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Enforcement of Judgments

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I. INTRODUCTION

The author has spent a lot of time preparing cases against the Government of Iran and its controlled entities. This Article will draw upon that experience to discuss the enforcement of judgments rendered in international litigation. The focus is on two aspects of judgment enforcement: (1) the enforcement of judgments of United States or other courts against the Government of Iran and (2) the enforcement by Iran of judgments obtained against United States companies in the courts of Iran.

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II. THE ALGIERS DECLARATIONS AND THE HAGUE TRIBUNAL

The resolution of disputes between United States companies and the Government of Iran revolves primarily around the Iran-United States Claims Tribunal at The Hague in the Netherlands. The Tribunal was established as a result of the release of the hostages at the United States Embassy in Tehran. On January 19, 1981, the Governments of the Islamic Republic of Iran and the United States, through the intermediation of the Algerian Government, entered into the Algiers Declarations.[1] One of the Algiers Declarations, the Claims Settlement Declaration,[2] provides for the general structure of the Tribunal.[3] Another Algiers Declaration, the General Declaration,[4] establishes a "security account," initially funded at one billion dollars, from which awards rendered by the Tribunal in favor of United States claimants may be paid.[5] This particular account was created to pay the claims of United States industrial companies, not United States banks. The banks are to be paid out of a different fund, through a process distinct from the Tribunal.[6] Iran is to replenish the security ac-

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1. Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, United States-Iran, 81 DEP'T ST. BULL. 1 (Feb. 1981), *reprinted in* 20 I.L.M. 224 (1981) [hereinafter cited as General Declaration]; 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, Jan. 19, 1981, United States-Iran, 81 DEP'T ST. BULL. 3 (Feb. 1981), *reprinted in* 20 I.L.M. at 230 [hereinafter cited as Claims Settlement Declaration]; Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, United States-Iran, 81 DEP'T ST. BULL. 4 (Feb. 1981), *reprinted in* 20 I.L.M. at 229 [hereinafter cited as Undertakings]; Escrow Agreement, Jan. 20, 1981, United States-Iran-Algeria, 81 DEP'T ST. BULL. 6 (Feb. 1981), *reprinted in* 20 I.L.M. at 234; Technical Arrangement Between Banque Centrale d'Algerie as Escrow Agent and the Governor and Company of the Bank of England and the Federal Reserve Bank of New York as Fiscal Agent of the United States, Jan. 20, 1981, 81 DEP'T ST. BULL. 14 (Feb. 1981), *reprinted in* 1 Iran-U.S. C.T.R. 20 (1983) [hereinafter cited as Technical Agreement]; [the five documents hereinafter cited collectively as Algiers Declarations].

2. Claims Settlement Declaration, *supra* note 1.

3. *Id.* art. II, *reprinted* at 230-31.

4. General Declarations, *supra* note 1.

5. *Id.* para. 7, *reprinted* at 226.

6. *See* Undertakings, *supra* note 1, para. 2, *reprinted* at 229-30.

count when the amount falls below 500 million dollars.[7] In addition, interest accruing on the amounts in the security account is to be set aside and made available for use in replenishing the fund.[8]

The Declarations also required that all claims against Iran in the Tribunal be filed by January 19, 1982, one year from the date of the hostages' release.[9] Not surprisingly, virtually all United States industrial companies with claims against Iran filed their claims before the deadline. At the present time, more than 500 large claims (those over 250 thousand dollars) are pending at the Tribunal.[10]

United States claimants are not obliged under the Declarations to bring their cases to the Tribunal in The Hague. United States claimants, nevertheless, may be barred from the United States courts because their cases have been suspended and their attachments vacated. These claimants were permitted, but not required, to file their claims in The Hague prior to the January 19, 1982 deadline. If the claimants failed to file prior to that date, they may not bring an action in the Tribunal[11] and, in general, they will not be able to revive their United States actions. They are still permitted, however, to sue in a foreign court of competent jurisdiction. The United States claimants also may return to United States courts if their filed claims are dismissed by the Tribunal on jurisdictional grounds.[12]

III. Proceeding Against Iran Outside The Hague Tribunal

Some United States companies did not file their claims at The Hague. Some may have decided not to file because of the small size of their claims, as contrasted with the perceived high costs of proceeding in the Tribunal. Others may have been concerned that

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7. General Declaration, *supra* note 1, para. 7, *reprinted* at 226.

