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CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

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Case No. 10199

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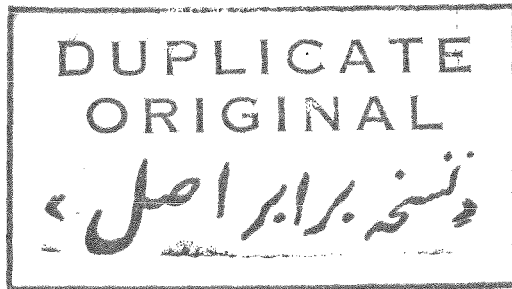
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CASE NO. 10199

CHAMBER ONE

AWARD NO. 324-10199-1

138

KENNETH P. YEAGER,
a claim of less than US\$250,000
presented by the UNITED STATES OF AMERICA
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه دآوری دعوی ایران - ایالات متحدہ	
ثبت شد - FILED			
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No.	10199	شماره	

PARTIAL AWARD

Appearances:

For the Claimant:

Mr. John R. Crook,
Agent of the United
States of America,
Mr. Michael F. Raboin,
Deputy Agent of the
United States of
America,
Prof. Richard B. Lillich.

For the Respondent:

Mr. Mohammad K. Eshragh,
Agent of the Islamic
Republic of Iran,
Dr. Ali Akbar Ryazi,
Adviser to the Agent,
Mr. Shohrab Rabiee,
Assistant to the Agent,
Mr. Mohammad Ali Behabadi,
Mr. Hossein Ali Farzad,
Representatives of Bank
Markazi.

A. PROCEDURAL HISTORY

1. On 18 January 1982, the United States filed a Statement of Claim presenting a claim of less than \$250,000 of Kenneth P. Yeager (the "Claimant") against the Islamic Republic of Iran (the "Respondent"). The Claimant seeks damages, inter alia, for his alleged wrongful expulsion from Iran, in the sum of \$134,147.14, as well as interest and costs. A Supplementary Statement of Claim was filed on 1 October 1984.

2. On 1 October 1984, the United States filed a Request for an Interlocutory Award "on behalf of approximately fifteen hundred U.S. Claimants who left Iran during the period from October 1978 through February 1979 . . .," seeking a holding "that all U.S. nationals who departed from Iran during that period were expelled in violation of international law and are entitled to compensation for the resulting injury to their property and property rights." Respondent's Petition for Dismissal of this Request was filed on 18 July 1985.

3. On 5 March 1986, the Respondent filed a Statement of Defence. Thereafter the Parties submitted further memorials and evidence pursuant to orders of the Tribunal.

4. On 11 December 1986, the Respondent filed a request for postponement of the Hearing on the ground that it needed more time to carry out necessary investigations. The Tribunal denied this request by Order filed on 16 December 1986.

5. A Hearing in this case was held on 18 and 19 February 1987.

B. FACTS AND CONTENTIONS

6. In October 1977, the Claimant was offered a job by the Bell Helicopter International Company ("BHI") to work as a Program Manager providing management, supervision and training services to the Iranian Helicopter Support and Renewal Depot at Mehrabad Airport in Tehran. The Claimant accepted the offer and departed for Iran on 6 January 1978. He shipped his furniture and other household goods to Iran from the United States and they arrived in Iran in June 1978. His wife and two sons followed in July 1978.

7. Claimant's employment contract provided for an initial term of two years, subject, however, to termination "at any time . . . with or without cause." The Claimant asserts that it was BHI's general policy to extend employment contracts, and that he intended to work and stay in Iran for at least five years.

8. The Claimant alleges that, beginning in October 1978, United States citizens in Iran were subjected increasingly to harassment and violence by Iranian militants and revolutionaries. The Claimant reports that BHI company buses carrying employees were stopped and attacked by militant mobs; that tires of private cars were slashed; and that he and his family were threatened and intimidated in the streets. The Claimant has submitted a detailed account of anti-American events in his "Factual Memorial Concerning Anti-Americanism During the Islamic Revolution in Iran." In his view, anti-Americanism in Iran was instigated and supported by the leaders of the Revolution, in particular by Ayatollah Khomeini, and eventually resulted in the "de facto" expulsion of United States nationals.

9. In early January 1979, the Claimant decided to send his two sons and his daughter, who was visiting Iran, back to the United States. He bought tickets for a flight

scheduled to leave Tehran on 3 January 1979. On that day, masses of panicky people attempted to leave Iran. The airport was in chaos; scheduled flights had been cancelled. The Claimant contends that, even though in possession of confirmed tickets, he was able to get his daughter onto her flight only by paying a "special fee" of 20,000 Rials to an Iran Air agent. His sons had to wait until the next day.

10. The Claimant reports that by early February 1979, revolutionaries had occupied the BHI work site, preventing the employees from going to work. BHI reduced its work force to a minimum of essential employees and recommended that dependents of employees leave Iran. Claimant's employment contract, however, had not been terminated at that time.

11. The Claimant contends that, between 7 and 10 February 1979, his neighbors threatened and intimidated him with remarks such as "some people who do not like Americans" knew where he lived, and "trouble would come" to him and his wife. They allegedly told him that he would have to leave Iran shortly without being allowed to take anything with him, and that he should sell or give them some items of his property. The Claimant asserts that, in view of these threats and the revolutionary violence, he was forced to give away, or sell at sacrifice prices, property originally worth \$8,025, for which he received no more than approximately \$2,500.

