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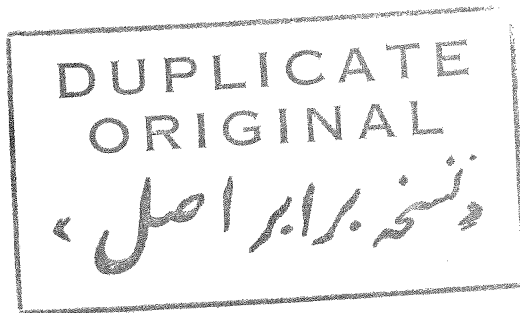
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IRAN-UNITED STATES CLAIMS TRIBUNAL

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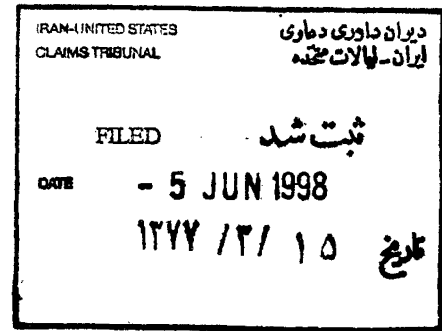


CASE NO. A27

FULL TRIBUNAL

AWARD NO. 586-A27-FT

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

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I. INTRODUCTION

1. At issue in this Case are the United States obligations under the Algiers Declarations¹ concerning the enforcement in the United States of Tribunal awards rendered against United States nationals in favor of Iran. Relevant to this Case are the Tribunal's findings in Islamic Republic of Iran and United States of America, Decision No. DEC 62-A21-FT (4 May 1987), reprinted in 14 Iran-U.S. C.T.R. 324 (hereinafter "Case A21").

2. In Case A21, Iran had requested that the Tribunal hold that the Algiers Declarations obliged the United States to satisfy any award rendered by the Tribunal against United States nationals in favor of Iran. The Tribunal concluded that the Algiers Declarations did not impose on the United States any obligation, either express or implicit, to satisfy any such awards, and it denied Iran's request. In reaching this conclusion, the Tribunal pointed out, however, that "[t]he Parties to the Algiers Declarations are obligated to implement them in such a way that the awards of the Tribunal will be treated as valid and enforceable in their national jurisdictions." Id. at para. 14, 14 Iran-U.S. C.T.R. at 330.

3. In this Case, Iran contends that the United States has breached its obligations under the Algiers Declarations concerning the enforcement of Tribunal awards, which obligations, Iran asserts, were delineated by the Tribunal in its Decision in Case A21. As a basis for its claim, Iran invokes the refusal by the United States courts to enforce the Tribunal's Partial Award in Avco Corporation and Iran Aircraft Industries, et al., Partial Award No. 377-261-3 (18 Jul. 1988), reprinted in 19 Iran-U.S.

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 of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"), both dated 19 January 1981.

C.T.R. 200 (hereinafter "Avco"). Iran also adduces an alleged undue delay by the United States courts in enforcing the Tribunal's Award in Gould Marketing, Inc. and Ministry of Defence of the Islamic Republic of Iran, Award No. 136-49/50-2 (29 Jun. 1984), reprinted in 6 Iran-U.S. C.T.R. 272 (hereinafter "Gould"). The United States denies liability.

4. According to its final pleadings, Iran seeks U.S.\$3,513,086.03, the amount that the Tribunal awarded the Iranian parties in Avco, and U.S.\$48,914, the legal expenses that Iran allegedly incurred in connection with the Avco enforcement proceedings in the United States. In addition, Iran seeks U.S.\$344,767.80, the total amount of arbitration costs that the Tribunal awarded Iran in twenty-four other awards. Iran concedes that it has not attempted to seek enforcement of those cost awards in the courts of the United States. In Iran's view, in light of the unsatisfactory outcome of the Avco and Gould enforcement proceedings, it would have been futile to do so. Iran seeks interest on all claimed amounts.

5. A Hearing in this Case was held on 27 and 28 February 1996 in the Peace Palace, The Hague.

II. FACTS AND CONTENTIONS

A. FACTUAL BACKGROUND

1. The Tribunal's Decision in Case No. A21

6. On 19 July 1985, Iran requested that the Tribunal determine whether the Algiers Declarations obliged the United States to satisfy awards rendered by the Tribunal in favor of Iran against nationals of the United States. Iran contended that the "final and binding" nature of the Tribunal's awards, as this term is used in Article IV, paragraph 1, of the Claims Settlement Declaration, imposed an obligation on the United States to

satisfy such awards when its nationals failed to do so voluntarily. This interpretive dispute was assigned docket No. A21.

7. As noted, in its Decision in Case A21 the Tribunal held that the Algiers Declarations did not contain any express or implied obligation of the United States to satisfy Tribunal awards rendered against its nationals in favor of Iran. The Tribunal reasoned as follows.

8. The terms "final" and "binding," when used in instruments relating to international arbitration, "do not ordinarily mean that an award is self-enforcing. Rather, as is generally recognized, a 'final' and 'binding' award is one with which the parties must comply and which is ripe for enforcement." Case A21, supra, at para. 10, 14 Iran-U.S. C.T.R. at 329. The Tribunal also disagreed with Iran's argument that the Algiers Declarations established a "reciprocal system of commitments" that obliged the United States to pay awards against its nationals. The establishment of the Security Account "as the source for payments of awards against the Government of Iran and its controlled entities" and the absence of "an identical obligation of payment upon the United States" demonstrate that the Declarations "clearly contemplated something other than parity of treatment of the two States Parties as regards enforcement mechanisms." Id. at para. 11, 14 Iran-U.S. C.T.R. at 329.

9. The Tribunal went on to hold, however, that the Algiers Declarations did "impose upon the United States a duty to implement the Algiers Declarations in good faith so as to ensure that the jurisdiction and authority of the Tribunal are respected." The High Contracting Parties are obliged to implement the Declarations "in such a way that the awards of the Tribunal will be treated as valid and enforceable in their respective national jurisdictions." Id. at para. 14, 14 Iran-U.S. C.T.R. at 330. "This good faith obligation leaves a considerable latitude to the States Parties as to the nature of the procedures and mechanisms

by which Tribunal awards rendered against their nationals may be enforced." Id. at para. 15, 14 Iran-U.S. C.T.R. at 331.

