

Draft

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IRAN-UNITED STATES CLAIMS TRIBUNAL

ADMINISTRATIVE DIRECTIVE NO. 2

TRIBUNAL RULES

I. INTRODUCTION

(1) This Administrative Directive has been issued by the Iran-United States Claims Tribunal to establish Tribunal Rules which modify the UNCITRAL Arbitration Rules. Such modifications have been made pursuant to Article III, paragraph 2 of the Claims Settlement Declaration of January 19, 1981, which provides that the members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the UNCITRAL Arbitration Rules, except to the extent modified by the parties or by the Tribunal to ensure that the Claims Settlement Declaration can be carried out.

(2) These Tribunal Rules are being issued at this time and enter into force immediately so that all interested parties may have an early statement of the procedures to be followed. These Rules incorporate the provisions of Administrative Directive No. 1 which remains in effect. The Tribunal may in the future modify or supplement these Rules. The Tribunal invites the

Agents of the Governments of Iran and of the United States, respectively, and other interested parties (e.g., prospective or actual claimants and respondents) to submit written comments on the Tribunal Rules to the Secretary-General of the Tribunal before November 15, 1981. In order to expedite consideration of such comments by the Tribunal and to avoid needless repetition and expense, those who share common views are encouraged to submit joint comments through a committee or a single representative, but are not required to do so.

II. DEFINITIONS

For the purposes of the Tribunal Rules:

(1) "Claims Settlement Declaration" means the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated January 19, 1981.

(2) "Tribunal" means the Iran-United States Claims Tribunal established by the Claims Settlement Declaration.

(3) "UNCITRAL Arbitration Rules" and "UNCITRAL Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law which are the subject of Resolution

31/98 adopted by the General Assembly of the United Nations on December 15, 1976, as such rules were in effect on January 19, 1981.

(4) "Tribunal Rules" means these Rules, as they may be modified and supplemented from time to time.

(5) "Plenary Tribunal" means the tribunal composed of the nine members announced on June 9, 1981, or any replacement or replacements of such members appointed or chosen in accordance with Article 13 of the UNCITRAL Rules, or any ad hoc member designated to act as a substitute member of the plenary Tribunal pursuant to the Tribunal Rules.

(6) "Chamber" means a panel of three members of the Tribunal composed by the President of the Tribunal from among the nine members of the plenary Tribunal or including, any ad hoc members.

(7) "Arbitral tribunal", as used in the Tribunal Rules and in the UNCITRAL Rules, means either the plenary Tribunal or a Chamber, depending on whichever is seised of a particular case or part of a case.

(8) "President" means the President of the Tribunal.

(9) "Ad hoc member" means any member appointed in addition to the nine members of the plenary Tribunal.

(10) "Member" means either a member of the plenary Tribunal or an ad hoc member. "Member" as used in the Tribunal Rules has the same meaning as "arbitrator" where used in the UNCITRAL Rules.

(11) "High contracting parties" are the Government of the Islamic Republic of Iran and the Government of the United States of America.

(12) "Arbitrating party" means the party initiating recourse to arbitration (the claimant), the other party (the respondent), or any other party who is joined in a particular case. The term "arbitrating party" also means a high contracting party when, in a particular case, it is a claimant, respondent or counter-claimant, or when it refers any dispute or question to the Tribunal for decision.

(13) "Agent" means the Agent of the Government of Iran or the Agent of the Government of the United States, as designated by such government in accordance with Article VI, paragraph 2 of the Claims Settlement Agreement, to represent it to the

Tribunal, and also includes any deputy of, or other person authorized by, the Agent.

(14) "Secretary-General" means the Secretary-General of the Tribunal and includes any deputy of, or other person authorized by, the Secretary-General, the President or the plenary Tribunal to perform a function for which the Secretary-General is responsible.

(15) "Registrar-General" means the Registrar-General of the Tribunal and includes any deputy of, or other person authorized by, the Registrar-General, the President or the plenary Tribunal to perform a function for which the Registrar-General is responsible.

(16) The terms "national", "claims of nationals", "Iran" and the "United States" shall have the same meanings when used in the Tribunal Rules as the meanings defined in Article VII of the Claims Settlement Declaration.

(17) "Chosen by lot" and "determined by lot" mean choice by a lottery drawn by the President in the presence of the Secretary-General.

(18) "Case" means any proceeding arising out of a claim, counter-claim, dispute or question as to which the Tribunal has

jurisdiction pursuant to the Claims Settlement Declaration or which is submitted to the Tribunal pursuant to an agreement of the high contracting parties.

(19) "Counter-claim" means a counter-claim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of a claim and as to which the Tribunal has jurisdiction pursuant to the Claims Settlement Declaration.

III. SCOPE OF APPLICATION (ARTICLE I OF UNCITRAL RULES).

(1) For the purposes of Article 1, paragraph 1 of the UNCITRAL Rules and for all other purposes, the Claims Settlement Declaration constitutes an agreement in writing by Iran and by the United States, on their own behalfs and on behalf of their nationals, to submit to arbitration in accordance with the Claims Settlement Declaration.

(2) As used in Article 1 of the UNCITRAL Rules, the term "these Rules" means the UNCITRAL Rules as modified by or pursuant to the Claims Settlement Agreement, including the modifications made by the Tribunal Rules.

IV. DELIVERY AND FORM OF DOCUMENTS; NUMBERS OF COPIES;
CALCULATION OF PERIODS OF TIME (ARTICLE 2 OF UNCITRAL
RULES).

Article 2 of the UNCITRAL Rules is modified as follows:

(1) Filing and Service of Documents

(a) All documents (e.g., statements of claim, statements of defense, counter-claims and replies thereto, notices, communications, briefs, challenging requests, proposals or other written statements) must be filed with the Tribunal and served on all arbitrating parties as provided herein.