12. The Claimant alleges that, at about 10 a.m. on 13 February 1979, his landlord came to his apartment together with two men his landlord identified as "Revolutionary Guards." The Claimant described them as being dressed in everyday clothes, but wearing distinctive arm bands indicating association with the new Government, and armed with rifles. He asserts that these Guards announced that he and his wife had to leave on the same day, and that they had 30

minutes to pack whatever they could carry; the rest of their belongings they had to leave behind. The Claimant alleges that they were then taken by car to the Hilton Hotel in Tehran.

13. On arrival at the Hilton Hotel, the Claimant learned that the Hotel had been attacked by revolutionaries the previous day, and that it had since then been under the revolutionaries' control. The Claimant alleges that he and his wife were forced to remain inside the Hotel until 16 February 1979, as "Revolutionary Guards" manned the exits, and that they were unable to recover property left in their apartment during that time.

14. According to the Claimant, on 17 February 1979, BHI employees were evacuated from Iran pursuant to instructions by the BHI management. They were taken to Mehrabad Airport in a convoy of buses. The Claimant reports that after the processing of tickets and immigration formalities, they had to move to another waiting room, where they were searched. In the course of this search, "Revolutionary Guards" allegedly seized \$941 from the Claimant and \$525 from his wife. Thereafter, Claimant left Iran on a flight to Germany.

15. Before leaving Iran, in May 1978, the Claimant had made a bid on four jeeps to be auctioned by "Telecommunication Company of Iran" ("TCI"). To secure the bid, he made a 20,000 Rial deposit into a TCI bank account at, he believes, Bank Markazi. He was eventually notified that his bid had been successful and that he could pick up the vehicles after paying the balance. The Claimant contends that when he went to inspect the jeeps, one of them was gone, one of them he could not identify as the one for which he had bid, one was damaged and only one was acceptable. Therefore, he informed the yard attendant that the vehicles were unacceptable to

him and followed it up in a letter to TCI requesting the return of the deposit. TCI, allegedly, refused to do so.

16. Finally, the Claimant contends that he was unable to withdraw 31,214 Rials he had in his bank account with Bank Omran (now Bank Mellat). He asserts that his bank in the United States requested the transfer of these funds, but was informed by Bank Omran that exchange control restrictions existing in Iran prevented it from complying with the request. In the Claimant's view, these exchange control restrictions violate Iran's obligations under international law.

17. The Claimant predicates his Claim largely upon the allegation that he was wrongfully expelled from Iran and argues that the Tribunal has jurisdiction over this claim. He now seeks compensation for:

- a) the \$284 paid to the Iran Air agent;
- b) property sold at sacrifice prices or left behind in Iran, which he values at \$28,660;
- c) the total of \$1,466 in cash seized from himself and his wife by "Revolutionary Guards" at the Airport;
- d) the loss of salary and other employment benefits under his employment contract with BHI, alleging that it would have been extended at least for another year, in the amount of \$48,221;
- e) the \$287.14 auction deposit held by TCI;
- f) the \$443 remaining in his bank account with Bank Mellat (formerly Bank Omran).

The Claimant also requests interest and costs.

18. The Respondent disputes the Tribunal's jurisdiction over this claim. First, it argues that expulsion is tortious in nature and, consequently, not covered by Article II, paragraph 1, of the Claims Settlement Declaration. Second, the Respondent points out that paragraph 11(D) of the General Declaration precludes claims based on injury as "a result of popular movements in the course of the Islamic Revolution in Iran . . .," and construes this provision as referring to all United States citizens, rather than referring only to the 52 United States citizens seized on 4 November 1979 in the United States Embassy compound in Tehran.

19. The Respondent also rejects the Claim on the merits. It denies that the Claimant was expelled, asserting that he left voluntarily upon the recommendation and instructions of BHI and the United States Embassy, in view of revolutionary turmoil, strikes and the closure of factories and work sites.

20. The Respondent denies Claimant's contention that Ayatollah Khomeini and other leaders of the Revolution deliberately instigated anti-American sentiment in order to force United States citizens to leave Iran. Rather, it regards comments and statements of Ayatollah Khomeini as justified criticism of the United States Government and its allegedly anti-revolutionary policies.

21. The Respondent contends that there was no discriminatory mass expulsion of United States nationals. Indeed, it argues that the lack of discrimination is demonstrated by the fact that many nationals of other States, and even some Iranians, decided to leave Iran during the Revolution. It is submitted, moreover, that thousands of Iranians were

injured in the course of the Islamic Revolution, as compared to relatively few United States nationals.

22. The Respondent asserts that anti-American activity is not attributable to the new Government as, at the time, numerous groups, among them counter-revolutionaries and armed Afghans, operated outside the control of the new Government.

23. It is admitted that "revolutionary guards and Komiteh personnel" were engaged in the maintenance of law and order from January 1979 to months after February 1979 as government police forces rapidly lost control over the situation. The Respondent asserts, however, that these revolutionaries did not operate under the name "Revolutionary Komitehs" or "Revolutionary Guards," and that they were not affiliated with the Provisional Government. The involvement of Revolutionary Guards in taking the Claimant to the Hilton Hotel in Tehran is denied. In any event, even if the Revolutionary Guards did take the Claimant and his wife to the hotel, Respondent suggests, they intended only to assist and safeguard the Claimant in his voluntary departure. Finally, the Respondent asserts that the Provisional Government established after the victory of the Revolution was not sufficiently consolidated and did not have the means to control the actions of extremist revolutionary groups.

C. REASONS FOR AWARD

I. Procedural Issues

1. Request for an Interlocutory Award

24. The Claimant has requested an Interlocutory Award holding that all United States nationals who departed from Iran during the period from October 1978 through February

1979 were expelled in violation of international law and are entitled to compensation for the resulting injury to their property and property rights. The Tribunal finds that such a general holding is neither necessary nor appropriate in the present case. It is not necessary because the Tribunal is only presented with the question of whether the Claimant in this case was wrongfully expelled. Such broad relief is not appropriate because the particular facts in other cases may differ. The Tribunal prefers to look at each case individually. The request for an Interlocutory Award is therefore denied.

