages, if any, Iran suffered as a result of those attachments. See supra, para. 102.

7. Claim H

a. The Parties' Positions

178. In this claim Iran contends that the United States has violated the Algiers Declarations by failing to nullify judgments obtained by United States nationals against Iran in United States courts before the date of the Algiers Declarations. Iran relies primarily on General Principle B, which obliges the United States "to terminate all legal proceedings . . . [and] to nullify all . . . judgments obtained therein."

179. As noted, Section 1 of Executive Order 12294 suspended all claims against Iran that arguably fell within the Tribunal's jurisdiction and provided that such claims would have "no legal effect." See supra, para. 28. Iran points out that the Executive Order does not explicitly nullify "judgments" obtained by United States nationals against Iran in United States courts; it may only suspend their legal effect to the extent that such judgments are treated as claims. In any event, suspension of judgments would not satisfy the United States obligation to nullify them. Iran maintains that, as a result of the United States violation, Iran was forced to appear in United States courts to vacate the judgments.

180. Iran seeks a declaratory award finding that, by failing to nullify judgments obtained by United States nationals against Iran in United States courts, the United States has breached General Principle B; directing the United States to nullify present, and prohibit future, judgments based on claims that were in existence on 19 January 1981; and ordering the United States to compensate Iran for legal fees and court costs incurred in vacating judgments in United States courts as well as for other damages Iran sustained as a result of the United States alleged breach.

181. The United States argues that it has treated judgments against Iran in the same way it has treated claims that arguably fell within the jurisdiction of the Tribunal. Executive Order 12294 provided that such claims would have "no legal effect" in any court of the United States. If a claim has no legal effect, the argument continues, then neither can a judgment based on such a claim.

182. The United States contends that, because Executive Order 12294 suspended all judgments based on claims arguably within the Tribunal's jurisdiction, Iran is in the same position with respect to judgments that it is in with respect to the claims that form the bases of those judgments; that is, if the Tribunal takes jurisdiction over the claim underlying a judgment, then the judgment is terminated when the Tribunal issues an award on the merits; if the Tribunal dismisses the claim for lack of jurisdiction, then the judgment can be revived in United States courts.

183. Of the cases identified by Iran where judgments allegedly remained in effect after 19 January 1981, the United States asserts that some cases lie outside the Tribunal's jurisdiction, others do not exist under the docket numbers provided by Iran, and the remainder have been vacated or dismissed. The United States contends that, in any event, Iran has not identified any harm accruing from the United States alleged failure to nullify judgments in a sufficiently timely fashion.

b. The Tribunal's Decision

184. As an initial matter, for the same reasons it provided when determining the scope of the United States obligation to terminate claims against Iran, see supra, paras. 81-82, the Tribunal holds that the United States is obliged to nullify only judgments that are based on claims that are within the jurisdic-

tion of the Tribunal, as defined in Article II, paragraph 1, of the Claims Settlement Declaration. As to when that obligation accrued, the reasoning behind the Tribunal's decision concerning the timing of the United States obligation to terminate litigation against Iran applies with equal force here. See supra, paras. 108-10. Accordingly, the Tribunal holds that the United States had six months from the date of the signing of the Algiers Declarations within which to nullify judgments pursuant to General Principle B.

185. Executive Order 12294 provides that

[a]ll claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the [Claims Settlement Declaration] . . . are hereby suspended During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States

Thus, Executive Order 12294 does not specifically refer to "judgments." The question therefore arises whether judgments obtained by United States nationals against Iran in United States courts are nevertheless included within the scope of that Order.

186. In the Tribunal's view, the Algiers Declarations do not contemplate any distinction between a claim and a domestic court judgment entered thereon. A judgment has no status under the Declarations independent of the claim upon which it is based (see the conclusion reached by the Tribunal in *Burton Marks, et al.* and *Islamic Republic of Iran*, Interlocutory Award No. ITL 53-458-3 (26 Jun. 1985), reprinted in 8 Iran-U.S. C.T.R. 290, 294-95). It should also be noted that there seems to be no dispute that Executive Order 12294 in fact suspended the execution of judgments in cases within the Tribunal's jurisdiction. See, e.g., *American International Group, Inc., et al.* and *Islamic Republic of Iran, et al.*, Award No. 93-2-3, at 4 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 98. The Tribunal therefore

concludes that judgments were included within the scope of Executive Order 12294.

