

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1981 Nr. 155

A. TITEL

*Notawisseling tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Verenigde Staten van Amerika houdende een overeenkomst betreffende een garantiefonds in verband met de beslechting van bepaalde geschillen tussen de Verenigde Staten van Amerika en Iran, met bijlage;
's-Gravenhage, 10 juli 1981*

B. TEKST

Nr. I

EMBASSY OF THE UNITED STATES
OF AMERICA

No. 59

The Embassy of the United States of America at The Hague presents its compliments to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and has the honour to refer to the consultations between representatives of the Governments of the United States of America and the Kingdom of the Netherlands relating to the selection of De Nederlandsche Bank at Amsterdam by the Governments of the Islamic Republic of Iran and the United States of America as a mutually agreeable central bank within the meaning of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

During the course of these consultations a number of rules have been drawn up relating to the foregoing matter, with the intention of incorporating them in a host State convention to be concluded with the Kingdom of the Netherlands on behalf of the Iran-United States Claims Tribunal. However, it would appear to be desirable, in anticipation of the conclusion in due course of the more comprehensive convention, to lay down the rules in question in a separate agreement.

If the selection of De Nederlandsche Bank as well as the relevant rules, set out in the Annex to this Note, are acceptable to the Government of the Kingdom of the Netherlands, the Embassy proposes that this Note together with the affirmative Note of reply of the Ministry constitute an Agreement between the United States of America and the Kingdom of the Netherlands which shall enter into force on the date of the Note of reply.

Attachment: Annex

The Embassy of the United States of America
The Hague, July 10, 1981

Annex

Article 1

(1) The Governments of the Islamic Republic of Iran and the United States of America, desiring to give effect to certain provisions of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981, have selected, as a mutually agreeable central bank, De Nederlandsche Bank at Amsterdam, to assume the management of a bank which shall act as Depositary of the funds in the Security Account established by the foregoing Declaration.

(2) The Netherlands Government concurs in the appointment of De Nederlandsche Bank for this task, subject to the provisions of the present Agreement and subject to agreement being reached among the competent authorities or central banks of the other States concerned and De Nederlandsche Bank and the Depositary on the conditions subject to which the latter shall carry out their tasks. The agreement or agreements reached by De Nederlandsche Bank and the Depositary on this matter with the authorities or central banks of the other States shall hereafter be referred to as the "Technical Agreements."

(3) Having regard to the international and public nature of the foregoing tasks entrusted to De Nederlandsche Bank and the Depositary, those banks shall, in performing their functions, enjoy immunity from jurisdiction in each of the Contracting States as described below.

Article 2

(1) The Security Account is to be opened by the Depositary on its books in the name of the Banque Centrale d'Algérie, as Escrow Agent.

(2) The Security Account may consist of one or more accounts as may be provided for in the Technical Agreements.

(3) The Security Account has as its sole purpose to hold funds in order to secure the payment of, and to pay, claims in accordance with awards rendered by the Tribunal pursuant to 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, of 19 January 1981, and in accordance with the Technical Agreements.

(4) The sole function of the Depository shall be to carry out the responsibilities specified in the present Agreement and in the Technical Agreements. Funds held by the Depository shall not be invested in the United States of America or in Iran.

Article 3

Payments from the Security Account shall be made and the Account shall be closed in accordance with rules to be set forth in the Technical Agreements.

Article 4

The Depository is responsible to the Banque Central d'Algérie as Escrow Agent, and to the other parties to the Technical Agreements, for the management of the Security Account, in accordance with rules to be set forth in the Technical Agreements.

Article 5

The funds held in the Security Account and the funds in turn deposited with third parties by the Depository are immune from attachment in each of the Contracting States.

Article 6

Except as otherwise provided for in the present Agreement or in the Technical Agreements concluded by De Nederlandsche Bank or the Depository, De Nederlandsche Bank and the Depository shall enjoy immunity from the jurisdiction of the Contracting States, in accordance with their laws, in respect of claims relating to:

- a) the presence in the Netherlands of the funds in the Security Account;
- b) the assistance given by De Nederlandsche Bank or the Depository in setting up and managing the Security Account;
- c) actions performed or omitted by De Nederlandsche Bank or the Depository in carrying out the tasks entrusted to them in accordance with the present Agreement.

