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CHAMBER THREE

CASE NO. 812

AWARD NO.546-812-3

ABRAHIM RAHMAN GOLSHANI,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحدہ

FILED ثبت شد
DATE = 2 MAR 1993
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FINAL AWARD

Appearances:

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Mr. Chester D. Taylor Jr.,
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Ms. Eliane Petit de Mirbeck,
Mr. Parviz Golshani,
Witnesses.

For the Respondents:

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Professor Derek Bowett,
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Mr. Mehdi Karimpour,
Mr. Ali Akbar Rezvani,
Mr. Ghader Faramarzpour,
Mr. Mohammad Taghi Entezari,
Mr. Hamid Moeen Vaziri,
Mr. Yousof Bouzari,
Mr. Abolhassan Pazouki,
Mr. Ahmad Afshar zadegan,
Mr. Ali Asghar Moghadamnia,
Mr. Keyvan Ramian,
Mr. Asghar Naser Vaziri,
Witnesses.

Also Present:

Mr. Michael F. Raboin
Deputy Agent of the Government
of the United States of America.

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I. PROCEDURAL HISTORY

1. This is a claim brought by ABRAHIM RAHMAN GOLSHANI, a dual Iran-United States national (the "Claimant") against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (the "Respondent") for the alleged expropriation of his ownership interest in the Tehran Redevelopment Corporation ("TRC" or the "Company") and other corporate shareholdings and properties. The Claimant maintains that he became the owner of these properties pursuant to the execution, on 15 August 1978, of a deed of conveyance by himself and his relative, Mr. Rahman Golzar Shabestari (the "Deed").

2. In his original Statement of Claim filed 19 January 1982, the Claimant sought compensation in the amount of U.S.\$1,710,712,450.00. However, on 5 October 1982, the Claimant submitted an Amended Statement of Claim in which a diminished amount of U.S.\$1,056,904,460.00 was claimed. On 28 March 1983, the Claimant again revised the amount of monetary relief requested to U.S.\$1,057,904,460.00 plus interest at the rate of 12% per annum.

3. In Abraham Rahman Golshani and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 72-812-3 (30 June 1989), reprinted in 22 Iran-U.S. C.T.R. 155 (the "Interlocutory Award"), the Tribunal held, inter alia, that "from the date on which his Claim is alleged to have arisen until 19 January 1981, the dominant and effective nationality of the Claimant Abraham Rahman Golshani is that of the United States."

4. The procedural history prior to 30 June 1989 is reflected in the Interlocutory Award.

5. In its Order dated 2 August 1989 the Tribunal scheduled further pleadings in this Case. The Respondent, in its letter filed 20 March 1990, requested the Tribunal to determine, as a preliminary issue, whether the Deed is a forgery and whether the Claimant has locus standi. In the same submission, the Respondent also requested the Tribunal to order the Claimant to

submit the original of the Deed to the Tribunal and to offer the Respondent the opportunity to inspect it. On the same day, the Respondent submitted its Jurisdictional Brief Concerning Claimant's Lack of Locus Standi. Having received the Claimant's comments on the procedural suggestions made by the Respondent, the Tribunal determined in its Order of 8 May 1990 that "the issue of the Claimant's ownership of the Claim [would] be considered a preliminary matter to be decided in an Award." In the same Order, the Claimant was requested to submit the original of the Deed and the Tribunal scheduled the filing of submissions on the preliminary issue. This schedule determined that the first pleadings should be submitted by the Respondent (after the inspection of the Deed), to be followed by pleadings by the Claimant. The original of the Deed was submitted on 21 May 1990. In its Order of 25 May 1990, the Tribunal invited the Respondent to inspect the original Deed on 25 June 1990 at the Tribunal Registry. The Claimant was granted permission to be present at the inspection. In its letter filed 6 June 1990, the Respondent requested the Tribunal to grant it the opportunity to reply to the pleadings to be submitted by the Claimant and to schedule a hearing on the preliminary issue. The Claimant objected to these requests in its letter filed 15 June 1990. The Respondent's comments on this objection were filed on 25 June 1990.