10. The Tribunal continued:

Certainly, if no enforcement procedure were available in a State Party, or if recourse to such procedure were eventually to result in a refusal to implement Tribunal awards, or unduly delay their enforcement, this would violate the State's obligations under the Algiers Declarations. It is therefore incumbent on each State Party to provide some procedure or mechanism whereby enforcement may be obtained within its national jurisdiction, and to ensure that the successful Party has access thereto. If procedures did not already exist as part of the State's legal system they would have to be established, by means of legislation or other appropriate measures. Such procedures must be available on a basis at least as favorable as that allowed to parties who seek recognition or enforcement of foreign arbitral awards.

Id.

11. The Tribunal found no grounds upon which to conclude that the United States had failed to satisfy its obligation in that respect. Up to that point, Iran had made no attempt to avail itself of any procedures that existed for the enforcement of Tribunal awards in United States courts. Thus, it would have been premature for the Tribunal to consider whether those procedures were adequate. The Tribunal concluded by stating:

Only if it were to be established that recourse by Iran to the mechanisms or systems existing in the United States had not resulted in the enforcement of awards of this Tribunal against United States nationals would the question arise as to what further measures, if any, the United States might be required to take in order to ensure the "effectiveness" of the Algiers Declarations.

Id. at para. 16, 14 Iran-U.S. C.T.R. at 331.

2. The Gould Enforcement Proceedings in the United States

12. On 29 June 1984, the Tribunal rendered Award No. 136-49/50-2 in Gould Marketing, Inc. and Ministry of Defence of the Islamic Republic of Iran. See supra, para. 3. In Gould, the Tribunal awarded U.S.\$3,640,247.13 to the Iranian Ministry of Defence (hereinafter "the Ministry"). In addition, the Tribunal ordered the claimant, Gould Marketing, Inc. ("Gould"), to make available to the Ministry certain communications equipment owned by the Ministry that was in Gould's possession. Gould failed both to pay the award and to make the equipment available to Iran. Thus, in June 1987, Iran sought confirmation and enforcement of the Tribunal's award by petitioning the United States District Court for the Central District of California. Gould responded by filing a motion to dismiss on the ground that the District Court lacked subject matter jurisdiction to hear the enforcement action. The United States government filed a statement of interest in which it argued that the District Court did have subject matter jurisdiction under both the New York Convention² and 28 U.S.C. §1331, a provision generally granting jurisdiction over civil actions arising under the laws of the United States.

13. The District Court held that it had jurisdiction to hear Iran's enforcement action because the Tribunal's award in Gould satisfied the requirements of the New York Convention. Gould appealed this decision to the United States Court of Appeals for the Ninth Circuit.

14. On 23 October 1989, the Ninth Circuit affirmed the District Court's decision and held that that court had jurisdiction to enforce the Tribunal's award in Gould pursuant to the New York Convention. The case returned to the District Court for

² United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 3, in force 7 Jun. 1959 (effective in the United States 29 Dec. 1970).

cross motions and summary judgment. By Order of 6 December 1990, the District Court confirmed the Tribunal's award to the extent it granted U.S.\$3,640,247.13 to the Ministry, but modified it to the extent it required specific performance by Gould. The District Court relieved Gould of the obligation to make the communications equipment available to the Ministry because it believed that "doing so would violate United States export restrictions." The Court went on to say, however, that, if those restrictions were lifted within a reasonable time after the Court's Order, Gould was to return or make available the equipment as directed by the Tribunal's award.

15. Iran appealed from this decision, urging that the District Court should have affirmed the award "as is." On 30 June 1992, the Ninth Circuit vacated the District Court's Order to the extent it relieved Gould of the specific performance obligation and remanded that portion of the Order for further proceedings. In so deciding, the Ninth Circuit considered a proposal by the United States Department of State, put forward in an amicus curiae brief filed by the United States Department of Justice, to make the equipment available to Iran in the United States.

16. On 31 March 1993, Iran and Gould concluded a settlement agreement, pursuant to which Gould agreed to pay Iran a certain amount and to transfer the communications equipment in question to Victory Van Warehouse in the United States.

3. The Avco Enforcement Proceedings in the United States

a. The Tribunal's Award in Avco

17. On 14 January 1982, Avco Corporation (hereinafter "Avco") presented a Statement of Claim against the Islamic Republic of Iran and certain entities controlled by the government of Iran (hereinafter collectively "Iran"). Avco's claim

consisted of several components, including certain claims for unpaid invoices. The Case was assigned No. 261. Iran asserted certain counterclaims against Avco. On 18 July 1988, the Tribunal issued Award No. 377-261-3, Avco Corporation and Iran Aircraft Industries, et al., see supra, para. 3, awarding Iran a total of U.S.\$3,513,086.03, plus interest, on its counterclaims. In the Award, the Tribunal, inter alia, rejected part of Avco's claims for unpaid invoices. To substantiate its invoice claims, Avco had submitted, inter alia, a verification of the underlying invoices by an independent accountant, but not the invoices themselves. In rejecting the invoice claims, the Tribunal said that, while the method of evidence chosen by Avco provided the Tribunal "with adequate evidence of the existence of the invoices listed in Avco's accounts receivable ledgers," it did not "include any material allowing the Tribunal to find that the [claimed invoices] were actually payable." Id. at para. 32, 19 Iran-U.S. C.T.R. at 208. As examples of such materials, the Tribunal cited "purchase orders, bills of lading, written demand for payment or other documentary evidence." Id. at para. 66, 19 Iran-U.S. C.T.R. at 214.

18. In a Concurring and Dissenting Opinion appended to the Avco Award, Judge Charles N. Brower, the United States-appointed Arbitrator participating in the Case, stated with respect to Avco's invoice claims that Avco had been advised to submit the independent invoice verification, and not to submit the copies of the many underlying invoices, by the previous Chairman of Chamber Three at a Pre-Hearing Conference in 1985. In Judge Brower's view, "[s]ince Claimant did exactly what it previously was told to do by the Tribunal the denial in the present Award of any of those invoice claims on the ground that more evidence should have been submitted constitutes a denial to Claimant of the ability to present its case to the Tribunal." (Footnote omitted.) Avco Corporation and Iran Aircraft Industries, et al., Award No. 377-261-3 (18 Jul. 1988), Concurring and Dissenting Opinion of Charles N. Brower, at para. 22 (18 Jul. 1988), reprinted in 19 Iran-U.S. C.T.R. 231, 238. According to him,

"the Tribunal ha[d] misled the Claimant, however unwittingly, regarding the evidence it was required to submit" Id. at para. 1, 19 Iran-U.S. C.T.R. at 231.³

b. The Avco Enforcement Proceedings

19. Avco failed to pay the Avco award voluntarily. Thus, on 5 June 1991, Iran petitioned the United States District Court for the District of Connecticut for an order confirming the award. Avco responded by filing a motion for summary judgment, requesting that the District Court deny enforcement. Under the applicable rules of procedure, Iran was required to file its response to Avco's motion by 28 November 1991 but failed to do so. On 9 December 1991, Iran filed a motion for an extension of time to file that pleading. On 10 December 1991, the District Court, "after careful review and absent objection," granted Avco's motion for summary judgment and, consequently, denied enforcement of the Avco award.

