BEFORE THE

IRAN-UNITED STATES CLAIMS TRIBUNAL

The Hague

The Netherlands

The Islamic Republic of Iran, Claimant, v. United States of America, Respondent.	)	Claim No. A/30 Full Tribunal

STATEMENT OF DEFENSE OF THE UNITED STATES

Sean D. Murphy
Agent of the United States

Counsel:

Michael J. Matheson
Jeffrey D. Kovar

BEFORE THE

IRAN-UNITED STATES CLAIMS TRIBUNAL

The Hague

The Netherlands

The Islamic Republic of Iran, Claimant, v. United States of America, Respondent.	)	Claim No. A/30 Full Tribunal

STATEMENT OF DEFENSE OF THE UNITED STATES

On August 12, 1996, the Islamic Republic of Iran filed a Statement of Claim (Doc. 1) in a new interpretive dispute against the United States, Case No. A/30, alleging that the United States has violated its commitments under the Algiers Accords by interfering in Iran's internal affairs and implementing economic sanctions against Iran. Pursuant to the Tribunal's Order of August 21, 1996 (Doc. 3), and subsequent extension orders (Docs. 5, 9, and 12), the United States submits this Statement of Defense.[1]

[1] In the event the Tribunal permits Iran to file further written statements or other materials in this case (Rules of Procedure, Art. 22-23), the United States requests that the Tribunal accord it the right to respond thereto.

I. INTRODUCTION AND SUMMARY

The Government of Iran, which has a long record of using terrorism and lethal force as an instrument of state policy, is seeking a ruling from the Tribunal that the United States has violated the Algiers Accords by intervening in Iran's internal affairs and enacting economic sanctions against it. Iran asserts that the United States has violated two obligations under the Algiers Accords: the pledge in Paragraph 1 of the General Declaration that it is and will be the policy of the United States not to intervene in Iran's internal affairs, and the requirement in Paragraph 10 of the General Declaration to revoke all trade sanctions imposed in response to Iran's seizing the U.S. Embassy and taking 52 American hostages on November 4, 1979.

This Statement of Defense will show that Iran's claim that the United States has violated the Algiers Accords is utterly without foundation. It will demonstrate that the United States has fully complied with its obligations, and that Iran presents no evidence or legal authority to support its sweeping claims to the contrary. It will demonstrate that Paragraphs 1 and 10 were never intended to insulate Iran from economic measures taken for reasons unrelated to the events addressed in the Algiers Accords. It will also establish that Iran's attempts to bring its claim under customary international law, the Treaty of Amity, and the United Nations Charter are patently without merit. It will go on to show that under general principles of international law, Iran's own unlawful international activities preclude it from

bringing its claims. Finally, this Statement of Defense will demonstrate that Iran does not present a case for interim measures. Iran's claim should be rejected.

II. FACTUAL BACKGROUND

Since the conclusion of the Algiers Accords in 1981, and the mutual release of the hostages and lifting of trade sanctions, Iran has adopted a policy and practice of state-sponsored terrorism, including violent actions aimed directly at the United States, its allies, and its fundamental interests. Successive U.S. Presidents and the U.S. Congress have determined that the national security interests of the United States call for a series of gradually increasing economic and diplomatic measures to convince Iran to halt these dangerous activities. These measures have been designed to induce Iran to alter its harmful and threatening international actions, and to restrict Iran's access to the financial and technological means necessary to carry them out. Iran's new and threatening actions, and the United States' measures to address them, are unrelated to the events that resulted in the Algiers Accords. This section will discuss U.S. economic and diplomatic measures and the reasons they were promulgated, and then describe in some detail Iran's record of international terrorism.

A. The United States Revoked All Trade Sanctions Related to the 1979 Hostage-Taking on January 19, 1981, as Required by the Algiers Accords

Iran does not dispute that the United States revoked on January 19, 1981, all the trade sanctions instituted after the seizure of the U.S. Embassy on November 4, 1979. On the day the Algiers Accords were signed, the United States "revoke[d] all trade sanctions which were directed against Iran in the period November 4, 1979 to date." General Declaration, ¶ 10. Specifically, in Executive Order 12282, President Carter revoked the "prohibitions contained in Executive Order 12205 of April 7, 1980 [export and financial transactions bans], and Executive Order 12211 of April 17, 1980 [import and travel bans], and Proclamation 4702 of November 12, 1979 [import ban on petroleum and petroleum products]." Exec. Order No. 12282, 46 Federal Register 7925 (Jan. 23, 1981).[2] Thus, the United States complied

[2] The United States also took steps to "ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9," as required by General Principle A, by revoking the prohibitions contained in Exec. Order No. 12170, 44 Federal Register 65729 (Nov. 15, 1979). Under Exec. Order No. 12277, 46 Federal Register 7915 (Jan. 23, 1981)(Direction to Transfer Iranian Government Assets), Exec. Order No. 12278, 46 Federal Register 7917 (Jan. 23, 1981)(Direction to Transfer Iranian Government Assets Overseas), Exec. Order No. 12279, 46 Federal Register 7919 (Jan. 23, 1981)(Direction to Transfer Iranian Government Assets Held by Domestic Banks), Exec. Order No. 12280, 46 Federal Register 7921 (Jan. 23, 1981)(Direction to Transfer Iranian Government Assets Held by Non-Banking Institutions), and Exec. Order No. 12281, 46 Federal Register 7923 (Jan. 23, 1981)(Direction to Transfer Certain Iranian Government Assets), President Carter lifted the prohibitions contained in Exec. Order 12170 and thus "unblocked" Iranian governmental assets. The Treasury Department's Office of Foreign Assets Control implemented these orders in the weeks following the inauguration of President Reagan. See 31 C.F.R. §§ 535.212-535.215 (1996).

fully with the obligations undertaken by it in Paragraph 10 of the General Declaration.

B. Since the Signing of the Algiers Accords, the United States Has Taken Various Economic Measures Against Iran for Foreign Policy Reasons Unrelated to the Events at Issue in the Algiers Accords

The United States has taken a number of economic and diplomatic measures since the conclusion of the Algiers Accords in response to Iran's threatening international behavior. These measures are completely unrelated to the events settled by the Accords.

1. Operation Staunch

The United States undertook Operation Staunch during the Iran-Iraq War to seek the cooperation of other countries not to ship arms or items that could be used for military purposes to Iran so long as Iran refused to agree to a cease-fire and negotiated settlement with Iraq. Affidavit of A. Peter Burleigh, attached as Exhibit 1. In 1982, after Iran had regained Iranian territory taken by Iraq at the start of the Iran-Iraq war, it refused all offers to negotiate a cease-fire. Instead, Iran launched a series of offensives designed to seize Iraqi territory. The United States, and many other states in and out of the region, made the assessment that continuation of the war was largely Iran's responsibility. Under Operation Staunch, the United States notified governments about information it received regarding pending commercial arms sales to Iran, and sought their cooperation in preventing the sales. Operation Staunch was part of a wider effort by many states -- including Saudi Arabia,

Kuwait, and the Soviet Union -- to convince other states that supplying arms to Iran would simply prolong the war. Operation Staunch ended after Iran finally agreed to a cease-fire with Iraq in 1988.[3] While Iran correctly describes Operation Staunch in its Statement of Claim as "designed to prevent arms or dual use equipment from anywhere in the world to reach Iran" (Doc. 1 at 9), that Operation had no connection to the events at issue in the Algiers Accords.

2. Designation of Iran on the Terrorism List

On January 23, 1984, the Secretary of State made a formal determination under Section 6 of the Export Administration Act ("EAA"), 50 U.S.C. app. § 2405(j)(1994), that Iran has "repeatedly provided support for acts of international terrorism." Department of State Bulletin, March 1984, at 77, attached as Exhibit 2. This determination placed Iran on what is commonly called the "terrorism list"; it has been renewed annually since 1984. The terrorism list designation renders Iran ineligible for a broad range of benefits from the U.S. Government, including certain forms of U.S. foreign assistance,[4] sales of U.S. munitions list items,[5] U.S. Export-Import Bank credits,[6] and U.S. Government support for loans from

---

[3] Exhibit 1, Burleigh Affidavit, ¶¶ 4-9.

[4] 22 U.S.C. § 2371 (1994).

[5] 22 U.S.C. § 2780 (1994)(contained in the Anti-Terrorism and Arms Export Amendments Act of 1989, Pub. L. No. 101-222, 103 Stat. 1892 (1989).

[6] 22 U.S.C. § 2371 (1994).

international financial institutions.[7] It also imposes strict export licensing requirements for goods controlled under the EAA.[8]

3. Export Ban on Chemical Weapons Components

The United States took steps during the Iran-Iraq War to halt the export to both Iran and Iraq of chemicals that could be used in the manufacture of chemical weapons. The Department of Commerce issued regulations on March 30, 1984 (49 Federal Register 13135), September 14, 1984 (49 Federal Register 36079), and July 31, 1987 (52 Federal Register 28550), that designated certain specific chemicals.[9] The 1987 regulation also applied to Syria.

4. Executive Order 12613

President Reagan issued Executive Order 12613 on October 29, 1987, which banned the import of most Iranian-origin goods and

---

[7] See Section II.B.7 below.

[8] 50 U.S.C. app. § 2405(j)(1994). Although the EAA expired August 20, 1994, its regime remains in force pursuant to Exec. Order No. 12924, 59 Federal Register 43437 (Aug. 23, 1994), issued under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701 (1994 & Supp. I 1995). It was extended on August 14, 1996, 61 Federal Register 42527 (Aug. 15, 1996). Implementing the EAA are the Export Administration Regulations ("EAR"), 61 Federal Register 12714 (Mar. 25, 1996)(to be codified at 15 C.F.R. §§ 730-799A). Items requiring a validated license for export are specified at 15 C.F.R. § 746.7(a)(2) (61 Federal Register 12810 (Mar. 25, 1996)).

[9] Iran is mistaken in its Statement of Claim (p. 10) that there were "executive orders" in March 1984 and July 1987 related to this ban on certain chemical exports.

services to the United States. In the order, the President stated that he was acting because he had determined that:

> the Government of Iran is actively supporting terrorism as an instrument of state policy. In addition, Iran has conducted aggressive and unlawful military action against U.S.-flag vessels and merchant vessels of other non-belligerent nations engaged in lawful and peaceful commerce in international waters of the Persian Gulf and territorial waters of non-belligerent nations of that region.

He stated further that his intention was to:

> ensure that United States imports of Iranian goods and services will not contribute financial support to terrorism or to further aggressive actions against non-belligerent shipping.

52 Federal Register 41940 (Oct. 30, 1987). The President also stated in section 5 of Exec. Order 12613 that:

> [t]he measures taken pursuant to this Order are in response to the actions of the Government of Iran referred to above, occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those actions.

In a public statement issued with the order, the President said that he was ordering the measures as a direct result of Iran's actions and only after other efforts to reduce tensions were unsuccessful:

> Let me emphasize that we are taking these economic measures only after repeated but unsuccessful attempts to reduce tensions with Iran and in response to the continued and increasingly bellicose behavior of the Iranian Government. They do not reflect any quarrel with the Iranian people. Indeed, as I have said a number of times, the United States accepts the Iranian revolution as a fact and respects the right of the Iranian people to choose any government that they wish.

Department of State Bulletin, December 1987, at 75, at Exhibit 3.

5. The Iran-Iraq Arms Non-Proliferation Act of 1992[10]

In 1992, U.S. law extended certain measures to Iran that were already in force against Iraq under paragraphs (1)-(4) of section 586G(a) of the Iraq Sanctions Act of 1990. Pub. L. No. 101-513, Title V, 104 Stat. 2047 (codified at 50 U.S.C. § 1701 note (1994)). These measures ban all FMS and commercial arms sales, as well as exports regulated under section 6 of the EAA, and prohibit the export of material that could be used in the development of a nuclear weapon. Id. § 1603. The law also imposes sanctions on any person or country that "transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological, or nuclear weapons or to acquire destabilizing numbers and types of advanced conventional weapons." Id. §§ 1604-5. The Act makes clear that it is intended to inhibit Iran and Iraq equally from acquiring weapons of mass destruction or destabilizing amounts of conventional weapons:

> It shall be the policy of the United States to oppose, and urgently to seek the agreement of other nations also to oppose, any transfer to Iran or Iraq of any goods or technology, including dual-use goods or technology, wherever that transfer could materially contribute to either country's acquiring chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons.

Id. § 1602.

---

[10] Iran-Iraq Arms Non-Proliferation Act of 1992, Pub. L. No. 102-484, Div. A, Title XVI, 106 Stat. 2571 (codified at 50 U.S.C. § 1701 note (1994)).

6. Assistance to Russia

The Foreign Operations, Export Financing, and Related Appropriations Act, 1993, Pub. L. No. 102-391, 106 Stat. 1663 (1992), precluded the provision of certain forms of foreign assistance funds to Russia (except for humanitarian assistance) unless the President reported to Congress that:

> the United States has entered into serious and substantive discussions with Russia to reduce exports of sophisticated conventional weapons to Iran and to prevent sales to Iran of any destabilizing numbers and types of such weapons . . . or the provision of such assistance is determined to be in the national interest.

Id. § 599B(a). The Secretary of State, to whom the President's functions were delegated, determined the provision of such assistance to Russia to be in the U.S. national interest.

7. Assistance to International Financial Institutions

The Foreign Operations, Export Financing, and Related Appropriations Act, 1994, provided in section 528 that the U.S. executive directors of international financial institutions[11] shall be instructed "to use the voice and vote of the United States to oppose any loan or other use of funds to or for a[ny] country" that has been placed on the terrorism list.[12] The

---

[11] Institutions covered include the International Bank for Reconstruction and Development, the International Development Association, the International Monetary Fund, and the Inter-American, Asian, and African Development Banks.

[12] Pub. L. No. 103-87, 107 Stat. 931 (1993). This section was numbered 527 in the Foreign Operations, Export Financing, and Related Programs Act, 1996, Pub. L. No. 104-107, 110 Stat. 704 (1996), and 528 of the 1995 Foreign Operations, Export Financing, and Related Programs Act, Pub. L. No. 103-87, 107 Stat. 931 (1993). See also section 575 of the 1988 Foreign Operations, Export Financing, and Related Programs Act, Pub. L. No. 100-202,

Foreign Operations Acts for Fiscal Years 1994, 1995, and 1996 also provided that the Secretary of the Treasury must certify to the U.S. Congress 21 days before obligating contributions to the International Bank for Reconstruction and Development that the Bank had not "approved any loans to Iran" since October 1, 1994, or "that withholding of these funds is contrary to the national interest of the United States." The last such certification was made on March 20, 1996.[13]

8. Executive Order 12959

President Clinton issued Executive Order 12959 on May 6, 1995, prohibiting U.S. trade and investment in Iran, including the trading of Iranian petroleum and petroleum products overseas by U.S. companies and their foreign affiliates. Exec. Order No. 12959, 60 Federal Register 24757 (May 9, 1995). The Order was issued shortly after Executive Order 12957, which prohibited U.S. investment or participation in the development of Iranian petroleum resources. Exec. Order No. 12957, 60 Federal Register 14615 (Mar. 17, 1995). Both orders are attached as Exhibit 4.[14] The President declared in the orders that "the actions and

---

101 Stat. 1329-131 (1988).

[13] See, e.g., Pub. L. No. 104-107, supra note 12, at Title IV. This provision is not contained in the Fiscal Year 1997 Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

[14] Iran confuses these orders in its Statement of Claim. Iran attaches the text of Executive Order 12957 at Exhibit 5 of the Statement of Claim, but asserts that it is Executive Order 12959.

policies of the Government of Iran" pose an "unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." The President also stated expressly that the measures are completely unrelated to actions of Iran addressed in the Algiers Accords:

> The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Exec. Order No. 12959, § 7, 60 Federal Register 24757 (May 9, 1995).