6. During the inspection, which was held in the presence of the Claimant and the Chairman and Members of the Chamber and during which the Respondent took photographs of the Deed, a clarification was made to the Parties with reference to the Tribunal's Order of 8 May 1990. Specifically, the Parties were informed that the sole issue to be considered preliminarily by the Tribunal was the allegation that the Deed was a forgery and that the subsequent submissions by the Parties should address only that issue. This was confirmed by Order dated 25 June 1990. The same Order also confirmed the sequence of pleadings as determined in the Tribunal's Order of 8 May 1990. In its submission filed 10 July 1990 the Respondent objected to the above clarification, arguing that it was inconsistent with the Order of 8 May 1990, and requested the Tribunal to annul its

Order of 25 June 1990 and to determine that the preliminary issue was the "Claimant's lack of ownership of the claim," including the allegation of forgery. In the same submission, the Respondent reiterated its request that it be granted the opportunity to submit the last reply on the preliminary issue and that a Hearing be scheduled. In its Order of 31 July 1990, the Tribunal confirmed its Orders of 8 May, 25 May and 25 June 1990 and the schedule set forth therein. Judge Aghahosseini filed a Dissent to that Order on the same day.

7. On 24 August 1990 the Respondent submitted its Brief Concerning the Forgery Committed in the Claimant's Alleged Deed of Conveyance and Its Invalidity. On 24 September 1990 the Claimant filed its Submission on the Preliminary Matter of the Alleged Forgery of the Deed of Conveyance. By Order of 8 November 1990 the Tribunal scheduled a second round of pleadings. The Tribunal also requested the Respondent to submit, prior to 7 December 1990, a number of original deeds and documents used by the Respondent in evidence of its allegation of forgery. A Hearing on the preliminary issue was scheduled to take place on Wednesday 24 April 1991.

8. On 20 September 1990 the Claimant filed a Request for Interim Measures whereby it asked the Tribunal to issue an Order directing the Respondent to stay criminal proceedings that apparently had been initiated against the Claimant in the Courts of Tehran. Comments on this request were submitted by the Respondent on 26 November 1990. By Order of 11 December 1990 the Tribunal declined to grant the Claimant's Request for Interim Measures but reminded the Parties "that it [would] make an independent assessment of the evidence presented to it [and that its] determination ... as to the alleged forgery [would] prevail, in so far as this Tribunal is concerned, over any decisions by any other tribunal or court inconsistent with such determination." Judge Aghahosseini dissented from the above Order on the same day.

9. On 7 December 1990 the Respondent submitted the original deeds and documents referred to in the Tribunal's Order of 8 November 1990. Following a request by the Claimant to inspect these materials, an inspection thereof was scheduled for 18 January 1991 by the Tribunal in its Order of 20 December 1990. By its Order dated 14 January 1991 the Tribunal rescheduled this inspection to 13 February 1991.

10. On 23 January 1991 the Respondent filed its Brief Concerning the Preliminary Matter of Forgery of the Alleged Deed of Conveyance Pursuant to the Tribunal's Order Dated 8 November 1990. The following day it submitted a number of additional original documents and materials in support of its allegation of forgery. It also requested the Tribunal to reserve at least three days for the Hearing instead of one as provided in the Order of 8 November 1990. The Respondent again requested the opportunity to file the last submission on the preliminary issue. On 1 February 1991 the Claimant requested that the documents to be inspected on 13 February 1991 include all of the documents and materials filed by the Respondent on 24 January 1991. It also objected to the Respondent's request to have the last reply on the preliminary issue and to schedule additional days for the Hearing. The Respondent's comments on the Claimant's letter dated 1 February 1991 were filed on 5 February 1991. In its Order of 8 February 1991 the Tribunal determined that the documents and materials filed by the Respondent on 23 January 1991 would also be subject to inspection on 13 February 1991. In answer to the Respondent's request to submit an additional pleading on the preliminary issue of the alleged forgery, the Tribunal "note[d] that each Party ha[d] already been granted equal opportunity to submit two rounds of pleadings on this preliminary issue and that no further submissions [would] be granted on this issue." In the same Order the Hearing was rescheduled to 23 and 24 April 1991.