2. Late-Filed Documents

25. On 30 January 1987, the Agent of the Islamic Republic of Iran filed together with a letter to the Chairman of Chamber Two dated 23 January 1987:

1. the French Text of the General Declaration;
2. a copy of President Carter's Summary Statement to Congress;
3. an Affidavit of Mr. Behzad Nabavi filed in Case No. 39, in Chamber Two.

The presenter of the Claim objected to the introduction of these late-filed documents in the present proceedings.

26. In the Tribunal's understanding, the Respondent submits the documents in question as evidence in support of its contention that paragraph 11(D) of the General Declaration applies to all United States nationals who suffered injuries resulting from popular movements during the course of the revolution. This argument, as explained below, see paras. 32-33, is not relevant to the issue of jurisdiction over the present Claim in any event. Hence, there is no

need to rely on the late-filed documents as evidence, and, accordingly, the Tribunal need not reach the question of their admissibility.

II. Jurisdiction

1. Nationality of Parties and Ownership of Claim

27. It is not contested, and the Tribunal is satisfied, that the Claimant is a United States national by birth. The Claim was owned continuously by the Claimant from the date on which it arose to the date on which the Claims Settlement Declaration entered into force, and was still outstanding on the latter date. The Islamic Republic of Iran is a proper respondent under the Claims Settlement Declaration.

2. Article II, paragraph 1, of the Claims Settlement Declaration

28. Article II, paragraph 1, of the Claims Settlement Declaration limits the Tribunal's jurisdiction to claims arising "out of debts, contracts . . . , expropriations or other measures affecting property rights" The Claimant argues that his property was "expropriated" by virtue of his wrongful expulsion, and that expulsion, in any event, is an "other measure[]" affecting property rights." In the Respondent's view a claim based on wrongful expulsion is in the nature of a tort and does not fall within any of these categories.

29. It is true that the Tribunal has found that it lacked jurisdiction over claims arising from personal injury

in previous cases.¹ This does not mean, however, that all torts fall outside the scope of Article II, paragraph 1, of the Claims Settlement Declaration. A "tort" is commonly defined as a legal wrong committed upon a person or property independent of contract. See Black's Law Dictionary 1335 (rev. 5th ed. 1979). The term "measures" used in Article II, paragraph 1, of the Claims Settlement Declaration is not limited to contractual relationships and does include "torts," if, and that is the relevant jurisdictional criterion, it affects property rights in a similar way as an expropriation.²

¹ See Lillian Byrdine Grimm and The Islamic Republic of Iran, Award No. 25-71-1 (18 Feb. 1983); Manuchehr Haddadi and The United States of America, Award No. 162-763-3 (31 Jan. 1985); International Systems & Controls Corp. and Industrial Development and Renovation Organization of Iran, Award No. 256-439-2 (26 Sept. 1986). In K. Haji-Bagherpour and The Government of the United States, Award No. 23-428-2 (26 Jan. 1983), also relied upon by the Respondent, however, the Tribunal dismissed the claim for lack of jurisdiction not on the ground that the act complained of was tortious in nature, but because it was one related to the seizure of the 52 United States nationals and, therefore, excluded from the Tribunal's jurisdiction pursuant to paragraph 11 of the General Declaration.

² See Lillian Byrdine Grimm, supra, at pp. 3-4. In the Grimm case, however, the Tribunal held that it had no jurisdiction, finding that the claim for loss of support, and for mental anguish, grief and suffering brought by the claimant whose husband was killed in Iran is not one affecting the Claimant's property rights. Similarly, Manuchehr Haddadi, supra, was dismissed for lack of jurisdiction because the Claimant had no "property interest" in his son's welfare (which allegedly was diminished due to maltreatment in the United States). The Tribunal in International Systems & Controls Corp., supra, at paras. 94-95, expressly concurred in the Grimm decision. It is true that it dismissed the claim for lack of jurisdiction in so far as it was based on "intentional tort." At the same time, however, the acts complained of were considered under the concept of "constructive expropriation." The Tribunal, then, stated: "The Respondents' failure to renew a contract or their failure to pay a debt cannot be said to amount to expropriation" This reasoning supports the view
(Footnote Continued)

30. The Tribunal recognizes that expulsion is a measure by nature directed against the Claimant himself. Yet, it may, at the same time, directly affect his property or property rights. In considering the issue of the taking of property through government interference, the Tribunal has construed the term "expropriation or other measures affecting property rights" broadly. See, e.g., Harza Engineering Co. and The Islamic Republic of Iran, Award No. 19-98-2, p. 9 (30 Dec. 1982); American International Group, Inc. and The Islamic Republic of Iran, Award No. 92-2-3, p. 9 (19 Dec. 1983). In the Tribunal's view, this jurisdictional phrase includes claims arising out of a wrongful expulsion, if, and to the extent that, it affects a Claimant's property rights.

31. The Claim for the payment to an Iran Air employee, the property left or sold in Iran, the cash seized at the Tehran Airport, the auction deposit, and money in the bank account are clearly claims arising out of measures affecting Claimant's "property" or "property rights." This is less obvious as regards the claim for loss of salary and employment benefits, which is based on the Claimant's allegation that BHI would have extended his employment contract for another year. Since, as noted below, the Claimant has failed to demonstrate that he would have continued to be employed by BHI after February 1979, the Tribunal need not reach the issue of whether his termination was caused by a "measure[] affecting property rights" within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration. Therefore, the Claim, in any event, fails on the merits. See infra, at para. 60.