(b) All documents shall be filed by delivery to the Registrar-General. The Registrar-General may refuse to accept any document which is not received within the required time period or which does not comply with the Claims Settlement Declaration or with the UNCITRAL Rules, as modified by the Tribunal Rules. A document which the Registrar-General refuses to accept shall not be deemed to have been received for the purposes of the Tribunal Rules. Any such refusal by the Registrar-General is, upon objection by an arbitrating party concerned, subject to review by the arbitral tribunal.

(c) Filing of a document with the Tribunal shall be deemed to have been made when it is physically received by the Registrar-General.

(d) All documents filed in a particular case shall be served upon all arbitrating parties in that case. Service of a document on an arbitrating party shall be effected by one of the following procedures:

(i) Service may be effected by actual delivery to the Registrar-General, who shall then follow the procedures set forth in paragraph 1(e) of this Section 4. Such service upon the Registrar-General shall constitute service on all of the other arbitrating parties in the case and shall be deemed to have been received by said arbitrating parties when it is received by the Registrar-General; or

(ii) When the arbitral tribunal has so ordered in a particular case, service shall be effected by actual delivery to the authorized representative of an arbitrating party in the case. Service on such authorized representative shall be deemed to have been

received by said arbitrating party when it is physically delivered to the authorized representative. The arbitrating party making the service shall file copies with the Tribunal and shall at the same time deliver to the Registrar-General a signed statement, in a form specified by the Registrar-General, certifying that delivery was made to the authorized representative.

(e) When service of a document is effected by delivery to the Registrar-General as provided in paragraph 1(d)(i) of this Section IV, the Registrar-General shall within two business days after receiving a document physically deliver copies to the offices of each of the two Agents in The Hague as follows:

- (i) One copy to the Agent of the country of the arbitrating party which filed the document, plus one additional copy if there is another arbitrating party in that country.
- (ii) Two copies to the Agent of the country of the other arbitrating party, plus one additional copy for any additional arbitrating parties in that country.

(iii) Each Agent shall then be responsible for delivering one copy to each concerned arbitrating party in his country, or to the representative designated by each such arbitrating party to receive documents on its behalf.

2. Number of Copies

(a) Twelve copies of all documents shall be filed with the Registrar-General, unless otherwise determined by the arbitral tribunal. In the event that there are more than two arbitrating parties in a case, a sufficient number of additional copies shall be filed to permit service on all arbitrating parties in the case. Also, the arbitral tribunal, or the Registrar-General, may at any time require a party which files a document to submit additional copies. It is suggested (but not required) that documents be delivered by hand, by air courier service, or by registered mail with return receipt requested.

(b) Exhibits and written evidence shall be submitted in such numbers of copies as the arbitral tribunal may determine in each case based on the nature and volume of the

particular exhibit or written evidence and any other relevant circumstances.

(c) Upon the filing of a document, the Registrar-General shall note on all copies the date received. The Registrar-General shall issue a receipt to the arbitrating party which filed the document. In all cases in which the Registrar-General is required to deliver copies to the Agents he will secure a written receipt of such delivery which will be kept in the case file and be available for inspection or copying by any arbitrating party in that case.

3. Form of Documents

(a) All documents filed with the Registrar-General are to be submitted on paper 8 1/2 inches x 11 inches or on A-4 size paper (21 cm x 29.5 cm), or on paper no larger than A-4. If a document, exhibit or other written evidence cannot conveniently be reproduced on paper no larger than A-4, it is to be folded to A-4 size, unless the Registrar-General permits otherwise in special circumstances.

(b) Upon receiving a Statement of Claim, the Registrar-General shall assign an identifying number to the claim. Thereafter, that identifying number shall be included

in the caption of all documents in the case, including the award.

4. Periods of Time

(a) For purposes of calculating a period of time established or allowed by the UNCITRAL Rules, as modified by the Tribunal Rules, or as ordered by the arbitral tribunal, such period of time shall begin to run on the day following the day when a document is received.

(b) If a period of time for filing a document by an arbitrating party is established or allowed by the arbitral tribunal, the Secretary-General shall file a written notice of such period of time with the Registrar-General and the procedures set forth in paragraph 1(d) of this Section IV shall be followed.

(c) Periods of time established or allowed by the Tribunal Rules and as may be established by orders of the arbitral tribunal shall take into account, among other things, the time reasonably required to carry out the procedures specified in paragraphs 1(d) and 1(e) of this Section IV, the time required for mailings, and the time reasonably required for an arbitrating party to prepare the required document, as well as any other relevant circumstances.

(d) For purposes of calculating a period of time under Article 2, paragraph 2 of the UNCITRAL Rules as modified by the Tribunal Rules, "official holiday" and "non-business days" shall mean official holidays and non-business days observed generally at The Hague. The Secretary-General will issue a list of such days.

V. NOTICE OF ARBITRATION (ARTICLE 3 OF UNCITRAL RULES)

No Notice of Arbitration pursuant to Article 3 of the UNCITRAL Rules is to be given.

VI. REPRESENTATION AND ASSISTANCE (ARTICLE 4 OF UNCITRAL RULES)

Article 4 of the UNCITRAL Rules is modified as follows:

(1) The representative of each high contracting party shall be its Agent.

(2) Each arbitrating party which is not a high contracting party may appoint a representative. A person or law firm which is designated as a representative shall be deemed to be authorized to act before the arbitral tribunal on behalf of the appointing party for all purposes of the case and the acts of the representative shall be binding upon the appointing party.

When a representative is appointed all notices, communications and documents shall be served upon the representative rather than to the appointing party. A representative is not required to be licensed to practice law. Parties who appoint a representative shall file with the Registrar-General notice of appointment in such form as the Registrar-General may require.

(3) Arbitrating parties may also be assisted in proceedings before the arbitral tribunal by one or more persons of their choice. Persons chosen to assist who are not also appointed as representatives are not deemed to be authorized to act before the Tribunal on behalf of appointing party, to bind the appointing party or to receive notices, communications or documents on behalf of the appointing party. Any such assistant is not required to be licensed to practice law.