11. On 13 February 1991 the Claimant inspected the documents referred to above at the Tribunal Registry in the presence of the

Respondent and the legal assistants of the Chairman and of the Members of the Chamber.

12. On 18 February 1991 the Claimant requested to photograph the originals of two additional documents, photocopies of which were appended as exhibits to the Respondent's Brief filed 23 January 1991. In a letter filed 21 February 1991 the Respondent agreed to submit these originals to the Tribunal. They were subsequently filed on 5 March 1991. The inspection and photography session of the said documents was held in the presence of the Respondent and the legal assistants of the Chairman and Members of the Chamber on 7 March 1991.

13. On 26 February 1991 the Respondent renewed its request for a three-day Hearing. The Claimant objected thereto on 7 March 1991. On 10 April 1991 the Tribunal issued an Order informing the Parties that the Hearing in this Case would be held on 23, 24, and, to the extent necessary, on 25 April 1991.

14. On 19 March 1991 the Respondent submitted a list of the witnesses it would present at the Hearing. The Claimant's list of witnesses was filed on 25 March 1991. On 27 March 1991 the Claimant filed its final memorial on the preliminary issue. On 15 April 1991 the Respondent filed a submission in which it argued that the Claimant's witnesses should not be allowed to testify at the Hearing because the Claimant failed to abide by the minimum time limit for designating witnesses under Article 25 of the Tribunal Rules. At the Hearing the Tribunal determined that Article 25 was not infringed and that, therefore, the persons designated as witnesses by the Claimant should not be barred from testifying.

15. On 17 April 1991 the Respondent requested that its expert be allowed to re-inspect the original Deed in preparation for the Hearing. Pursuant to the Tribunal's Order of 18 April 1991, such inspection was held on the same day in the presence of the Claimant and the legal assistants of the Chairman and of the Members of the Chamber.

16. Following this inspection, on 18 April 1991, the Respondent requested permission from the Tribunal to again take photographs of the Deed and of the "Handwriting of Mr. Nia," which was one of the original documents that it had submitted in support of its forgery allegation. On the same day the Claimant also requested another opportunity for his expert to inspect the original documents submitted by the Parties in preparation for the Hearing. By its Order of 19 April 1991, the Tribunal granted both Parties a final opportunity to inspect, photocopy and/or photograph the following documents and materials on 22 April 1991:

1. the Original Deed of Conveyance (filed 21 May 1990);
2. the Registration Income Book of Notary Public Office No. 319 (filed 7 December 1990);
3. the Statement of Income for the Month of Mordad 1958 of Notary Public Office No. 319 (filed 7 December 1990);
4. the Five Original Deeds of Notary Public Office No. 369 (filed 7 December 1990);
5. the Twelve Original Deeds of Notary Public Office No. 319 (filed 7 December 1990);
6. the Ledger Book No. 23 of Notary Public Office No. 369 (filed 24 January 1991);
7. the Ledger Book for Automobile Transactions of Notary Public Office No. 369 (filed 24 January 1991);
8. the Original Seal of Notary Public Office No. 319 (filed 24 January 1991);

9. the Original Order Form No. 0597 (filed 24 January 1991);
10. the Handwriting of Mr. Nia (filed 5 March 1991); and
11. the Order Signed by Mr. Mohaghegh Damad (filed 5 March 1991).