9. The Iran and Libya Sanctions Act of 1996

On August 5, 1996, President Clinton signed the Iran and Libya Sanctions Act of 1996 ("ILSA") into law. Pub. L. No. 104-172, 110 Stat. 1541 (to be codified at 50 U.S.C. § 1701 note). The Act states expressly that its purpose is:

> to deny Iran the ability to support acts of international terrorism and to fund the development and acquisition of weapons of mass destruction and the means to deliver them by limiting the development of Iran's ability to explore for, extract, refine, or transport by pipeline petroleum resources of Iran.

Id. § 3(a).

Under ILSA, the President is required to impose at least two sanctions from a statutory list on persons determined to have:

> with actual knowledge, on or after the date of the enactment of this Act, made an investment of $40,000,000 or more (or any combination of investments of at least $10,000,000 each, which in the aggregate equals or exceeds $40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Iran's ability to develop petroleum resources of Iran.

Id. § 5(b). The sanctions that may be imposed on persons include: denial of U.S. Export-Import Bank assistance; denial of specific export licenses for exports to a violating company; prohibition on loans or credits from U.S. financial institutions of over $10 million in any 12-month period; prohibition on designation as a primary dealer for U.S. Government debt instruments; prohibition (on persons that are financial institutions) serving as an agent of the U.S. or as a repository for U.S. Government funds; denial of U.S. Government procurement opportunities; and a ban on all or some imports of a violating company. Id. § 6.

10. International Cooperation

The United States has sought the cooperation of other governments to persuade Iran to halt its hostile international activities and terrorist acts. At the 1997 "Summit of the Eight," in Denver, for example, the leaders of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States issued a communique where they "renew[ed]" their "call upon the Government of Iran to play a constructive role in regional and world affairs," declaring:

> [W]e call upon the Government of Iran to desist from material and political support for extremist groups that are seeking to destroy the Middle East peace process and to destabilize the region. We further call upon the Iranian Government to respect the human rights of all Iranian citizens and to renounce the use of terrorism, including against Iranian citizens living abroad, and, in that connection, to desist from endorsing the continued threats to the life of Mr. Salman Rushdie and other people associated with his work. We call on all States to avoid

> cooperation with Iran that might contribute to efforts to acquire nuclear weapons capabilities, or to enhance chemical, biological, or missile capabilities in violation of international conventions or arrangements.

Communique of the Denver Summit of the Eight, June 22, 1997, ¶ 86, attached as Exhibit 5. See also Chairman's Statement, Lyon G-7 Summit, June 29, 1996. In 1995, the G-7 leaders also declared "our resolve to defeat all forms of terrorism." Chairman's Statement, Halifax G-7 Summit, June 17, 1995. Other governments have determined for themselves the types of initiatives they wish to pursue to convince Iran to modify its behavior.

C. The United States Has Taken Measures Against Iran Because Iran Has Made Terrorism a Tool of Iranian Foreign Policy

Contrary to Iran's allegations, the measures described in the previous sections have been taken by the United States not to intervene in Iranian internal affairs, but to convince Iran to modify its unlawful behavior toward the United States and other governments, particularly with respect to its support of international terrorism. This section contains a brief summary of some of the more egregious examples of this behavior by Iran.

Iran has adopted terrorism as a basic tool of its foreign policy. Violent acts of murder and sabotage are aimed at Iranian opponents of the government living abroad, refugees, foreign individuals such as the writer Salman Rushdie, and at states such as the United States, Bahrain, and Israel. These unlawful acts are planned and executed by government officials and their

agents, and approved at the highest levels of the Government of Iran. Although they are carried out clandestinely, Iran's actions have been consistently and widely recognized and condemned by the international community. Recently, judicial authorities in Germany and Azerbaijan have found Iran responsible for such acts, as have many competent observers and experts.

As described in section II.B above, following entry into force of the Algiers Accords, the United States has exercised its sovereign right to respond to Iran's hostile international activities, which include terrorism aimed at the United States. There is nothing in the Accords that prohibited future U.S. actions to protect its legitimate foreign policy and national security interests.

1. Iran Has Assassinated Scores of Dissidents Abroad Since the Early 1980s.

Informed observers have established that Iran has committed scores of assassinations in over 20 countries. The UK Parliamentary Human Rights Group ("Parliamentary Group") determined in a lengthy report published in June 1996 that Iran is responsible for over 150 terrorist attacks outside Iran:

> Over the last seventeen years, over 150 assassination attempts on the lives of Iranian dissidents living abroad, and other terrorist acts, have been committed in 21 countries. Nearly 350 people have been killed or injured in these attacks, two thirds of which have occurred during the seven years of [Iranian President] Rafsanjani's rule."

Parliamentary Human Rights Group, Iran: State of Terror, An Account of Terrorist Assassinations by Iranian Agents (1996), at

3, attached as Exhibit 6. The Parliamentary Group's report is based upon extensive research and contains considerable detail about the planning and execution of these attacks. The Parliamentary Group, which was founded in 1976 by parliamentarians from the main political parties in the United Kingdom, regularly investigates and reports on human rights abuses around the world.

The Superior Court of Justice in Berlin confirmed Iran's role in committing terrorist acts against political opponents outside Iran in its April 10, 1997 judgment in the "Mykonos" trial. The judgment, which followed over three years of investigation, found that the September 17, 1992 murder of four members of the Democratic Party of Kurdistan-Iran (DPK-I) at the Mykonos Restaurant in Berlin, was conceived, planned, and executed by order of the highest levels of the Iranian Government. A public summary of the judgment as issued by the Berlin court, including English translation, is attached as Exhibit 7. The court also determined that the July 13, 1989 murder of three DPK-I leaders in Vienna was ordered and carried out by the Government of Iran. The summary of the judgment states:

> In order to silence [the DPK-I] Iran's political leadership decided not to fight the DPK-I's leaders with political means but to liquidate them. The killing of the DKP-I's chairman, Dr. Abdul Rahman Ghassemlou, and two of his confidants in Vienna on 13 July 1989, as well as the crime which has been tried by this Court, are the outcome of that decision. The connection between the assassinations in Vienna and Berlin is obvious. Any suggestion that they were

> the result of conflicts among Kurdish opposition groups can be ruled out.

Summary of Judgment, at 2, attached as Exhibit 7.

The reaction of the European Union was swift in condemning Iran for the murders, which violated fundamental norms of international law. Virtually all the EU countries immediately recalled their ambassadors from Tehran, and the EU Presidency issued a Declaration stating:

> In the findings of the Superior Court of Justice in Berlin in the so-called Mykonos case the involvement of the Iranian authorities at the highest level was established. The European Union condemns this involvement of the Iranian authorities and regards such behaviour as totally unacceptable in the conduct of international affairs. The European Union has always wanted a constructive relationship with Iran, and its critical dialogue agreed at the European Council in December 1992 was designed to further that objective. However, no progress can be possible while Iran flouts international norms, and indulges in acts of terrorism.[15]

On April 29, 1997, the European Union Council of Foreign Ministers "had an extensive discussion" about its relations with Iran in light of the Mykonos case, reaffirmed the Presidency's April 10 Declaration, and stated that progress toward a

---

[15] April 10, 1997 Declaration by the Presidency on behalf of the European Union on Iran, attached as Exhibit 8.

The German Bundestag adopted a resolution on April 17, stating that it:

> condemns the complicity, as determined by the Berlin court of appeals, of Iranian government agencies in the assassination at the Mykonos restaurant as a glaring violation of international law.

April 16 draft attached as Exhibit 9.

"constructive relationship" with Iran was only possible "if the Iranian authorities respect the norms of international law and refrain from acts of terrorism, including against Iranian citizens living abroad and cooperate in preventing such acts." The Council:

> called on Iran to abide by its commitments under international agreements, including those concerning the non-proliferation of weapons of mass destruction, as well as those concerning human rights. . . .
>
> The Council, determined to fight against terrorism in all its forms, regardless of its perpetrators or motives, agreed on the following:
>
> * confirmation that under the present circumstances there is no basis for the continuation of the Critical Dialogue between the European Union and Iran;
>
> * the suspension of official bilateral Ministerial visits to or from Iran;
>
> * confirmation of the established policy of the European Union member states not to supply arms to Iran;
>
> * cooperation to ensure that visas are not granted to Iranians with intelligence and security functions;
>
> * concertation in excluding Iranian intelligence personnel from European Union member states.

European Union Declaration on Iran, European Union Press Release (April 29, 1997), attached as Exhibit 10.

In unguarded moments, Iranian government officials have admitted that their government carries out and condones attacks on opponents outside Iran. Iranian Minister of Intelligence Hojjatolislam Ali Fallahian stated in an August 30, 1992

televised address that Iran had attacked opposition Kurdish groups outside of Iran:

> We have been able to deal blows to many of the mini-groups outside the country . . . . As you know, one of the active mini-groups is the Kurdistan Democratic Party . . . We were able to deal vital blows to their cadres last year.

Vision of the Islamic Republic of Iran, in British Broadcasting Corporation, Summary of World Broadcasts, ME/1475/A/1 (Sept. 2, 1992), attached as Exhibit 11. In June 1993, Iranian Minister of Interior Abdollah Nouri, when asked by a New York Times reporter about the assassination of Iranian opposition leader Muhammed Hussein Naghdi in Rome two months earlier, stated: "And if someone takes action against such terrorists [as Naghdi], does that mean they are terrorists?" Chris Hedges, Isolation and Internal Unrest Trouble Iran, N.Y. Times, June 22, 1993, at A1, attached as Exhibit 12.

2. Iran Has Targeted the United States in its Attacks

Iranian terrorism is aimed directly at the United States and American citizens, as well as at Iranian opponents of the Iranian regime. Iranian officials have admitted that Iran instigated the 1983 truck bombs that destroyed a U.S. Marine barracks in Lebanon and killed 241 American and 56 French soldiers deployed on peace-keeping missions. An Iranian Government minister, Mohsen Rafiqdoust, Minister of the Iranian Revolutionary Guard Corps, boasted that:

> With the victory of the Iranian Revolution, America felt the effect of our hard blow to its corrupt body in Lebanon and other parts of the world. It knows that both the TNT and

> the ideology which in one blast sent to hell 400 officers, NCOs and soldiers of the Marine Headquarters have been provided by Iran.

Speech of Our Brother Rafiqdoust at One of the Country's Factories for Defense, Ressalat, July 20, 1987, at 8, attached as Exhibit 13.[16] Then-Speaker of the Majlis Ali Akhbar Hashemi-Rafsanjani (now President of Iran, and soon to be Chairman of the Expediency Council)[17] confirmed Iranian Government responsibility for the Lebanon bombing in a 1986 address before a large public gathering on the seventh anniversary of the seizure of the U.S. Embassy and hostages. He stated:

> The Americans put the blame for the blow that was delivered to the United States in Lebanon and the disgrace the Americans suffered there on us; and, in fact, they should blame us for it.

Tehran Radio Domestic Service, in Foreign Broadcast Information Service, Daily Report, Vol. VIII, at 12 (November 4, 1986), attached as Exhibit 15.

In a May 1989 speech before a large public gathering Mr. Rafsanjani encouraged Palestinians to kill Americans and other Westerners around the world. This speech was reported by the official Iranian news agency, "IRNA." IRNA, in Foreign Broadcast

---

[16] Iran: State of Terror, supra p. 16, at 4, Exhibit 6; U.S. Department of Defense, Terrorist Group Profiles 16 (1988), attached as Exhibit 14. See also Mohammed Mohaddessin, Islamic Fundamentalism, The New Global Threat 116 (1993).

[17] Mr. Rafsanjani was the President of Iran during the research and preparation of this statement of Defense. He was succeeded as President a few days before the filing, and has been appointed Chairman of the Expediency Council.

Information Service, FBIS-NES-89-086 (May 5, 1989), at 45-46, attached as Exhibit 16. Mr. Rafsanjani said:

> If in retaliation for every Palestinian martyred in Palestine they kill and execute, not inside Palestine, five Americans or Britons or Frenchmen, they (Zionists) would not continue these wrongs.
>
> It is not hard to kill Americans or Frenchmen. It is a bit difficult to (kill) Israelis. But there are so many (Americans and Frenchmen) everywhere in the world.
>
> Those who give 10 billion dollars a year to preserve Israel and know what they are doing, is their blood worth anything?

Id. Mr. Rafsanjani also called on Palestinians to hijack planes and to blow up factories in Western countries. He admitted that his words would be understood to be an official call for acts of terror:

> Now they will start saying that so and so, as a man in charge, and as the speaker of parliament has officially called for acts of terror . . . But let them say it . . . Aren't they saying it now?

Id.

In October 1991, a senior Iranian jurist and former member of the Supreme Judicial Council, Ayatollah Musavi-Ardabili, also speaking at a large public gathering, called on muslims to attack Americans and their properties as a religious duty. He stated:

> Kill only those whom I told you to kill, and those are the Americans.

This speech was broadcast by the government media. Voice of the Islamic Republic of Iran First Program Network, in Foreign Broadcast Information Service, FBIS-NES-91-227 (Nov. 22, 1991), at 50-51, attached as Exhibit 17.

3. Iran Has Incited the Assassination of the British Novelist Salman Rushdie

The case of the fatwa against British novelist Salman Rushdie, his publisher, and translators is an instructive example of how the Government of Iran uses international terror to achieve its goals. The Government of Iran, through its Supreme Leader, instigated the fatwa and continues to condone it, as well as to incite its execution, despite widespread condemnation by governments and international human rights organizations.

On February 14, 1989, following the publication of Mr. Rushdie's novel The Satanic Verses, the Ayatollah Khomeini publicly called for Mr. Rushdie's murder, declaring the novel blasphemous. Tehran Radio Domestic Service, in Foreign Broadcast Information Service, FBIS-NES-89-029 (Feb. 14, 1989), at 43-44, attached as Exhibit 18. Subsequently, a reward of $2,000,000 was offered by the 15 Khordad Foundation in Iran to anyone who would kill the author. That amount was recently raised to $2,500,000 by the leader of the Foundation, the Ayatollah Haj Shaykh Hasan Sane'i, who is the representative of the Vali-e Faqih (the Vice Regent of the Jurisconsult), the Iranian Government's Supreme Leader Ayatollah Khamenei. The Ayatollah Sane'i has declared that "[n]o power can prevent" the fatwa from being carried out. Tehran Jomhuri-ye Eslami, in Foreign Broadcast Information Service, FBIS-NES-97-032 (Feb. 12, 1997), attached as Exhibit 19.

The assassination order also applies to those who would facilitate the publication and distribution of the novel, and

this has led to at least one murder and two serious assaults. In 1991, the Japanese translator of the novel, Prof. Hitoshi Igarashi, was stabbed to death on his university campus in Japan. Nine days earlier, the Italian translator, Ettore Capriole, was stabbed in Italy. In October 1993, the director of the Norwegian publishing house that published the novel in Norway was shot. Iran: State of Terror, supra p. 16, at 85, attached as Exhibit 6.