187. The resolution of Claim H, then, is similar to that of Claim A, because the judgments at issue in Claim H have no status independent of the claims at issue in Claim A. Pursuant to the Tribunal's conclusions in Claim A, therefore, the United States is obliged to nullify only those judgments that are based on claims that the Tribunal decides on the merits. As to the United States obligations under Article I and Article VII, paragraph 2, of the Claims Settlement Declaration, the United States chose to implement them through Executive Order 12294 -- that is, by suspending the judgments and declaring them to be without legal effect during the period of suspension.

188. In line with its conclusions in Claim A, the Tribunal holds that, if Iran reasonably incurred legal expenses in relation to judgments that remained in existence after 19 July 1981, then the United States breached its obligations under the Algiers Declarations concerning nullification of judgments against Iran. This question can only be answered on the basis of factual evidence and therefore is one for the subsequent proceedings in this Case. See supra, paras. 101, et seq.

B. CASE NO. A24

1. Iran's Position

189. Iran contends that the claim pursued by Foremost and OPIC before the United States District Court for the District of Columbia is the same as the claim that was decided by the Tribunal in Foremost. Iran argues that, by allowing the Foremost/OPIC lawsuit to be brought before the District Court, the United States has breached its obligation under the Algiers Declarations to prohibit all further litigation of claims resolved by the Tribunal. More specifically, Iran asserts that

the United States has breached General Principle B as well as Article IV, paragraph 1, and Article VII, paragraph 2, of the Claims Settlement Declaration.

190. Iran points out that the Complaint that Foremost and OPIC filed in the United States District Court in January 1982 tracked the Statement of Claim they filed before the Tribunal in Case No. 37. Iran asserts that the facts Foremost and OPIC presented to the District Court in support of their claim were identical to those they relied on before the Tribunal in Foremost.

191. Moreover, Iran contends that in deciding Foremost, the Tribunal considered all the relevant facts, including those that occurred after 19 January 1981 (in particular, events that occurred in October and November 1981). Iran states that the Tribunal "considered and evaluated developments even after that date to determine whether any" such events could "shed additional light on the claimed impairment" of Foremost's shareholder rights before 19 January 1981.

192. Iran further contends that, by not terminating the Foremost/OPIC lawsuit once the Tribunal had decided the Foremost Case on the merits in 1986, the United States violated, in addition to the Algiers Declarations, the terms of Section 4 of Executive Order 12294. Section 4 provides, in relevant part, that "[a] determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes."

193. Iran seeks a declaratory award finding that, by allowing the Foremost/OPIC lawsuit to proceed in the United States District Court, the United States has breached General Principle B as well as Article IV, paragraph 1, and Article VII, paragraph 2, of the Claims Settlement Declaration; ordering the United States to terminate the Foremost/OPIC lawsuit and to

prohibit any future litigation of that claim; and ordering the United States to reimburse Iran for the legal expenses incurred in monitoring and defending against the Foremost/OPIC lawsuit.

2. The United States Position

194. The United States contends that it had no obligation to terminate the litigation in the United States District Court because Foremost and OPIC's claim in that forum is different from the claim decided by the Tribunal in Foremost. The latter was for an expropriation alleged to have occurred in 1980, while the former is for an expropriation alleged to have occurred in October 1981.

195. The United States argues that the claim before the United States District Court is based on a broader set of facts than the claim decided by the Tribunal in Foremost. According to the United States, Foremost and OPIC allege new facts before the District Court, including new and intensified expropriatory measures that arose or continued after January 1981. The United States concedes that Foremost and OPIC also reallege facts that were already before the Tribunal in Foremost but contends that the addition of the new allegations of events that occurred after the Tribunal's jurisdictional cutoff date means that the claim before the District Court is different from the one decided by the Tribunal.