20. On 13 December 1991, Iran filed before the same District Court a "Motion To Reopen And/Or For Relief From the [10 December 1991] Judgment." On 22 January 1992, the District Court

³ To support his view, Mr. Brower primarily relied on the following colloquy between the Chairman of Chamber Three and Avco's Counsel at the 1985 Pre-Hearing Conference:

[Chairman]: I don't think we will be very, very much enthusiastic getting kilos and kilos of invoices.
 [Counsel]: That, that's what I thought so
 [Chairman]: So I think it will but help us
 [Counsel]: We'll use
 [Chairman]: to use the alternative rather.
 [Counsel]: Alright
 [Chairman]: On the other hand I don't know if, if any, if there are any objections to any specific invoices so far made by the Respondents. But anyhow as a precaution maybe you could
 [Counsel]: Yes, sir.
 [Chairman]: Get an account made.

Id. at para. 17, 19 Iran-U.S. C.T.R. at 236.

denied Iran's motion. In its decision, the Court noted that Iran had "failed to file the requisite memorandum of law in support of [its] motion" and that it "otherwise failed to demonstrate any legitimate basis upon which the Court might relieve [it] from the previously entered judgment."

21. On 7 February 1992, Iran appealed from the District Court's 10 December 1991 order denying enforcement of the Avco award before the United States Court of Appeals for the Second Circuit. In the appellate proceedings, Iran argued that the Tribunal's awards were directly enforceable in United States courts because, pursuant to Article IV, paragraph 1, of the Claims Settlement Declaration, all decisions and awards of the Tribunal "shall be final and binding." Iran argued, in the alternative, that the Avco award was enforceable in accordance with the New York Convention. Avco, for its part, contended that the District Court had properly denied enforcement of the award pursuant to Article V(1)(b) of the 1958 New York Convention. That Article provides for the nonenforcement of an award when "[t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case. . . ." In Avco's view, it was unable to present its case to the Tribunal because the Tribunal had misled it as to the proper method to substantiate its invoice claim.

22. On 24 November 1992, following briefing and oral argument, the Court of Appeals held that the District Court had been right in denying enforcement of the Avco award; consequently, it affirmed the lower court's decision. In reaching this conclusion, the Court of Appeals, which considered de novo the legal question whether the Tribunal's award in Avco was enforceable, held that the "final and binding" language found in the Claims Settlement Declaration did not bar consideration of the defenses to enforcement provided for in the New York Convention. The Court of Appeals went on to state that, at the Pre-Hearing Conference in Case No. 261, the then-Chairman of Chamber Three

of the Tribunal specifically advised Avco not to burden the Tribunal by submitting many invoices and "approved the method of proof proposed by Avco, namely the submission of Avco's audited accounts receivable ledgers." Iran Aircraft Industries, et al. v. Avco Corp., 980 F.2d 141, 146 (1992).

23. According to the Court of Appeals, the Tribunal never made Avco aware that "the Tribunal now required the actual invoices to substantiate Avco's claim. Having thus led Avco to believe it had used a proper method to substantiate its claim, the Tribunal then rejected Avco's claim for lack of proof." Id. The Court of Appeals, perhaps persuaded by the reasoning in Judge Brower's Concurring and Dissenting Opinion, see supra, para. 18, and in the absence of any Statement of Interest by the United States government, thus concluded:

We believe that by so misleading Avco, however unwittingly, the Tribunal denied Avco the opportunity to present its claim in a meaningful manner. Accordingly, Avco was 'unable to present [its] case' within the meaning of Article V(1)(b) [of the 1958 New York Convention], and enforcement of the Award was properly denied.

Id.

24. One of the three judges on the panel, Judge Cardamone, dissented from this decision and voted to enforce the award. He wrote that Avco had had a full opportunity to present its claims and was on notice that there might be a problem with its proof, especially in light of certain questions that the Tribunal posed to Avco at the Hearing; that there was no clear indication that at the Pre-Hearing Conference, the Tribunal had issued a "definitive ruling" concerning the evidence Avco should produce to substantiate its invoice claims; and that in electing to produce only a summary of the invoices, rather than the invoices themselves, Avco took a "calculated risk." Id. at 148 (Cardamone, J. dissenting).

25. Iran did not seek judicial review of the Court of Appeals' decision denying enforcement of the Avco award.

B. THE PARTIES' CONTENTIONS

1. Iran

26. Iran contends that the United States has breached its obligations under the Algiers Declarations concerning the enforcement of Tribunal awards rendered in favor of Iran against United States nationals. Iran argues that under the Declarations, the United States is obliged to provide a mechanism that ensures the enforcement of all such awards, and not merely some of them. In support of this proposition, Iran relies on the language from the Tribunal's Decision in Case A21, on the Algiers Declarations themselves, and on principles of customary international law.

27. With regard to the Tribunal's Decision in Case A21, Iran points in particular to paragraph 15 thereof, which states in relevant part:

Certainly, if no enforcement procedure were available in a State Party, or if recourse to such procedure were eventually to result in a refusal to implement Tribunal awards, or unduly delay their enforcement, this would violate the State's obligations under the Algiers Declarations.

According to Iran, this language requires that each and every Tribunal award rendered in favor of Iran against United States nationals be enforced. This result, it argues, flows directly from the principle of good faith, is in conformity with the object and purpose of the Algiers Declarations, is necessary to ensure their effectiveness, and is also necessary to protect the jurisdiction and authority of the Tribunal.

28. Iran further points out that in paragraph 11 of its Decision in Case A21, the Tribunal stated that the principle of reciprocity of obligations between the States Parties applies to the Algiers Declarations taken as a whole. In Iran's view, therefore, the Declarations — with the sole exception of Iran's obligation to establish a Security Account to pay awards rendered against it — require parity of treatment of the two States Parties with respect to enforcement of Tribunal awards. Hence, the United States must provide a mechanism that ensures the enforcement of all Tribunal awards rendered in favor of Iran against United States nationals.