European governments have expressed outrage at the fatwa and demanded the Iranian Government provide written assurances that it will not be carried out. See, e.g., Resolution B4-0876/96 of 18 July 1996 on the Fatwa on Salman Rushdoe, 1996 O.J. (C261) 168, attached as Exhibit 20. UN Human Rights Commission Special Representative Maurice Copithorne condemned the reward as "an incitement to murder." Report on the Situation of Human Rights in the Islamic Republic of Iran, Special Representative of the Commission on Human Rights, U.N. ESCOR, Hum. Rts. Comm., 52nd Sess., Agenda Item 10, U.N. Doc. E/CN.4/1996/59 (1996) ¶ 10.

Although some Iranian officials have said that the government itself does not intend to carry out the fatwa, Iranian government and religious officials refuse to take steps to have the death sentence rescinded or punish the 15 Khordad Foundation for offering a reward.[18] They continue to call for the sentence

---

[18] The British Government has rejected recent attempts by some Iranian officials to describe the 15 Khordad Foundation's actions as outside the scope of government control, stating: "We do not accept that the 15 Khordad Foundation is independent of the Iranian Government." Statement by the Foreign and

to be carried out. Supreme Leader Ayatollah Khamenei, has described the edict approvingly and stressed that it must be carried out:

> [T]he Imam [Khomeini] has released an arrow aimed at that debauched person and calumniator. The arrow has left the bow and it has been properly targeted; sooner or later the arrow will reach its target. . . .
>
> This edict must be implemented, without a doubt, and it will be implemented. All the Muslims who can today reach this man who appeared, for a great anti-Islamic act, as a cursed and vile element, whoever can remove this harmful and noxious being from the path of Muslims must do so. He must be punished, no doubt. Now it is everyone's duty; it is the duty of all who can do this, who can reach this man.

Voice of the Islamic Republic of Iran First Program Network, in Foreign Broadcast Information Service, FBIS-NES-93-030 (Feb. 14, 1993), at 48, attached as Exhibit 22. The Ayatollah Sane'i recently repeated the Ayatollah Khamenei's statement in a February 1997 interview about the fatwa. Tehran Jomhuri-ye Eslami, in Foreign Broadcast Information Service, FBIS-TDD-97-005-L (Feb. 12, 1997), attached as Exhibit 23. Speaker of the Parliament, Ali Akbar Nateq-Nuri, also stressed recently for an Iranian political reporter the importance of the fatwa. He stated: "This decree remains in effect and we cannot retreat from our rightful stance for the sake of others." Tehran BFN, March 16, 1997, in Foreign Broadcast Information Service, FBIS-NES-97-085 (Mar. 26, 1997), attached as Exhibit 24.

Commonwealth Office Spokesman, London, February 12, 1997, attached as Exhibit 21.

4. Iran is Actively Trying to Overthrow the Government of Bahrain

Iran is engaged in undermining the sovereign independence of its neighbors in the Middle East, including through the support of terrorist and other armed groups seeking to overthrow the government of Bahrain.

In Bahrain, Iran has funded and provided arms and training to Bahraini Shiites who have been carrying out a campaign of violent civil disturbances, bombings, destruction, arson, and murder. In a June 3, 1996 letter to U.S. President Clinton, Amir Bin Sulman Al Khalifa, the Head of State of Bahrain, stated that the Iranian authorities have "established, financed and supported" an organization called "Bahrain Hezbollah" to carry out these violent attacks on the State of Bahrain. Letter of Amir Bin Sulman Al Khalifa (June 3, 1996), attached as Exhibit 25. Iran has trained these individuals "in military camps in Iran under the supervision of the Iranian Revolutionary Guards," as well as in camps in Lebanon. "The aim of these deliberate acts," stated the Amir, "is to undermine the security and stability of the country and to overthrow the Government of the State of Bahrain, with a view to creating a fundamentalist regime similar to that which exists in Iran." Id.

5. Iran Is Committed to the Destruction of the Sovereign State of Israel and the Disruption of the Middle East Peace Process

Iran is implacably opposed to the existence of the sovereign state of Israel, and actively sponsors groups in Lebanon, Syria,

the West Bank, and Gaza that are engaged in terrorist acts inside and outside Israel to disrupt the peace process between the Palestinian Authority and Israel. The most important of these groups are Hizbollah and Hamas. Iranian support includes arms, cash, and training. Paul Wilkinson, Professor of International Relations at St. Andrews University in Scotland, and Director of Research at the Institute for the Study of Conflict and Terrorism, has described Iran's role in establishing Hizbollah:

> It is important to note that the Iranian mullahs have played a key part in the establishment of Hizballah. It was Ayatollah Ali-Akbar Mohtashami who had direct access to Ayatollah Khomeini. Mohtashami, while serving as Iran's ambassador to Syria, organized the supply of large quantities of arms and cash to develop the operations of Hizballah in Lebanon.

Paul Wilkinson, Terrorism, Iran and Gulf Region, 4 Jane's Intelligence Review 222 (May 1, 1992), attached as Exhibit 26.

Former Iranian President Abolhasan Banisadr has described the role the Revolutionary Guard Corps plays in training Hizbollah and Hamas. In an August 26, 1996, interview with Munich FOCUS, later affirmed in a signed affidavit and attached as Exhibit 27, President Banisadr responded to a question whether it was true that there are "11 training camps for terrorists in Iran, for Hizballah and Hamas fighters." President Banisadr

stated "Of course, there are such camps." When asked if he had any details, Mr. Banisadr replied:

> When the Sepah-Pasdaran [army for the revolutionary guards] was founded there was a department for groups operating abroad, fighting for the liberation of their countries. I was against that department. This department has developed further, and one of its tasks is the training of fighters in Iran and Lebanon.

Exhibit 27, at Tab 4, p. 3. See also Mohammad Mohaddessin, Islamic Fundamentalism, supra note 16, at 200-01.

Iranian-sponsored groups strike targets outside as well as inside the Middle East. Hizbollah claimed responsibility for the March 1992 bombing of the Israeli Embassy in Buenos Aires, in which 29 people were killed and 242 wounded.[19] A strikingly similar attack was carried out against the Argentine-Israel Mutual Association on June 18, 1994, killing 98 people. See Iran: State of Terror, supra p. 16, at 77-80, attached as Exhibit 6.

Iranian officials have directly associated themselves with terrorist attacks against civilians in Israel. In one week in early 1996, Hamas claimed responsibility for four suicide bombings in Israel in which 55 people died, including two American citizens, and over 200 were wounded. Reuters World

---

[19] Paul Wilkinson, Terrorist Trends in the Middle East, 5 Jane's Intelligence Review 73 (Feb. 1, 1993), attached as Exhibit 28; Terrorist Group Profiles, supra note 16, at 3, attached as Exhibit 14; U.S. Department of State, Patterns of Global Terrorism 22 (1992), attached as Exhibit 29.

Service reports on these incidents[20] are attached as Exhibit 30. Two of the bombings were on February 25, and one each was on March 3 and March 4. In the middle of those attacks, Iranian Vice President Hasan Habibi met with the Hamas leadership in Damascus, and received a report on its activities. Vice President Habibi was reported by Iranian radio to have "expressed pleasure," and stated the Iranian government's "support." Voice of the Islamic Republic of Iran First Program Network, in Foreign Broadcast Information Service, FBIS-NES-96-041 (Feb. 29, 1996), attached as Exhibit 31.[21]

6. The Supreme Court of Azerbaijan Has Determined That Iran Is Responsible for Recruiting Azerbaijani Nationals to Overthrow the Government of Azerbaijan

Iran has also been found responsible for attempting to subvert and overthrow the Government of Azerbaijan. On April 14, 1997, the Supreme Court of Azerbaijan convicted four Azerbaijani citizens members of the Azerbaijani Islamic Party of various criminal activities associated with their recruitment by Iranian agents. The judgment of the Court, with English translation, is

---

[20] Robert Mahoney, Hamas Suicide Bombers Kill 25, Wound 77, in Israel, Reuters World Service, Feb. 25, 1996, available in LEXIS, Nexis Library, NEWS file; Robert Mahoney, Hamas Bomber Kills 18, Peres Cracks Down, Reuters World Service, Mar. 3, 1996, available in LEXIS, Nexis Library, NEWS file; Danny Gur-arieh, Bomb Kills at Least Seven in Tel-Aviv, Reuters World Service, Mar. 4, 1996, available in LEXIS, Nexis Library, NEWS file.

[21] See also Tehran IRIB Television First Program Network, in Foreign Broadcast Information Service, FBIS-NES-96-040 (Feb. 29, 1996) (reporting a similar meeting with other terrorist organizations), attached as Exhibit 32.

attached as Exhibit 33. The Court found the individuals cooperated with Iranian officials for the purpose of overthrowing the Government of Azerbaijan and "sabotag[ing] American and Israeli institutions operating in Azerbaijan." Id. at 2.

In its judgment, the Court described how the individuals were recruited, trained, and directed by high-ranking officials of the Iranian Revolutionary Guard Corps (Sepah-e Pasdaran-e Enghelab-e Eslami). Id., passim. In addition to religious, ideological, intelligence, and political training, the Revolutionary Guards provided the Azerbaijani students military training, including training in the "use of machine guns and mortars." Id. at 12. The military training of one Azerbaijani lasted three months, and was described by the Court as follows:

> In the military training they had been given special lessons on using different weapons and ways of handling explosives, tactics of fighting during day time and at night, secrets of military topography, ways of following suspicious people without being detected, and ways of avoiding detection during undercover observations. At the end of the training he was sent across the border to Azerbaijan by Iranian border patrol officers."

Id. at 13.[22]

The Court determined that the Iranian Embassy in Baku had played an important coordinating role in the recruitment,

---

[22] This is consistent with the statement by former Iranian President Banisadr that the Revolutionary Guard Corps has training centers in Iran for the purpose of training foreign citizens to carry out terrorist and subversive activities. See p. 27 supra. It is also consistent with the statement by Bahrain's Head of State to President Clinton that the Revolutionary Guards have trained Bahrainis to overthrow the government. See p. 26 supra.

training, and direction of the Azerbaijanis. In particular, the Embassy provided a location for meetings, payments, and general planning. Id. at 2-4, 8-9, 13-14, 17. The first recruitment -- of the Chairman of the Azerbaijani Islamic Party -- occurred following his introduction by the Iranian Ambassador to Azerbaijan to a high-ranking military officer of the Revolutionary Guard Corps. Id. at 3. Throughout its judgment the Court described how this officer, Haji Mansur Haghighatpur, directed the training and activities of the group in Azerbaijan. Id., passim.

7. Iran Has a Highly-Developed State Apparatus for Planning and Carrying Out Acts of International Terrorism

International terrorist acts are carefully planned, approved, coordinated, and carried out under the supervision of the highest levels of the Government of Iran, including the President, the Supreme Spiritual Leader, the Minister of Intelligence, and the Foreign Minister. Although the Government of Iran denies the existence of this government apparatus, authoritative and consistent accounts of the governmental planning, approval, and implementation mechanism have been reported and published, including most recently in the judgment of the Berlin Superior Court of Justice in the Mykonos case.

The basic outline of the government process is well established. Proposed murders and other acts of terror are decided by a "Committee for Special Matters," under President

Rafsanjani. Minister of Foreign Affairs Velyati, Minister of Intelligence Fallahian, and Commander of the Revolutionary Guards Rezaie, in addition to others, are involved. These decisions are given formal approval by President Rafsanjani and Supreme Leader Khamenei in the Supreme Security Council. The Ayatollah Khomeini was also a member of the Council until his death. Following final approval, necessary plans are drawn up by the ministry in charge, and execution of the plans outside Iran is coordinated by the Foreign and Intelligence Ministries and other agencies, through Iran's diplomatic and consular posts abroad. These processes are described in more detail in the following sources: Judgment of the Superior Court of Justice, Berlin (April 10, 1997), at 2-3, attached as Exhibit 7; Affidavit of Abolhasan Banisadr, at passim, attached as Exhibit 27. See also Mohammad Mohaddessin, Islamic Fundamentalism, The New Global Threat, supra note 16, at 113-14; Iran: State of Terror, supra p. 16, at 7-9, attached as Exhibit 6.

As part of its evidence of Iran's state terrorist apparatus, the United States has submitted five interviews with former President Banisadr by European media, as translated by the Foreign Broadcast Information Service, and an affidavit by Mr. Banisadr affirming the truth of specific relevant portions of his statements in those interview reports. Exhibit 27. Former President Banisadr was a key witness in the Mykonos trial, testifying in open court about the Iranian terror apparatus. He

has also given numerous interviews for the international press about the same subject, including those attached to his affidavit. Id.

Mr. Banisadr is extremely knowledgeable about how the government in Iran conducts its business. He played an important role in the Iranian Revolution from exile in France, was a close associate of the Ayatollah Khomeini, and became the Minister of Economy and Minister of Foreign Affairs in the post-Revolutionary government. He became the first elected President of Iran, then was forced to flee the country in 1981. He maintains substantial contacts inside Iran, and has been editing an opposition newspaper published in Germany since leaving Iran. He currently lives under 24-hour police protection as a refugee in France, and is considered a target for assassination by the Government of Iran.

8. The United Nations Has Repeatedly Condemned Iran's Terrorist Activities

The United Nations organs charged with considering evidence of Iran's international terrorist activities have repeatedly and unambiguously determined that Iran is responsible, condemned Iran's actions, and called for Iran to halt them immediately. The relevant organs include the Sub-Commission on Prevention of Discrimination and Protection of Minorities ("Sub-Commission"), the Commission on Human Rights ("Human Rights Commission"), the

Economic and Social Council ("ECOSOC"), and the General Assembly ("UNGA").

Two special representatives of the Human Rights Commission, Mr. Reynaldo Galindo Pohl and Mr. Maurice Copithorne, have reported on Iran's record of assassinations and other terror attacks, and the fatwa against Salman Rushdie, to the UN Human Rights Commission and Economic and Social Council.[23] The two special representatives received information from individuals, human rights organizations, and governments, and made visits to Iran before drawing up their reports. Special Representative Pohl detailed numerous instances in which Iran has been implicated in the assassination of political opponents in France, Germany, Iraq, Switzerland, Turkey, and Pakistan. Final Report on the Situation of Human Rights in Iran, Special Representative of the Commission on Human Rights, U.N. ESCOR, Hum. Rts. Comm., 50th Sess., Agenda Item 12, U.N. Doc. E/CN/4/1994/50 (1994), ¶¶ 37, 39, 41, 43, 63-68, 76, 79, 235-239, attached as Exhibit 34.

---

[23] Report on the Situation of Human Rights in the Islamic Republic of Iran, Prepared by the Special Representative of the Commission on Human Rights, Mr. Maurice Copithorne (Canada), Pursuant to Commission Resolution 1995/68 of 8 March 1995 and Economic and Social Council Decision 1995/279 of 25 July 1995, U.N. ESCOR, Hum. Rts. Comm., 52d Sess., Agenda Item 10, U.N. Doc. E/CN.4/1996/59 (1996); Final Report on the Situation of Human Rights in Iran Prepared by the Special Representative of the Commission on Human Rights, Mr. Reynaldo Pohl, Pursuant to Commission Resolution 1993/62 of 10 March 1993 and Economic and Social Council Decision 1993/237, U.N. ESCOR, Hum. Rts. Comm., 50th Sess., Agenda Item 12, U.N. Doc. E/CN/4/1994/50 (1994).