196. The United States further argues that, even if Foremost and OPIC had presented no new facts to the District Court, the United States still would not have been obligated to terminate the District Court lawsuit because the Tribunal in its Foremost Award did not resolve and could not resolve on the merits the claim now before the District Court. While the Tribunal held that the expropriation claim was not ripe by 19 January 1981, it made no determination as to whether the claim could be considered ripe at a later date. Indeed, the United States continues, the

Tribunal had no jurisdiction to determine whether a taking of the property in question occurred at any date after 19 January 1981. Consequently, because the Algiers Declarations do not require the United States to terminate claims that do not fall within the Tribunal's jurisdiction, the United States had no obligation to preclude the Foremost/OPIC lawsuit.

197. The United States points out, moreover, that its obligation to terminate the claim decided by the Tribunal was satisfied through Section 4 of Executive Order 12294. That section provides that a "determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes."

3. The Tribunal's Decision

a. The Foremost/OPIC lawsuit during the period from 11 April 1986 until 1 April 1988

198. The Statement of Claim Foremost submitted to the Tribunal in Case No. 37 on 16 November 1981 and the Complaint it filed on 22 January 1982 before the District Court for the District of Columbia for purposes of tolling the limitations period were identical. The two documents named the same parties; they invoked the same cause of action; they alleged the same facts in support of the claim for the expropriation of Foremost's ownership interest in Pak Dairy; and they sought compensation in the same amount. In its 1982 Complaint before the District Court and, subsequently, in its Verified Amended Complaint of 13 December 1990, Foremost confirmed that its Statements of Claim before the Tribunal concerned "the subject matter of this [i.e., District Court] action."¹⁸

¹⁸ At the Hearing, Mr. Mark Joelson, Counsel for Plaintiffs in the Foremost/OPIC lawsuit before the United States (continued...)

199. It is true that, while the Statements of Claim before the Tribunal specifically alleged that "[t]he claims asserted [therein] were outstanding on January 19, 1981" [Statement of Claim in Case No. 37, para. 8], the Complaint before the District Court did not specifically state that the claim asserted therein was likewise outstanding at that date. In the Tribunal's view, however, this apparent difference does not mean that the Complaint before the District Court was broader than the Statements of Claim before the Tribunal in that it arguably also included an expropriation claim that arose after 19 January 1981. The reference to the 19 January 1981 cutoff date in the Statements of Claim before the Tribunal was intended merely to place the claims in Cases Nos. 37 and 231 squarely within the jurisdictional parameters set by the Algiers Declarations.¹⁹ It did not affect the substance of the claims. Because there was no jurisdictional requirement before the United States District Court that the claim be outstanding at 19 January 1981, silence in the Complaint as to this fact is irrelevant to the issue discussed in the present paragraph.

200. Neither the Statements of Claim in Foremost nor the Complaint filed before the United States District Court indicated a specific date for the alleged taking of Foremost's ownership interest in Pak Dairy. Rather, they both included references to expropriatory actions by Iran alleged to have occurred both before and after 19 January 1981.

201. In Foremost, the Tribunal concluded that Iran's interference with Foremost's rights did not, by 19 January 1981,

¹⁸(...continued)

District Court, stated that it was the Tribunal's 11 April 1986 decision in Foremost that caused Plaintiffs, in April 1988, to change their legal theory from a pre-19 January 1981 to a post-19 January 1981 expropriation.

¹⁹ Pursuant to Article II, paragraph 1, of the Claims Settlement Declaration, a claim had to be "outstanding" at 19 January 1981 in order for it to fall within the jurisdiction of the Tribunal.

amount to an expropriation. See id. at 31, 10 Iran-U.S. C.T.R. 250. In reaching this conclusion, the Tribunal considered also certain events that had occurred after that date, namely, that Foremost representatives on Pak Dairy's board of directors played an active role in the company's affairs until October 1981, when Foremost chose to withdraw them. See id. at 28-29, 10 Iran-U.S. C.T.R. 248.