17. A Hearing was held on the preliminary issue of the alleged forgery on 23, 24 and 25 April 1991.

18. At the Hearing the Respondent attempted to introduce into evidence a sound tape of an alleged conversation between Mr. Golzar and the Respondent's main witness, Mr. Afsharzadegan. According to the Respondent, this tape clearly establishes that the Deed is a fabrication. In view of the fact that the admission as evidence of an element of proof such as the cassette at such a late stage of the proceedings would have prejudiced the Claimant and because the tape had been in the Respondent's possession for a substantial amount of time prior to the Hearing,¹ the Tribunal decided not to admit this additional piece of evidence.

II. FACTS AND CONTENTIONS

19. A considerable portion of the facts of this Case has been set out in paragraphs 8 through 16 of the Interlocutory Award. This section, therefore, is limited to summarizing the circumstances forming the direct background to the execution of the Deed.

20. As explained in the Interlocutory Award, the Claimant left the United States for Iran in 1978 to perform an internship with TRC as part of the curriculum at the School for International Training in Brattleboro, Vermont. TRC is a

¹ A reference to the tape appears in the Respondent's brief submitted 23 January 1991.

corporation established under the laws of Iran, the main purpose of which is housing development and construction. According to the Claimant, TRC was the largest company of its kind in the country. It was involved in a major building project known as the "Ekbatan Housing Development," which was the construction in Tehran of a 15,000 condominium housing complex for 75,000 people. The Claimant contends that TRC also owned and controlled a large number of other companies, enterprises and assets. He claims that, prior to the date of the Deed, the equity interest in TRC was distributed as follows:

| | |
|---|-----|
| Mr. Rahman Golzar Shabestari, TRC's managing director | 60% |
| Mr. Mohammad Ali Baqerzadeh | 10% |
| Mr. Hossain Daneshvar | 30% |

21. The Claimant maintains that on 15 August 1978, he and Mr. Golzar executed a notarial deed of conveyance whereby the latter transferred to the former 59/60 of his 60% ownership interest in TRC and other corporate shareholdings and real and personal property.² The Claimant contends further that the Deed was registered as document No. 25345 by Notary Public Office No. 319 on 15 August 1978 and recorded on page 152 of Ledger Book No. 31 of the same Office.

22. The Claimant and Mr. Golzar left Iran in May 1979. The Claimant contends that, after May 1979, the Respondent took measures which served to expropriate the property acquired from Mr. Golzar and thus made official the de facto expropriation that occurred following the accession to power of the Provisional Government on 11 February 1979.

²In the Statement of Claim, the Claimant is referred to as Mr. Golzar's brother. At the Hearing, Mr. Golzar offered a more precise description of his relationship with the Claimant: "I had a father, and he had two wives. One was my mother, who was a bit older, and he had a younger wife. When my father died, my uncle married her ... That mother is the mother of Mr. Golshani. I think it is better if I say he is my cousin rather than my brother."

23. The Respondent maintains that the Deed was forged in the course of 1982 and backdated to 15 August 1978. According to the Respondent, the alleged forgery was intended to place assets owned by several Iranian nationals, including but not limited to Mr. Golzar, in the name of the Claimant, whose American nationality would enable him to claim for the value of those assets before this Tribunal. The Respondent also claims that the Deed was not drawn up by Notary Public Office No. 319, but was fabricated and attributed to that Office with the help of Mr. Afsharzadegan, Notary Public No. 369. The latter was purportedly a friend of Mr. Golzar and TRC's regular notary public prior to the Revolution.