VII. COMPOSITION OF THE ARBITRAL TRIBUNAL SECTION II (ARTICLES 5-14) OF THE UNCITRAL RULES)

Section II (Articles 5-14) of the UNCITRAL Rules is modified as follows:

(1) Appointment of Members

(a) In view of the provisions of Article III of the Claims Settlement Declaration, Article 5 of the UNCITRAL Rules

does not apply.

(b) As used in Articles 6, 7 and 8 of the UNCITRAL Rules the terms "party" and "parties" refer to the high contracting parties.

(c) When the high contracting parties, in accordance with Article III, paragraph 1 of the Claims Settlement Declaration, agree that additional members are necessary to conduct the business of the Tribunal expeditiously, an equal number of ad hoc members, in multiples of three, shall be appointed by each of the three methods set forth in said Article of the Claims Settlement Declaration, it being understood that members of the plenary Tribunal appointed by the high contracting parties, rather than the ad hoc members, shall by agreement select the remaining third of the ad hoc members. Failing such agreement within thirty days after the appointment of the ad hoc members by the high contracting parties, the remaining third of the ad hoc members shall, as provided in the Claims Settlement Agreement, be appointed in accordance with the UNCITRAL Rules.

(2) The Composition and Function of Chambers;
Relinquishment of Cases by Chambers to the Plenary
Tribunal

(a) In accordance with Article III, paragraph 1 of the Claims Settlement Agreement, claims, counter-claims and

other questions may be decided by the plenary Tribunal or by a Chamber of three members as the President shall determine. The provisions of paragraphs 2(b), 2(c), 2(d), 2(e) and 2(f) of this Section VII set forth the determinations which have been made by the President in this regard.

(b) Each Chamber shall be composed of one member who was appointed by each high contracting party, and a third member who was appointed in accordance with Article III of the Claims Settlement Declaration. The third member shall act as the presiding member of the Chamber. The President will, within the foregoing framework, designate the persons who will constitute each Chamber.

(c) After each Statement of Claim is filed, the case shall be assigned to a Chamber in accordance with procedures established by the plenary Tribunal, except that all cases shall be assigned to the plenary Tribunal which involve a dispute between the high contracting parties to which the Tribunal has jurisdiction pursuant to Article II, paragraph 3 or Article VI, paragraph 4 of the Claims Settlement Declaration, or which relate to questions submitted to the Tribunal pursuant to agreement of the high contracting parties.

(d) When a claim assigned to a Chamber raises a

substantial question affecting the interpretation of the Claims Settlement Declaration or when a claim raises predominating and significant issues of law or fact which are also raised in other claims filed with the Tribunal, the Chamber may, at any time before a final award is made, relinquish its jurisdiction over the case to the plenary Tribunal. Alternatively, the plenary Tribunal may at any time before a final award is made, order that a Chamber shall relinquish jurisdiction of a case to the plenary Tribunal.

(e) The plenary Tribunal, having been seised of a case, may either retain jurisdiction over the whole case or may, after deciding on the question of interpretation of the Claims Settlement Declaration and/or the common issues of law or fact, order that the case be referred back to the Chamber which shall, in regard to the remaining part of the case, recover its original jurisdiction.

[Drafting Note: Paragraphs (d) and (e) above are largely based on Rule 48 of the European Court of Human Rights. See also par. 21(b) of the rules of the Koblenz Commission].

(f) At any time before hearings in a case have begun, the plenary Tribunal may transfer a case, or part of a case, from one Chamber to another Chamber. Reasons need not be given for a decision as to such a transfer.

(g) Promptly after a case has been assigned to a Chamber, transferred to another Chamber, relinquished to the plenary Tribunal or assigned back to a Chamber, the Registrar-General shall give notice thereof to the arbitrating parties in the case. When the notice relates to assignment, transfer or referral back to a Chamber, it shall include the identifying number of the Chamber and the names of its members.

(h) After notice has been given to the arbitrating parties by the Registrar-General that a case has been assigned, transferred or referred back to a Chamber, the caption of all documents filed by arbitrating parties in the case shall include the identifying number of the Chamber seised of the case. If the case is relinquished to the plenary Tribunal, the caption of all documents filed by arbitrating parties shall so indicate for so long as the plenary Tribunal is seised of the case.

3. Challenges to Members

(a) When any member of the arbitral tribunal obtains knowledge that any claim, counter-claim, or dispute before the arbitral tribunal involves circumstances likely to give rise to justifiable doubts as to his impartiality or independence with respect to a particular case, he shall disclose such circumstances to the President and to the arbitrating parties

in the case and, if appropriate, shall disqualify himself as to that claim, counter-claim or dispute.

[Drafting Note: This paragraph is based on the agreement of the Agents recorded in paragraph 6 of the Minutes of the Tribunal of July 1, 1981.]

(b) As used in Articles 9, 10, 11 and 12 of the UNCITRAL Rules, with respect to the initial appointment of a member the terms "party" and "parties" refer to the high contracting parties. After the initial appointment, the terms "party" and "parties" refer to the arbitrating parties in a particular case. Arbitrating parties may challenge only on the basis of the existence of circumstances which give rise to justifiable doubts as to the member's impartiality or independence with respect to the particular case involved, and not upon any general grounds which also relate to other parties. Challenges on such general grounds may only be made by a high contracting party.

(c) In applying paragraph 1 of Article 11 of the UNCITRAL Rules, the period for making a challenge to a member of a Chamber to which a case has been assigned shall be fifteen days after the challenging party is given notice identifying the members of the Chamber to which the case has been assigned, or after the circumstances mentioned in Articles 9 and 10 of the UNCITRAL Rules became known to that party. In the event

the case is relinquished by the Chamber to the plenary Tribunal, the period for challenging a member who is not a member of the relevant Chamber shall be fifteen days after the challenging party is given notice of the relinquishment, or after the circumstances mentioned in Articles 9 and 10 of the UNCITRAL Rules became known to that party.