202. The Tribunal's decision in Foremost represents both its finding that the claim before it fell within its jurisdiction and its final resolution of that claim. The Tribunal has held that once a claim is found by the Tribunal to fall within its jurisdiction, the United States is required by the Algiers Declarations to terminate finally all litigation related to such claim in United States courts. See supra, paras. 82-83 and 89-91. As noted, the Statement of Claim Foremost presented to the Tribunal in Case No. 37 and the original Complaint it filed in 1982 before the District Court were identical; and they so remained until 1 April 1988, when Foremost filed its Motion for Summary Judgment against Iran before the District Court, see supra, para. 43, alleging a different date for the expropriation of Foremost's ownership interest in Pak Dairy.

203. The Tribunal holds that, by not acting to have the Foremost/OPIC lawsuit in the District Court dismissed from the District Court's docket within a reasonable time after 11 April 1986, the date the Tribunal issued its award in Foremost, the United States has violated its obligation under the Algiers Declarations to terminate finally litigation in United States courts related to claims resolved by the Tribunal on the merits.

204. Even if the original Complaint Foremost and OPIC filed before the District Court was broader than the Statements of Claim they filed before the Tribunal in Foremost, see supra, para. 199, the United States still would have been obliged under the Algiers Declarations to put the District Court on notice, within a reasonable time after 11 April 1986, that proceedings

in the Foremost/OPIC lawsuit were to be considered terminated to the extent they related to that portion of the claim that had been decided by the Tribunal in Foremost (*i.e.*, the claim for a pre-19 January 1981 expropriation of Foremost's ownership interest in Pak Dairy).

205. As a result of the United States omission, Iran is entitled to damages to the extent it was reasonably compelled in the prudent defense of its interests to make appearances or file documents with respect to the Foremost/OPIC lawsuit from 11 April 1986 until 1 April 1988, to the extent those expenses are not already sought by Iran in Case No. A15(IV). See supra, paras. 101, et seq.

b. The Foremost/OPIC lawsuit from 1 April 1988 onward

206. As noted earlier in this Award, on 1 April 1988, Foremost and OPIC filed a Motion for Partial Summary Judgment against Iran before the United States District Court for the District of Columbia, thereby reviving the lawsuit that had been initiated in 1982 for the purpose of tolling the statute of limitations. In this connection, the Tribunal recalls that the Algiers Declarations do not prohibit the preservation of those claims that the Tribunal would ultimately determine fell outside its jurisdiction. See supra, para. 131. Thus, the fact that the United States preserved such claims, including Foremost and OPIC's claim against Iran, is not inconsistent with the Algiers Declarations.

207. In their Motion for Summary Judgment of 1 April 1988, the plaintiffs in the Foremost/OPIC lawsuit in the United States stated:

Plaintiffs fully accept, as they must, the conclusion of the majority of the arbitral panel to the effect that there had been no expropriation as of January 19, 1981. Since the Tribunal determined that the expropriation claim had not ripened within the time period

submitted to its jurisdiction, it did not purport to rule on the merits of a post-January 19, 1981 expropriation claim. This issue is now suitable for hearing and disposition by this Court. . . .

See supra, para. 43. The plaintiffs went on to allege that Iran expropriated Foremost's equity interest in Pak Dairy in October 1981. Likewise, in their Verified Amended Complaint of 13 December 1990, the plaintiffs alleged specifically that "[a]s of October 1981, Iran had deprived McKesson entirely of the enjoyment of its ownership interest in Pak Dairy." The plaintiffs based that allegation on numerous facts that occurred before and after 19 January 1981. According to the plaintiffs, acts of interference carried out by Iran prior to 19 January 1981, combined with acts carried out thereafter, led to the expropriation of Foremost's interest in Pak Dairy in October 1981. In their Verified Amended Complaint, the plaintiffs also increased the amount of damages to include Foremost's full 31 percent ownership interest in Pak Dairy and stated an alternative theory of recovery (Iran's tortious interference with Foremost's rights as a minority shareholder in Pak Dairy). In addition, the plaintiffs excluded the dividends awarded to Foremost by the Tribunal in its 1986 Award from their claim for recovery of dividends owed up to the date of the alleged expropriation.