8. Iran-United States Case A/1, 1 Iran-U.S. C.T.R. 189, 191-92, Iran. Assets Lit. Rep. (Andrew) 5062 (Full Tribunal July 30, 1982).

9. Claims Settlement Declaration, *supra* note 1, art. III, para. 4, *reprinted* at 232.

10. Iran. Assets Lit. Rep. (Andrew) at 4174 (Feb. 5, 1982). Claims of less than $250,000 must be presented by the United States on behalf of the claimants. Claims Settlement Declaration, *supra* note 1, art. III, para. 3, *reprinted* at 231. There are 2,795 small claims before the Hague Tribunal. Iran. Assets Lit. Rep. (Andrew), at 4174.

11. *See supra* note 8 and accompanying text.

12. *See infra* notes 13-18 and accompanying text.

Iran's counterclaims could exceed their claims.[13] Other companies that did not file may have failed to do so simply because of inadvertence.

A. Jurisdiction of the Tribunal: Status of the Claimants

Some groups of claimants are not permitted to file claims at The Hague. For example, United States companies with fifty-one percent or more of ownership held by foreign nationals are not permitted to bring claims at the Tribunal.[14] Companies not able to demonstrate that the Iranian respondent is controlled by the Government of Iran also fall outside the jurisdiction of the Tribunal.[15] Dual nationals' link to the United States is not sufficient for having their claims decided by the Tribunal.[16]

A number of claims also will be ruled outside the jurisdiction of the Tribunal as a result of the decisions made in certain test cases argued in the summer of 1982.[17] Those cases concerned the inter-

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13. A counterclaim is allowed if it "arises out of the same contract, transaction or occurrence that constitutes the subject matter of [the] claim." Claims Settlement Declaration, *supra* note 1, art. II, para. 1, *reprinted* at 231.

14. *Id.* art. II, para. 1, art. VII, para. 1, *reprinted* at 230-31, 232.

15. *See id.*; J.I. Case Co. v. The Islamic Republic of Iran, IRAN. ASSETS LIT. REP. (Andrew) 6825 (June 15, 1983).

16. Haroonian v. The Islamic Republic of Iran, IRAN. ASSETS LIT. REP. (Andrew) 6422 (Mar. 29, 1983). For a discussion of the applicable considerations in dual nationality cases, see Esphahanian v. Bank Tejarat, IRAN. ASSETS LIT. REP. (Andrew) 6405 (Mar. 29, 1983); Golpira v. Islamic Republic of Iran, *id.* at 6416 (Mar. 29, 1983).

17. Gibbs and Hill, Inc. v. Iran Power Generation and Transmission Co. (Tavanir), 1 Iran-U.S. C.T.R. 236, IRAN. ASSETS LIT. REP. (Andrew) 5623 (Full Tribunal Nov. 5, 1982); Halliburton Co. v. Doreen/IMCO, 1 Iran-U.S. C.T.R. 242, IRAN. ASSETS LIT. REP. (Andrew) 5635 (Full Tribunal Nov. 5, 1982); Howard, Needles, Tammen and Bergendoff v. Islamic Republic of Iran, 1 Iran-U.S. C.T.R. 248, IRAN. ASSETS LIT. REP. (Andrew) 5626 (Full Tribunal Nov. 5, 1982); 1 Iran-U.S. C.T.R. 252, IRAN. ASSETS LIT. REP. (Andrew) 5629 (Full Tribunal Nov. 5, 1982); T.C.S.B., Inc. v. Iran, 1 Iran-U.S. C.T.R. 261, IRAN. ASSETS LIT. REP. (Andrew) 5643 (Full Tribunal Nov. 5, 1982); Ford Aerospace and Communications Corp. v. Air Force of the Islamic Republic of Iran, 1 Iran-U.S. C.T.R. 268, IRAN. ASSETS LIT. REP. (Andrew) 5620 (Full Tribunal Nov. 5, 1982); Zokor Int'l, Inc. v. Islamic Republic of Iran, 1 Iran-U.S. C.T.R. 271, IRAN. ASSETS LIT. REP. (Andrew) 5647 (Full Tribunal Nov. 5, 1982); Stone and Webster Overseas Group, Inc. v. National Petrochemical Co., 1 Iran-U.S. C.T.R. 274, IRAN. ASSETS LIT. REP. (Andrew) 5639 (Full Tribunal Nov. 5, 1982); Dresser Indus. Inc. v. Islamic Republic of Iran, 1 Iran-U.S. C.T.R. 280, IRAN. ASSETS LIT. REP. (Andrew) 5618 (Full Tribunal Nov. 5, 1982).