29. Iran asserts, moreover, that not only must the United States ensure that all Tribunal awards are enforced, but it also must ensure that they are enforced promptly and at a reasonable cost to Iran. In support, Iran relies primarily on language from paragraph 15 of the Tribunal's Decision in Case A21, stating that "if recourse to [the available enforcement procedure] were eventually to result in a refusal to implement Tribunal awards, or unduly delay their enforcement, this would violate the State's obligations under the Algiers Declarations." (Emphasis added.) Delay is undue, according to Iran, if it takes substantially longer to enforce an award against a United States national in the United States than it takes to pay an award against Iran out of the Security Account.

30. Iran argues that its interpretation of the United States enforcement obligations under the Algiers Declarations is also supported by General Principle B of the General Declaration. The first sentence of that Principle provides, in relevant part, that "[i]t is the purpose of both parties, within the framework of and pursuant to the [two 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." Iran contends that the settlement and termination of a claim and the end of the related litigation can be attained only through

an enforceable award. Iran contends, moreover, that by using the word "settlement" in General Principle B, the States Parties intended to prohibit any further proceedings — including enforcement proceedings — after the issuance of an award by the Tribunal.

31. In this connection, Iran invests with particular significance the words "final and binding" found in Article IV, paragraph 1, of the Claims Settlement Declaration, which provides in full that "[a]ll decisions and awards of the Tribunal shall be final and binding." When the parties to an arbitral agreement stipulate that an award is final and binding, Iran argues, they recognize that that award shall be enforced. The United States, which is bound by that provision, must therefore ensure that all Tribunal awards are enforced in the United States.

32. In any event, Iran continues, because both the Tribunal and its awards are international in character, a Tribunal award would be final and binding even if no express language to that effect were found in the Algiers Declarations. The Iran-United States Claims Tribunal, Iran argues, is international in character for two independent reasons. First, because it was established by treaty — the Algiers Declarations. Second, because it adjudicates disputes between states. The awards of the Tribunal, likewise, are international, because they are based on the Algiers Declarations. Iran asserts that principles of customary international law require that awards rendered by an international tribunal be recognized and enforced in domestic courts. Domestic authorities may not review or refuse to enforce such an award; authenticity is the only aspect of the award that they may verify.

33. Iran maintains that the enforcement mechanism provided by the United States pursuant to the New York Convention does not satisfy the United States obligations under the Algiers Declarations and international law. This is because the New York Convention, Iran argues, by its own terms, does not apply to

international awards; it covers the enforcement of foreign arbitral awards only.⁴ The Convention is inadequate, most notably, because, under conditions specified in Article V, it allows for a court to refuse recognition and enforcement of an award. See e.g. supra, para. 21. Because the international nature of the Tribunal's awards mandates that they be enforced in the domestic sphere, Iran urges, Article V of the Convention cannot apply to those awards. For all the above reasons, Iran concludes, the New York Convention is not suitable for the enforcement of Tribunal awards.

34. As a factual matter, Iran contends that the refusal by the United States Court of Appeals for the Second Circuit to enforce the Avco award, see supra, para. 22, demonstrates that the mechanism available in the United States does not result in the enforcement of all Tribunal awards rendered against United States nationals in favor of Iran. In Iran's view, this fact is sufficient to establish the United States liability for this claim. Iran asserts, moreover, that the history of the enforcement of the Tribunal's award in Gould, see supra, paras. 12-16, shows how the procedures available in the United States unduly delay enforcement of Tribunal awards. That history also demonstrates that it is not cost-effective to attempt to enforce Tribunal awards in the United States. Iran contends that it incurred over U.S.\$300,000 in legal expenses in connection with the Gould enforcement proceedings.

35. As damages for the alleged breach by the United States of its obligations under the Algiers Declarations, Iran seeks

⁴ Article I, paragraph 1, of the New York Convention provides the following:

This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

U.S.\$3,513,086.03, the amount that the Tribunal awarded the Iranian parties in Avco, and U.S.\$48,914, the legal expenses that Iran allegedly incurred in connection with the Avco enforcement proceedings in the United States.

36. In addition, Iran seeks U.S.\$344,767.80, the total amount of arbitration costs that the Tribunal awarded Iran in twenty-four awards. Iran argues that, having demonstrated that there is no realistic prospect of enforcing Tribunal awards in the United States, it is entitled to seek payment from the United States of those twenty-four cost awards without first attempting to enforce them in United States courts.

37. Iran seeks interest on all claimed amounts.

38. Iran also seeks an order requiring the United States to establish a suitable procedure for the enforcement of all future Tribunal awards rendered in favor of Iran against United States nationals, including awards of arbitration costs.

2. The United States

39. The United States rejects Iran's interpretation of the United States enforcement obligations under the Algiers Declarations. Iran's arguments, the United States contends, are directed toward the revision of the Tribunal's Decision in Case A21. As recognized by that Decision, the Declarations do not require the United States to step in and pay Tribunal awards rendered against United States nationals in favor of Iran. Rather, they simply require that the United States (1) provide procedures in its domestic law whereby enforcement of Tribunal awards may be obtained; (2) ensure that Iran has access to those procedures; and (3) see that the procedures made available to Iran are at least as favorable as those afforded other parties wishing to enforce foreign arbitral awards. This the United

States has done: it offered enforcement on the basis of the New York Convention.

40. In support of its position, the United States relies primarily on language from paragraph 15 of the Tribunal's Decision in Case A21, stating that it is

incumbent on each State Party to provide some procedure or mechanism whereby enforcement may be obtained within its national jurisdiction, and to ensure that the successful Party has access thereto. . . . Such procedures must be available on a basis at least as favorable as that allowed to parties who seek recognition or enforcement of foreign arbitral awards.

See supra, para. 10. In the United States view, the Tribunal's choice of the word "may," rather than "shall," indicates that it was not requiring the parties to provide procedures that guaranteed enforcement of Tribunal awards in every instance, as Iran argues. The United States enforcement obligation is one of providing an appropriate procedure rather than one of ensuring a successful result.

41. The United States alleges that Iran has misconstrued the Tribunal's Decision in Case A21. In particular, the United States insists, Iran misinterprets the following language from paragraph 15 thereof:

Certainly, if no enforcement procedure were available in a State Party, or if recourse to such procedure were eventually to result in a refusal to implement Tribunal awards, or unduly delay their enforcement, this would violate the State's obligations under the Algiers Declarations.

According to the United States, this sentence just means that, should enforcement procedures not exist in the United States or not provide a framework for the enforceability of Tribunal awards without undue delay, the United States would be in breach of its obligations under the Algiers Declarations. This sentence does not mean, however, that if the available procedures result in

nonenforcement of even a single award the United States is obligated to pay all Tribunal awards rendered against its nationals, including those that Iran never attempted to enforce in United States courts.