Drawing on the reports of the special representatives, the Sub-Commission, which is composed of independent experts on human rights nominated by governments, has condemned Iran's practices in the strongest language. At its 46th Session, the Sub-Commission stated:

> Aware of the mounting concern expressed by the authorities of a number of States at the involvement in, and support for, international terrorism by the Islamic Republic of Iran, causing the loss of many lives, and the call by those authorities for action against the Islamic Republic;
>
> Reaffirming that Governments are accountable for attacks by their agents against persons on the territory of another State, and also for inciting, approving or condoning such acts,
>
> Demands that the Government of Islamic Republic of Iran cease forthwith any involvement in or toleration of murder and State-sponsored terrorism against Iranians living abroad and the nationals of other States;
>
> Also demands that the Government of the Islamic Republic of Iran withdraw its support for and condoning of repeated threats to the lives of persons whose opinions, writings or publications it disapproves.

U.N. ESCOR, Comm. Hum. Rts., Sub-Commission on Prevention of Discrimination and Protection of Minorities, Report of the 46th Sess., U.N. Doc. E/CN.4/1995/2; E/CN.4/Sub.2/1994/56 (Oct. 28, 1994), at 53-55, attached as Exhibit 35.[24]

The Human Rights Commission has also explicitly rejected Iran's assertions that it does not target political dissidents for assassination outside Iran, and is not responsible for

---

[24] See also, reports of the 47th and 48th sessions: E/CN.4/1996/2; E/CN.4/Sub.2/1995/51, at 54-7 (Oct. 23, 1995); E/CN./1997/2; E/CN.4/Sub.2/1996/41, at 33-6 (November 25, 1996).

efforts to carry out the fatwa against Salman Rushdie. The Commission has used strong language to demand Iran cease its unacceptable behavior. The Commission stated at its 52nd Session that it:

> Reaffirm[s] that Governments are accountable for assassinations and attacks by their agents against persons in the territory of another State, as well as for the incitement, approval or wilful condoning of such acts;
>
> . . . .
>
> Expresses its grave concern that there are continuing threats to the life of Mr. Salman Rushdie, as well as to individuals associated with his work, which have the support of the Government of the Islamic Republic of Iran;
>
> Deplores the continuing violence against Iranians outside the Islamic Republic of Iran, and urges the Government of the Islamic Republic of Iran to refrain from activities against members of the Iranian opposition living abroad and to cooperate wholeheartedly with the authorities of other countries in investigating and punishing offenses reported by them.

Situation of Human Rights in the Islamic Republic of Iran, H.R.C. Res. 84, Hum. Rts. Comm., 52nd Sess., U.N. Doc. E/CN.4/1996/177 (Apr. 24, 1996), at 273, 274-75, attached as Exhibit 36. The ECOSOC and General Assembly have also accepted the resolutions of the Sub-Commission and Human Rights Commission, and have condemned Iran's terrorist activities in similar language. G.A. Res. 107, U.N. GAOR, 51st Sess., U.N. Doc. A/51/619/Add.3 (Dec. 12, 1996) (accepting H.R.C. Res. 84, Hum. Rts. Comm., U.N. Doc., E/CN.4/1996/177 (Apr. 24, 1996) and S.-

C.P.D.P.M. Res. 7, Sub-Comm. for Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN4/Sub.2/1996/41 (Aug. 20, 1996).[25]

---

[25] See also, e.g., G.A. Res. 188, U.N. GAOR 50th Sess., U.N. Doc. A/50/635/Add.3 (Dec. 22, 1995) (accepting H.R.C. Res. 68, Hum. Rts. Comm., U.N. Doc. E/CN.4/1995/176 (Mar. 8, 1995), and S.-C.P.D.P.M. Res. 18, Sub-Comm. for Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1995/51 (Aug. 24, 1995)); G.A. Res. 202, U.N. GAOR 49th Sess., U.N. Doc. A/49/610/Add.3 (Dec. 23, 1994) (accepting H.R.C. Res. 73, Hum. Rts. Comm., U.N. Doc. E/CN.4/1994/132 (Mar. 9, 1994), and S.-C.P.D.M. Res. 16, Sub-Comm. for Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1994/56 (Aug. 25, 1994)); G.A. Res. 145, U.N. GAOR 48th Sess., U.N. Doc. A/48/632/Add.3 (Dec. 20, 1993) (accepting H.R.C. Res. 62, Hum. Rts. Comm., U.N. Doc. E/CN.4/1993/122 (Mar. 10, 1993), and S.-C.P.D.M. Res. 14, Sub-Comm. for Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1993/45 (Aug. 20, 1993)). See also E.S.C. Res. 287, U.N. ESCOR, UN Doc. A/51/3 (Part II) 29 (1996) (accepting H.R.C. Res. 84, Hum. Rts. Comm., U.N. Doc. E/CN.4/1996/177 (Apr. 24, 1996)).

III. ARGUMENT

A. The Jurisdiction of the Tribunal Is Limited in This Case to the Interpretation or Performance of Paragraphs 1 and 10 and General Principle A of the General Declaration, And Does Not Include Any Claims Arising Under the 1955 Treaty of Amity or General Principles of International Law

Iran does not clearly specify the legal basis for its claims in the Statement of Claim. Because the Tribunal only has jurisdiction to hear claims arising under specific provisions of the Algiers Accords, however, it is important to establish the precise scope of the Tribunal's jurisdiction over the points of law asserted in Iran's Statement of Claim.

Paragraph 17 of the General Declaration of the Algiers Accords provides for the submission of a dispute to the Tribunal by one State Party regarding the "interpretation or performance of any provision of this Declaration" by the other State Party. Paragraph 17 operates in conjunction with Article II(3) of the Claims Settlement Declaration of the Algiers Accords, which grants jurisdiction to the Tribunal "as specified in Paragraphs 16-17 of the [General Declaration],[26] over any dispute as to the

[26] Paragraph 16 provides separately for certain disputes to be submitted to the Tribunal related to Iran's efforts to obtain assets of the Shah located in the United States.

interpretation or performance of any provision of that declaration." Iran v. United States, DEC No. 1-A2-FT, ¶ C, 1 Iran-U.S. C.T.R. 101, 103 (Jan. 13, 1982).

The United States denies Iran's allegation in its jurisdictional statement (Doc. 1 at 2-5) that the United States has violated Paragraph 1 of the General Declaration. Iran has not stated any other basis for the Tribunal's jurisdiction. Nevertheless, Iran also alleges that the United States has violated Paragraph 10 and General Principle A of the General Declaration. Doc. 1 at 27. The United States also denies those allegations. If properly presented, therefore, allegations related to the interpretation or performance of Paragraphs 1 and 10 and General Principle A are the only ones raised in Iran's Statement of Claim over which the Tribunal could have jurisdiction.

Iran also argues that the United States has violated the 1955 Treaty of Amity ("1955 Treaty") and general principles of law, but the Tribunal's jurisdiction does not extend to these questions, which are not based on specific provisions of the General Declaration.[27] The Tribunal has consistently interpreted

---

[27] Iran asserts facts related to these questions that are or have been the subject of cases before the International Court of Justice. These include allegations of attacks on oil platforms, as well as the shootdown of Iran Air flight 655. These allegations were brought before the Court under international agreements over which this Tribunal has no jurisdiction, including the 1955 Treaty, and the Montreal and Chicago conventions regarding civil aviation.

its jurisdiction as limited by the Algiers Accords. For instance, in its decision in case no. A/2, the Tribunal refused to find jurisdiction over claims of one government against the nationals of another (where not presented as counterclaims), finding no specific provision in the Accords granting such jurisdiction. The Tribunal stated that it "could not have wider jurisdiction than that which was specifically decided by mutual agreement." Iran v. United States, DEC No. 1-A2-FT, ¶ B, 1 Iran-U.S. C.T.R. 101, 103 (Jan. 13, 1982). Similarly, the Tribunal has found no jurisdiction over claims based on intentional tort.[28] Moreover, with respect to the 1955 Treaty, the Tribunal has previously held that its jurisdiction does not "rest on the Treaty, but is derived from the Algiers Accords." Amoco Int'l Finance Corp. v. Iran, AWD No. 310-56-3, ¶ 90, 15 Iran-U.S. C.T.R. 189, 215 (July 14, 1987); see also INA Corp. v. Iran, AWD No. 184-161-1, 8 Iran-U.S. C.T.R. 373, 404-07 (Aug. 12, 1986)(Ameli, J., dissenting).[29]

---

[28] Int'l Systems and Controls Corp. v. Iran, AWD No. 256-439-2, ¶¶ 93-8, 12 Iran-U.S. C.T.R. 239, 262-64 (Sept. 26, 1986). See also, Iran Railway v. United States, AWD No. 572-B58-2, ¶¶ 68, 85, 88 (Oct. 9, 1996)(finding no jurisdiction under Art. II(2) of the Claims Settlement Declaration over a claim involving no contract between the governments).

[29] To the extent that Iran is arguing in its Statement of Claim that its claims are also based on the General Declaration "as a whole" (Doc. 1 at 3) or on its "object and purpose" (Doc. 1 at 14), these claims would also be outside the Tribunal's jurisdiction. To invoke the Tribunal's jurisdiction, Iran must identify a specific provision in the General Declaration for the Tribunal to interpret. Case A/2, DEC 1-A/2-FT, para. C (Jan. 26, 1982), 1 Iran-U.S. C.T.R. 101; Iran Nat'l Gas Corp. v. United

B. Paragraph 1 of the General Declaration is Nonbinding

Contrary to Iran's allegations, Paragraph 1 of the General Declaration did not create legal obligations or a binding legal standard under which the Tribunal is to evaluate U.S. national security policy and action. Rather, Paragraph 1 is a general political commitment by the United States confirming that its pre-hostage crisis policy toward Iran would continue.

This conclusion flows from a straightforward reading of the text of the General Declaration. The Tribunal has held that the Algiers Accords must 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."[30]

States, AWD No. 330-B40-2, ¶ 8, 17 Iran-U.S. C.T.R. 183, 185 (Nov. 20, 1987); accord Bank Mellat v. United States, AWD No. 108-A16/582/591-FT, ¶¶ 3-4, 5 Iran-U.S. C.T.R. 57, 58 (Dec. 27, 1983). Paragraph 17 of the General Declaration and Article II(3) of the Claims Settlement Declaration provide for Tribunal jurisdiction only over the "interpretation or performance of any provision of" the General Declaration (emphasis supplied). Any obligation to adhere to the "object and purpose" of the General Declaration could only arise from general principles of customary international law, not from a "provision" of the General Declaration. See Military and Paramilitary Activities (Nicaragua v. United States), 1986 I.C.J. 14, 135-36 (June 27) (finding no jurisdiction under a commercial treaty very similar to the 1955 Treaty to consider Nicaragua's claim that the United States violated the object and purpose of the treaty).

[30] Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, 1155 U.N.T.S. 332, art. 31 (hereinafter "Vienna Convention"). See Iran v. United States, AWD No. 382-B1-FT, ¶ 47, 19 Iran-U.S. C.T.R. 273, 287 (Aug. 31, 1988); United States v. Iran, DEC No. 37-A17-FT, ¶ 9, 8 Iran-U.S. C.T.R. 189, 200-01 (May 13, 1985); Iran v. United States, AWD No. ITL 63-A15-FT, ¶ 17, 12 Iran-U.S. C.T.R. 40, 46-7 (Aug. 20, 1986); Iran v. United States, DEC No. 32-A18-FT, at 14, 5 Iran-U.S. C.T.R. 251, 259-260, 273 (Apr. 6, 1984)(Mosk, J., concurring); Iranian

The Tribunal has further recognized that, because Iran and the United States negotiated the Accords through intermediaries, "[t]he terms themselves should be given primary weight in the analysis of the text." United States v. Iran, DEC No. 37-A17-FT, ¶ 9, 8 Iran-U.S. C.T.R. 189, 200-01 (May 13, 1985). Applying these standards to the text of Paragraphs 1 demonstrates that the United States has complied with the requirements of that provision.

1. Paragraph 1 is a Statement of Policy Not Intended to Create Binding Legal Obligations

The ordinary meaning of Paragraph 1, viewed in context and in light of the object and purpose of the Algiers Accords, does not support Iran's contention that Paragraph 1 creates a binding legal obligation. Rather, on its face, Paragraph 1 is a political commitment.[31]

Customs Admin. v. United States, AWD No. 172-B3-3, at 5, 8 Iran-U.S. C.T.R. 89, 92 (Apr. 17, 1985).

[31] Treaties and other international instruments commonly contain both binding and nonbinding provisions. Such nonbinding commitments may have political and moral force, and may guide the interpretation of other binding provisions of the agreement, but they are not themselves legally enforceable. See Restatement (Third) of U.S. Foreign Relations Law § 301, Comment e and Reporters' Note 2; Oscar Schachter, The Twilight Existence of Nonbinding International Agreements, 71 Am. J. Int'l L. 296, 298 (1977). Typical examples are commitments of a personal, political, or moral nature. Such commitments may take various forms, but often appear as declarations of intent or policy.

In general, international law provides that an international commitment is not legally binding unless the parties so intended. See Arnold D. McNair, The Law of Treaties 6 (1961); Oscar Schachter, supra at 296-97; U.S. Department of State, Digest of United States Practice in International Law 263-67 (1976)

Paragraph 1 lacks language of specific obligation. In Paragraph 1, the United States makes a general statement about its policy to refrain from interfering in Iran's internal affairs. The United States "pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs" (emphasis supplied). This language indicates that the United States was confirming the content of its existing foreign policy toward Iran and declaring that it would maintain that policy. It does not indicate the creation of a binding legal obligation to take or refrain from any specific actions. To the contrary, to pledge a "policy" is to declare a general direction or disposition. Judge Lauterpacht has explicitly recognized this distinction between declarations of policy and binding agreements.[32]

(referring to the Mar. 12, 1976 Memorandum of Monroe Leigh, Legal Adviser); Kelvin Widdows, What is an Agreement in International Law? 50 Brit. Y.B. Int'l L. 117, 120-39 (1979).

U.S. treaty practice includes instruments with mixed binding and nonbinding obligations that predate the Algiers Accords. See, e.g., Case Concerning Oil Platforms (Iran v. United States), Judgment on Preliminary Objection, I.C.J. (Gen. List No. 90) (Dec. 12, 1996) (discussing the 1955 Iran-U.S. Treaty of Amity); 73 U.S. Dep't State Bulletin 613 (1975) (Secretary of State Kissinger describing the Sinai Disengagement Agreements of 1975 in the following terms: "[While some of the undertakings are nonbinding,] they are important statements of diplomatic policy and engage the good faith of the United States as long as the circumstances that gave rise to them continue.").

[32] Hersch Lauterpacht, Special Rapporteur, Report on the Law of Treaties, [1953] 2 Y.B. Int'l L. Comm'n 90, 93, 96-7, U.N. Doc. No. A/CN.4/63/1953; Hersch Lauterpacht, Special Rapporteur,

Paragraph 1 also lacks specified standards. If the parties had sought to impose definable limits on U.S. Government action or affirmative obligations to act in a certain way, as opposed to a declaration of policy, they would have provided more specific standards of conduct. A "policy . . . not to intervene" is extremely vague, particularly given the range of diplomatic, economic, and cultural interactions of states, and that vagueness is an indication that it was not intended to be binding. Iran seeks to evade the problem of the lack of obligatory language or defined standards in Paragraph 1 by asserting that the language should be deemed to incorporate sweeping general international law principles of nonintervention and non-use of force, as well as provisions of the UN Charter. Rather than buttress Iran's argument that Paragraph 1 is binding, however, this argument illustrates the lack of defined commitments in Paragraph 1.