pretation of a clause in the Algiers Declarations which provides, in effect, that claims arising out of contracts providing for the selection of the Iranian courts as the sole forum for hearing disputes will not be heard by the Tribunal.[18] In the test cases, the Tribunal made determinations on a number of forum-selection clauses in various contracts and indicated the kinds of forum-selection clauses that will result in denial of jurisdiction.[19] A number of cases (or claims within cases) eventually will be removed from the Tribunal's docket. Although these cases have not as yet been removed, every expectation is that they will be dismissed. Those particular claimants who do not meet the jurisdictional requirements will have to look to tribunals other than the Iran-United States Claims Tribunal for enforcement of their rights against Iran. The reasonable likelihood is that most of the dismissed claimants can obtain jurisdiction over the Iranian defendants somewhere in the United States and receive judgments on many of their claims. The question then becomes: What can the claimants do about enforcing the judgments which they may obtain?

B. The Attachment Option

The time to plan for enforcement is not after a judgment is obtained, but in advance. A judgment, of course, is only as good as the assets one can levy upon; thus, it would be imprudent to wait until after a judgment is obtained to try to find assets. Claimants, therefore, should consider attachments before receiving judgments. Attachments exist for the very purpose of protecting and securing judgments ultimately obtained, particularly when it is doubtful that the judgments will be paid voluntarily.

Few Iranian assets in the United States, if any, are worth pursuing. There may be, however, assets outside the United States that claimants should consider. For example, the National Iranian Oil Company continues to sell oil and Iran's central bank, the Bank Markazi, continues to do business with banks worldwide. Commerce with Iran does take place and a clever person aided by

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18. Claims are excluded which "aris[e] 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." Claims Settlement Declaration, *supra* note 1, art. II, para. 1, *reprinted* at 231.

19. *See supra* note 16.

skillful counsel may be able to find some assets to attach. Once such assets are found, what can be done to attach them and secure the judgment ultimately obtained?

It is important to remember that there are essentially two kinds of attachment proceedings outside the United States. One is similar to the proceedings we are familiar with in this country. In this type of attachment proceeding, the attachment is inextricably bound to the proceeding on the merits. The attachment must always be connected with the filing of a complaint, which ordinarily has to be served within a certain time period after the attachment is obtained.[20]

In many European countries, such as Luxembourg, the Netherlands, Belgium, Italy, Germany, and France, the attachment proceeding and the proceeding on the merits are separate from each other.[21] In the attachment proceeding, assets are seized and held, or transfer is otherwise restrained, pending the outcome of the hearing on the merits. This merit hearing may be held in the

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20. *See, e.g.*, Johnson v. Tobacco Leaf Mkt'g Bd., [1967] Vict. R. 427 (1967); Mareva Compania Naviera S.A. v. International Bulkcarriers S.A., [1980] 1 All E.R. 213, 215 (C.A. 1975); The *Siskina* (Cargo Owners) v. Distos Compania Naviera S.A., [1977] 3 All E.R. 803, 813-15 (C.A.), *rev'd on other grounds*, [1977] 3 All E.R. 821 (H.L.); N.Y. CIV. PRAC. L. § 6201 (McKinney 1980), N.Y. CIV. PRAC. R. 6212 (McKinney 1980).