(Footnote Continued)

that a tort may indeed fall within the Tribunal's jurisdiction provided it affects property rights in a similar way as an expropriation. See also Alfred W. Short and The Islamic Republic of Iran, Award No. 312-11135-3, para. 11 (14 July 1987).

3. Paragraph 11 of the General Declaration

32. Paragraph 11(D) of the General Declaration also limits the Tribunal's jurisdiction. In that paragraph, the United States agreed to "bar and preclude the prosecution against Iran of any pending or future claim . . . arising out of events occurring before the date of this Declaration related to . . . (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 Claimant contends that this exclusion applies only to the 52 United States nationals seized on 4 November 1979, while the Respondent argues that the exclusion applies to any United States national claiming injury to himself or his property resulting from popular movements during the course of the Revolution.

33. Yet, notwithstanding the Parties' position on this issue, the exclusion would only apply to acts "which were not an act of the Government of Iran." The Claimant relies on acts which he contends are attributable to the Government of Iran. Acts "attributable" to a State are considered as "acts of State." See Draft Articles on State Responsibility adopted by the International Law Commission on First Reading ("ILC-Draft"), Articles 5 et seq., 1980 Y.B. Int'l L. Comm'n, Vol. II, Part 2, at pp. 30-34, U.N. Doc. A/CN.4/SER.A/1980/Add.1 (Part 2). Therefore, paragraph 11 of the General Declaration does not effectively restrict the Tribunal's jurisdiction over this Claim.

III. MERITS

1. Claimant's Expulsion from Iran

34. The Claimant asserts that increasing anti-Americanism, instigated and supported by the leaders of the revolutionary movement, eventually led to the "de facto

expulsion" of United States nationals from Iran. This assertion is based on public statements of Ayatollah Khomeini and other leaders of the Revolution, together with anti-American activity by various groups alleged to be supporters of Ayatollah Khomeini.

35. The primary question is whether the alleged conduct is attributable to the Respondent Islamic Republic of Iran. Attributability of an act to the State is a constituent element of State responsibility. Acts of a revolutionary movement which becomes the new government can be attributable to the State under certain circumstances. See ILC-Draft Article 15. The Tribunal is convinced that statements and acts of Ayatollah Khomeini are attributable to the new Government, as it is beyond doubt that he was the leading organ of the revolutionary movement which became the new Government. The Tribunal cannot make a finding, however, whether statements and acts of other persons are attributable to the new Government as well, as the Claimant has not presented sufficient evidence as to the statements and acts by others. Such evidence is indispensable, in the Tribunal's view, to evaluate the importance of policy statements and their influence on the course of the Iranian Revolution.

36. In any event, it is unnecessary to consider the issue of "de facto" expulsion in the present case. The Claimant alleges that he had intended to stay in Iran until, on 13 February 1979, "Revolutionary Guards" forced him to leave. This contention is supported by the fact that he kept most of his property and did not sell or ship it home. The Tribunal is not persuaded, therefore, that the Claimant considered himself expelled before 13 February 1979.

37. The Claimant, however, also argues that he was expelled by "Revolutionary Guards" who forced him to leave his apartment. The Respondent asserts first that these "Revolutionary Guards" were not authentic, and second that their conduct is not attributable to Iran. In the

Tribunal's view, these arguments are interrelated: in order to attribute an act to the State, it is necessary to identify with reasonable certainty the actors and their association with the State.

38. Such identification proves difficult in this Case considering the revolutionary turmoil and the fact that during the Revolution various groups with different political orientations were struggling for power in Iran. The Tribunal finds, however, that these circumstances cannot generally relieve Iran from its responsibility under international law. Considering the evidence presented and public sources referred to, the Tribunal concludes that there were identifiable groups associated with the new government that, in fact, acted for Iran immediately after the victory of the Revolution.

39. It is beyond doubt that the vast majority within the revolutionary movement supported Ayatollah Khomeini and his policies. Many of Ayatollah Khomeini's supporters were organized in local revolutionary committees, so-called Komitehs, which often emerged from the "neighborhood committees" formed before the victory of the revolution. These Komitehs served as local security forces in the immediate aftermath of the revolution. It is reported that they made arrests, confiscated property, and took people to prisons. See S. Bakhash, The Reign of the Ayatollahs, 56 et seq. (1985). While there were complaints about a lack of discipline among the numerous Komitehs, Ayatollah Khomeini stood behind them, and the Komitehs, in general, were loyal to him and the clergy. Soon after the victory of the Revolution, the Komitehs, contrary to other groups, obtained

a firm position within the State structure and were eventually conferred a permanent place in the State budget.³

40. In May 1979, the Komitehs were officially recognized by decree under the name Revolutionary Guard.⁴ However, as early as 10 February 1979, groups loyal to Ayatollah Khomeini were sometimes referred to as "Revolutionary Guards." See Kayan, 10 February 1979; N.Y. Daily News, 13 February 1979, p. 3. Apparently, the Komitehs changed their name, rather than their composition, during the period from February 1979 to May 1979. On the basis of the evidence submitted and public sources available the Tribunal is convinced, therefore, that the names "Revolutionary Komitehs" and "Revolutionary Guards" were interchangeably used to describe the same group of revolutionaries generally loyal to the new government.

41. The evidence in this Case suggests that the two men who took the Claimant to the Hilton Hotel belonged to this group. First, the Claimant states in his affidavit

³ See S. Bakhash, supra, at 58-59 (quoting Ayatollah Khomeini as follows: "the Committees need purging, not dissolution As long as corrupt individuals exist, there is need for committees."). See also B. Rubin, Paved with Good Intentions: The American Experience in Iran 301 (1980).