Article 7

Judgments by foreign courts and writs of execution, insofar as they relate to claims as defined in Article 6 against De Nederlandsche Bank or against the Depositary, shall not be enforced or otherwise implemented within the territory of the Contracting States.

Article 8

If De Nederlandsche Bank or the Depositary appears before the courts in order to assert immunity, it shall not thereby be deemed to have waived immunity.

*The Ministry of Foreign Affairs
of the Netherlands
The Hague*

Nr. II

MINISTRY OF FOREIGN AFFAIRS

The Hague

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America at The Hague and has the honour to acknowledge receipt of the Note of 10 July 1981 of the Embassy, the text of which reads as follows:

(Zoals in Nr. I)

The Ministry has the honour to confirm that the contents of the Note and its Annex are acceptable to the Government of the Kingdom of the Netherlands and that the Note together with this Note constitute an Agreement between both Governments which shall enter into force on the date of this Note.

The Hague, 10 July 1981

*To the Embassy of the
United States of America
at
The Hague*

D. PARLEMENT

De in de nota's vervatte overeenkomst behoeft ingevolge artikel 62, tweede lid, juncto artikel 60, tweede lid, van de Grondwet de goedkeuring der Staten-Generaal.

G. INWERKINGTREDING

De bepalingen van de in de nota's vervatte overeenkomst zijn op 10 juli 1981 in werking getreden.

Wat het Koninkrijk der Nederlanden betreft, geldt de overeenkomst alleen voor Nederland.

J. GEGEVENS

De tekst van de Verklaring van de Regering van de Democratische Volksrepubliek Algerije van 19 januari 1981, naar welke Verklaring in de tekst van de onderhavige nota's wordt verwezen, luidt als volgt:

Declaration of the Government of the Democratic and Popular Republic of Algeria

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the four points stated in the resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran. On the basis of formal adherences received from Iran and the United States, the Government of Algeria now declares that the following interdependent commitments have been made by the two governments:

GENERAL PRINCIPLES

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

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

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

Point I: Non-Intervention in Iranian Affairs

1. 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.

Points II and III: Return of Iranian Assets and Settlements of U.S. Claims

2. Iran and the United States (hereinafter "the parties") will immediately select a mutually agreeable central bank (hereinafter "the Central Bank") to act, under the instructions of the Government of Algeria and the Central Bank of Algeria (hereinafter "the Algerian Central Bank") as depository of the escrow and security funds hereinafter prescribed and will promptly enter into depository arrangements with the Central Bank in accordance with the terms of this declaration. All funds placed in escrow with the Central Bank pursuant to this declaration shall be held in an account in the name of the Algerian Central Bank. Certain procedures for implementing the obligations set forth in this Declaration and in the Declaration of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States and the Government of the Islamic Republic of Iran (hereinafter "the Claims Settlement Agreement") are separately set forth in certain Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Democratic and Popular Republic of Algeria.

3. The depository arrangements shall provide that, in the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will thereupon instruct the Central Bank to transfer immediately all monies or other assets in escrow with the Central Bank

pursuant to this declaration, provided that at any time prior to the making of such certification by the Government of Algeria, each of the two parties, Iran and the United States, shall have the right on seventy-two hours notice to terminate its commitments under this declaration.

If such notice is given by the United States and the foregoing certification is made by the Government of Algeria within the seventy-two hour period of notice, the Algerian Central Bank will thereupon instruct the Central Bank to transfer such monies and assets. If the seventy-two hour period of notice by the United States expires without such a certification having been made, or if the notice of termination is delivered by Iran, the Algerian Central Bank will thereupon instruct the Central Bank to return all such monies and assets to the United States, and thereafter the commitments reflected in this declaration shall be of no further force and effect.

ASSETS IN THE FEDERAL RESERVE BANK

4. Commencing upon completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank of all gold bullion which is owned by Iran and which is in the custody of the Federal Reserve Bank of New York, together with all other Iranian assets (or the cash equivalent thereof) in the custody of the Federal Reserve Bank of New York, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3 above.