(e) For the purposes of Articles 9, 10, and 11 of the UNCITRAL Rules, the following are among circumstances which are deemed not to give rise to justifiable doubts as to a member's impartiality or independence:

(i) Consultation with an Agent or other representative of a high contracting party shall not be deemed inconsistent with the impartiality or independence of a member so long as such consultations do not relate to the substance of particular claims, counter-claims or disputes that have been or may be brought before the Tribunal.

[Drafting Note: The above paragraph is based on the agreement of the Agents recorded in paragraph 5 of the Minutes of the Tribunal of July 1, 1981.]

(ii) Receipt by a member appointed by a high contracting party from that high contracting

party of secretarial, office, telephone or transportation or similar services, or reimbursement for the actual cost thereof.

(iii) A connection by a member to the country of which he is a citizen shall not, by itself, be deemed a circumstance which gives rise to justifiable doubts as to his impartiality or independence.

(iv) No circumstance shall be deemed to give rise to justifiable doubts as to a member's impartiality or independence in a particular case unless known to the member or called to his attention before he makes a decision or award in that case.

(v) The fact that a member's law firm works with or against another law firm which represents an arbitrating party shall not, by itself, be deemed a circumstance which gives rise to justifiable doubts as to the member's impartiality or independence.

(f) In the event a member is challenged with respect to a particular case and withdraws or if the challenge is

sustained, he shall continue to exercise his functions as a member for all other cases and purposes except in respect of that particular case.

[Drafting Note: The above paragraph is based on ICJ Rules, Article 13(2)]

(g) In the event a member of a Chamber who is challenged with respect to a particular case withdraws from that case, or if the challenge is sustained, the President will transfer the case to another Chamber.

(h) In the event the plenary Tribunal is seized of a particular case and a member is challenged with respect to that case and withdraws, or if the challenge is sustained, a substitute member shall be appointed to the plenary Tribunal for the purposes of that case in accordance with the procedures set forth in paragraph 4(b) of this Section VII.

4. Replacement or Substitution of A Member

(a) In applying the provisions of paragraph 2 of Article 13 of the UNCITRAL Rules, if the President, after consultation with the other members of the plenary Tribunal, determines that the failure of a member to act or his impossibility to perform his functions is due to a temporary illness or other circumstance expected to be of relatively

short duration, the member shall not be replaced but a substitute member shall be appointed in accordance with the provisions of paragraph 4(b) of this Section VII.

(b) Substitute members shall be appointed in accordance with the following procedures:

- (i) If ad hoc members have been appointed and are available, the substitute member shall be chosen by lot from among the ad hoc members who were appointed by the same method as the member being substituted.

- (ii) If no ad hoc members have been appointed or are available, the substitute member shall be appointed by the same one of the three methods set forth in Article III of the Claims Settlement Declaration as was used in choosing the member being substituted. For this purpose the appointing authority, if required, shall consist of the President and the member of the plenary Tribunal not appointed by one high contracting party, who takes precedence according to paragraph 7 of this Section VII, Re Precedent and said senior member shall act unanimously after

consultation with the other available members of the plenary Tribunal. If the President and said senior member are not available for this purpose, or cannot reach unanimity, the appointing authority shall be determined in the same manner as provided for in Article 12, paragraph 1 of the UNCITRAL Rules.

5. Repetition of Hearings in the Event of Replacement or Substitution of a Member

(a) Notwithstanding the provisions of Article 14 of the UNCITRAL Rules, if a member of the plenary Tribunal or of a Chamber is replaced or substituted, the arbitral tribunal shall determine whether all, any part or none of any previous hearings shall be repeated. If no tape-recording or transcript is available, the hearing, or portion of hearing, for which there is no tape-recording or transcript shall be repeated, unless the arbitrating parties jointly submit an agreed written statement of facts and other relevant matters concerning the hearing in place of such transcript.

6. President

(a) The President shall preside at all meetings of

the plenary Tribunal. He shall have the functions and responsibilities set forth in the Claims Settlement Declaration and in the UNCITRAL Rules as modified by the Tribunal Rules, and shall have such other functions and responsibilities as the plenary Tribunal may delegate to him. He shall direct the work and supervise the administration of the Tribunal, subject to any directions or policies adopted by the plenary Tribunal. In performing his functions and responsibilities the President shall, to the extent he considers appropriate, consult with various members of the plenary Tribunal and the Agents.

(b) In the event of a vacancy in the office of President or the inability of the President to exercise the functions and responsibilities of the presidency, these functions and responsibilities shall be exercised by the member not appointed by one high contracting party who takes precedence according to Paragraph 7 of this Section VII, or failing him, by the third member not appointed by one high contracting party.

(c) The President shall take the measures necessary in order to assure the continuous exercise of the functions and responsibilities of the presidency. In the event of his absence, he may, so far as is compatible with the Tribunal Rules, arrange for these functions to be exercised by the member not appointed by one high contracting party who takes

precedence according to Paragraph 7 of this Section VII, or failing him, by the third member not appointed by one high contracting party.

7. Precedence

(a) Members of the plenary Tribunal shall take precedence after the President as follows:

(i) The members not appointed by one of the high contracting parties.

(ii) The members appointed by each high contracting party.

(iii) Any ad hoc substitute members.

Within each of the foregoing groups, members shall take precedence according to their seniority in office, and, if of equal seniority in office, according to their ages.

(b) All members of the plenary Tribunal in office at its first session on July 1, 1981 shall be deemed to have the same seniority in office.

(c) The order of voting by the plenary Tribunal shall

be in accordance with procedures adopted by the plenary Tribunal.

[Drafting Note: Above based on European Court of Human Rights, Rule 5. See also Koblenz Commission, Rule 5]

VIII. ARBITRAL PROCEEDINGS SECTION III (ARTICLES 15-30) OF THE UNCITRAL RULES

Section III (Articles 15-30) of the UNCITRAL Rules is modified as follows:

(1) General Provisions

(a) For the purposes of Article 15 of the UNCITRAL Rules, the terms "party" and "parties" refer to the arbitrating parties.