⁴ Cf. S. Bakhash, supra, at 63. Eventually, the Revolutionary Guards Corps was also constitutionally recognized. Article 150 of the Constitution of the Islamic Republic of Iran, ratified on 15 November 1979, states:

"The Islamic Revolutionary Guards Corps, which was established in the early days of the victory of this Revolution, shall continue to exist in order to carry out its role of the protector of the revolution. The scope of functions and responsibilities of other armed forces, emphasizing the brotherly cooperation and coordination between them, shall be laid down by law." (Translated by Masouduzzafar).

that his landlord had identified them as "Revolutionary Guards," and that they wore distinctive arm bands. The Tribunal recognizes that the credibility of the Claimant's affidavit may be somewhat problematic, particularly because foreigners in Iran may not have realized that there were different revolutionary groups with different loyalties. In this Case, however, the Claimant's affidavit appears credible in light of other circumstances. The Claimant was taken to the Hilton Hotel on 13 February 1979, one day after a group of revolutionaries, described in several affidavits as "Revolutionary Guards," took control over the Hotel. It is undisputed that this group had repelled an attack by another group, believed to be Afghan labourers, and according to newspaper reports it arrested several attackers and took them as prisoners. See Tehran Journal, 14 February 1979. In the absence of any specific proof to the contrary, this fact strongly supports Claimant's statement that "Revolutionary Komitehs" or "Guards" loyal to the new government controlled the Hilton Hotel from 12 February 1979 and that the two men who took the Claimant to the Hilton Hotel were associated with them.

42. The question then arises whether the acts at issue are attributable to Iran under international law. While there is some doubt as to whether revolutionary "Komitehs" or "Guards" can be considered "organs" of the Government of Iran, since they were not formally recognized during the period relevant to this Case, attributability of acts to the State is not limited to acts of organs formally recognized under internal law. Otherwise a State could avoid responsibility under international law merely by invoking its internal law. It is generally accepted in international law that a State is also responsible for acts of persons, if it is established that those persons were in fact acting on behalf of the State. See ILC-Draft Article 8 (a). An act is attributable even if a person or group of persons was in fact merely exercising elements of governmental authority in

the absence of the official authorities and in circumstances which justified the exercise of those elements of authority. See ILC-Draft Article 8 (b).

43. The Tribunal finds sufficient evidence in the record to establish a presumption that revolutionary "Komitehs" or "Guards" after 11 February 1979 were acting in fact on behalf of the new government, or at least exercised elements of governmental authority in the absence of official authorities, in operations of which the new Government must have had knowledge and to which it did not specifically object.⁵ Under those circumstances, and for the kind of measures involved here, the Respondent has the burden of coming forward with evidence showing that members of "Komitehs" or "Guards" were in fact not acting on its behalf, or were not exercising elements of government authority, or that it could not control them.

44. The Tribunal is convinced that the evacuation of BHI employees, subsequent to 12 February 1979, was controlled by revolutionary "Komitehs" or "Guards" loyal to the new government, see supra para. 41, and that an operation of

⁵ In William L. Pereira Associates, Iran and Islamic Republic of Iran, Award No. 116-1-3, p. 43 (19 March 1984), the Tribunal held that Iran must be deemed responsible for the actions of the Revolutionary Guards (after their formal recognition). Moreover, in the Stephens Case (U.S. v. Mexico), 4 Rep. Int'l Arb. Awards 265, 267 (1927), the Mexico-United States Claims Commission found acts of groups of a similar nature attributable to the State: "Since nearly all of the federal troops had been withdrawn from this State and were used farther south to quell this insurrection, a sort of informal municipal guards organization - at first called "defensas sociales" - had sprung up, partly to defend peaceful citizens, partly to take the field against the rebellion if necessary. It is difficult to determine with precision the status of these guards as an irregular auxiliary of the army, the more so as they lacked both uniforms and insignia; but at any rate they were acting for Mexico or for its political subdivisions."

this size and nature was known to the new government. Under those circumstances, the Respondent has failed, in the Tribunal's view, to offer satisfactory evidence that these "Komitehs" or "Guards" did not act in fact on behalf of the new government, or that they did not exercise elements of government authority. Rather, the evidence suggests that the new government, despite occasional complaints about a lack of discipline, stood behind them. The Tribunal is persuaded, therefore, that the revolutionary "Komitehs" or "Guards" involved in this Case, were acting "for" Iran.

45. Nor has the Respondent established that it could not control the revolutionary "Komitehs" or "Guards" in this operation. Because the new government accepted their activity in principle and their role in the maintenance of public security, calls for more discipline, phrased in general rather than specific terms, do not meet the standard of control required in order to effectively prevent these groups from committing wrongful acts against United States nationals. Under international law Iran cannot, on the one hand, tolerate the exercise of governmental authority by revolutionary "Komitehs" or "Guards" and at the same time deny responsibility for wrongful acts committed by them. On the basis of the evidence in this Case, therefore, the Tribunal finds the acts of the two men who took the Claimant to the Hilton Hotel attributable to Iran.

46. The question then arises whether they indeed forced the Claimant to leave his apartment or whether they merely meant to assist him in a voluntary departure. As reported by the Claimant, the "Revolutionary Guards" announced that he and his wife would have to leave that day, while establishing their authority through automatic rifles they carried. The Respondent, on the other hand, contends that the Claimant left Iran at own will and makes the following supporting arguments: (1) BHI had started to evacuate its personnel via the Hilton Hotel as early as

December 1978; (2) the United States Embassy had recommended to United States nationals that they leave Iran; (3) Claimant's employment contract had allegedly been terminated by the end of January 1979; (4) Claimant had sold or sent away some of his property.