208. The Tribunal has recognized that an expropriation can be carried out, not only by way of a single act, but also by way of a series of interferences with the enjoyment of the property concerned. "[T]he breach forming the cause of action is deemed to take place on the day when the interference has ripened into more or less irreversible deprivation of the property rather than on the beginning date of the events." International Technical Products Corp., et al. and Islamic Republic of Iran, et al., Award No. 196-302-3, at 49 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 240.

209. Although the Foremost/OPIC lawsuit, as pursued from 1 April 1988 onward, relies, to a large extent, on the same facts

as those invoked in the claim before the Tribunal, the cause of action alleged in that lawsuit is materially different from that considered by the Tribunal in Foremost: the issue before the Tribunal was whether Iran had expropriated Foremost's property on or prior to 19 January 1981; the issue before the District Court was whether Iran had expropriated Foremost's property after that date. In the Tribunal's view, extensive reliance on the same facts, without more, does not cause two claims between the same parties that are based on different causes of action to become identical for purposes of precluding a claim. In this connection, it should also be noted that in the Foremost/OPIC lawsuit, the plaintiffs asserted new rights based on facts that they had not relied on before the Tribunal in Foremost, namely, Iran's alleged failure to pay stock and cash dividends that were declared and became due only after 19 January 1981. See supra, paras. 43-44. "[A] claim based on a distinct injury is an assertion of a new right -- a right that has been violated -- and would be considered as a new case."²⁰

210. Although in Foremost the Tribunal considered certain events that took place after 19 January 1981, it limited its decision to a determination that no expropriation had occurred on or prior to that date. It held: "Having examined the totality of the evidence in the present Cases, the Tribunal reaches the conclusion, on balance, that the interference with the substance of Foremost's rights did not, by 19 January 1981, and still less by 27 May 1980, amount to an expropriation." Foremost, supra, at 31, 10 Iran-U.S. C.T.R. at 250. (Emphasis added.) The Tribunal did not, and was not competent to, decide whether an expropriation had materialized after that date.²¹ The consider-

²⁰ Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals 345 (1987).

²¹ The Tribunal defined its task in Foremost as "to evaluate the rights Foremost had in Pak Dairy in the period prior to the alleged expropriation; the extent to which these rights were diminished or interfered with prior to 19 January 1981; and, finally, whether such interference amounts in law to an expropriation."
(continued...)

ation by the Tribunal of certain facts that occurred after 19 January 1981 for the purpose of clarifying Iran's relevant behavior on or before that date, see supra, para. 201, cannot imply any binding determination about whether Iran's behavior after 19 January 1981 amounted to an expropriation.²²

211. What is important here is that the Tribunal would not have been competent to decide on the merits the claim before the District Court as pursued by Foremost and OPIC from 1 April 1988 onward. This factor is crucial. Consequently, the conclusion is unavoidable that the Foremost/OPIC lawsuit, as pursued from 1 April 1988 onward, does not fall within the scope of the res judicata of the Tribunal's decision in Foremost and, therefore, is not contrary to the Algiers Declarations.

212. The Tribunal now turns to the Memorandum Opinion rendered by the United States Court for the District of Columbia on 23 June 1997 in the Foremost/OPIC lawsuit, holding that Iran's interference with Plaintiffs' shareholder rights in Pak Dairy had ripened into an expropriation by April 1982. See supra, para. 47. As an initial matter, that Opinion shows that the only claim considered by the District Court was a claim for an expropriation of Plaintiffs' ownership interests in Pak Dairy that occurred after 19 January 1981. As to whether the Opinion respects the final and binding character of the Tribunal's award in Foremost, the Tribunal holds that it so does. In this connection, it should be recalled that in Foremost, the Tribunal found that Iran's interference with Foremost's ownership interests in Pak Dairy did not, by 19 January 1981, amount to an expropriation. The Memorandum Opinion does not question this finding by the Tribunal, as that Opinion holds that Iran's interference with

²¹(...continued)
 ation giving rise to a right to compensation." Foremost, supra, at 28, 10 Iran-U.S. C.T.R. at 248.