The political and nonbinding nature of Paragraph 1 emerges even more clearly when read in the context of the other provisions of the Algiers Accords and in relation to the overall object and purpose of the agreement. The object and purpose of the Accords was to resolve the elements of the hostage crisis -- the freeing of the American hostages, lifting of the U.S. trade embargo, return of Iranian assets, and establishment of the Tribunal to hear claims between the parties and involving their

---

Report on the Law of Treaties, [1954] 2 Y.B. Int'l L. Comm'n 123-27, UN Doc. No. A/CN.4/87/1954; see also Kelvin Widdows, supra note 31, at 127-28.

nationals. The Accords provided detailed and highly technical blueprints for the complicated legal and financial transactions necessary to carry out these goals. The object and purpose of the Accords was not to regulate political and economic relations between the United States and Iran in perpetuity. Read in context, Paragraph 1 stands alone in the Accords by virtue of its lack of specific undertakings and mandatory language, and its unique phrasing as a "policy" statement. Paragraph 1 was intended as a nonbinding provision within an otherwise binding constellation of explicit commitments.[33]

The subsequent practice of the parties provides strong evidence that they have never considered Paragraph 1 to be binding. Iran cites a number of instances of alleged intelligence activities of which it claims to have been a target,

---

[33] In sharp contrast to Paragraph 1 of the Algiers Accords, the parties to the Bilateral Agreement on the Principles of Mutual Relations, in Particular on Non-Interference and Non-Intervention, signed in 1988 between Pakistan and Afghanistan, took several steps to indicate the binding nature of the nonintervention obligations of that agreement. 27 I.L.M. 577, 581-84 (1988). First, the agreement adopts common and explicit language of obligation:

> Relations . . . shall be conducted in strict compliance with the principle of non-interference and nonintervention by states in the affairs of other states.

Id. at 581, Art. I (emphasis supplied). Second, the object and purpose of the agreement was unambiguously to address nonintervention, as is evident in its title. Finally, the agreement enumerates thirteen areas of action that are prohibited, and specifies that "each of the high contracting parties undertakes to comply with [those] obligations." Id. at 581-83, Art. II.

and lists several economic and diplomatic measures taken by the

United States to restrain hostile Iranian international behavior, dating back to just after the time the Algiers Accords were signed in 1981. Iran also cites armed hostilities between U.S. and Iranian forces in the Persian Gulf. Doc. 1 at pp. 7-8. Yet, until immediately prior to the filing of Case No. A/30, the United States is unaware of Iran ever asserting a violation of Paragraph 1. Moreover, the United States has consistently stated throughout this period that its policy is to take necessary steps to protect its foreign policy and national security interests if Iran acts in a threatening manner and carries out terrorist activities, including those aimed at Americans, and it has taken such steps. See discussion supra Part II.C .

Although it is not necessary in this case to go beyond the ordinary meaning of the text, read in context and in the light of the object and purpose of the Algiers Accords, the preparatory work and circumstances of the agreement's conclusion also strongly support a finding that Paragraph 1 was not intended to be binding. The United States clearly and consistently indicated to Iran that it would only agree to make a statement of policy related to nonintervention, and that it would not agree to language implying it was necessary in any way to change its longstanding policy toward nonintervention in Iran.

During the negotiations over the resolution of the hostage crisis, which ended with the Algiers Accords, the United States rejected language sought by Iran that could have implied a future

legal restriction on U.S. actions. Then-Foreign Minister Banisadr first demanded in a statement on November 12, 1979, that the United States must end its interference in Iran's affairs and apologize for its "crimes," in order to resolve the hostage crisis.[34] Subsequently, the Ayatollah Khomeini stated on September 12, 1980, that "a guarantee of no U.S. military and political interventions in Iran" was required to resolve the crisis. Affidavit of Warren Christopher, ¶ 6, attached as Exhibit 37. The Majlis also made such a demand in its resolution of November 2, 1980, where it stated that:

> Since, in the past the American Government has always interfered in various ways in Iran's political and military affairs, she should make a pledge and a promise that from now on she will in no way interfere, either directly or indirectly, politically or militarily, in the affairs of Iran.

Foreign Broadcast Information Service, Daily Report, Vol. VIII, No. 214, at 13 (Nov. 3, 1980), attached as Exhibit 38. The last formal Iranian proposal made through the Algerian Government would also have had the United States "pledge[] not to intervene, from now on." Affidavit of Warren Christopher, ¶ 13, attached as Exhibit 37; see also Andreas Lowenfeld, III Trade Controls for Political Ends DS-817 (2d ed. 1983). Iran's formulations were rejected by U.S. negotiator Warren Christopher for two reasons: first, the United States would only agree to a statement of

---

[34] See Harold Saunders, Diplomacy and Pressure, November 1979-May 1980, in American Hostages in Iran 72, 81 (Warren Christopher, ed. 1985).

political intention and not to any express limit on future actions; and second, the commitment had to recognize that the United States was in no way changing its existing policy. Affidavit of Warren Christopher, ¶¶ 14-5, attached as Exhibit 37.

Iran eventually conceded the U.S. position, which is recorded in the final language of Paragraph 1: "The United States pledges that it is and from now on will be the policy of the United States not to intervene." This language specifies that the United States is declaring a policy, which is a formulation absent from Iran's proposals. This language also explicitly links future U.S. policy to then-existing U.S. policy ("it is and from now on will be the policy"). U.S. policy at that time included imposing a total economic embargo on Iran in response to the illegal seizure of the U.S. Embassy and hostages.

2. The International Court of Justice Has Found a Similar Provision in the 1955 Treaty to be Nonbinding and Nonjusticiable -- a Political Objective That "Throws Light on the Interpretation of the Other Treaty Provisions"

In its recent decision in the Case Concerning Oil Platforms (Iran v. United States), Judgment on Preliminary Objection, I.C.J. (Gen. List No. 90)(Dec. 12, 1996), the International Court of Justice rejected the same argument made by Iran in this case when it determined that Article I of the 1955 Treaty does not contain binding legal obligations. Article I of the 1955 Treaty provides that:

> There shall be firm and enduring peace and sincere friendship between the United States . . . and Iran.

Just as it does in the present case with respect to Paragraph 1 of the General Declaration, Iran had asserted that Article I "imposes actual obligations." Id. ¶ 24. Similarly, Iran asserted that Article I of the 1955 Treaty requires the parties "to conduct themselves with regard to the other in accordance with the principles and rules of general international law in the domain of peaceful and friendly relations," particularly the United Nations Charter and General Assembly Resolution 2625 (XXV) on friendly relations. Iran asserted that any violation of general principles of law related to the use of force or friendly relations would amount to a violation of Article I. Id. Iran argued that attacks by the United States on Iranian offshore oil platforms in the course of armed hostilities in the Persian Gulf constituted such violations.

The Court found that Article I of the 1955 Treaty was intended to "throw light on the interpretation of the other Treaty provisions," but was not intended to provide in itself the basis for a claim before the Court. Id. ¶ 31. The Court looked at the language of the provision, and found it too general to support Iran's reading on its face. The Court also noted that the main purpose of the 1955 Treaty was to "encourag[e] mutually beneficial trade and investments and closer economic intercourse generally" and "regulat[e] consular relations," and that it provided very specific standards related to these matters. The Court determined that Article I was not a binding obligation, and

did not incorporate general principles of international law, but rather was intended to be aspirational:

> [B]y incorporating into the body of the Treaty the form of words used in Article I, the two States intended to stress that peace and friendship constituted the precondition for a harmonious development of their commercial, financial and consular relations and that such a development would in turn reinforce that peace and that friendship. It follows that Article I must be regarded as fixing an objective, in the light of which the other Treaty provisions are to be interpreted and applied.

Id. ¶ 30.

In the same way, Paragraph 1 of the General Declaration is a declaration by the United States that confirms U.S. intentions following the conclusion of the Algiers Accords to maintain the policy of nonintervention, but it is not a permanent standard of conduct reviewable by the Tribunal. Paragraph 1 is a declaration of intent by the United States to maintain the policy existing prior to, during, and after Iran's seizure of the U.S. Embassy and hostages. The specific obligations in the other provisions of the Accords should be read in light of this good faith declaration on the part of the United States, but this declaration in Paragraph 1 does not create independent legal obligations.

C. Whether or Not Paragraph 1 Is Found to be Binding, Iran Has Failed to Demonstrate That the United States Has Violated That Provision

Iran's claim that the United States has violated Paragraph 1 of the General Declaration is without merit, even if Paragraph 1 were found to be binding. First, Paragraph 1 does not by its

terms apply to economic and diplomatic measures that address Iran's wrongful external behavior, such as those undertaken by the United States. Second, the vague facts alleged by Iran regarding a covert action program do not on their face support Iran's claim that the United States is engaged in an attempt to subvert and overthrow the Iranian Government. Finally, even if Iran's allegations regarding a covert action program could state a claim under Paragraph 1, Iran has failed to present prima facie proof to support them. Moreover, Iran's grave allegations carry an enhanced burden of proof that Iran has failed utterly to meet.

1. Paragraph 1 Does Not Apply to Economic Measures or to Actions Affecting Iran's External Affairs

Nothing in the language, context, subsequent practice, or negotiating history of Paragraph 1 suggests that it applies to U.S. economic measures taken to address Iran's threatening international behavior. Moreover, even under a broader nonintervention principle, the measures taken by the United States to respond to Iran's terrorist and hostile actions would be permissible.

a. By its Terms, Paragraph 1 Applies Only to Political or Military Measures Affecting Iran's Internal Affairs

Even if Paragraph 1 were found by the Tribunal to impose binding obligations under international law, the scope of the provision is much more circumscribed than Iran suggests. The precise text reads:

> The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs.

First, there is no reference to intervention in Iran's external affairs; the pledge applies by its terms only to intervention in the internal affairs of Iran. Second, in contrast to the specific references to political or military intervention, there is no mention of economic intervention. Finally, the inclusion of the phrase "it is," confirms that Paragraph 1 did not represent a change in U.S. policy. It thereby incorporated and defined as consistent with the pledge those measures the United States had already undertaken at the time of the hostage negotiations -- including diplomatic, military, and economic measures.

By omitting any reference to external affairs, Paragraph 1 stands in contrast to the stock phrasing of the nonintervention principle as it appears in other international instruments. The standard formulation of the nonintervention principle almost universally refers to intervention in another state's "internal or external affairs."[35] Cf. Gaetano Arangio-Ruiz, supra note 35,

---

[35] The nonintervention principle had its most notable early expression in the 1933 Montevideo Convention, which stated that "[n]o state has the right to intervene in the internal or external affairs of another." Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, T.S. 881, Art. 8. The principle was elaborated in the Charter of the Organization of American States in 1948, Apr. 30, 1948, 2 U.S.T. 2394, which stated, inter alia:

> No State or group of States has the right to intervene,

at 260-61 (taking note of the standard formulation and pointing out that "obviously the area of prohibition would have been horizontally narrower if intervention had been condemned with regard to matters of internal conduct only"). Iran suggests that Paragraph 1 must be read in light of the general principle of nonintervention in customary international law; if the Tribunal agrees, it follows that any deviation from that customary formulation in Paragraph 1 is significant.[36] The same conclusion

---

> directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.

Id. at art. 18. See Gaetano Arangio-Ruiz, Human Rights and Non-Intervention in the Helsinki Final Act, 157 Recueil Des Cours 195, 252-65 (1977 IV). Two declarations of the United Nations General Assembly elaborated the principle further, but did not necessarily clarify its scope. Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, G.A. Res. 2131, U.N. GAOR, 20th Sess., Supp. No. 14, at 11, U.N. Doc. No. A/6014 (1965)(hereinafter "Declaration on Intervention"); Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25th Sess., Supp. No. 18, at 121, U.N. Doc. No. A/8018 (1970) (hereinafter "Friendly Relations Declaration"). The Friendly Relations Declaration repeats the language of the OAS Charter quoted above, with the Declaration on Intervention deleting the words "or group of States." See Gaetano Arangio-Ruiz, supra, at 262-74. See also Principle VI of the Conference on Security and Co-operation in Europe (hereinafter "Helsinki Final Act"), 14 I.L.M. 1292, 1294 (1975).

[36] See Gaetano Arangio-Ruiz, The UN Declaration on Friendly Relations and the System of the Sources of International Law 294 (1979)(noting that parties to an agreement are free to create rights and obligations that differ from rules of customary international law); Mark E. Villiger, Customary International Law and Treaties 270 (1985)("If only part of the customary rule has been codified, the rest will remain applicable solely *qua* customary law.").

is drawn from a straightforward application of the principle *expressio unius est exclusio alterius*: the explicit reference in Paragraph 1 to Iran's internal affairs indicates that the parties intended to exclude prohibitions on intervention in Iran's external affairs.

The omission of any reference to economic interference in Paragraph 1 also distinguishes the text from the typical formulation of the nonintervention norm. Most formal statements of the nonintervention rule specifically prohibit "economic" measures of "coercion."[37] In contrast, Paragraph 1 specifically refers to political and military intervention, but says nothing about economic. Again, consistent with the principle of *expressio unius*, the omission must be deemed significant.

Looking at the plainly limited scope of Paragraph 1, the Tribunal should reject Iran's arguments that economic measures taken by the United States in response to Iran's hostile and illegal international behavior are prohibited by the provision. On their face, these measures are economic in nature and are not

---

[37] See, e.g., Charter of the Organization of American States, supra note 34, at Art. 16, 2 U.S.T. 2420 ("No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind."); Declaration on Intervention, supra note 35; Friendly Relations Declaration, supra note 35 ("No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."). See also the Helsinki Final Act, Principle VI, supra note 35.

covered by the specific language of Paragraph 1. Moreover, these measures address Iran's international economic affairs. They affect imports and exports between the United States and Iran, and withdraw U.S. economic benefits from third parties who choose to engage in certain types of commercial relations with Iran. As such, these measures fall outside Paragraph 1 because they are economic in nature and because they do not address Iran's internal affairs.

Finally, the text of Paragraph 1 states that United States policy "is" not to intervene in Iran's internal affairs, and it makes clear that the United States in no way accepted any assertion that it had intervened or had an intervention policy until that time. The U.S. negotiator Warren Christopher consistently rejected attempts by Iran to impose language that implied the United States had to change in any way its policy toward nonintervention. Mr. Christopher has stated that he explained to the Algerian intermediaries that Paragraph 1 must only be a statement of existing U.S. policy. Affidavit of Warren Christopher, ¶¶ 8, 11-12, attached as Exhibit 37. Mr. Christopher reiterated this point in public hearings before Congress shortly after the conclusion of the Algiers Accords. Mr. Christopher told Congress that:

> During the negotiations, Iran sought to have the nonintervention pledge stated solely in prospective terms -- i.e., "from now on will be." Such a formulation was apparently intended to imply that the United States was changing its policy in return for the release of the hostages. That proposal was rejected, and the resulting

formulation represents no more than a reiteration of frequently-stated, current U.S. policy.