47. None of these arguments in the Tribunal's view are persuasive. First, BHI employees were not obligated to take part in the evacuation program. There is sufficient evidence in the record showing that BHI had hoped to resume its work in Iran, and that BHI officials tried to reach an agreement with the new government, at least until mid-February 1979. It is, therefore, not evident that BHI had an interest to evacuate those employees who were willing to take the risk and stay. Second, United States citizens in Iran were not obligated to follow the Embassy's recommendations; only U.S. government employees and their dependents were "ordered" to leave Iran. See Kayan International, 17 February 1979. Many United States citizens, in fact, decided to stay, despite the risk, and await further developments. Third, the Tribunal is not persuaded that the Claimant's employment contract was terminated by 31 January 1979. The "Letter of Appreciation" from BHI's Deputy Director, Maintenance Management, dated 31 January 1979, can hardly be construed as a notice of termination. There is evidence in the record that BHI employed clear and unambiguous language when it terminated an employee. For example, Claimant, as part of his Factual Memorial, submitted a BHI termination notice to Blaine S. Irish. This termination notice stands in contrast to the "Letter of Appreciation" sent to the Claimant. Moreover, there is no indication that any other termination notice was sent to the Claimant before he left Iran. Rather, he testified that he tried to get back to work in early February 1979, but could not do so because the BHI worksite was occupied by revolutionaries. Moreover, the Claimant apparently received a salary for the month of February 1979. Indisputably, BHI

(in Iran) was in a certain state of dissolution at the time and many employees had left the country by the end of January 1979, or were about to leave. It is therefore entirely possible that, as the Claimant asserts, the Letter of Appreciation was written because the Deputy Director left Iran, rather than the Claimant himself.

48. It is a difficult task to determine whether an employee, under the circumstances, wanted to go anyway, or whether he was indeed forced to go. In this Case, however, the Tribunal finds the more persuasive evidence on the Claimant's side. There is no indication that he asked BHI for evacuation, that he himself somehow tried to get to the Hilton Hotel where other BHI employees stayed, or that he made a serious effort to store or to ship his property. The Tribunal is convinced that on 13 February 1979 he still had most of his property, and that he was in no way prepared for an immediate departure on that day. It is unlikely that the Claimant voluntarily left his house in such a rush, abandoning all his property, while it was publicly known that Mehrabad Airport was closed as of 11 February 1979, and that evacuation flights could not take place for the time being. In view of all the circumstances in this Case, then, the Tribunal is persuaded that the "Revolutionary Guards" indeed forced the Claimant to go to the Hilton Hotel from where he had to leave Iran on an evacuation flight on 17 February 1979. Such conduct, in the Tribunal's view, constitutes a de jure expulsion by virtue of an express or implied order.

49. It is the prevailing view that a State has wide discretion in expelling foreigners. Certain procedural and substantive minimum standards, however, are guaranteed under international law. See, e.g., M. Pellonpää, Expulsion in International Law 379 (1984). One of the procedural requirements almost unanimously recognized is that a State must give the foreigner to be expelled sufficient time to wind up his affairs. M. Pellonpää, supra, at 420.

50. The Tribunal is satisfied that the Claimant was given only 30 minutes to pack a few personal belongings without advance notice. The Respondent did not submit any reason why the Claimant had to leave within such a short time and no such reason is evident. It is true that the Claimant's visa for Iran had expired on 29 January 1979. Yet, this does not justify an expulsion in the manner in which it was carried out here. First, while it was the previous practice of the Iranian authorities to extend visas of United States employees, one could not reasonably expect the Claimant to formally apply for such extension in a period of revolutionary turmoil. Further, there is no evidence in the record that he was warned by any authority that he would be ordered to leave the country. Second, there is no indication that the "Revolutionary Guards" who came to his apartment in any way mentioned the expiration of the visa, or that they were even aware of it. The Tribunal holds, therefore, that Claimant's expulsion was carried out with unnecessary haste and in violation of minimum procedural standards under customary international law. Certainly, the same result is reached under the standards established in Articles II and IV of the Treaty of Amity, Economic Relations and Consular Rights of 1955 between Iran and the United States, which was still in force during the period relevant to this case. See Phelps Dodge Corp. and The Islamic Republic of Iran, Award No. 217-99-2, p. 14 (19 Mar. 1986); Case Concerning United States Diplomatic and Consular Staff in Tehran, Judgment, 1980 I.C.J. 3, para. 54. The Tribunal concludes that the Respondent is liable for the consequences of Claimant's wrongful expulsion.

a) Liability for the Loss of Personal Property

51. The Claimant seeks compensation for the loss of his personal property in Iran. He submits two causes for the loss: first, he asserts that he was forced to sell property at sacrifice prices in view of threats and

intimidation by neighbors urging him to leave Iran; second, he left property behind in the apartment when "Revolutionary Guards" took him and his wife to the Hilton Hotel.

52. The Claimant cannot base his Claim on the conduct of his neighbors in Iran, as these neighbors are not even alleged to have acted for Iran. Nor is the Tribunal persuaded that the Claimant sold property because he was, or regarded himself, as "de facto" expelled before 13 February 1979. According to his own statement, he had chosen to stay in Iran until forced to leave on 13 February 1979. Obviously, civil unrest and violence associated with the Revolution was a good reason to take precautionary measures. The Tribunal finds, however, that the Claimant did not establish a sufficient causal link between anti-American acts of a general nature, even if regarded as attributable to the Government, and the sale of his property.