(b) In applying paragraph 2 of Article 15, the arbitral tribunal shall determine without hearing any written requests or objections of the concerned arbitrating parties arising under the following provision of the UNCITRAL Rules, unless it grants or invites oral argument in special circumstances: Article 19, paragraph 3 (delay in making counter-claim); Article 20 (amendment of claim or defense); Article 22 (further written statements); Article 23 (periods of

time); Articles 24 and 25 (evidence and hearings); Article 26 (interim measures of protection); Article 27 (experts).

(c) In complying with paragraph 3 of Article 15, an arbitrating party shall follow the procedures set forth in Section IV, paragraph 1(c) of the Tribunal Rules.

(2) Place of Arbitration

(a) For the purposes of Article 16 of the UNCITRAL Rules, "parties" means the high contracting parties.

(b) Pursuant to Article VI of the Claims Settlement Declaration, the seat of the Tribunal shall be The Hague, the Netherlands.

(3) Language

(a) For the purposes of Article 17 of the UNCITRAL Rules, "parties" means the high contracting parties.

(b) In accordance with an agreement of the Agents, English and Farsi shall be the official languages to be used in the arbitration proceedings, and these languages shall be used for all oral hearings, decisions and awards.

(c) In accordance with the provisions of Article 17 of the UNCITRAL Rules, the following documents filed with the Tribunal shall be submitted in both English and Farsi, unless otherwise agreed by the arbitrating parties:

- (i) The Statement of Claim and any documents and references annexed thereto or included therein.
- (ii) The Statement of Defense, and any counter-claim, including any documents and references annexed thereto.
- (iii) The reply to any counter-claim.
- (iv) Any further written statements (e.g. replies, rejoinders, briefs) which the arbitral tribunal may require or permit the arbitrating parties to present.
- (v) Any written request to the arbitral tribunal to take action or any objection thereto.
- (vi) Any challenge to a member.

(vii) Any notice of appointment of an authorized representative.

(d) The arbitral tribunal shall determine in each particular case what other documents, documentary exhibits and written evidence, or what parts thereof, shall be submitted in both English and Farsi.

(e) Every translation submitted to the arbitral tribunal shall be certified as a faithful translation by the arbitrating party which submits it, or by his authorized representative. Any disputes regarding translations shall be resolved by the arbitral tribunal.

(4) Statement of Claim

(a) No claims with respect to which the Tribunal has jurisdiction pursuant to paragraphs 1 and 2 of Article II of the Claims Settlement Declaration may be filed before October 20, 1981.

(b) Pursuant to Article III, paragraph 4 of the Claims Settlement Declaration, January 19, 1982 is the last day for filing claims of nationals of the United States and Iran pursuant to Article II, paragraph 1 of that Declaration, or for filing of official claims of the United States and Iran against

each other arising out of contractual arrangements between them for the purchase and sale of goods and services as to which the Tribunal has jurisdiction pursuant to Article II, paragraph 2 of that Declaration.

(c) The party initiating recourse to arbitration before the Tribunal (the "claimant") shall do so by filing a Statement of Claim. Notwithstanding the provisions of Article 18 of the UNCITRAL Rules, each Statement of Claim shall contain the following particulars:

- (i) A demand that the dispute be referred to arbitration by the Tribunal;
- (ii) The names and last known addresses of the parties;
- (iii) A reference to the debt, contract (including transactions which are the subject of letters of credit or bank guarantees) expropriations or other measures affecting property rights out of or in relation to which the dispute arises and as to which the Tribunal has jurisdiction pursuant to Article II, paragraph 1 of the Claims Settlement Declaration;

- (iv) The general nature of the claim and an indication of the amount involved, if any;
- (v) A statement of the facts supporting the claim;
- (vi) The points at issue;
- (vii) The relief or remedy sought;
- (viii) If the Claimant has appointed a lawyer or other person for purposes of representation or assistance in connection with the claim, the name and address of such person and an indication whether the appointment is for purposes of representation or assistance;
- (ix) The name and address of the person to whom communications should be sent on behalf of the Claimant (only one such person shall be entitled to be sent communications).

It is advisable that claimants (i) annex to their Statements of Claim such documents as will serve clearly to establish the basis of the claim, and/or (ii) add a reference and summary of

relevant portions of such documents, and/or (iii) include in the Statement of Claim quotations of relevant portions of such documents.

[Drafting Note: The paragraph above repeats Administrative Directive No. 1. It is included here as a convenience to the readers and because, in accordance with the pattern of the UNCITRAL Rules, the paragraph on Statement of Defense below makes cross-references to this material.]

(e) In the event that the high contracting parties agree to submit a dispute or question to the Tribunal for decision, the plenary Tribunal may, after consultation with the Agents, dispense with the requirements of a statement of claim and statement of defense as set forth herein and may, instead, provide for the case to be initiated by another form of document or by exchanges of other documents.

(e) All Statements of Claim with respect to matters as to which the Tribunal has jurisdiction pursuant to paragraphs 1 and 2 of Article II of the Claims Settlement Declaration which are filed between October 20 and November 19, 1981 shall be deemed to have been filed simultaneously as of October 20, 1981. All such claims filed between November 20, 1981 and December 19, 1981 shall be deemed to have been filed simultaneously as of November 20, 1981. All such claims filed between December 20, 1981 and January 20, 1982 shall be deemed to have been filed simultaneously as of December 20, 1982.

(5) Statement of Defense

(a) With respect to claims of \$250,000 or more, the respondent shall file its Statement of Defense in accordance with the following time schedule:

<u>Statement of Claim Filed</u>	<u>Last Day to File Statement of Defense</u>
October 20-November 19, 1981	January 20, 1982
November 20-December 19, 1981	February 20, 1982
December 20-January, 1982	March 20, 1982

(b) In the event that the foregoing schedule would require filing more than fifty Statements of Defense in any 60-day period, with respect to any agency, instrumentality or entity of Iran or the United States, the Registrar-General shall establish a schedule providing for 50 Statements of Defense to be filed as to such agency, instrumentality or entity in each 60-day period until all Statements of Defense have been filed, provided that all Statements of Defense shall be filed no later than May 20, 1982. Such schedule shall be based on an order of priority determined by lot. The choices by lot shall be made on November 23 with respect to Statements of Claims filed before November 20, on December 23 with respect to Statements of Claim filed before December 20, and on January 23 with respect to Statements of Claim filed before January 20. The Registrar-General shall notify the concerned arbitrating parties of the schedule.