21. *See, e.g.*, IV Zivilprozessordnung [ZPO] (West German Code of Civil Procedure and Side Statutes) § 1025 Comment DIIdl, § 1027a Comment BIII; M. Max Guldener, Schweizerisches Zivilprozessrecht § 247; Burgerlijka Rechtsvordering III.7; P. Zonderland C.S., *Coops' Nederlands Burgerlijk Procesrecht* 283-84; R. Van Delden, *Arbitration and the Ordinary Courts According to the Law of the Netherlands*, Tijdschrift Van Arbitrage 41-42 (1981). For a general discussion of this topic, see Burrows and Newman, *International Litigation: Attachments Abroad (Part I)*, N.Y.L.J., May 28, 1982, at 1, col. 1; Burrows and Newman, *International Litigation: Attachments Abroad (Part II)*, N.Y.L.J., Sept. 29, 1982, at 1, col. 1; *See* CODE DE PROCÉDURE CIVILE [C. PR. CIV.] art. 557 (France); Judgment of June 7, 1979, Cass. Civ. 1980 Rev. Arb. 78; Judgment of Dec. 4, 1953, Cour de cassation, Deuxiéme section civile, 1954 Dalloz, *Jurisprudence* [D. Jur.] 108 (saisie-arret, or opposition); *Arbitration in Sweden* at 179 (Stockholm Chamber of Commerce 1971) (kvarstad); Code of Civil Procedure art. 4 (Italy). *See also* Brussels Convention of September 27, 1968 on Jurisdiction and Enforcement of Civil and Commercial Judgments, art. 24, *translated in* 2 COMMON MKT. REP. (CCH) ¶¶ 6003, 6028. For a general discussion of this topic, see Burrows and Newman, *International Litigation: Attachments Abroad (Part I)*, N.Y.L.J., May 28, 1982, at 1, col. 1; Burrows and Newman, *International Litigation: Attachments Abroad (Part II)*, N.Y.L.J., Sept. 29, 1982, at 1, col. 1.

same court, in another court in the same country, in a court in another country, or even in an arbitration proceeding.[22] The proceeding held in another location must result in a judgment or an arbitral award that will be enforced in the country where the assets are seized and held.[23]

Obtaining attachments in foreign countries can be greatly facilitated by the assistance of local counsel. Generally, counsel must be alert to several problems. One problem is whether the attachment obtained is worth anything. In Luxembourg, for example, it is difficult to determine whether the asset has been attached because the garnishee is not legally required to disclose the attachment. The success or failure of an attachment is discovered through the bank grapevine. In other countries, procedures exist for determining whether one has struck a gusher or a dry hole.[24]

Another important consideration is whether the attachment is exclusive. In the United States, if the creditor attaches and is second or third in line, he may or may not be out of luck under a hierarchy of priorities, depending on the amounts claimed by the prior attaching parties. The German procedure is similar.[25] In France, however, there is no priority.[26] The later attachments may have the same rights to the attached assets as those attaching first.[27] In deciding whether to attach, therefore, counsel must consider the extent to which local law provides for the vesting of the attaching party's rights and whether other creditors will attach the same assets.

An additional problem in the attachment process is the scope of the obtained attachment. In France, an attachment against a foreign nation's assets can be obtained, but a judgment cannot be

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22. *See supra* note 20. *See generally* 3 INT'L CONT. L. FIN. REV. 48, 54, 61 (1982); 2 INT'L CONT. L. FIN. REV. 454, 455, 458, 465, 468, 472, 475, 478, 515, 519, 523 (1981).

23. *See infra* text accompanying notes 30-35. As to the enforceability of an arbitral award, see Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38.

24. *E.g.*, Belgium, Germany, Brazil, France, Italy, Japan, Korea, and the Philippines.

25. *See generally*, IV ZPO.

26. An attaching creditor obtains a freezing of the debtor's assets in place where they are. The funds are not transferred or removed from the control of the garnishee, and the creditor's claim does not receive priority. C. PR. CIV. art. 557-580.

27. *Id.*

enforced against those assets.[28] The attachment does little more than provide some pressure to be applied during the period that the assets are tied up.