53. The Tribunal accepts, on the other hand, Claimant's allegation that he had to leave behind most of his personal property in his apartment when "Revolutionary Guards" took him to the Hilton Hotel. The loss of this property is a direct consequence of his wrongful expulsion. Had he been granted sufficient time to leave the country, he would have been able to sell his property or ship it back to the United States. Obviously, the Claimant did not even get the opportunity to prepare property for later shipment. Under such circumstances, any effort to ask for subsequent shipment lacked a reasonable expectation of success, and a failure to do so cannot be regarded as a breach of the Claimant's obligation to mitigate his damages. The Respondent is, therefore, liable for the loss of property left behind in the apartment.

54. The Claimant is entitled to appropriate monetary compensation. The Tribunal determines the amount on the basis of the value of the goods at the time when the loss

occurred, taking into account the purchase price and the normal rate of depreciation. The burden of proof in this respect is on the Claimant, but no unreasonable standards may be applied.

55. The starting point for the valuation is the amount and value of goods shipped to Iran. The Claimant alleges that he had shipped household goods to Iran with a replacement value of \$31,160 in early 1978. He submitted shipping documents which show that he had shipped a "gross" weight of 15,429 pounds and a "net" weight of 11,704 pounds. An entry made by Iranian Customs authorities in Claimant's passport, on the other hand, indicates that a shipment of 5,320 kilograms "gross" weight arrived in Iran, which is 3,701 pounds less than the gross weight indicated in the shipping documents.

56. The Tribunal is, thus, apparently faced with contradictory evidence. In general, official documents, such as a passport entry, are accorded high evidentiary value. Yet, the Tribunal does not believe that the discrepancy between the weight figures reflects a discrepancy in the amount of goods shipped. First, all the shipping documents were issued independently from each other and all contain the same figure. Second, a weight of 5,320 kilograms shown in the passport entry corresponds to 11,728 pounds, which is approximately the net weight figure indicated in the shipping documents, 11,704 pounds.⁶ This leads to the assumption that both figures, in fact, refer to the same quantity of goods shipped, whatever reason there is for the different indications. It is evident, therefore, that the Claimant brought a substantial amount of household goods

⁶ The two figures are exactly equal if one uses the common (albeit slightly inaccurate), formula of: kilograms divided by 2.2 = pounds.

from the United States to Iran. The Claimant has, further, submitted an inventory of his household goods. This inventory seems plausible, since, from the number and nature of items listed, it appears that they are not in excess of the needs and the standard of an average family household in the United States. The Tribunal is persuaded that the Claimant had to pay \$31,160 for these items.

57. From this amount the Tribunal must deduct the value of property the Claimant sold or gave away before he left Iran, amounting to \$8,025, leaving property originally worth \$23,135.

58. In determining the rate of depreciation, the Tribunal takes into account the composition of Claimant's household goods, their age and average duration of useful life, as well as the fact that a few of the items were damaged when they arrived in Iran. As a substantial number of items was already several years old in February 1979, the fair, average depreciation for all household goods together is estimated at 33%. The amount of compensation is thereby reduced to \$15,500.45.

59. Further, the Tribunal deems it fair to deduct from this amount costs the Claimant would have incurred in shipping his property back to the United States. The evidence submitted, in particular the letter of BHI to its employees dated 14 November 1978 together with attachments, shows that BHI would not have reimbursed Claimant's shipping costs of weight in excess of approximately 1000 lbs. It follows that the Claimant would have had to bear almost all transportation costs. Because the Respondent failed to introduce evidence on this point, however, the Tribunal estimates the cost of shipping as being \$3,000. The Claimant is, thus, entitled to compensation for property he left in Iran, in the amount of \$12,500.45.

b) Liability for the Loss of Salary and Employment Benefits

60. The Claimant also seeks compensation for the loss of salary and employment benefits under his contract with BHI allegedly caused by his wrongful expulsion. The Tribunal notes, however, that the employment contract was terminable "at any time . . . with or without cause." BHI withdrew from Iran and terminated Claimant's contract not later than some time in February 1979. There is no indication that Claimant's employment contract was terminated for any other reason than the cessation of BHI's activity in Iran. Consequently, Claimant would have lost his job and the benefits associated therewith anyway, even if he had not been expelled. The Tribunal cannot ignore this fact and grant compensation for the loss of salary and employment benefits Claimant would not have received. This part of the Claim is accordingly dismissed.

2. Money Seized at the Airport

61. The Claimant contends, and the Tribunal is satisfied on the basis of the evidence submitted, that "Revolutionary Komitehs" or "Guards" seized money from the Claimant and his wife at the Airport. These "Revolutionary Guards" were performing the functions of customs, immigration and security officers. See, e.g., International Herald Tribune, 20 February 1979, p. 1. They were, thus, obviously acting in their capacity as "organs" of the new Government or, at least, on its behalf. Again, under such circumstances the Respondent must show that it did not and could not control the "Revolutionary Guards" operating at the Airport. In the absence of evidence that it made at least an attempt to enjoin their activity or to exercise adequate control in order to hinder such seizure of cash, these acts are considered as attributable to the new Government.

62. Moreover, under the particular circumstances in this Case, the Tribunal is satisfied on the basis of Claimant's affidavit that these "Revolutionary Guards" seized a total of \$1,466 in cash from him and his wife. The Tribunal does not doubt that he was carrying cash when leaving Iran for the United States. It is not evident why the Claimant should have left any money behind in the apartment.

63. The Tribunal concludes that the Government of Iran is responsible for the conduct of the "Revolutionary Guards" acting at the Airport. The Respondent has not submitted any justification for the seizure. The Tribunal finds, therefore, that the seizure of cash at the airport was wrongful under international law and that the Respondent must pay appropriate compensation in the full amount of cash seized.