See, e.g., Iran's Seizure of the United States Embassy: Hearings Before the House Committee on Foreign Affairs, 97th Cong., 1st Sess. 150 (1981)(statement of Warren Christopher, former Dep. Sec'y State). As a result, Paragraph 1 incorporates by reference U.S. policy toward Iran existing at the time of negotiation, which included carrying out where necessary economic, political, and diplomatic efforts to modify Iran's hostile and illegal international behavior. It defines that policy as not constituting intervention.

b. Even if Paragraph 1 Included a Broader Nonintervention Principle, U.S. Economic and Diplomatic Measures to Discourage Iranian Terrorism Would Not be Barred

Iran has no basis to assert that U.S. diplomatic and economic efforts to discourage and restrain Iran's hostile international behavior would violate the international nonintervention norm, were the Tribunal to find it applicable. Every state has the right to conduct diplomacy and pursue its legitimate foreign policy objectives, particularly to counter another state's hostile or illegal international behavior or to achieve the peaceful resolution of armed conflict. See Gaetano Arangio-Ruiz, supra note 35, at 261, 264 ("the ordinary practices of diplomacy will not be hit by the [nonintervention] prohibition"). As the discussion in sections II.B & C have made clear, the measures taken by the United States have not been

directed at Iranian internal matters, but rather at Iran's external actions, particularly its support of international terrorism. The United States has sought to protect legitimate U.S. interests and discourage hostile Iranian behavior, not to "jeopardiz[e] the territorial integrity or political independence" of Iran, or to coerce Iran's sovereign will in areas in which it was carrying out lawful activities. See Gaetano Arangio-Ruiz, Special Rapporteur, Fourth Report on State Responsibility, 44th Sess., Int'l L. Comm'n, at ¶¶ 70-77, U.N. Doc. No. A/CN.4/444/Add.1 (May 25, 1992).

The U.S. economic measures cited in Iran's complaint are matters of U.S. sovereign discretion and are otherwise consistent with international law. Every state has the right to grant or deny foreign assistance, to permit or deny exports, to grant or deny loans or credits, and to grant or deny participation in national procurement or financial management, on such terms as it finds appropriate.[38] The Iran and Libya Sanctions Act does not seek directly to regulate the conduct of persons outside the United States or exact any affirmative penalties on them, but only involves the withdrawal of specified economic benefits in the United States from a person determined to have carried out

---

[38] See, e.g., Iran v. United States, AWD No. 382-B1-FT, ¶ 62, 19 Iran-U.S. C.T.R. 273, 292 (Aug. 31, 1988)(President's discretion under Section 38 of the Arms Export Control Act to deny exports of defense articles and services is a "sovereign right which is not subject to review by an international Tribunal.").

certain activity.[39] These actions cannot constitute wrongful intervention in Iran's internal affairs.

Moreover, the International Court of Justice has held that economic measures do not violate the principle of nonintervention. Referring to actions by the United States to cease economic aid to Nicaragua, eliminate Nicaragua's sugar import quota, and impose a trade embargo, the Court stated that it was:

> unable to regard such action on the economic plane as is here complained of as a breach of the customary-law principle of non-intervention.

Military and Paramilitary Activities (Nicaragua v. United States), 1986 I.C.J. 14, 126 (June 27).[40]

2. Iran Has Failed to State the Basis for its Claim With Respect to Any Alleged Covert Action Program and Failed to Meet its Burden of Proof

The gravity of Iran's claims and the urgency with which they are asserted are in inverse proportion to the substance of Iran's allegations and the weight of Iran's evidence. Iran makes a sweeping claim that the United States is engaged in an attempt to subvert and overthrow the Government of Iran. However, the vague

---

[39] The Act is described in more detail in Section II.B.9. supra

[40] Iran's claim regarding use of force during the Iran-Iraq War, and the U.S. counterclaim for attacks on U.S. vessels, are currently before the International Court of Justice. Iran should not be permitted to reargue those claims before the Tribunal by seeking to import general international law into Paragraph 1 of the Algiers Accords. In any case, Iran's few allegations in its Statement of Claim of wrongful use of force by the U.S. military are completely unsupported by evidence.

facts alleged by Iran do not support this claim. Even if they did, Iran's evidence fails to establish prima facie proof for its claim. Finally, Iran's grave allegations carry an enhanced burden of proof that Iran has failed to meet.

a. Iran's Allegations Do Not on Their Face Make Out a Violation of Paragraph 1

Iran rests its charge that the United States has engaged in covert actions to overthrow the Iranian government after the conclusion of the Algiers Accords on its allegation that a statute was passed for fiscal year 1996 authorizing the U.S. Central Intelligence Agency to intervene in Iranian affairs. Doc. 1 at 5. However, Iran does not allege -- and offers no evidence whatever -- that any actions have been taken against Iran pursuant to this purported authorizing statute, much less any actions that would amount to intervention in Iranian internal affairs. At most, Iran has alleged that the U.S. Executive Branch has been authorized to carry out a program of covert action; Iran has not alleged or shown that any such action was actually taken.

On their face, Iran's assertions that such legislation was enacted cannot be the basis for a claim of violation of the Accords. Establishing that the United States has domestic authority to take an action cannot as a matter of law establish that such an action actually occurred. Nor can Iran state a cognizable violation of the Accords merely by alleging that the United States has domestic authority to carry out acts that would

violate them. Both Iran and the United States have domestic authority to violate many provisions of the Accords. Accordingly, Iran's allegations concerning a fiscal year 1996 authorization, even if they were true, would have no legal significance and should be dismissed for failing to state a violation of the Accords.[41]

Iran's other allegations that at various times the United States attempted to destabilize and overthrow the Government of Iran following the 1979 Iranian Revolution (Doc. 1 at 7) are of only the most cursory and conclusory sort, and thus do not provide the basis for a claim under Paragraph 1 of the General Declaration. Iran cannot expect to state a claim of such a grave nature without more specific and particularized allegations.

Finally, Iran's casual allegation about U.S. intelligence collection activities -- even if proven -- would not state a violation of the Algiers Accords. In particular, reference is made to alleged past U.S. efforts to acquire information about Iranian military planning and capabilities. Doc. 1 at 7-8. Gathering information about the military capabilities of a

---

[41] The Tribunal has dismissed claims without reference to the evidence presented where the claimant failed to establish a legal basis for the claim. See Electronic Systems Int'l, Inc. v. Ministry of Defense, AWD No. 430-814-1, ¶¶ 57-8, 22 Iran-U.S. C.T.R. 339, 353-54 (July 28, 1989) (claim for expenses outside of the terms of a contract); ITEL Corp. v. Iran, AWD No. 530-490-1 ¶ 32, 28 Iran-U.S. C.T.R. 159, 172-73 (June 8, 1992) (claim for rental value of equipment has no legal basis where contract stipulates that rental liability terminates when lessee becomes liable for replacement cost).

potentially hostile government would hardly in itself constitute an intervention in that government's internal affairs.

b. Even If The Tribunal Found That Iran's Allegations Could State Violations of the Accords, Iran Has Failed to Make Out a *Prima Facie* Case for Those Allegations

The Tribunal's rules expressly require that "[e]ach party shall have the burden of proving the facts relied on to support his claim or defense." Rules of Procedure, Art.24(1).[42] The Tribunal has repeatedly held that where a claimant fails to meet its burden of proof, the respondent must prevail.[43] "It goes without saying that it is the Claimant who carries the initial burden of proving the facts upon which he relies." Malek v. Iran, AWD No. 534-193-3, at ¶ 111, 28 Iran-U.S. C.T.R. 246, 287-88 (Aug. 11, 1992).[44]

---

[42] See also Alan Redfern & Martin Hunter, Law and Practice of International Commercial Arbitration 328 (2d ed. 1991) (noting similar requirement under UNCITRAL Arbitration Rules).

[43] See, e.g., Golshani v. Iran, AWD 546-812-3, ¶ 49 (Mar. 2, 1993); Arthur Young & Co. v. Iran, AWD No. 338-484-1, ¶¶ 46-59, 17 Iran-U.S. C.T.R. 245, 256-59 (Nov. 30, 1987); Austin Co. v. Machine Sazi Arak, AWD 257-295-2, ¶¶ 41-42, 12 Iran-U.S. C.T.R. 288, 296-97 (Sept. 30, 1986); McLaughlin Enter., Ltd. v. Iran, AWD 253-289-1, ¶ 21, 12 Iran-U.S. C.T.R. 146, 152-53 (Sept. 16, 1986).

[44] International practice also places the burden of proof on the claimant:

> there is in substance no disagreement among international tribunals on the general principle that the burden of proof falls upon the claimant, i.e., 'the plaintiff must prove his contention under penalty of having his case refused.'

Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals 334 (1987)(quoting Lord Phillimore at page

The burden of proof requirement contains two elements: a claimant must first make out a prima facie case, then persuade the Tribunal that the case has merit.[45] Prima facie evidence "provides sufficient ground for a reasonable belief in its truth, rebuttable by evidence to the contrary."[46] Until the claimant provides prima facie proof of its allegations, the burden of proceeding with evidence does not shift to the respondent. Golshani v. Iran, AWD No. 546-812-3, at ¶ 49 (Mar. 2, 1993).[47]

---

316 of the *Procès-verbaux* of the Advisory Committee of Jurists for the Establishment of the Permanent Court of International Justice); see also id. at 327 & n.11; Duruard V. Sandifer, Evidence Before International Tribunals 127 (1975); Asian Agric. Products, Ltd. v. Republic of Sri Lanka, XVII Y.B. Comm. Arb. 106, 122 (1992).

[45] "[A] party having the burden of proof must not only bring evidence in support of his allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want, or insufficiency, of proof." Cheng, supra note 44, at 329.

[46] Cheng, supra note 43 at 324. See also Int'l Ore & Fertilizer Corp. v. Razi Chemical Co. Ltd., AWD No. 351-486-3, 18 Iran-U.S. C.T.R. 98, 102 & n.2 (1988)(Brower, J., dissenting)(noting that *prima facie* evidence is enough evidence "to establish a fact in the absence of any evidence to the contrary, but it is not conclusive")(quoting D.M. Walker, Oxford Companion to Law 987 (1980)); Dadras Int'l and Per-Am Construction Corp. v. Iran, AWD No. 567-213/215-3, at n. 43 and accompanying text (Nov. 11, 1995)(Aghahosseini, J., dissenting)("*Prima facie* evidence has been defined as evidence 'which, unexplained or uncontested, is sufficient to maintain the proposition affirmed,'" quoting Lillie S. Kling Case (Oct. 8, 1930) Mexican-U.S. General Claims Commission, reprinted in 4 U.N. Rep. Int'l Arb. Awards 585).

[47] See also, Stewart A. Baker & Mark D. Davis, Arbitral Proceedings Under the UNCITRAL Rules -- The Experience of the Iran-U.S. Claims Tribunal, 2 Geo. Wash. J. Int'l L. & Econ. 267, 306 (1989)("when one party has made a prima facie showing of evidence to support its claim or defense, the burden ordinarily shifts to the other party to come forward with contrary

Moreover, even where the burden of going forward with the evidence shifts from the claimant to the respondent the burden of persuasion remains on the claimant to persuade the Tribunal of the truth of his allegations. See Cheng supra note 44, at 334.

To support its allegation that the United States has violated Paragraph 1 of the General Declaration by passing authorization legislation to subvert and overthrow the Government of Iran, Iran seeks to make out a prima facie case with three vague and unsubstantiated newspaper articles based on anonymous sources. Doc. 1, Exhibits 1(5), 2 & 3. Similarly, Iran cites one magazine and three newspaper articles to support its allegation that the United States has engaged in other intelligence-related activities since 1979. Doc. 1 at 7-8. These latter articles are also vague, full of conjecture, and based on anonymous sources. Moreover, Iran cites no source whatsoever to support its allegations of U.S. military actions against it.[48] Doc. 1 at 8. Nevertheless, Iran asserts that because the U.S. Government has not publicly repudiated the press reports it cites, or replied to an "open letter" of the Iranian

---

evidence."); Sandifer, supra note 44, at 125 (same)(quoting "*Onus Probandi devant les jurisdictions arbitrales*," as attributed to Joseph C. Wittenberg, 55 Rev. Gen. de Droit Int'l Pub. 324 (3d ser. 1957)); Cheng, supra note 44, at 323-24.

[48] Some of the allegations are simply casual references to matters that are either the subject of a current case before the International Court of Justice related to Iranian oil platforms damaged during armed hostilities between U.S. and Iranian armed forces during the Iran-Iraq war, or are part of a case that was settled involving the accidental shootdown of Iran Air 655.

Foreign Minister to the Secretary-General of the United Nations about them, they must be true.

Iran cannot carry even the prima facie portion of its burden of proof with such evidence. The International Court of Justice has noted that press reports must be treated with "great caution":

> even if they seem to meet high standards of objectivity, the Court regards them not as evidence capable of proving facts, but as material which can nevertheless contribute, in some circumstances, to corroborating the existence of a fact, i.e., as illustrative material additional to other sources of evidence.[49]

Far from meeting "high standards of objectivity," the articles Iran cites are entirely lacking in specificity and are wholly derived from anonymous sources. Moreover, Iran relies on them to prove the truth of its allegations, not just to illustrate and corroborate other evidence.

Beyond their lack of specificity and basis in anonymous sources, the articles Iran relies on do not support Iran's contentions. Contrary to Iran's assertions, the Tribunal can hardly conclude from this evidence the existence of a program to destabilize or overthrow the Government of Iran. Doc. 1 at 6. Indeed, the Washington Post article submitted by Iran, which

---

[49] Military and Paramilitary Activities (Nicaragua v. United States), 1986 I.C.J. 14, 40 (June 27)(emphasis supplied).

purports to describe the law as finally adopted, directly contradicts Iran's contention, stating:

> Instead of trying to overthrow the regime, however, the program would have the less ambitious aim of trying to blunt Iran's extremist policies and encourage it to move -- even slowly -- toward becoming a democracy, several sources said.

Doc. 1 at Exhibit 1(5). Iran presents no evidence that such an alleged covert program to overthrow the government exists. In fact, Iran's allegations are exaggerations of what was never anything more than press speculation.

Because Iran's evidence is not sufficient to establish the truth of its assertions, the Tribunal need not look beyond it. The Tribunal has dismissed a claim without considering the respondent's proof where it found that the claimant's evidence was not credible or specific enough to prove the main elements of his claim and thus failed to make out a prima facie case. Malek v. Iran, AWD No. 534-193-3, at ¶ 123, 28 Iran-U.S. C.T.R. 246, 291-92 (Aug. 11, 1992). In Malek, the claim depended in part upon the validity of a document allegedly procured from a notary public and in part upon several affidavits. Iran asserted that the document was a forgery. The Tribunal explained that, even where the respondent raises an affirmative defense (for which the respondent would bear the burden of proof), the Tribunal need not consider the proof submitted by the respondent unless the claimant has first made out a prima facie case. Id. at ¶ 88, 28 Iran-U.S. C.T.R. 280. Finding that the claimant's proof did not establish the authenticity of the document, the Tribunal

dismissed the claim without even considering the respondent's evidence that it was a forgery. Id. The Tribunal also looked at affidavits submitted by the claimant and determined they were too vague to make out a prima facie case. Id. at ¶¶ 121-22, 28 Iran-U.S. C.T.R. 290-91. In a separate case, the Tribunal dismissed a claim against Iran for nonpayment of an amount due under a contract, finding that claimant's evidence that Iran was responsible for the nonpayment insufficient "even in the absence of any evidence to the contrary." J. I. Case Co. v. Iran, AWD No. 57-244-1, at 6, 3 Iran-U.S. C.T.R. 62, 65 (June 15, 1983)(emphasis supplied). The Tribunal was not persuaded by claimant's evidence indicating that the companies in question were willing to make the payments, but had been told by third parties that the Government of Iran would not permit foreign currency transfers. Id. at 4, 3 Iran-U.S. C.T.R. 64. In the same way, because Iran has failed to support its covert action claim with even prima facie evidence, this portion of Iran's claim should be dismissed.