The main point regarding the enforcement of judgments outside the Tribunal against Iran is the need for prior planning. Just after the hostages were released, the State Department informed the United States claimants and their counsel that the Algiers Declarations provided a solution to their problems. Department officials stated, "[N]ot only do you have this billion-dollar fund in The Hague, but you also have the right to enforce your awards from the Tribunal anywhere in the world."[29] The State Department's expressed belief was that sufficient Iranian Government assets existed around the world for enforcing the awards of the United States claimants if the security account was depleted. Claimants have found, however, that levying Iranian assets, whether through prejudgment attachments or postaward executions, is not so simple. If the security account is not replenished, a number of hungry litigants will be seeking to enforce judgments around the world. Those who have done prior planning and obtained prejudgment attachments obviously will be in a preferred position.

IV. Enforcement by Iran of Judgments Obtained in its Own Courts

In the summer of 1982, various Iranian Government entities commenced approximately sixty lawsuits in Iran against United States companies.[30] Process was served on the United States companies through the Iranian Interests Section of the Algerian Embassy in Washington, D.C. These lawsuits have presented the United States companies with two significant problems. What, if anything, can the companies do in response to these lawsuits

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28. Judgment of June 7, 1969, Cour d'appel, Paris, 1970 Dalloz-Sirey, *Sommaires de Jurisprudence* [D.S. Jur. Som.] 27, *cited in* Sinclair, *The Law of Sovereign Immunity: Recent Developments*, 167 Recueil des Cours 227; *see* Brandon, *Immunity from Attachment and Execution*, Int'l Fin. L. Rev., July 1982, at 32.

29. The Claims Settlement Declaration provides: "Any award which the Tribunal may render against either Government shall be enforceable against such government in the courts of any nation in accordance with its laws." Claims Settlement Declaration, *supra* note 1, art. IV, para. 3, *reprinted at* 232.

30. Iran. Asset Lit. Rep. (Andrew) 5048, Aug. 20, 1982.

brought in a most inhospitable forum? Can the judgments rendered in that forum be enforced in the United States or elsewhere?

A. The Uniform Foreign Money-Judgment Recognition Act

The Uniform Foreign Money-Judgment Recognition Act[31] (Uniform Act) is in force in many important states such as New York,[32] California,[33] Illinois,[34] and Texas.[35] The Uniform Act generally codifies the United States law[36] that started with the *Hilton v. Guyot* decision.[37] This statute makes the United States one of the more receptive countries in the world to foreign judgments.[38] The Uniform Act, however, contains provisions under which foreign money judgments are not to be recognized or enforced. For example, under section 4(a)(1) of the foreign system, rendering judgment does not provide adequate due process safeguards, the "judgment is not conclusive."[39] In the *Carl Zeiss Stif-*

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31. 13 U.L.A. 417 (1980) [hereinafter cited as UNIFORM ACT].

32. N.Y. CIV. PRAC. LAW §§ 5301-5304 (McKinney 1978 & Supp. 1983).

33. CAL. CIV. PRAC. CODE §§ 1713-1713.8 (West 1982).

34. ILL. ANN. STAT. ch. 110, ¶¶ 12-618 to -324 (Smith-Hurd 1983).

35. TEX. REV. CIV. STAT. ANN. art. 2328b-6 (Vernon Supp. 1984). Eight other states have adopted the UNIFORM ACT. *See* ALASKA STAT. §§ 09.30.100-.180 (1962); COLO. REV. STAT. §§ 13-62-101 to -109 (Supp. 1983); MD. CTS. & JUD. PROC. CODE ANN. §§ 10-701 to -709 (1980); MASS. GEN. LAWS ANN. ch. 235, § 23A (West Supp. 1983-84); MICH. COMP. LAWS ANN. §§ 691.1151-.1159 (West 1968); OKLA. STAT. ANN. tit. 12, §§ 710-18 (West Supp. 1983-84); OR. REV. STAT. §§ 24.200-.255 (Supp. 1979); WASH. REV. CODE ANN. §§ 6.40.010-.915 (Supp. 1983-84).