3. Additional Payment for Iran Air Ticket

64. The Claimant asserts that on 3 January 1979 he had to pay an additional amount of 20,000 Rials to an Iran Air agent in order to get his daughter onto a flight for which he held a confirmed ticket. Such conduct by the Iran Air agent, in the Tribunal's view, is not attributable to the Government of Iran. Even assuming government control over Iran Air, the Tribunal finds the evidence insufficient to demonstrate that the agent was acting in his official capacity as an "organ" of Iran Air on this occasion.

65. While there may have been reasons, in view of the chaos at the airport, why the Claimant's daughter could not take her reserved seat on the plane on that particular day, both Parties agree that the alleged conduct in question was unjustified and illegal under Iranian law. It is widely accepted that the conduct of an organ of a State may be attributable to the State, even if in a particular case the organ exceeded its competence under internal law or contravened instructions concerning its activity. It must have

acted in its official capacity as an organ, however. See ILC-Draft Article 10. Acts which an organ commits in a purely private capacity, even if it has used the means placed at its disposal by the State for the exercise of its function, are not attributable to the State. See Commentary on the ILC-Draft Article 10, Yearbook of the International Law Commission 1975, Volume II, p. 61. The critical question here, then, is whether the Iran Air agent was acting in his official capacity as an organ of Iran Air when he demanded the extra payment. There is no indication in this case that the Iran Air agent was acting for any other reason than personal profit, or that he had passed on the payment to Iran Air. He evidently did not act on behalf or in the interest of Iran Air. The Tribunal finds, therefore, that this agent acted in a private capacity and not in his official capacity as an organ of Iran Air.

66. Such conduct by a private individual might be attributable to Iran, if expressly or tacitly approved by Iran Air, or if Iran Air negligently failed to exercise appropriate control over its employees. Yet, the evidence presented here does not support such a conclusion.

67. Nor can the Government of Iran be held responsible for the failure to protect the Claimant against unjustified additional payments. There is no evidence that the Claimant sought any protection, or that the situation was so prevalent and generally known that the Government had a duty to provide protection. Thus, this portion of the Claim must be dismissed.

4. Auction Deposit

68. The Claimant asserts that in May 1978 he paid \$574 as a deposit on an auction bid for four jeeps. The money was placed in a bid account opened at Bank Markazi in the

name of Telecommunication Company of Iran. He further contends that although he was notified that he was the successful bidder, after the auction he found the jeeps in an unacceptable condition and requested TCI to return the auction deposit. TCI refused and the Claimant now seeks recovery before this Tribunal.

69. The Claimant's evidence in support of this Claim is inadequate. There is no evidence, either in the Claimant's affidavit or the letters he sent to TCI as to the conditions under which the jeeps were auctioned, whether the Claimant had the opportunity to inspect the jeeps beforehand, and whether TCI had guaranteed a good condition of these jeeps. Nor is it clear whether the Claimant was entitled to rescind his auction bid. Moreover, the Claimant has not submitted TCI's letter 577/2461/19514 dated 1357/7/30, referred to in his letter to TCI dated 1357/8/9 which might, otherwise, have clarified the matter. The burden of proof is on the Claimant to show that he is entitled to recover the auction deposit. In the absence of satisfactory evidence this Claim must be dismissed.

5. Bank Account at Bank Omran

70. It is not contested that the Claimant held, and still holds a balance of 31,214 Rials in a bank account at Bank Omran or its legal successor, Bank Mellat. The Claimant asserts that he was unable to transfer the funds in his bank account out of Iran due to exchange restrictions issued by the Government of the Islamic Republic of Iran. The Parties are in dispute over the validity of these exchange restrictions under international law.

71. The Tribunal will decide this issue at a later stage of the proceedings and, therefore, retains jurisdiction over the Claim for funds in the bank account.

6. Interest

72. In order to fully compensate the Claimant for the losses suffered by him by reason of his forced departure and the seizure of his money at the Airport, the Tribunal considers it appropriate to award interest as of 17 February 1979 in an amount approximately equal to the rate a successful Claimant would have been able to earn had it invested the sums awarded in a form of commercial investment common in its own Country. For successful American claimants, the Tribunal customarily uses the average rates earned on a six-month Certificate of deposit. See Sylvania Technical Systems, Inc. and The Government of The Islamic Republic of Iran, Award No. 180-64-1, pp. 31, 32 (27 June 1985). The average rate for the period relevant to this Award, rounded to the nearest quarter percent, is 10.50 percent.

7. Costs

73. The Claimant has claimed 1½ percent of the amount awarded as costs of the arbitration. The Tribunal notes, however, that the Claimant has succeeded only in relation to a small portion of his entire Claim. In these circumstances the Tribunal determines that each Party shall bear its own costs of arbitration.

D. AWARD

74. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The Respondent THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the Claimant KENNETH P. YEAGER the sum of thirteen thousand nine hundred sixty six United States Dollars and forty-five cents (U.S. \$13,966.45) plus

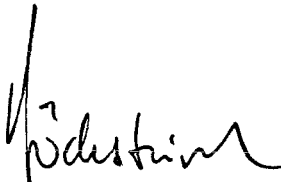
simple interest at the rate of 10.50 percent per year (365-day basis) from 17 February 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

- (b) The Tribunal retains jurisdiction over the Claim for funds in the bank account at Bank Mellat.
- (c) The remaining Claims are dismissed.
- (d) Each Party shall bear its own costs of arbitration.

These obligations shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

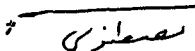
This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
02 November 1987



Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God



Mohsen Mostafavi

*Dissenting in part,
Concurring in part.
See Separate Opinion.*


Howard M. Holtzmann