(c) With respect to claims of less than \$250,000, in the event that any such claims have not been settled by Iran and the United States before March 20, 1982, the plenary Tribunal will thereafter establish a time schedule for filing Statements of Defense in connection with any unsettled claims.

(d) The Statement of Defense shall reply to the particulars (v), (vi) and (vii) of the Statement of Claim (see Section VIII, paragraph 4(c) of the Tribunal Rules). It is advisable that respondents annex to their Statements of Defense such documents as will serve clearly to establish the basis of defense, and/or (ii) add a reference and summary of the relevant portions of such documents, and/or (iii) include in the Statement of Defense quotations of relevant portions of such documents.

(e) Any counter-claim authorized by the Claims Settlement Declaration shall be included in the Statement of Defense, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances.

(f) The provisions of Section VIII, paragraph 4(c) of the Tribunal Rules apply to any counter-claim. In the event of a counter-claim by the respondent, the claimant shall have the

right to reply and the provisions of paragraph 5(d) of Section VIII shall apply to the reply.

(6) Amendments to the Claim of Defense

(a) For the purposes of Article 20 of the UNCITRAL Arbitration Rules, "party" means an arbitrating party.

(7) Further Written Statements

(a) For the purposes of Article 22 of the UNCITRAL Rules, the terms "party" and "parties" refer to the arbitrating parties.

(8) Periods of Time

(a) The provisions of Article 23 of the UNCITRAL Rules do not apply to the period of time for filing a Statement of Claim, Statement of Defense or counter-claim.

(9) Evidence and Hearings

(a) For the purposes of Articles 24 and 25 of the UNCITRAL Rules, the terms "party" and "parties" refer to the arbitrating parties.

(b) In applying paragraph 2 of Article 24, the arbitral tribunal will require each arbitrating party to deliver within such period as the arbitral tribunal shall decide, a summary of the documents and other evidence which that arbitrating party intends to present in support of his case. Such summary is not required to include any documents or other evidence which an arbitrating party may later decide to present to rebut evidence presented by the other arbitrating party. However, a summary of any such rebuttal documents or other rebuttal evidence shall be delivered to the arbitral tribunal and to the other arbitrating parties promptly after the decision to present them has been made.

(c) The period referred to in paragraph 2 of Article 25 of the UNCITRAL Rules for communicating, if witnesses are to be heard, the names and addresses of witnesses etc., shall be at least thirty days. The information concerning witnesses which an arbitrating party must communicate pursuant to said paragraph 2 is not required with respect to any witnesses which an arbitrating party may later decide to present to rebut evidence presented by the other arbitrating party. However, such information concerning any rebuttal witness shall be communicated to the tribunal and the other arbitrating parties promptly after the decision to present them has been made.

(d) With respect to paragraph 3 of Article 25, the

Secretary-General shall make arrangements for a tape-recording of each hearing, which shall be kept in the archives of the Tribunal. Any arbitrating party may purchase copies of transcripts of the tape-recording upon payment to the Registrar-General of the cost of making such transcripts, including the cost of making two copies which the Registrar-General shall retain for the use of the arbitral tribunal.

(e) As used in paragraph 4 of Article 25 of the UNCITRAL Rules, parties means the high contracting parties. Notwithstanding the provisions of that paragraph, the arbitral tribunal may at its discretion permit representatives of arbitrating parties in other cases which present similar issues of fact or law to be present to observe all or part of the hearing in a particular case, subject to the prior approval of the arbitrating parties in the particular case.

(f) In applying paragraph 4 of Article 25 of the UNCITRAL Rules, the following provisions shall determine the manner in which witnesses are examined:

(i) Before giving any evidence each witness shall make the following declaration: "I solemnly declare upon my honor and

conscience that I will speak the truth, the whole truth and nothing but the truth".

- (ii) Witnesses, including experts, may be examined by the presiding member and the other members of the arbitral tribunal. Also, they may, subject to the control of the presiding member, be examined by the representative or counsel of the arbitrating parties.

[Drafting Note: The above sub-paras (i) and (ii) are closely based on European Court of Human Rights Rules 40 and 42; also Koblenz Commission Rules 45(a) and 45(b)]

(g) The Secretary-General shall draft minutes of each hearing. After each member of the arbitral tribunal present at the hearing has been given the opportunity to comment on the draft minutes, the minutes, with any corrections approved by a majority of members who were present, shall be signed by the President and the Secretary-General. Copies of the minutes shall be given to each arbitrating party, or to its authorized representative. Minutes and orders of the arbitral tribunal may be corrected by the arbitral tribunal nunc pro tunc.

(10) Meaning of "Party" in Articles 26-30

(a) As used in Articles 26-30 of the UNCITRAL Rules, the terms "party" and "parties" refer to the arbitrating parties.

(11) Experts

(a) In applying paragraph 4 of Article 27 of the UNCITRAL Rules, any arbitrating party may present at a hearing expert witnesses in order to testify on the points at issue regardless of whether or not the arbitral tribunal has appointed an expert witness or such expert has testified at the same hearing.

(b) Every expert before making any statement shall make the following declaration: "I solemnly declare upon my honor and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief".

[Drafting Note: Above based on ICJ practice]

(12) Coordination of Cases

(a) In order to provide for the economic and efficient management of cases, taking into account the disadvantages of

duplicative or inconsistent decisions and awards, the plenary Tribunal may make such orders as it considers appropriate to coordinate cases which raise predominating and significant common questions of law or fact. The plenary Tribunal may take such action upon its own motion or after suggestions by one or more Chambers, or by arbitrating parties. Such coordination may take various forms including, but not limited to, the following:

- (i) Transferring cases, or parts of cases, to the same Chamber.
- (ii) Ordering that cases, or parts of cases, be joined so that all of the arbitrating parties in the joined case may participate therein.
- (iii) Ordering that parts of cases be severed and tried separately.
- (iv) Ordering that any issue of fact or law be tried separately and before the trial of the remaining issues.
- (v) Taking steps designed to encourage lawyers in cases which raise significant common questions of fact or law to make

presentations through committees or by a single designated representative in order to avoid duplicative effort and to expedite the disposition of cases.