²² It should be noted that the Tribunal did not make any findings with respect to Iran's alleged failure to pay Foremost dividends that became due after 19 January 1981.

Plaintiffs' shareholder rights in Pak Dairy ripened into an expropriation by April 1982. Furthermore, the Memorandum Opinion gives preclusive effect to all of the Tribunal's findings in Foremost concerning matters that were within the Tribunal's jurisdiction as defined in Article II, paragraph 1, of the Claims Settlement Declaration. It should be beyond dispute that only such findings acquired the force of res judicata and are thus covered by the final and binding language of Article IV, paragraph 1, of that Declaration.²³ For these reasons, the Tribunal concludes that the Opinion does not impinge upon the Tribunal's jurisdiction and authority.

213. For the foregoing reasons, Iran's claim in this Case, to the extent it relates to the period beginning on 1 April 1988, must be dismissed.

VII. AWARD

214. In view of the foregoing,

THE TRIBUNAL DETERMINES AS FOLLOWS:

A. IN CASE NO. A15(IV):

a. On Claim A:

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

²³ "An arbitral tribunal is one of large and exclusive powers within its prescribed limits, but it is as impotent as a morning mist when it is outside these limits." Bin Cheng, supra, at 259. (Quoting from the French Company of Venezuelan Railroads Case (1905).)

- (2) The Algiers Declarations oblige the United States to terminate all legal proceedings initiated by United States nationals against Iran in United States courts involving claims that arguably fall within the Tribunal's jurisdiction. The United States obligation to terminate legal proceedings arose on 19 July 1981, six-months after the signing of the Algiers Declarations; that obligation ceases with regard to legal proceedings involving claims that have been dismissed by the Tribunal for lack of jurisdiction. Claims that the Tribunal has decided are within its jurisdiction can never be revived in domestic courts.
- (3) The suspension mechanism provided for in Executive Order 12294 satisfies the United States termination obligations under the Algiers Declarations only if, in effect, the mechanism resulted in a termination of litigation as required by those Declarations. The Tribunal will examine the facts bearing on this issue in the second phase of these proceedings. If, as a result of such examination, the Tribunal concludes that Iran was reasonably compelled in the prudent defense of its interests to make appearances or file documents in United States courts subsequent to 19 July 1981 in any litigation in respect of claims described in Article II, paragraph 1, of the Claims Settlement Declaration or in respect of claims filed with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction, then the Tribunal will find that the United States has not complied with its obligations under General Principle B of the General Declaration and Article I and Article VII, paragraph 2, of the Claims Settlement Declaration. In that event, the United States will be required to compensate Iran for any expenses that Iran was caused to incur as a result of making appearances or filing documents in United States courts after 19

July 1981 in any litigation in respect of claims described hereabove.

- (4) The Tribunal expects Iran to show in the second phase of these proceedings what expenses it incurred with respect to each specific case and what was the particular justification for the specific sums it spent. Iran will be expected to produce factual evidence of the losses it suffered as a result of its making appearances or filing documents in United States courts subsequent to 19 July 1981 in the prudent defense of its interests with respect to the claims described in subparagraph (3) hereabove. The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of the monitoring of the suspended claims and invites both parties to address the question of whether Iran should be compensated for those losses.
- (5) The Tribunal will not award any damages related to, or arising from, Iran's participation in United States court litigation during the six-month period following the signing of the Algiers Declarations. Nor will it award any damages related to, or arising from, Iran's participation in cases regarding the validity and constitutionality of the Algiers Declarations under United States law.

b. On Claim A:

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

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

c. Claim B is dismissed.

d. On Claim D:

- (1) By allowing, in Section 1 of Executive Order 12294, the filing of suits after the date of the Algiers Declarations, even for the limited purpose of tolling the applicable statutes of limitation, the United States did not act consistently with its obligations under General Principle B.