It is particularly important for the Tribunal to hold Iran strictly to the requirements of alleging sufficient facts to make out a claim and presenting sufficient evidence to meet Iran's burden of proof, where the claim involves allegations of covert intelligence activity. It is well known that governments must keep in strict confidence certain aspects of their national security activities, including in particular intelligence

activities needed for protection against potentially hostile external threats. Under these circumstances, it would be highly inappropriate for one government to be permitted to maintain a claim on the basis of wholly unproven allegations about intelligence activities, and to require the respondent government to assume the burden of factual response and proof.

c. Iran Must Be Held to a Heightened Standard of Proof Where it Makes "Particularly Grave" Allegations

In this case, where Iran makes the particularly grave allegation that the United States is engaged in an effort to overthrow the Iranian Government, Iran must be required to prove its allegations with "a higher degree of probability" than in an ordinary case. Aryeh v. Iran, AWD No. 581-842/843/844-1, at ¶ 159 (May 22, 1997); Dadras Int'l and Per-Am Construction Corp. v. Iran, AWD No. 567-215-3, at ¶ 124 (Nov. 7, 1995). The Tribunal has repeatedly held a party to an "enhanced standard of proof" where its allegations are "particularly grave." Aryeh v. Iran, Award No. 581-842/843/844-1, at 66, ¶ 159; Dadras v. Iran, Award No. 567-215-3, at ¶ 123; see also Oil Field of Texas, Inc. v. Iran, AWD No. 258-43-1, at ¶ 25, 12 Iran-U.S. C.T.R. 308, 315 (Oct. 8, 1986).[50] At a minimum, "clear and convincing" evidence is needed to carry this enhanced burden of proof. Dadras v.

[50] See also Rupert Cross, Cross on Evidence 148 (17th ed., 1990) (citing Lord Denning to the effect that claimant must demonstrate a "degree of probability commensurate with the occasion").

Iran, Award No. 567-215-3, at ¶ 123. In a case involving allegations of bribery, the Tribunal set the standard even higher than "clear and convincing": "If reasonable doubts remain, such an allegation cannot be deemed to be established." Oil Field of Texas, Inc. v. Iran, AWD No. 258-43-1, at ¶ 25, 12 Iran-U.S. C.T.R. at 315 (emphasis supplied).

Despite the requirement to prove its claim with at least "clear and convincing" evidence,[51] Iran has submitted only a very small number of vague press articles based on anonymous sources. This is far from "clear and convincing" evidence. Indeed, Iran has failed even to establish a prima facie case with its evidence; it has patently failed to satisfy a heightened standard of pleading and proof. Iran's claim should accordingly be dismissed.

D. Iran Has Failed to Demonstrate That the United States Has Violated Paragraph 10 of the General Declaration

It is not, and cannot be, disputed that the United States complied fully with its obligation under Paragraph 10 of the General Declaration to "revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date," "[u]pon the making by the Government of Algeria of the certification described in Paragraph 3." The United States

---

[51] Given the extremely grave nature of Iran's claim that the United States is engaged in an effort to subvert and overthrow the Government of Iran, Iran should be held to the highest standard, and should be required to prove its allegations "beyond a reasonable doubt." See Oil Field of Texas, Inc. v. Iran, AWD No. 258-43-1, at ¶ 25, 12 Iran-U.S.C.T.R. at 315.

revoked the trade sanctions on January 19, 1981, and Iran has never alleged otherwise. Imports, exports, and travel between Iran and the United States were permitted to resume.[52]

Iran's argument that U.S. economic and diplomatic measures taken to counter subsequent threats from Iran violate a continuing obligation not to reimpose any trade sanctions against Iran is completely unsupported. Nothing in the ordinary meaning of the language of Paragraph 10, read in context and in light of the object and purpose of the Algiers Accords, supports Iran's contention. Nor is there anything in the negotiating history of the provision to support it. Iran's assertion should be rejected.

The ordinary meaning of Paragraph 10 is that the United States was obligated to "revoke" trade sanctions put in place between the date the U.S. Embassy was seized in Tehran and the date the Accords were signed, and this was done. Indeed, the transitive verb "revoke" means a "recalling or taking back" of "acts and things done before." Black's Law Dictionary (6th ed., 1990), at 1321, 1322. "Revoke" does not imply a continuing obligation.

---

[52] See Exec. Order 12282, 46 Federal Register 7825 (Jan. 19, 1981)(revoking the "prohibitions contained in Executive Order 12205 of April 7, 1980 [export and financial transactions bans], and Executive Order 12211 of April 17, 1980 [import and travel bans], and Proclamation 4702 of November 12, 1979 [import ban on petroleum and petroleum products]"). See also the series of other Executive Orders revoking the prohibitions contained in Executive Order 12170 of November 14, 1979, supra note 2.

Read in context, and in light of the object and purpose of the Algiers Accords to undo Iran's hostage-taking and the U.S. economic response, Paragraph 10 ensured that the United States would return the legal basis for trade with Iran to the status quo before the hostages were seized, in exchange for Iran releasing them.[53] Nothing in the Accords suggests that Paragraph 10 was intended permanently to prohibit the United States from imposing trade sanctions or other economic measures against Iran for hostile Iranian actions taken after the release of the hostages. If so, Iran would have been put in a better position -- in effect, rewarding it for its illegal seizure of the Embassy. Prior to the hostage-taking, Iran like other U.S. trading partners was subject to a range of potential economic sanctions under U.S. law.

If the parties had intended to create a continuing prohibition on all types of economic and trade measures against Iran, they would have said so explicitly, employing language such as "renounce the use of," or "refrain from imposing." Nothing in

---

[53] See, e.g., Iran v. United States, DEC, Case No. A1 (Issue II), 1 Iran-U.S. C.T.R. 144, 145 (May 14, 1982), (stating that the parties "entered into a series of Agreements with a view to concluding the crisis in the relations between the two states arising out of the detention of United States nationals in Iran and the counter-measures taken by the United States); see also Iran v. United States, AWD No.529-A15(II:A & II:B)-FT, at 11, 28 Iran-U.S. C.T.R. 112, 149 (May 6, 1992)(sep. op. of Holtzman, Aldrich and Allison, JJ.) ("On the one hand, Iran released the diplomats; on the other hand, the United States agreed to remove various blocking orders that it had instituted in response to the detention of its nationals.").

the negotiating history of Paragraph 10 suggests an intention to create a continuing obligation on the United States. U.S. negotiator Warren Christopher flatly denies there was ever such an intention. Affidavit of Warren Christopher, at ¶ 21, attached as Exhibit 37.

Since the conclusion of the Algiers Accords, the subsequent practice of Iran and the United States contradicts Iran's contentions. The parties have consistently acted on the basis that the United States fully discharged its obligation under Paragraph 10. Iran never informed the United States that it considered the United States to have violated Paragraph 10 by imposing new sanctions, despite a series of economic measures imposed in response to Iranian actions since late 1983.

Iran cannot hope to transform this carefully worded and limited obligation into one with a completely different character by invoking the doctrine of "good faith." Doc. 1 at 25-26. If the United States had reimposed the sanctions lifted on January 19, 1981, immediately after the release of the hostages, an issue of good faith might have arisen if nothing else had changed between the United States and Iran. That is not the case here. Instead, the United States has gradually and selectively used new economic and diplomatic measures for reasons completely unrelated to those for which trade sanctions were imposed as a result of the hostage crisis. Far from supporting Iran's case, the principle of "good faith" reinforces the U.S. argument here. As

demonstrated above, a "good faith" reading of Paragraph 10 leads to the conclusion that the United States did not give up the right to take legitimate economic measures in response to new actions by Iran.

E. Iran Cannot Bring a Claim Under General Principle A

Near the end of its Statement of Claim, Iran requests the Tribunal to rule that the United States has violated General Principle A of the General Declaration, but offers no explanation or justification for this request. Doc. 1 at 27. General Principle A states:

> 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.

Consistent with its terms, General Principle A must be read in the context of the specific obligations in Paragraphs 4-9; it is not relevant to Iran's claims under Paragraphs 1 and 10.[54]

General Principle A discusses the restoration of Iran's "financial position," to the extent possible, to its condition

---

[54] United States v. Iran, DEC No. 37-A17-FT, 8 Iran-U.S. C.T.R. 189, 211 (May 13, 1985)(Brower and Holtzmann, JJ., concurring)(noting that the meaning of both General Principles can be "discerned only by reference to 'the specific provisions of the two Declarations,'" citing United States v. Iran, DEC No. 1-A2-FT, at 4, 1 Iran-U.S. C.T.R. 101, 103 (Jan. 13, 1982)); see also, Iran Nat'l Gas Co. v. United States, AWD No. 330-B40-2, at ¶ 8, 17 Iran-U.S. C.T.R. 183, 185 (Nov. 20, 1987)(finding that General Principle B is limited by the framework and provisions of the two Declarations).

prior to November 14, 1979, which was the day the United States froze all Iranian assets under Executive Order 12170 in response to the seizure of the American Embassy and hostages. The use of the term "financial" in General Principle A indicates that it only addresses the freeze on assets, and not the trade sanctions addressed by Paragraph 10 or the policy statement in Paragraph 1. Under the terms of General Principle A, the United States has committed itself to guarantee the "mobility and free transfer" of Iranian assets, "as set forth in Paragraphs 4-9." None of Iran's factual allegations in this case pertain to these obligations.[55]

To the extent that Iran may wish to establish a separate claim based on General Principle A, the Tribunal has held that it may not do so.

> While the Tribunal has found that General Principle A can provide useful guidance in the interpretation of the provisions of the General Declaration, it cannot stand by itself.

Iran v. United States, AWD No. 529-A15(II:A & II:B)-FT, at ¶ 69, 28 Iran-U.S. C.T.R. 112, 138 (May 6, 1992), cf. Iran v. United States, ITL No. 78-A15(I:C)-FT, at ¶ 31, 25 Iran-U.S. C.T.R. 247, 260 (November 12, 1990)("'the undertaking [that General Principle

---

[55] General Principle A is simply not relevant to the trade measures at issue in this case. The first trade sanction imposed by the United States following the hostage seizure was the oil import ban, contained in Proclamation 4702 of November 12, 1979. Given that oil imports had been the largest single aspect of Iran-U.S. trade, Iran would not have set the cut-off date in General Principle A as November 14 if it had intended General Principle A to cover trade sanctions. Viewed in context, General Principle A could not be intended to address trade measures, but only financial and other asset-blocking measures.

A] contains is made only with very definite qualifications'").

F. The 1955 Treaty Is not Relevant to Iran's Claim

Iran states in a summary fashion that the "imposition of sanctions" by the United States has violated Articles X(1) and VII(2) of the 1955 Treaty (Doc. 1 at 2-3), but does not ask the Tribunal to rule on the issue (Doc. 1 at 27-28). Consequently, it is unclear why Iran makes this baseless allegation. As discussed in section III.A above, the Tribunal has no jurisdiction to hear claims arising under the 1955 Treaty. Moreover, the Treaty is not incorporated into the General Declaration, nor is it a guide to interpretation of Paragraphs 1 and 10. In any event, nothing in the 1955 Treaty supports Iran's allegations that the United States has violated the Algiers Accords.

The General Declaration does not incorporate the obligations of the 1955 Treaty. If the United States and Iran had so intended, they would have added an appropriate reference. No such reference was included, and Iran long denied before the Tribunal that the Treaty even remained in force. See, e.g., Phelps Dodge Corp. v. Iran, AWD No. 217-99-2, at ¶ 27, 10 Iran-U.S. C.T.R. 121, 131-32 (Mar. 19, 1986). Given its position at the time, Iran could not have intended to link the General Declaration and the 1955 Treaty.

Even as a guide to interpretation of the General Declaration, the provisions of the 1955 Treaty cited by Iran say

nothing about how, as a matter of international law, the obligations of Paragraphs 1 and 10, or General Principle A, should be interpreted. None of its provisions are relevant to the question of what constitutes "interven[tion]" in the "internal affairs" of Iran (Paragraph 1), or what constitutes the "revo[cation]" of trade sanctions (Paragraph 10), or what measures would "restore the financial position of Iran" (General Principle A). As the International Court of Justice held in the Case Concerning Oil Platforms (Iran v. United States), "the object and purpose of the Treaty of 1955 was not to regulate peaceful and friendly relations between the two States in a general sense." Judgment on Preliminary Objection, I.C.J. (Gen. List No. 90)(Dec. 12, 1996), at ¶ 28.

Moreover, there is no basis for the Tribunal to look to the 1955 Treaty in this case, which was brought under Article II(3) of the Claims Settlement Declaration, as a source of law between the parties to interpret Paragraphs 1 and 10 (or General Principle A). The Tribunal has never done so as part of an interpretive dispute; Iran, in fact, has argued before that it should not. See Iran v. United States, DEC No. 32-A18-FT, at 7, 5 Iran-U.S. C.T.R. 251, 255 (Apr. 6, 1982). The Tribunal has applied the international and commercial lex specialis of the 1955 Treaty in claims brought under the lex generalis of Article II(1) of the Claims Settlement Declaration by "nationals" arising out of "debts, contracts . . . , expropriations or other measures

affecting property rights."[56] By contrast with the Claims Settlement Declaration, however, which provides only general rules for the Tribunal to resolve commercial and property claims, the General Declaration is itself a lex specialis, calling upon the United States and Iran to take specific steps to undo the hostage-taking and subsequent trade and financial sanctions.[57]

G. Principles Related to the Extraterritorial Application of Laws Do not Apply to This Case

Iran asserts that the Iran and Libya Sanctions Act of 1996 has been criticized by member states of the European Union, and implies that the Act is an unlawful extraterritorial application of U.S. law. Iran provides no discussion of any international law principles it may believe are applicable, however, and does not ask the Tribunal to find the United States in violation of

---

[56] See, e.g., Sedco Inc. v. Iran, AWD No. 30-129-3, at ¶¶ 17, 30 & n.14, 15 Iran-U.S. C.T.R. 23, 29, 34 & n.14 (July 2, 1987); Sedco Inc. v. Iran, ITL No. 59-129-3, at 6-7, 10 Iran-U.S. C.T.R. 180, 184-86 (Mar. 27, 1986); Sedco Inc. v. Iran, ITL No. 55-129-3, at 34, 9 Iran-U.S. C.T.R. 248, 272-73 (Oct. 24, 1985); Khosrowshani v. Iran, AWD No. 55-178-2, at ¶ 34 (June 30, 1994); Phillips Petroleum Co. Iran v. Iran, AWD No. 425-39-2, at ¶ 107, 21 Iran-U.S. C.T.R. 79, 118-21 (June 29, 1989); Starrett Housing Corp. v. Iran, AWD No. 314-24-1, at ¶ 261, 16 Iran-U.S. C.T.R. 112, 195 (Aug. 14, 1987).

[57] The 1955 Treaty was negotiated and concluded by the parties specifically to govern the commercial and financial rights of each government's nationals when in the territory of the other government. It is particularly important for interpreting claims brought under Article II(1) because many were transferred from U.S. courts where the claimants could have relied on the provisions of the 1955 Treaty. See Sedco, Inc. v. Iran, ITL No. 59-129-3, at 5, 10 Iran-U.S. C.T.R. at 192 (Brower, J., concurring).

any specific principles. Doc. 1 at 23-25.[58] As was discussed in section III.A above, the Tribunal does not have jurisdiction over claims that do not arise under the Algiers Accords. Moreover, it goes without saying that Iran cannot purport to assert a claim of third parties.

In the absence of any presentation by Iran, the United States will not enter here into a detailed discussion of the principles alluded to in the Statement of Claim. The United States hereby requests that it be provided an opportunity to respond fully to any claim or argument if Iran is permitted to present such in the future.