42. The United States further points to the language in Article IV, paragraph 1, of the Claims Settlement Declaration, characterizing the Tribunal's awards as "final and binding" and contends that that language does not mean that the Tribunal's awards are self-enforcing or that their enforcement is guaranteed. Rather, as the Tribunal stated in paragraph 10 of its Decision in Case A21, a final and binding award "is one with which the parties must comply and which is ripe for enforcement." Tribunal awards, therefore, are no more and no less enforceable than any other foreign arbitral award.

43. The United States next makes an argument based on Article IV, paragraph 3, of the Claims Settlement Declaration, which provides:

Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

The United States first points out that this provision deals only with the enforcement of awards rendered against either government. By using the words "in the courts of any nation" and "in accordance with its laws," the United States continues, the High Contracting Parties agreed that enforcement of such awards would occur pursuant to national legal rules and procedures, including those in force in Iran and the United States.

44. The United States observes that the Declarations do not, on the other hand, expressly provide for any obligation concerning the enforcement of awards made against nationals of either government. Such an implied obligation, if it exists, cannot reasonably be interpreted more broadly than the analogous

express obligation regarding enforcement of awards rendered against either government, as set forth in Article IV, paragraph 3, of the Claims Settlement Declaration. Consequently, awards rendered against nationals of either state shall be enforced the same way as those rendered against either government — in accordance with national laws. The law applicable in the United States for the enforcement of non-domestic arbitral awards, including those of the Tribunal, the United States points out, is the New York Convention.

45. As to the Tribunal's legal nature, the United States argues that the Tribunal is a hybrid entity. It is clearly a creature of public international law established by treaty; but it is also capable of, and indeed charged with, deciding disputes of a commercial character, predominantly claims brought by private parties against either government, as was Avco's case. Article V of the Claims Settlement Declaration, which states that the Tribunal shall decide all cases on the basis of principles of commercial and international law, as the Tribunal determines to be applicable, indicates that the Algiers Declarations empower the Tribunal to decide both commercial disputes and public international disputes.

46. The United States also makes an argument based on the negotiating history of the Algiers Declarations. It maintains that during the negotiations, Iran never requested that the United States guarantee payment of awards rendered against United States nationals in favor of Iran; nor did the United States ever volunteer to do so. Similarly, Iran never agreed to guarantee payment of awards rendered against it in favor of United States nationals. In support, the United States relies, inter alia, on the testimony given at the Hearing by Mr. Roberts B. Owen, who served as the Legal Adviser of the United States Department of State during the relevant period and participated in the negotiations.

47. The United States contends that, as a factual matter, it has complied with the requirement in paragraph 15 of the Tribunal's Decision in Case A21 that it make available to Iran procedures for the enforcement of Tribunal awards on a basis at least as favorable as that allowed to parties who seek recognition or enforcement of foreign arbitral awards. First, it has offered Iran enforcement of Tribunal awards on the basis of the New York Convention, which was codified as part of the United States Federal Arbitration Act. The New York Convention, the United States asserts, is the primary framework through which the international community regulates the enforcement of foreign arbitral awards.

48. Second, the United States contends that, as demonstrated by both the Avco and Gould enforcement proceedings initiated by Iran in the United States, Iran has unhindered access to the enforcement procedures available in the United States on terms just as favorable as those allowed to any other party seeking to enforce a foreign arbitral award. Finally, the United States points out that, as a matter of substantive law, in both those proceedings, the United States Courts of Appeals held that the Tribunal's awards were enforceable in United States courts pursuant to the New York Convention.

49. The United States denies that the enforcement mechanism available in the United States unduly delays enforcement of Tribunal awards, as Iran argues based on the history of the Gould enforcement proceedings. The United States observes that Iran has not shown that it would have taken less time for any other party to obtain enforcement of an award of that nature. In addition, the United States contends, Iran's argument ignores that the Gould enforcement action presented a case of first impression, where a United States court for the first time was asked to apply the terms of the New York Convention to the enforcement of Tribunal awards. The United States notes in this connection that the Avco enforcement action moved through the courts much faster than Gould. There is no reason to believe

that Iran's future enforcement efforts would not also move efficiently.

50. With regard to Iran's contention that it is not cost-effective to seek to enforce Tribunal awards in the United States, the United States points out that there is nothing in the Algiers Declarations or in the Tribunal's Decision in Case A21 that would limit the costs Iran might incur in pursuing its enforcement actions. Iran faces the same cost-benefit evaluation of any litigant in any jurisdiction.

51. The United States next argues that Iran has failed to pursue actively the enforcement of Tribunal awards in United States courts. According to the United States, paragraph 16 of the Tribunal's Decision in Case A21, see supra, para. 11, required that Iran avail itself of all existing enforcement procedures in the United States before the Tribunal could pronounce itself as to whether those procedures were adequate. This, the United States asserts, Iran has not done. Iran's conduct in the Avco enforcement action was characterized by repeated late filings and, most notably, by Iran's failure to respond to Avco's motion for summary judgment requesting that the United States District Court deny enforcement of the Avco award. The United States contends that this conduct by Iran contributed to the Second Circuit's decision not to enforce that award.

52. Moreover, the United States asserts that, by neglecting to seek a rehearing of the Avco case en banc by the Court of Appeals for the Second Circuit or to petition the Supreme Court of the United States for a writ of certiorari, Iran chose not to exhaust the judicial process available in the United States for the enforcement of Tribunal awards. Iran reasonably could have been expected to pursue those avenues, because the Avco award ultimately might have been enforced after further review by the Second Circuit en banc or the Supreme Court.

53. To this argument, Iran responds that neither of those remedies — rehearing en banc by the Court of Appeals or discretionary review by the Supreme Court of the United States — constituted a viable solution. According to Iran, its case was not eligible for a rehearing en banc before the full court of the Second Circuit, because the decision of the three-judge panel of the Second Circuit in Avco neither presented a conflict with a decision by another panel in that Circuit, nor dealt with "a question of exceptional importance," as required by the United States Federal Rules of Appellate Procedure. As to discretionary review by the Supreme Court, Iran contends that the chances of it being granted were nonexistent, because none of the extraordinary circumstances warranting the exercise of the Supreme Court's discretionary powers were present in the Avco case.