36. *See* Commissioners' Prefatory Note, UNIFORM ACT, *supra* note 31, at 417-18.

37. 159 U.S. 113 (1895).

38. *See generally* von Mehren & Patterson, *Recognition and Enforcement of Foreign-Country Judgments in the United States*, 6 LAW POL'Y INT'L BUS. 37 (1974).

39. UNIFORM ACT, *supra* note 31, § 4(a)(1). Section 4 reads in full:

§ 4. [Grounds for Non-recognition]

(a) A foreign judgment is not conclusive if (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if

(1) the defendant in the proceedings in the foreign court did not receive

tung case,[40] Judge Mansfield spoke disparagingly about the East German courts as creatures of Communist Party policy and the Communist regime, as partisan arbiters of private disputes, and as a subordinate judiciary.[41] This point of view is probably the type that will be expressed by United States courts confronted with judgments obtained in Iran against United States companies. Thus, it may be appropriate for a court to apply section 4(a)(1) of the Uniform Act to such cases.

A United States defendant arguing against the enforceability of an Iranian judgment in a United States court on the grounds of partiality or lack of due process will find ample support in the views expressed by the State Department at the Iran-United States Claims Tribunal. These views were presented in a brief[42]

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notice of the proceedings in sufficient time to enable him to defend;

(2) the judgment was obtained by fraud;

(3) the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

Id. § 4 (brackets in original).

40. Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 293 F. Supp. 892 (S.D.N.Y. 1968), *modified*, 433 F.2d 686 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

41. [I]t must be recognized in weighing these decisions that East German courts do not speak as an independent judiciary of the type found in the United States or even in West Germany, but orient their judgment according to the wishes of the leaders of the socialist state, which are expressed through two coordinated administrative organs, the Ministry of Justice and the Office of the Attorney General. In short, even the East German Supreme Court is made responsible to the highest authorities of the state as a means of insuring "that the content of the socialist law and its implementation through the courts are in harmony with the overall state administrative activity during the period of the comprehensive construction of socialism." . . . [C]onsideration reveals the decisions of the Supreme Court of East Germany to be so completely lacking in any objectivity of approach and so thoroughly saturated with a combination of communist propaganda, diatribes against the "capitalist oriented" decisions of the West German courts, and absence of judicial restraint, that any logical analysis is obfuscated by their obvious political mission.

293 F. Supp. at 906-07 (footnote and citations omitted).

42. IRAN. ASSETS LIT. REP. (Andrew) at 4753 (June 4, 1982).

submitted in connection with the forum-selection test cases.[43] The State Department argued very forcefully that the Tribunal should not enforce any of the contractual forum-selection clauses because Iran has no civilized jurisprudence.[44] To support this argument, the State Department pointed to the general Iranian hostility toward the United States;[45] the new Iranian constitution vesting secular and religious authority in the Ayatollah Khomeini;[46] the new application of religious law;[47] the extensive judiciary changes in which many Iranian judges were purged and new judges appointed, including many who were not required to be lawyers;[48] and the unavailability of competent counsel to represent foreigners in proceedings in Iran.[49]

Another Uniform Act provision may provide a different basis for preventing recognition and enforcement of an Iranian judgment in the United States. Section 4(b)(4) provides that a foreign judgment need not be recognized if it conflicts with another final and conclusive judgment.[50] At least one company has taken steps to protect itself under this provision. McDonnell-Douglas, which was sued in Iran, filed a complaint in the United States District Court for the Eastern District of Missouri.[51] McDonnell-Douglas has chosen not to appear in the court in Iran and is expecting a default judgment there. The company sought relief in the district court in the form of a declaratory judgment on its nonliability for damages under the contract in dispute.[52] McDonnell-Douglas also sought that any decree, order, decision, or judgment entered by the Iranian court would be null, void, and unenforceable.[53] In scores of paragraphs, the company's complaint reiterates the State Department position on the hostility of the Iranian Courts

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43. *See supra* note 16 and accompanying text.

44. IRAN. ASSETS LIT. REP. (Andrew) at 4769-78 (June 4, 1982).

45. *Id.* at 4774.

46. *Id.* at 4769.