- (2) The Tribunal shall determine in the second phase of these proceedings the nature and the extent of the damages, if any, incurred by Iran as a result of the United States authorizing the filing of tolling suits. Iran will be expected to produce factual evidence of the losses it suffered as a result of its making appearances or filing documents in United States courts subsequent to 19 January 1981 in the prudent defense of its interests with respect to tolling suits filed after 19 January 1981 asserting claims described in Article II, paragraph 1, of the Claims Settlement Declaration or asserting claims filed with the Tribunal until such time as those claims are dismissed by the Tribunal for lack of jurisdiction. The Tribunal also expects Iran to produce factual evidence of the losses it suffered as a result of monitoring the tolling suits and invites both parties to address the question of whether Iran should be compensated for those losses.

e. Claim E is dismissed.

f. Claim F is dismissed.

g. On Claim G:

- (1) Iran's claim that the United States has failed to take a sufficiently active role in nullifying attachments obtained by United States nationals on Iranian assets in the United States after 14 November 1979 is dismissed.
- (2) If any post-14 November 1979 attachments were still in effect and actually restrained Iranian assets in the United States after 19 July 1981, thereby limiting the free disposition of those assets by Iran, then this would constitute a violation of the United States obligation to nullify post-14 November 1979 attachments in a timely fashion. The Tribunal shall determine in the second phase of these proceedings whether any such attachments were still in effect at that date and, if so, the nature and the amount of damages, if any, Iran suffered as a result of those attachments.

h. On Claim H:

- (1) The United States is obliged to nullify only those United States court judgments obtained by United States nationals against Iran that are based on claims that are within the Tribunal's jurisdiction. This obligation accrued on 19 July 1981.
- (2) If Iran reasonably incurred legal expenses in relation to any such judgments that remained in existence after 19 July 1981, then the United States breached its obligations under the Algiers Declarations concerning nullification of judgments against Iran. The Tribunal shall determine in the second phase of these proceed-

ings whether any such judgments were still in effect at that date and, if so, the nature and the amount of damages, if any, Iran suffered as a result of those judgments.

B. IN CASE NO. A24:

- (1) By not acting to have the Foremost/OPIC lawsuit in the District Court for the District of Columbia dismissed from the District Court's docket within a reasonable time after 11 April 1986, the date the Tribunal issued its award in Foremost, the United States violated its obligation under the Algiers Declarations to terminate litigation in United States courts related to claims resolved by the Tribunal on the merits.
- (2) As a result of the United States omission, Iran is entitled to damages to the extent it was reasonably compelled in the prudent defense of its interests to make appearances or file documents with respect to the Foremost/OPIC lawsuit from 11 April 1986 until 1 April 1988, to the extent those expenses are not already sought by Iran in Case No. A15(IV). The Tribunal shall determine in the second phase of these proceedings the nature and the amount of Iran's damages, if any.
- (3) Iran's Claim in this Case, to the extent it relates to the Foremost/OPIC lawsuit as pursued from 1 April 1988 onward, is dismissed.

C. FURTHER PROCEEDINGS:

The Tribunal will describe and schedule by separate Order further proceedings and submissions in these Cases.

Dated, The Hague
28 December 1998

Krzysztof Skubiszewski

Krzysztof Skubiszewski
President

Bengt Broms

Bengt Broms
Dissenting and
partly Concurring;
See Separate Opinion.

Gaetano Arangio-Ruiz

Gaetano Arangio-Ruiz

In the Name of God

Assadollah Noori

Assadollah Noori
Concurring in part;
Dissenting in part.
See Separate Opinion.

George H. Aldrich

George H. Aldrich
Concurring in part;
Dissenting in part.
See Separate Opinion.

In the Name of God

Koorosh H. Ameli

Koorosh H. Ameli
Concurring in part;
Dissenting in part.
(Separate Opinion)

In the Name of God

Richard C. Allison

Richard C. Allison
Concurring in part;
Dissenting in part.
See Separate Opinion.

Mohsen Aghahosseini

Mohsen Aghahosseini
Concurring in part;
Dissenting in part.
See Separate Opinion.

Charles T. Duncan

Charles T. Duncan
Concurring in part,
Dissenting in part.
See Separate Opinion.