H. Iran Has Violated the International Law Principles of Nonintervention and Non-Use of Force, and Under General Principles of Law Should Not Be Heard to Bring Its Claims

In addition to the reasons discussed above, there is a separate and independent basis on which the Tribunal should reject Iran's claims in this case. Universally accepted

---

[58] It is important to note in this connection that Iran has imposed sanctions related to Israel. Attached as Exhibit 39 is a copy of a domestic Iranian law that implements the Arab League Boycott of Israel. Act Approving the Islamic Single Act Regarding the Israeli Boycott, Complete Digest of Commercial Laws and Regulations 578 (5th ed. 1994). Those sanctions ban imports from, exports to, and all commercial or financial transactions with, Israeli companies or the territory of Israel, provide for the confiscation of Israel-bound goods from whatever source, and prohibit trade with companies doing business in Israel. See Aaron J. Sarna, Boycott and Blacklist 7-9 (1986). Iran either views such economic sanctions as consistent with principles of international law or expects to be able to violate the principles itself with impunity.

principles of law bar a terrorist state such as Iran from pressing a claim of unlawful intervention on the basis of measures taken to respond to its use and support of terrorism.

As a state committed to sponsoring and carrying out armed terrorist attacks against Iranian and foreign nationals throughout the world, and to supporting the violent destabilization and overthrow of neighboring sovereign states, Iran has violated the fundamental international law principle prohibiting the use of armed force against the independence and territorial sovereignty of other states, and the customary international law principle of nonintervention. Although Iran brings its claims under Paragraphs 1 and 10 of the General Declaration -- two provisions of the Algiers Accords that only apply to the United States -- international law does not permit Iran to benefit from its wrongdoing. The principles of *nullus commodum capere de sua injuria propria* and *ex delicto non oritur actio* preclude Iran from bringing its claims.

1. Iran has Violated International Law

While there is no agreement on the precise outlines of the international law principles of non-use of force and nonintervention, there is consensus that they prohibit certain core activities, including armed or violent coercion.[59] There

---

[59] See Albrecht Randelzhofer, Article 2(4), in The Charter of the United Nations 112-15 (Bruno Simma, ed. 1994); Gaetano Arangio-Ruiz, supra note 36, at 121-22 (1979); Krzysztof Skubiszewski, Use of Force by States, in Manual of Public International Law 739, 741-58 (Max Sorensen, ed. 1968).

can be no dispute that they prohibit Iran's terrorist actions abroad.

The UN Charter specifically prohibits the threat or use of force, providing in Article 2(4):

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

59 Stat. 1031, T.S. 993. Moreover, the International Court of Justice defined the core content of the international law principle of nonintervention as having significant overlap with the non-use of force rule. The Court stated:

> The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State. . . . These forms of action are therefore wrongful in the light of both the principle of non-use of force, and that of non-intervention.

Military and Paramilitary Activities (Nicaragua v. United States), 1986 I.C.J. 14, 98 (June 27).

Iran has blatantly violated Article 2(4) of the UN Charter and the nonintervention rule as applied by the International Court. Iran has a highly developed state apparatus for planning, approving, and executing terrorist acts, and has planned and carried out scores of assassinations against opponents in foreign countries, is inciting the murder of a foreign novelist, and has committed violent acts, bombings, and murder aimed at undermining and destroying sovereign governments. After an exhaustive

investigation and public trial, the Berlin Superior Court of Justice confirmed the existence of Iran's state terrorist apparatus, and found Iran responsible for the planning and execution of the murders of four opposition Kurdish leaders in a public restaurant in Berlin. The Court determined that responsibility for these murders and for planning and approving all terrorist acts outside of Iran lie with the highest levels of the Iranian government. Exhibit 7. The court's independent judicial findings are consistent with the conclusions drawn by numerous other experts, the European Union, the United Nations, and the Supreme Court of Azerbaijan, and discussed in detail in Section II.C above. There can be no clearer violation of core principles of both the nonintervention and non-use of force rules than these terrorist actions by Iran.

2. Under the Principles of *Nullus Commodum Capere de Sua Injuria Propria* and *Ex Delicto Non Oritur Actio*, Iran Should Not Be Heard to Bring a Claim Against the United States

Iran seeks an order from the Tribunal in this case that would remove any incentives Iran may now have to cease its hostile activities against the United States and others and to comply with international law. International law does not permit Iran to receive such relief. To do so would allow Iran to use the instruments of justice to further its illegal acts, and would effectively make the Tribunal an instrument of Iran's wrongful intentions.

It is a well recognized general principle of law[60] that a claimant acting in an unlawful way should not receive judicial relief that would permit him to benefit from that wrongful act, and similarly, that rights and benefits may not be derived from wrongdoing. These principles are expressed in international law, *inter alia*, as the doctrines *nullus commodum capere de sua injuria propria* ("no one can be allowed to take advantage of his own wrong") (hereinafter *nullus commodum*) and *ex delicto non oritur actio* ("an unlawful act cannot serve as the basis of an action") (hereinafter *ex delicto*).[61] The Tribunal has recognized

---

[60] Under Article V of the Claims Settlement Declaration, the Tribunal may apply "such . . . principles of . . . international law as the Tribunal determines to be applicable." Accordingly, the Tribunal has looked to general principles of law where necessary to decide claims over which it otherwise has jurisdiction. CMI Int'l v. Iran, AWD No. 99-245-2, at 8-9, 4 Iran-U.S. C.T.R. 263, 268 (Dec. 27, 1983). Some examples of the Tribunal's application of general principles of international law include *force majeure*, changed circumstances, and unjust enrichment. See, e.g., Anaconda-Iran, Inc. v. Iran, ITL No. 65-167-3, ¶ 43, 13 Iran-U.S. C.T.R. 199, 211-12 (Dec. 10, 1986) (*force majeure*); Questech, Inc. v. Iran, AWD No. 191-59-1, at 20-2, 9 Iran-U.S. C.T.R. 107, 122 (Sept. 20, 1985) (*clausula rebus sic stantibus*, or "changed circumstances"); Sea-Land Services, Inc. v. Iran, AWD No. 135-33-1, at 27-9, 6 Iran-U.S. C.T.R. 149, 168-69 (June 20, 1984) (unjust enrichment).

[61] Similar principles include *ex injuria...*, *ex turpi...*, *ex malo...*, and *ex dolo malo oritur actio* (i.e., "a wrong..., an immoral act..., a bad act..., a fraud cannot serve as the basis of an action"); *inadimplenti non est adimplendum* ("he who seeks equity must do equity"); and "he who comes for relief must come with clean hands." See, e.g., Gerald G. Fitzmaurice, General Principles of International Law, in 92 Recueil des Cours 117-19 (1957). The late Judge Anzilotti called *inadimplenti non est adimplendum* "so just, so equitable, so universally recognized, that it must be applied in international relations also. . . . It is one of the[] general principles of law recognized by civilized nations." Diversion of Water from the River Meuse, 1937 P.C.I.J.

the principle of *nullus commodum* in Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA, AWD No. 141-7-2, 6 Iran-U.S. C.T.R. 219 (June 22, 1984):

> It is a well recognized principle in many municipal systems and in international law that no one should be allowed to reap advantages from their own wrong, *nullus commodum capere de sua injuria propria*.

Id., at 15, 6 Iran-U.S. C.T.R. at 228 (citing Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals 149 (1953))[62]

The Permanent Court of International Justice has applied the principle that a state may not take advantage of its own wrong in the context of treaty violations.[63] In the Chorzow Factory Case, the Permanent Court held that:

> It is . . . a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts, that one Party [to a dispute] cannot avail

---

(ser. A/B) No. 70, at 50 (Anzilotti, J., dissenting). See also, P.V. Baker, Snell's Equity 31 (29th ed. 1990)(noting relationship between "he who seeks equity" and *ex turpi causa non oritur actio*); 27A Am. Jur. 2d, Equity § 126 (1996) (the principle of "clean hands" is also expressed as "a party will not be permitted to take advantage of his own wrong."); Broom's Legal Maxims 198 (10th ed. 1939)(observing that *nullus commodum* and *ex dolo malo* are closely related principles).

[62] The Tribunal applied the principle in determining the dissolution value of a joint venture expropriated by Iran, to ensure that neither party to the contract "would profit by its wrong" by not having paid certain obligations. Cf. INA Corp. v. Iran, AWD No. 184-161-1, at 60-62 (Ameli, J., dissenting), 8 Iran-U.S. C.T.R. 373, 444-46 (Aug. 12, 1985)("The principle of *ex malo jus non oritur* is a general principle of law that bars a party from profiting from his own wrongful conduct.").

[63] See Cheng, supra note 44, at 149-50; Fitzmaurice, supra note 61, at 117-19.

> himself of the fact that the other has not fulfilled some obligation . . . if the former Party has, by some illegal act, prevented the latter from fulfilling the obligation in question . . . .'"

Case Concerning the Factory at Chorzow (Germany v. Poland), 1927 P.C.I.J. (ser. A) No. 9, at 31 (July 26).[64] Similarly, in the Danzig Courts case the Permanent Court held that Poland could not avail herself of an objection which . . . would amount to relying upon the non-fulfillment of an obligation imposed upon her by an international engagement." Jurisdiction of the Courts of Danzig 1928 P.C.I.J. (ser. A/B) No.15, at 26-7 (Mar. 3).[65]

These principles are widely accepted by scholars to be

---

[64] The late Judge Read stated that "there can be no doubt" the principle that a breaching state may not "profit from its own wrong" was settled in the Chorzow Factory Case. Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (2nd Phase), 1950 I.C.J. 221, 244 (July 18)(Read, J., dissenting).

[65] The International Court of Justice has also addressed these principles in Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, 1971 I.C.J. 16 (June 21). Referring to the relationship created between the United Nations and its members under the UN Charter, the Court stated:

> One of the fundamental principles governing the international relationship thus established is that a party which disowns or does not fulfil its own obligations cannot be recognized as retaining the rights which it claims to derive from the relationship.

Id., at 46, ¶ 91. The principle of *ex delicto* was recognized by Judge Anzilotti in Legal Status of Eastern Greenland, 1933 P.C.I.J. (ser. A/B) No. 53, at 95 (Apr. 5) (Anzilotti, J., dissenting)(stating that "an unlawful act cannot serve as the basis of an action in law").

applicable in a broad variety of circumstances.[66] The late Judge Fitzmaurice wrote that the general principle that States cannot profit from their own wrong, and that rights and benefits cannot be derived from wrongdoing, "admits of no doubt," and "is a wide general principle having many diverse applications under international law." Fitzmaurice, supra note 61, at 117-18. The jurisprudence of international arbitration has also long recognized and applied these principles broadly.[67]

Applying the principles to this case, the Tribunal should

---

[66] See, e.g., Fitzmaurice, supra note 61, at 119 (1957)(these principles form the basis of Chorzow Factory case, "and of course [they] apply not merely as regards treaty obligations but to general international law obligations also"); Cheng, supra note 44, at 149-58 (surveying the numerous situations in international arbitral practice in which *nullus commodum* and *ex delicto* have been applied); see also, Christopher R. Rossi, Equity and International Law 80-84 (1993); C. Wilfred Jenks, The Prospects of International Adjudication 412-14 (1964).

[67] See e.g., Mary Lowell (1879), 3 Moore Int'l Arb. 2772, 2776 (claimant's unlawful venture in violation of international law resulted in the forfeiture of the diplomatic protection of the United States); Pelletier Case (1885), 2 Moore Int'l Arb. 1749, 1800 (*ex turpi causa non oritur actio* has been applied by "innumerable rulings under Roman common law, as held by nations holding Latin traditions, and under the common law as held in England and the United States"); The Montijo Case (1875), 2 Moore Int'l Arb. 1421, 1437 (where the Umpire emphasized that "[n]o one can be allowed to take advantage of his own wrong"); Farmer (Master Osborne) (1797), 4 Moore Int'l Adjud. (Modern Series 1931) at 348-63 (claim forfeited by claimant's misconduct, where claimant had not conducted himself "with fairness and propriety" with regard to the subject of the claim); The Medea and The Good Return Cases (1865), 2 Moore Int'l Arb. 1572, 1573 (claimant's acts of piracy forfeited his standing as U.S. citizen for purposes of diplomatic protection, as no one can be allowed to profit from his own wrong).

dismiss Iran's claim. As described in sections II.C above, Iran has adopted terrorism as a basic tool of its foreign policy. Iran is actively engaged in a program of state-sponsored terrorism and subversion outside Iran, including against the United States, in direct violation of fundamental norms of international law. In response to Iran's hostile and illegal international behavior, the United States has taken certain actions to protect its legitimate interests and induce Iran to halt its behavior. Now Iran is asking the Tribunal to rule that the United States must cease its actions because they constitute intervention in Iran's internal and external affairs. Even if Iran were able to establish its factual and legal assertions against the United States, which it has not done, general principles of international law do not allow Iran redress against the United States because Iran's own wrongful actions have led directly to the actions of which Iran complains. The remedy sought would unjustly reward Iran by facilitating its unlawful activities.[68]

I. Iran has Failed to Make a Case for Interim Measures

Iran includes a section in its Statement of Claim entitled "Request for Interim Measures of Protection," but does not justify its request or even specify what measures it seeks. Doc.

[68] See Fitzmaurice, supra note 61, at 118-19.

1 at 28-9. Such a vague and unsubstantiated request requires no further action.

"Under Tribunal precedent, 'interim relief can be granted only if it is necessary to protect a party from irreparable harm or to avoid prejudice to the jurisdiction of the Tribunal.'" Iran v. United States, DEC No. 129-A4/A7/A15(I:F & III)-FT, at ¶ 10 (June 23, 1997), quoting Iran v. United States, DEC No. 116-A15(IV) & A24-FT, at ¶ 20 (May 18, 1993). See also Iran v. United States, Order, Chamber 2, Case Nos. A4/A15(III), at ¶ 4, 5 Iran-U.S. C.T.R. 112, 113 (Jan. 18, 1984); Iran v. United States, INL No. 33-A4/A15(III)-2, at 2 (1984), 5 Iran-U.S. C.T.R. 131. Most Tribunal decisions considering interim measures involve related cases pending in other jurisdictions or involve the protection of tangible property claimed by one party that is in the custody of the other. Neither of those situations is presented here. Although Iran asserts that it faces "immediate and irreparable damage and prejudice" (Doc. 1 at p. 28), it makes no attempt to substantiate that assertion. In the absence of any showing by Iran to support its bare allegations of irreparable harm, the Tribunal should summarily reject the request for interim measures.[69]

IV. **CONCLUSION**

---

[69] The United States requests the Tribunal provide an opportunity to respond in full if Iran is subsequently permitted an opportunity to attempt to substantiate its request for interim measures.

Iran has come before this Tribunal to complain that the United States has violated Paragraphs 1 and 10 of the General Declaration of the Algiers Accords. Iran has failed to carry the burden of proving its principal factual allegations against the United States, and failed to establish that any of the actions it alleges would violate these provisions. Even were Iran able to carry its burden of proof and make out violations of the Accords, however, general principles of law prevent Iran, which is actively engaged in a foreign policy of terrorist and subversive activities, from pursuing its claims where permitting it to do so would reward Iran for its own wrongdoing. Finally, Iran has failed to demonstrate why its claim merits consideration for interim measures.

Iran's claims should be seen for what they are -- a cynical ploy to deflect attention from its shocking and blatantly unlawful behavior -- and should be dismissed by the Tribunal.

Respectfully submitted,

Sean D. Murphy
Agent of the United States

Counsel:

Michael J. Matheson
Jeffrey D. Kovar

STATEMENT OF DEFENSE OF THE UNITED STATES