47. *Id.*

48. *Id.* at 4770-71.

49. *Id.* at 4775-76.

50. UNIFORM ACT, *supra* note 31, § 4(b)(4). For the text of section 4, see *supra* note 39.

51. McDonnell-Douglas Corp. v. Islamic Republic of Iran, No. 82-2096-C (E.D. Mo. filed 1982), *reprinted in* IRAN. ASSETS LIT. REP. (Andrew) at 5870 (Jan. 7, 1983) (Complaint).

52. *Id.*, Complaint at ¶¶ 56, 63, *reprinted* at 5879, 5881.

53. *Id.*, Complaint at ¶¶ 69, 73, *reprinted* at 5882-83.

to United States nationals.[54]

McDonnell-Douglas probably is concerned less with the possible enforcement of a judgment against it in the United States than with the possibility of an attempt by the Iranian Government to enforce its judgment in some other country. The protection afforded by a declaratory judgment in the United States would be particularly important if Iran sought to enforce a judgment in a friendly country like Libya or Syria. These countries might have a different attitude than the United States on whether justice may be obtained in the Iranian courts.

B. Directives Issued by the Tribunal

E-Systems, whose claim was brought in the Tribunal at The Hague, has taken a different approach than that followed by McDonnell-Douglas. E-Systems was sued in Iran after it had brought its claim in the Tribunal. The company filed an application at the Tribunal for interim relief in the form of an order either dismissing the lawsuits in Iran or staying them pending the outcome of the Tribunal case.[55] This application was filed before Iran made any counterclaim in the Tribunal case. E-Systems' motion was based on the contention that the case brought in Iran was in the nature of a compulsory counterclaim in The Hague proceeding.[56]

The Tribunal ruled in favor of E-Systems and stated that requesting the stay of proceedings in Iran pending the disposition of the case before the Tribunal was necessary to preserve its jurisdiction.[57] The Tribunal stated, however, that Iran had no obligation to bring its counterclaims at the Tribunal.[58] In any event, this decision effectively required the prosecution of any claims to await the outcome of the *E-Systems* case at the Tribunal. Even if Iran ignores the Tribunal's directive, as it has in fact done, and eventually attempts to enforce the judgment inevitably obtained in its courts, the order of the Tribunal should have some persua-

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54. *Id.*, Complaint at ¶¶ 29-52, *reprinted* at 5874-78.

55. Motion by Claimant to Compel Dismissal or Stay of Proceedings in Iranian Court, E-Systems, Inc. v. Islamic Republic of Iran, IRAN. ASSETS LIT. REP. (Andrew) at 6087, 6095 (Feb. 18, 1983).

56. *Id.*

57. E-Systems, Inc. v. Islamic Republic of Iran, IRAN. ASSETS LIT. REP. (Andrew) 6103 (Full Tribunal Feb. 4, 1983) (interim order granting stay).

58. *Id.* at 6107.

sive effect in the court where enforcement is sought. E-Systems should be able to argue persuasively that Iran violated the orders of an international tribunal in obtaining its judgment. Since the *E-Systems'* decision, the Tribunal has issued orders in several cases staying Iranian court proceedings when the underlying dispute was already before the Tribunal.

C. Enforcing the Iranian Judgment in European Courts

European countries provide for nonrecognition of judgments on public policy grounds, similar to the Uniform Act, if the forum state is not one in which the defendant can obtain justice through civilized jurisprudence.[59] In the Common Market countries, a treaty provision recognizes the possibility of uncivilized jurisprudence and allows the nonrecognition of judgments on this basis.[60]

Examining the method used by the British to handle a situation similar to the Iranian litigation may give an insight into how other European courts might deal with attempts to enforce Iranian judgments within their court systems. In the *Carvalho* case, decided in 1979 by the English Court of Appeal,[61] the plaintiff had entered into a contract with the defendants prior to the revolution in Angola. The plaintiff was forced to flee Angola after the Portuguese lost control over the government. He sought to enforce his rights under the contract in a British court because the defendant was an English citizen and resident. The defendant moved to dismiss the complaint in England because the contract's forum-selection clause provided that the courts of Luanda (the capital of Angola) should hear disputes arising out of the contract. Both the lower court and the Court of Appeal concluded that at the time of the hearings the courts of Luanda were quite different from the courts contemplated by the parties when the contract was made.[62] The method by which judges were selected