ASSETS IN FOREIGN BRANCHES OF U.S. BANKS

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

ASSETS IN U.S. BRANCHES OF U.S. BANKS

6. Commencing with the adherence by Iran and the United States to this declaration and the claims settlement agreement attached hereto, and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing security account specified in that agreement and Paragraph 7 below, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank, within six

months from such date, of all Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3.

7. As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the Central Bank, until the balance in the security account has reached the level of \$1 billion. After the \$1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the claims settlement agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the security account has fallen below \$500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of \$500 million in the account. The account shall be so maintained until the President of the Arbitral Tribunal established pursuant to the claims settlement agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the claims settlement agreement, at which point any amount remaining in the security account shall be transferred to Iran.

OTHER ASSETS IN THE U.S. AND ABROAD

8. Commencing with the adherence of Iran and the United States to this declaration and the attached claims settlement agreement and the conclusion of arrangements for the establishment of the security account, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in Paragraph 5 and 6 above, to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

9. Commencing with the adherence by Iran and the United States to this declaration and the attached claims settlement agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

NULLIFICATION OF SANCTIONS AND CLAIMS

10. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date.

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

Point IV: Return of the Assets of the Family of the Former Shah

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

14. Upon the making by the Government of Algeria of the

certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

16. If any dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. If the tribunal determines that Iran has suffered a loss as a result of a failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

SETTLEMENT OF DISPUTES

17. If any other dispute arises between the parties as to the interpretation or performance of any provision of this declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. Any decision of the tribunal with respect to such dispute, including any award of damages to compensate for a loss resulting from a breach of this declaration or the claims settlement agreement, may be enforced by the prevailing party in the courts of any nation in accordance with its laws.

De tekst van de Verklaring van de Regering van de Democratische Volksrepubliek Algerije van 19 januari 1981 inzake de regeling van vorderingen tussen de Regering van de Verenigde Staten van Amerika en de Regering van de Islamitische Republiek Iran, naar welke Verklaring in artikel 2, derde lid, van de Bijlage behorende bij de onderhavige overeenkomst wordt verwezen, luidt als volgt:

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

The Government of the Democratic and Popular Republic of Algeria, on the basis of formal notice of adherence received from the Government of the Islamic Republic of Iran and the Government of the United States of America, now declares that Iran and the United States have agreed as follows:

Article I

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

Article II

1. An International Arbitral Tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3. The Tribunal shall have jurisdiction, as specified in Paragraphs 16-17 of the Declaration of the Government of Algeria of January 19, 1981 over any dispute as to the interpretation or performance of any provision of that declaration.

Article III

1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the tribunal. Claims may be decided by the full tribunal or by a panel of three members of the tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the parties or by the Tribunal to ensure that this agreement can be carried out. The UNCITRAL rules for appointing members of three-member Tribunals shall apply mutatis mutandis to the appointment of the Tribunal.

3. Claims of nationals of the United States and Iran that are within the scope of this agreement shall be presented to the Tribunal either by claimants themselves, or, in the case of claims of less than \$ 250,000, by the Government of such national.

4. No claim may be filed with the Tribunal more than one year after the entry into force of this agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.

Article IV

1. All decisions and awards of the Tribunal shall be final and binding.

2. The President of the Tribunal shall certify as prescribed in Paragraph 7 of the Declaration of the Government of Algeria of January

19, 1981, when all arbitral awards under this agreement have been satisfied.

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

Article V

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.

Article VI

1. The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.

2. Each government shall designate an agent at the seat of the Tribunal to represent it to the Tribunal and to receive notices or other communications directed to it or to its nationals, agencies, instrumentalities, or entities in connection with proceedings before the Tribunal.

3. The expenses of the Tribunal shall be borne equally by the two governments.

4. Any question concerning the interpretation or application of this agreement shall be decided by the Tribunal upon the request of either Iran or the United States.

Article VII

For the purposes of this agreement:

1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.

2. "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals

through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this agreement. Claims referred to the Arbitral Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court.

3. "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

4. The "United States" means the Government of the United States, any political subdivision of the United States, any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof.

Article VIII

This agreement shall enter into force when the Government of Algeria has received from both Iran and the United States a notification of adherence to the agreement.

Uitgegeven de *tiende* juli 1981.

De Minister van Buitenlandse Zaken,
C. A. VAN DER KLAUW