54. Lastly, the United States contends that that portion of Iran's claim relating to the twenty-four Tribunal cost awards should be dismissed because it is inconsistent with the Tribunal's Decision in Case A21. As noted, the United States contends that paragraph 16 of the Tribunal's Decision in Case A21 required that Iran avail itself of all the existing enforcement procedures in the United States — which it did not do — before the Tribunal could pronounce itself as to their adequacy. See supra, para. 51.

III. JURISDICTION

55. The Tribunal's jurisdiction over this Case is undisputed. The Parties disagree about the interpretation of the Algiers Declarations and about the obligations they impose on the United States. This dispute thus clearly falls within the Tribunal's jurisdiction pursuant to paragraph 17 of the General Declaration and Article VI, paragraph 4, of the Claims Settlement Declaration.

IV. MERITS

A. THE CLAIM RELATED TO THE NONENFORCEMENT OF THE AWARD
IN AVCO AND THE ALLEGED UNDUE DELAY

56. In its Decision in Case A21, the Tribunal held that "[t]he Parties to the Algiers Declarations are obligated to implement them in such a way that the awards of the Tribunal will be treated as valid and enforceable in their respective national jurisdictions." Case A21, supra, at para. 14, 14 Iran-U.S. C.T.R. at 330. The task before the Tribunal is to determine whether the United States, by virtue of the refusal by its courts to enforce the Avco award, has breached that obligation.

57. Before turning to this task the Tribunal will deal with the question of its own legal nature, as that nature has been discussed by the parties and forms a backdrop against which the Tribunal may view the actions of the United States. Article II, paragraph 1, of the Claims Settlement Declaration in relevant part provides:

An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim

Pursuant to paragraph 2 of that Article, the Tribunal shall also have jurisdiction to decide official claims of the High Contracting Parties against each other arising out of contractual arrangements between them for the purchase and sale of goods and services. Pursuant to Paragraph 17 of the General Declaration and Article VI, paragraph 4, of the Claims Settlement Declaration, moreover, the Tribunal shall have jurisdiction over any dispute as to the interpretation or performance of the Algiers Declarations.

58. The Tribunal was established by an international agreement concluded between Iran and the United States. The States Parties empowered it to decide intergovernmental claims as well as claims by nationals of one State Party against the government of the other State Party. Under contemporary international law, the fact that an individual or a private entity is party to proceedings before a forum created by an international agreement does not deprive that forum and its proceedings of their international legal nature. The Tribunal is "clearly an international tribunal," Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT, at 18 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 261, and "it is subject to international law," Anaconda Iran, Inc. and Islamic Republic of Iran, et al., Interlocutory Award No. ITL 65-167-3, para. 97 (10 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 199, 223. By definition, international arbitral awards, if final, are binding. Recourse to this Tribunal implies the undertaking to respect its awards.

59. In Case A21, the Tribunal stated that it was "incumbent on each State Party [to the Algiers Declarations] to provide some procedure or mechanism whereby enforcement [of Tribunal awards] may be obtained within its national jurisdiction, and to ensure that the successful Party has access thereto." Decision in Case A21, para. 15, 14 Iran-U.S. C.T.R. at 331. In this connection, it should be noted that "[t]he Tribunal has no authority under the Algiers Declarations to prescribe the means by which each of the States provides for such enforcement." Id. The States Parties enjoy "considerable latitude . . . as to the nature of the procedures and mechanisms by which Tribunal awards rendered against their nationals may be enforced." Id. However, that latitude, though "considerable," has its limits. In its Decision in Case A21, the Tribunal held that those procedures "must be available on a basis at least as favorable as that allowed to parties who seek recognition or enforcement of foreign arbitral awards." Id. The procedures and mechanisms among which a State Party to the Algiers Declarations may choose must also be

adequate to achieve the objective envisaged by the Declarations, i.e., the enforceability of Tribunal decisions and awards as final and binding. That limitation on the Parties' latitude in choosing those procedures and mechanisms clearly follows from the Tribunal's Decision in Case A21. See infra, para. 61.

60. In paragraph 15 of its Decision in Case A21, the Tribunal also stated that

if recourse to [a municipal enforcement] procedure were eventually to result in a refusal to implement Tribunal awards, or unduly delay their enforcement, this would violate the State's obligations under the Algiers Declarations.

This interpretation of the Algiers Declarations by the Decision in Case A21 conforms to international law. See supra, para. 58. As paragraph 14 of that Decision points out, it is important to ensure the "effectiveness" of the Algiers Declarations and ensure that the

jurisdiction and authority of the Tribunal are respected. The Parties to the Algiers Declarations are obligated to implement them in such a way that the awards of the Tribunal will be treated as valid and enforceable in their respective national jurisdictions.

61. The mechanism available in the United States for the enforcement of Tribunal awards is the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. See supra, footnote 2. As noted, in the Gould and Avco enforcement proceedings, the United States courts held that Tribunal awards were enforceable pursuant to that Convention. See supra, paras. 14 and 22.

62. In its decision denying enforcement of the Avco award, the Second Circuit held that the Algiers Declarations did not bar consideration of the defenses to enforcement provided for in

Article V of the New York Convention.⁵ See supra, para. 22. In the statement of interest it filed in the Gould enforcement proceedings before the District Court of the Central District of

⁵ Article V of the New York Convention provides in full:

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

California, see supra, para. 12, the United States, for its part, while arguing that in principle Article V of the New York Convention applied to Tribunal awards, recognized that subparagraphs (1)(a) and (2)(b) thereof did not apply to such awards. With respect to the balance of the Article V exceptions to enforcement (subparagraphs (1)(b) through (1)(e) and subparagraph 2(a)), at the Hearing, the Legal Adviser to the United States Department of State conceded that there appeared to be, on the surface, "some infelicities."

63. The Tribunal agrees that those provisions are problematic in the context of Tribunal awards, particularly when viewed in the light of the States Parties' obligations under the Algiers Declarations relating to the enforcement of those awards. Indeed, Article IV, paragraph 1, of the Claims Settlement Declaration, which provides that "[a]ll decisions and awards of the Tribunal shall be final and binding," rules out the possibility of readjudication of the merits of Tribunal awards by a municipal court, either under the guise of Article V of the New York Convention or by any other means. See infra, para. 70.

64. Indeed, it is difficult for the Tribunal to believe that any of its awards could fall within the scope of Article V of the New York Convention. In any event, the fact that the mechanism chosen by the United States to enforce this Tribunal's awards is the New York Convention does not exempt the United States from liability if its courts err by denying enforcement of an award that should, by virtue of the Algiers Declarations,

have been enforced.⁶ See also Decision in Case A21, para. 15, 14 Iran-U.S. C.T.R. at 331.