24. The Respondent has advanced a vast array of arguments and evidence in support of its allegation of forgery. The main pillars of its case can be outlined as follows.

a. The Respondent relies on the affidavits and testimony of Messrs. Afsharzadegan and Nia, the alleged scribe of the Deed, stating that the document was fabricated in 1982.

b. The Respondent also relies on the reports and testimony of several Iranian handwriting and forgery experts. According to these experts, the signature of the notary public and the seal appearing on the Deed are clearly forged. Furthermore, they maintain that certain printing features of the sheets of the Deed are identical with the printing features of a sample of deeds issued by Notary Public No. 369 in the period 1981-1982 and bear no resemblance to the printing features of a sample of other deeds issued by Notary Public No. 319 during July and August 1978. According to the Respondent, the comparison of the printing features supports the view that the Deed was drawn up after 1978 by Notary Public Office No. 369.

c. The Deed is written on two sheets bearing numbers 362053 and 362058. The Respondent notes that these numbers are very close to the sheet numbers of the deeds issued by Notary

Public Office No. 369 referred to in subparagraph b, supra. The Respondent maintains that this similarity of official stationery numbers confirms that the Deed was drafted by Notary Public Office No. 369 during the period 1981-1982. The Respondent also introduced evidence purporting to prove that both sheets of the Deed were printed by the Iranian State Printing House after the date of the Deed.

d. The Deed indicates that it is registered as document No. 25345. The Respondent contends that the record establishes that document No. 25345 in reality is another instrument. Initially, the Respondent asserted that the real document No. 25345 was an affidavit by a Mr. Malayeri. In the course of the proceedings, however, the Respondent modified its position on this issue. It now maintains that the genuine document No. 25345 was an "admission" by a Mr. Hekmat.

e. The Parties agree that if the Deed was really drawn up on 15 August 1978, as alleged by the Claimant, it would have been registered in Ledger Book No. 31 of Notary Public No. 319. The Respondent maintains that this Ledger was stolen by the agents of the Claimant in order to make it impossible to prove that the Deed was not registered therein.

f. According to the Respondent, forgery is further evidenced by the Deed's total failure to comply with the most basic requirements of Iranian law regarding the transfer of real estate and shares. In this respect, the Respondent contends that the Deed's signatories did not pay the applicable registration fee, which, according to its calculations, would have amounted to 240,376,000.00 Rials. In addition, the Respondent stresses the Deed's alleged failure to indicate the fulfillment of numerous prerequisites which must be met and reflected in a deed of this nature.

25. The Claimant disputes the persuasiveness of all of the above arguments and maintains that the evidence in support thereof was fabricated by the Respondent to defeat a meritorious

claim. Contrary to the Respondent's contention that it was unaware of the existence of the Deed until 28 March 1983 - when the Claimant filed a photocopy thereof with the Tribunal - the Claimant asserts that the record establishes that the Respondent learned of the existence of the Deed between 19 January 1982 and 23 May 1982. The Claimant denies that his agents stole Ledger Book No. 31 and claims that the evidence demonstrates that it is still in the possession of the Respondent. The Claimant suggests that the Respondent has not produced the Ledger because it would show that the Deed was recorded in it. As regards the purported violations of the applicable Iranian legislation, the Claimant maintains that these allegations address the validity of the Deed, a question which the Tribunal is not concerned with at this stage of the proceedings.

III. PRELIMINARY ISSUES

A. Estoppel and Admission

1. The Parties' Contentions

26. In November 1982 TRC started proceedings in the French civil courts against, inter alia, the Claimant and Mr. Golzar to obtain the nullification of a sale to the Claimant by Mr. Golzar, acting on behalf of TRC, of an apartment owned by the Company. The Deed, as well as another document that forms part of the record in the present Case, namely the minutes of the Shareholders' Meeting of TRC of 13 November 1979, were also at issue in the Paris Litigation. The Claimant maintains that in the Paris Litigation, "the Respondent [took] positions that directly contradict the positions that it has taken in this proceeding." Specifically, the Claimant contends that in the Paris Litigation the Respondent denied the existence of the minutes of the Meeting of 13 November 1979, whereas they are now relied upon by that same Party in support of its allegation of forgery and that the Respondent "expressly asserted [in the Paris Litigation] ... that the Deed ... is authentic, valid and binding, operating under Iranian law to accomplish the objective

desired by Mr. Golzar and the Claimant." The Claimant concludes that, in view of these statements, the Respondent should be estopped or precluded from arguing in this Case that the Deed is forged.