(13) Amicus Curiae

The arbitral tribunal may, at its discretion, accept briefs by an amicus curiae and permit oral argument by an amicus curiae. In order to expedite consideration by the Tribunal and to avoid needless reputation and expense, those who desire to be amicii curiae and who share common views are encouraged to present joint briefs and oral arguments through a committee or by a single representative, but are not required to do so. A request to present a brief as amicus curiae shall be in writing and shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A request by an amicus curiae to present an oral argument shall be in writing and shall state any special reasons why an oral argument is desirable.

(14) Pre-hearing Conference

(a) As promptly as practicable after arbitration has been initiated, the Chamber to which the case has been assigned will order the arbitrating parties to appear for a pre-hearing

conference. Where a case is assigned initially or relinquished to the plenary Tribunal, it will conduct the pre-hearing conference or may delegate that function to an existing or a special Chamber. The pre-hearing conference will usually be ordered after the Statement of Defense has been filed, but a preliminary pre-hearing conference may be ordered earlier if the circumstances of the case make that desirable.

(b) The purpose of the pre-hearing conference is to expedite the preparation of the case for trial and to assist in finding ways to dispose of the case promptly and economically.

(c) At the pre-hearing conference the following matters will be considered:

- (i) Issues: Whether the legal and factual issues in the case have been clearly defined. If not, steps will be taken to clarify the issues.
- (ii) Relief Sought: Whether the relief or remedy sought and the basis for it have been clearly set forth. If not, steps will be taken to do so.
- (iii) Jurisdiction: Whether there are any objections to the jurisdiction of the

arbitral tribunal which should be ruled on as a preliminary question. If so, whether the procedural issues are similar to such issues in other cases before the Tribunal.

- (iv) Preliminary Issues: Whether there are any other issues which should be dealt with as preliminary questions (e.g., should issues of liability and damages be tried separately).

- (v) Coordination: Whether the trial of the case should be co-ordinated with other cases which raise common issues of law or fact. If so, consideration of the applicability of the types of coordination described in paragraph 12 of Section VIII of these Rules.

- (vi) Other cases. Whether the arbitrating parties have, or expect to have, other cases between them before the Tribunal. Whether the claimant intends to file any additional claims against the respondent or against any other party arising out of the same contract, transactions or factual circumstances.

- (vii) Counsel: Whether counsel for the arbitrating parties have taken, or intend to take, steps to coordinate their activities with counsel in any other cases which raise common issues.
- (viii) Settlement: Whether efforts have been made to settle the case. The status of any settlement discussions. Whether there are any plans for further settlement discussions and, if not, why not. The likelihood of a settlement.
- (ix) Further Written Statements: Whether the arbitrating parties intend to request permission to submit a reply and a rejoinder in addition to the Statements of Claim and the Statement of Defense. (Such permission will be granted only if special circumstances exist which strongly demonstrate the submission of a reply and rejoinder will expedite, rather than delay, the trial of the case.) Whether pre-trial briefs or other written statements will be required or permitted. If any such further written statements are to be submitted, fixing a schedule. (See UNCITRAL Rules, Article 72).

- (x) Stipulations of Fact: Whether the arbitrating parties have made efforts to agree upon a statement of those facts which are not in dispute. If not, fixing a schedule for preparing such a stipulation in order to simplify the trial.

- (xi) Summary of Evidence: Fixing a schedule for submission by each arbitrating party of a summary of the documents or other evidence which it intends to present. (See UNCITRAL Rules, Article 24, paragraph 2).

- (xii) Required Evidence: What documents, exhibits or other evidence the arbitral tribunal may require the parties to produce, and fixing a schedule for such submissions. (See UNCITRAL Rules, Article 25, paragraph 3).

- (xiii) Summaries of Evidence: The desirability of presenting voluminous or complicated data through written or oral summaries, tabulations, charts, graphs or extracts in order to save time and costs of translation. If so, fixing a schedule so that the underlying data can be made available to the

opposing party to permit verification before the hearing.

- (xiv) Translations: What steps can be taken to limit the need for translation of documentary evidence in order to save time and cost. Fix a schedule so that translations of documents to be presented in evidence will be submitted to the other party sufficiently far in advance to permit verification of accuracy before the hearing.

- (xv) Experts: Whether the appointment of an expert by the arbitral tribunal is required, and if so the expert's terms of reference. Whether the arbitrating parties intend to present experts, and if so the areas of expertise.

- (xvi) Hearings: Fix the schedule of hearings; when they will begin and how long they are expected to last. Consider the order of presentations of arguments and evidence at the hearings.

- (xvii) Other appropriate matters.

(d) The lawyers or other representatives of the arbitrating parties are encouraged to communicate with each other before the pre-trial conference and attempt to reach agreement upon as many as possible of the subjects to be considered at the conference. They should, in any event, be prepared to discuss at the pre-hearing conference each of the points described in paragraph 14(c) of this Section VIII.

(e) While efforts will be made to conclude all of the matters to be considered at one pre-trial conference, the arbitral tribunal will order additional pre-trial conferences whenever that appears desirable.

(f) The Secretary-General will prepare minutes of the pre-trial conference. The procedures described in paragraph 9(g) of this Section VIII shall govern such minutes.

(g) Following the pre-trial conference, the arbitral tribunal may make one or more pre-trial orders relating to the matters considered.