65. In denying enforcement of the Avco award, the Second Circuit held that Avco had been "unable to present [its] case" before the Tribunal within the meaning of Article V(1)(b) of the New York Convention. See supra, para. 23. In reaching the conclusion that the Tribunal had "denied Avco the opportunity to present its claim in a meaningful manner," the Second Circuit found (1) that at a Pre-Hearing Conference held in 1985, the then-Chairman of Chamber Three approved the method of proof proposed by Avco to substantiate its invoice claim, namely the "submission of Avco's audited accounts receivable ledgers" and (2) that the Tribunal never made Avco aware that "the Tribunal now required the actual invoices to substantiate Avco's claim." In the Second Circuit's view, "[h]aving thus led Avco to believe it had used a proper method to substantiate its claim, the Tribunal then rejected Avco's claim for lack of proof." See supra, para. 23.

66. This decision by the Second Circuit was erroneous. A careful reading of the Tribunal's award in Avco shows that it was based not on the absence of the invoices underlying Avco's claims, but on a lack of proof that those invoices were payable. See supra, para. 17. Indeed, the Tribunal stated at paragraph 32 of its Award that it did not question the existence of the invoices, but rather, whether Iran Aircraft Industries owed Avco on the basis of them, a defect in proof the invoices themselves could not have cured. Consequently, this erroneous decision by

⁶ The Tribunal recognizes that no tribunal can declare itself immune from procedural error or the possibility of fraud, forgery, or perjury that it may not detect. In such hypothetical cases, however, revision of the award could be done only by the Tribunal, if it concluded that it had the authority to do so, not by any other court. See Harold Birnbaum and Islamic Republic of Iran, Decision No. DEC 124-967-2, paras. 14-19 (14 Dec. 1995); Ram International Industries Inc., et al. and Air Force of the Islamic Republic of Iran, Decision No. DEC 118-148-1, para. 20 (28 Dec. 1993).

the Second Circuit places the United States in violation of its obligation to make the Avco award enforceable in the United States.

67. The United States elected not to file a statement of interest before the Second Circuit in Avco. The Tribunal believes that a statement should have pointed out why the Avco award deserved enforcement and, if filed, might have improved the chances that the majority of the court would have paid due attention to the text of the Tribunal's award, rather than apparently relying on the Dissenting and Concurring Opinion of one of the Members of the Tribunal, see supra, para. 18.

68. Indeed, the fact that the Second Circuit effectively adopted the dissenting view of the Tribunal Member in the minority illustrates an additional problem with its decision. That Member argued that Avco had been unable to prove its claim solely because the Tribunal supposedly misled it into not submitting its invoices. A majority of Chamber Three of the Tribunal considered this argument and, by not adopting the minority's view, rejected it. The Second Circuit thus reconsidered a specific question raised and conclusively decided by the Tribunal; in effect, the Second Circuit repudiated the merits of the Tribunal's award in Avco.

69. By reconsidering an issue that had been already aired and decided by the Tribunal, the Second Circuit, in violation of Article IV, paragraph 1, of the Claims Settlement Declaration, failed to treat the Tribunal's decision as "final and binding." Once an issue has been raised and decided by the Tribunal, no enforcing court may reexamine that same issue — whether under the guise of the New York Convention or by any other means — without violating that Article's proviso that "[a]ll decisions and awards of the Tribunal shall be final and binding." In this connection, see also Case Concerning the Factory at Chorzów (Interpretation) (Germany vs. Poland), 1927 P.C.I.J. (ser. A) No. 13, at 19 (16 Dec.); Case Concerning the Factory at Chorzów (Claim for Indemni-

ty) (Merits) (Germany vs. Poland), 1928 P.C.I.J. (ser. A) No. 17, at 33-34 (13 Sep.).

70. In other words, a party to a case before the Tribunal cannot evade findings made by the Tribunal by relitigating them in an enforcing court. The Claims Settlement Declaration requires the States Parties to stand behind the Tribunal's findings and makes them liable if their courts second-guess decisions the Tribunal has made. In this Case, the significance of the invoices underlying Avco's claims and of the colloquy between the Chairman of Chamber Three and Avco's Counsel at the 1985 Pre-Hearing Conference were considered and decided by the Tribunal. It was not open to the enforcing courts of one of the sovereign parties to decide that the dissenting arbitrator was right after all.

71. Based on the foregoing, the Tribunal holds that, through the refusal by the United States Court of Appeals for the Second Circuit to enforce the Avco award, the United States has violated its obligation under the Algiers Declarations to ensure that a valid award of the Tribunal be treated as final and binding, valid, and enforceable in the jurisdiction of the United States. It is a well-settled principle of international law that every international wrongful act of the judiciary of a state is attributable to that state.⁷ Consequently, the United States is liable for damages pursuant to paragraph 17 of the General Declaration and Article VI, paragraph 4, of the Claims Settlement Declaration. It is appropriate to recall here that the Parties

⁷ Lord McNair writes: "[I]f . . . the courts . . . decline to give effect to the treaty . . ., their judgments involve the State in a breach of treaty." Lord McNair, The Law of Treaties 346 (1961). The Draft Articles on State Responsibility adopted by the International Law Commission of the United Nations provide that if an act of a judicial organ of the state constitutes a breach of an international obligation of that state, such act produces an internationally wrongful act of the state entailing its international responsibility. See Articles 1-6, International Law Commission, 48th Sess., at 125-126, U.N. Doc. A/51/10 (1996).

to the Algiers Declarations undertook to respect the jurisdiction and the authority of the Tribunal.

72. To be sure, there were imperfections in the way Iran pursued enforcement of the Avco award before the United States courts. For example, Iran failed to respond to Avco's motion for summary judgment before the District Court, it did not seek a rehearing en banc by the Second Circuit, and it did not petition the Supreme Court of the United States for a writ of certiorari. See supra, paras. 19-20 and 25. Nevertheless, while an enforcing party must carry the burden of enforcement, the Tribunal does not believe that, taken as a whole, the evidence compels it to refuse relief to Iran because of those shortcomings. It should be noted, in particular, that, despite Iran's failure to respond to Avco's motion before the District Court, the Second Circuit heard arguments upon and reviewed the question of the enforceability of the Avco award.

73. With respect to the alleged delay of enforcement, the Tribunal finds that the record, as it stands, does not support Iran's contentions that the procedures available in the United States unduly delay enforcement of Tribunal awards and that it is not cost-effective to attempt to enforce Tribunal awards in the United States. See supra, para. 34.