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59. *See, e.g.*, Price v. Dewhurst, 59 Eng. Rep. 111 (1837); Law of Introduction to Civil Code, Decree-Law No. 4.657 of Sept. 4, 1942, *amended by* Law No. 3.238 of Aug. 1, 1957, art. 17 (Brazil); C. PR. CIV. art. 509 (France); ZPO § 328(3); CODICE DI PROCEDURA CIVILE [C.P.C.] arts. 395, 796, 797(7) (Italy); MINJI SOSHO HO (Code of Civil Procedure) art. 200(3) (Japan); Rules of Civil Procedure art. 954(3) (Spain); *Decision of May 20, 1981*, Bg II 107 IA 198-201 (Swiss Fed. Ct.). *See generally* Lorenzen, *The Enforcement of American Judgments Abroad*, 29 YALE L.J. 188 (1919).

60. Brussels Convention of Sept. 27, 1968, *supra* note 20.

61. Carvalho v. Hull, Blyth (Angola) Ltd., [1979] 3 All E.R. 280 (C.A. 1979).

62. *Id.* at 285.

and the training and experience of the judges themselves had changed. The lower court also mentioned the lack of available capable counsel. The unavailability of an appeal to the Supreme Court of Portugal also was given considerable significance.[63] The judges appeared to look upon the courts of newly independent Angola with a jaundiced eye and even compared the situation to the upheaval in Iran.[64] The Court, therefore, refused to enforce the contractual forum-selection clause that would have relegated the parties to the courts of Angola.

A number of European countries provide that judgments will be enforced on the basis of reciprocity.[65] For example, if Iranian courts enforce West German judgments, the West German courts will enforce Iranian judgments, unless enforcement would contravene public policy. There is, however, no treaty between West Germany and Iran and little or no German law in this area.[66] It is doubtful that Iranian courts will provide reciprocal recognition of the judgments of Western European courts. The lack of reciprocity, therefore, is another basis for denying enforcement of Iranian judgments.

Counsel should not overlook the arguments that Iranian judgments are unenforceable on the alternative grounds recognized by the Uniform Act, including those of inadequate notice or lack of jurisdiction. Iran, however, has been somewhat selective in choosing the cases to pursue. Iran apparently has followed a policy of bringing lawsuits only when the contracts contain forum-selection clauses providing for disputes to be heard in the Iranian courts or clauses with an outright submission to the jurisdiction of Iranian courts.

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63. *Id.* at 285, 288.

64. "[T]he nearest similar case is perhaps a contract made in Imperial Russia, and the situation after the 1917 revolution, or, alternatively, a contract made during the Shah's regime in Iran, and being enforced in the present circumstances." *Id.* at 283.

65. *E.g.*, Switzerland. Kaufmann, *Enforcement of United States Judgments in Switzerland*, Seminar at Hochschule St. Gallen Für Wirtshafts-und Sozial Wissenschaften 18, 60 (Sept. 23-24, 1982) (Switzerland); Spanish Rules on Civil Procedure arts. 952, 953 (Spain). The United States also once had a reciprocity requirement, Hilton v. Guyot, 159 U.S. 113, 227-28 (1895), but it was severely criticized and has been abandoned by the Uniform Act and the courts. Bishop & Burnett, *United States Practice Concerning the Recognition of Foreign Judgments*, 16 INT'L LAW. 425, 435 (1982).

66. *But see* ZPO § 328(5).

V. Conclusion

What should counsel do about the cases brought against United States claimants in Iran? It would be unwise to attempt to defend any case in Iran under the present circumstances. As indicated, any judgment rendered by an Iranian court has a good chance of being unenforceable. In doubtful cases, consideration should be given to the type of action taken by E-Systems if the case in Iran relates to a case brought in the Tribunal, or the action followed by McDonnell-Douglas if the case in Iran has no connection with the Tribunal.