(15) Scheduling of Hearings

(a) Hearings will be scheduled by the arbitral tribunal in the order in which cases become fully ready for

trial so that hearings can continue from day to day until completed. Priority in hearings will generally be given to fully ready cases in the following order:

- (i) Disputes between the high contracting parties as to which the Tribunal has jurisdiction pursuant to Article II, paragraph 3, or Article VI, paragraph 4 of the Claims Settlement Declaration, or other questions submitted to the Tribunal pursuant to agreement of the high contracting parties.

- (ii) Cases, or parts of cases, which raise predominant and significant common issues of law or fact and which are present in many other cases as to which The Tribunal has jurisdiction. Among such cases, further priority will be given to those in which the arbitrating parties and their counsel have, in the opinion of the arbitral tribunal, been most effective in achieving coordination of the kinds referred to in paragraph 12 of this Section VIII.

- (iii) A hearing, to the extent one is considered desirable by the arbitral tribunal, in order

to determine the acceptability of a settlement in the form of an arbitral award on agreed terms, as provided for in Article 34, paragraph 1 of the UNCITRAL Rules.

(iv) Official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services as to which The Tribunal has jurisdiction pursuant to Article II, paragraph 2 of the Claims Settlement Declaration.

(v) Other cases.

(c) In the event that cases of the same priority before the same Chamber or before the plenary Tribunal are fully ready for trial at the same time, the order of hearings will be determined by lot.

IX. THE AWARD SECTION IV (ARTICLES 31-41) OF THE UNCITRAL RULES

Section IV (Articles 32-41) of the UNCITRAL Rules is modified as follows:

(1) Decisions

In applying Article 31 of the UNCITRAL Rules:

(a) Any award or other decision of an arbitral tribunal shall be made by a majority of its members.

(b) When a Chamber is seised of a case and there is no majority, the case shall be relinquished to the plenary Tribunal. The extent, if any, to which hearings in the case will be repeated will be determined in accordance with the provisions set forth in paragraph 5 of Section VII of these Rules.

(c) The arbitral tribunal shall deliberate in private. Its deliberations shall be and remain secret. Only the members of the arbitral tribunal shall take part in the deliberations. The Secretary-General may be present. No other person may be admitted except by special decision of the arbitral tribunal. Any question which is to be voted upon shall be formulated in precise terms in English and Farsi and the text shall, if a member so requests, be distributed before the vote is taken. The minutes of the private sittings of the arbitral tribunal shall be secret; they shall be limited to a record of the subject of discussions, the names of the persons present and the number of members voting for or against a motion.

[Drafting Note: Above paragraph based closely on European Court of Human Rights, Rule 19]

(2) Form and Effect of Award

(a) As used in Article 32 of the UNCITRAL Rules, parties means the arbitrating parties.

(b) Notwithstanding the provisions of paragraph 5 of Article 32 of the UNCITRAL Rules, all awards shall be made public. Upon the request of one or more arbitrating parties, the arbitral tribunal may determine under special circumstances that it will not make the entire award public but will make public only portions of the award from which the identity of the parties and other identifying facts have been deleted.

(c) Paragraph 7 of Article 32 of the UNCITRAL Rules does not apply.

(3) Applicable Law

(a) Article 33 of the UNCITRAL Rules is superseded by Article V of the Claims Settlement Declaration which states: "The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to

be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

(4) Meaning of "Party" in Articles 34-37

(a) As used in Articles 34 through 37 of the UNCITRAL Rules, the terms "party" and "parties" refer to the arbitrating parties.

5. Costs

(a) In applying Article 38, subparagraph (c) of the UNCITRAL Rules the term "other assistance required by the arbitral tribunal" includes all of the costs of the secretariat of the Tribunal including, but not limited to, the rental of facilities; the purchase of equipment and supplies; the fees and expenses of the Secretary-General, the Registrar-General and other members of the secretariat staff; payments and reimbursements to the Permanent Court of Arbitration at the Hague for services to the Tribunal; the costs of telephone, telex and mail; and other expenses incidental to the operation of the Tribunal and its headquarters.

(b) As used in Article 39, of the UNCITRAL Rules, "party" means high contracting party.

(c) Notwithstanding the provisions of paragraph 1 of Article 40 or the UNCITRAL Rules, the costs of the Tribunal as set forth in subparagraphs (a), (b), (c) and (f) of Article 38 shall be borne equally by the two high contracting parties in accordance with Article VI, paragraph 3 of the Claims Settlement Agreement. In applying paragraph 1 of Article 40, the costs of arbitration to be borne by the unsuccessful arbitrating party consists of the costs set forth in subparagraphs (d) and (e) of Article 38 and the costs of making tape-recordings of hearings and any transcripts thereof which the arbitral tribunal determines should be made. As used in Article 40, the terms "party" and "parties" refer to the arbitrating parties.

6. Deposit of Costs

(a) As used in Article 41 of the UNCITRAL Rules, the terms "party" and "parties" refer to the high contracting parties.

(b) In applying paragraph 5 of Article 41 of the UNCITRAL Rules, the accounting referred to therein shall be made promptly following the end of each fiscal year of the Tribunal and a final accounting shall be made as promptly as practicable after the Tribunal completes its work on all claims and other cases and discontinues its secretariat and operations.

X. GENERAL RULES

(1) These Tribunal Rules may be modified or supplemented by the plenary Tribunal.

(2) Any points of procedure not covered by the Claims Settlement Declaration, or by the UNCITRAL Rules, or by the Tribunal Rules will be decided by the plenary Tribunal or one of the Chambers when occasion arises.

[Drafting Note: This paragraph is based on the Koblenz Commission Rules, paragraph 77]

(3) Effective _____, 1981 the address of the Tribunal headquarters is:

Iran-United States Claims Tribunal
Parkweg _____
_____ The Hague
The Netherlands

Telephone: (07) _____
Telex:

Before _____, 1981 the address of the Tribunal headquarters is:

Peace Palace
The Hague
The Netherlands

Telephone: _____

(4) The offices of the Secretary-General and the Registrar-General are at the Headquarters of the Tribunal.

(5) Hearings and other sessions of the Tribunal will be held at the Peace Palace, The Hague, unless otherwise stated in the notice of the session.

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