74. In view of its decision in this Case, the Tribunal need not address Iran's request for an order requiring the United States to establish a suitable procedure for the enforcement of all future Tribunal awards rendered in favor of Iran against United States nationals.

75. Where it finds that one of the State Parties has not fulfilled its obligations under the Algiers Declarations, the Tribunal has, according to paragraph 17 of the General Declaration, authority to award the other State Party damages to compensate for losses resulting from such a breach. In the circumstances, the Tribunal holds that the United States is

liable to compensate Iran in the amount of the award in Avco, namely U.S.\$3,513,086.03.

76. The Tribunal further holds that Iran is entitled to pre-judgment interest on that amount, as the Second Circuit would likely have awarded such interest if its decision had been to grant enforcement of the Avco award.⁸ The Tribunal therefore awards Iran simple pre-judgment interest at the annual rate of 10 percent⁹ (365-day basis) from 18 July 1988, the date the Avco award was issued, until 24 November 1992, the date the Second Circuit rendered its decision denying enforcement of that award.

77. Iran also seeks reimbursement of the legal expenses it incurred in pursuing the enforcement of the award in Avco after the United States District Court for the District of Connecticut denied enforcement of that award on 10 December 1991. These expenses, however, would have been incurred even if the decision of the Second Circuit had been to grant enforcement. Consequently, they are not recoverable as damages.

78. Consequently, the Tribunal awards Iran a total of U.S.\$5,042,481.65 on its claim related to the nonenforcement of the Tribunal's award in Avco. This amount includes the amount awarded by the Tribunal in Avco, U.S.\$3,513,086.03, plus

⁸ See Born, International Commercial Arbitration in the United States: Commentary & Materials (Deventer-Boston 1994) 623-24.

⁹ In Avco the Tribunal awarded U.S.\$886,127 to the Respondent Iran Aircraft Industries ("IACI") and U.S.\$2,626,959.03 to the Respondent Iran Helicopter Support and Renewal Company ("IHSRC"), for a total of U.S.\$3,513,086.03. It further awarded simple interest at the rate of 10 percent per annum on the amount awarded IACI, U.S.\$886,127, from the date of the award up to and including the date of payment. The Tribunal did not grant post-award interest on the amount owing to IHSRC because IHSRC had limited its interest request to the pre-award period. See Avco, *supra*, para. 139, 19 Iran-U.S. C.T.R. at 229. Given the inequity of the fact that IHSRC was not paid promptly after the Avco award, however, the Tribunal believes an enforcing U.S. court would likely have exercised its discretion to award post-award interest on the amount owed to IHSRC as well.

U.S.\$1,529,395.62, the aggregate pre-judgment interest awarded supra, at para. 76. The Tribunal further awards simple post-judgment interest on U.S.\$5,042,481.65 at the annual rate of 5 percent (365-day basis) from 25 November 1992 up to and including the date of payment of this Award.

B. THE CLAIM RELATED TO THE 24 COST AWARDS

79. Iran seeks U.S.\$344,767.80 — the total amount of arbitration costs that the Tribunal awarded it in twenty-four awards. Iran argues that, having demonstrated that there is no realistic prospect of enforcing Tribunal awards in the United States, it is entitled to seek payment of the cost awards in question directly from the United States. See supra, para. 36. The issue is whether the United States is obliged to satisfy such awards, though Iran has never made any attempt to enforce them in United States courts.

80. In its Decision in Case A21, the Tribunal held that the Algiers Declarations did not contain any express or implied obligation of the United States to step in and satisfy Tribunal awards rendered against its nationals in favor of Iran. See Case A21, supra, paras. 10-13, 14 Iran-U.S. C.T.R. at 328-30. On the evidence before it, the Tribunal is not prepared to assume that, because United States courts denied enforcement of a single award, they will also deny or unduly delay enforcement of the cost awards that are the subject of this claim.

81. Only after Iran has made timely attempts to enforce those cost awards in United States courts, and only if Iran establishes that those courts have wrongfully refused to implement the awards or have unduly delayed their enforcement, "would the question arise as to what . . . measures, if any, the United States might be required to take in order to ensure the 'effectiveness' of the Algiers Declarations." Id. para. 16, 14 Iran-U.S. C.T.R. at 331. A request by Iran to the Tribunal as

to the performance of the Algiers Declarations pursuant to Article 17 of the General Declaration and Article VI, paragraph 4, of the Claims Settlement Declaration "would be appropriate at that stage." Id.

82. Consequently, Iran's claim relating to the twenty-four cost awards must be dismissed.

V. AWARD

83. In view of the foregoing,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- a. By virtue of the refusal by the United States Court of Appeals for the Second Circuit to enforce the Avco award, the United States has violated its obligation under the Algiers Declarations to ensure that a valid award of the Tribunal be treated as final and binding, valid, and enforceable in the jurisdiction of the United States.
- b. Consequently, the United States is obligated to pay Iran the sum of Five Million Forty-Two Thousand Four Hundred Eighty-One United States Dollars and Sixty-Five Cents (U.S.\$5,042,481.65), plus simple interest at the annual rate of 5 percent (365-day basis) from 24 November 1992 up to and including the date of payment of this award.
- c. Iran's claim related to the reimbursement of the legal expenses it incurred in pursuing the enforcement of the award in Avco before the Second Circuit and Iran's claim related to the total amount of arbitration costs awarded to Iran by the Tribunal in twenty-four awards are both dismissed.

Dated, The Hague
05 June 1998

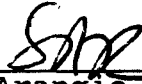


Krzysztof Skubiszewski
President

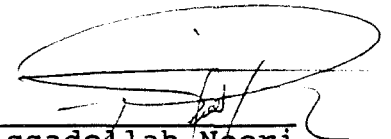
In the Name of God



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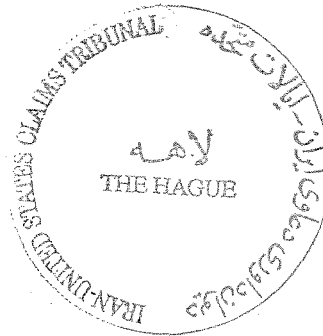


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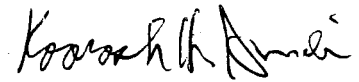
Concurring. See Separate
Opinion.



George H. Aldrich



In the Name of God



Koorosh H. Ameli
Concurring Opinion

In the Name of God



Richard C. Allison
Separate Opinion



Mohsen Aghahosseini
Concurring. See Separate
Opinion.



Charles T. Duncan