27. According to the Respondent and its expert, Professor Derek Bowett, no estoppel could have arisen because certain of the conditions thereto have not been met. First, the Respondent maintains that, for the doctrine of estoppel to be applicable, there must be a clear and unambiguous statement by the party sought to be bound. The Respondent disputes, however, that it ever stated clearly and unambiguously during the Paris Litigation that the Deed was valid. Second, the Respondent argues that a State Party can only be bound by its own statements or those made by persons or institutions whose conduct is attributable to the State. Whereas the Claimant emphasizes that TRC is a controlled entity, the Respondent is of the opinion that this fact alone does not justify attributing to the Government of Iran the statements made by TRC's lawyers in the course of the Paris Litigation. The Respondent also asserts that, as a final element of the doctrine of estoppel, there must be "a change in the positions of one or both Parties, as result of reliance on the statement alleged to create an estoppel, resulting in an advantage to the Party making the statement or the detriment of the Party relying on it." The Respondent contends that the Claimant did not change its position in the Paris Litigation in reliance upon TRC's reference to the Deed. This contention, in turn, is disputed by the Claimant.

28. Furthermore, the Respondent, relying on an affidavit by TRC's French attorney in the Paris Litigation, argues that it was not TRC, but the Claimant's attorney who first invoked the Deed in the Paris Litigation by submitting a translated French copy thereof to the Cour d'Appel of Paris. TRC's French attorney testified that it was only when he noted that the Deed contradicted the Claimant's position that he decided to make reference thereto in his pleadings.

29. Apart from estoppel, the Claimant also argues that "the Respondent's assertion of contrary positions in different proceedings may be viewed as an admission against interest that irreparably damages its credibility on the forgery issue." The Respondent acknowledges that a statement lacking the requirements of estoppel can be regarded as an admission. It contends, however, that, although such an admission can be treated as a weakness in a party's position, it cannot bar that party from declaring the truth. Nevertheless, the Respondent maintains that it cannot be held to have admitted anything for the same reasons that lead it to conclude that no estoppel arises in this Case: the statements made during the Paris Litigation regarding the Deed are not clear and unambiguous and they cannot be attributed to the Government of Iran.

30. Finally, the Claimant contends that both TRC's statements in the Paris Litigation and the French Courts' conclusions regarding the validity of the transfer incorporated in the Deed, which were not objected to by TRC, if not sufficient to estop or constitute an admission against the Respondent, nevertheless corroborate the Deed's authenticity.

2. The Tribunal's Findings

31. To assess what conclusions, if any, can be drawn for this Case from TRC's statements made during the Paris Litigation, the Tribunal must first view those statements in the context in which they were made.

32. The Paris Litigation originates in the sale of an apartment located in Paris that was owned by TRC. In April 1982 Mr. Golzar, acting on behalf of TRC, transferred the property in question to the Claimant. On 24 November 1982 TRC sued, inter alia, Mr. Golzar and the Claimant before the French Courts to obtain the nullification of the sale. The case was heard by the Tribunal de Grande Instance of Paris, the Cour d'Appel of Paris

and the Cour de Cassation. These fora issued their decisions on 6 March 1985, 19 June 1987 and 20 November 1990 respectively.³

33. During those proceedings, the Respondent argued that the sale of the apartment was null and void because Mr. Golzar did not have the authority to act for TRC, as he was stripped of all his corporate powers pursuant to legislation enacted in Iran subsequent to the Revolution. The Claimant and Mr. Golzar relied on the minutes of the Shareholders' Meeting of TRC of 13 November 1978 referencing a power of attorney granted by the Board of Directors of the Company empowering Mr. Golzar to sell the apartment. According to the Claimant and Mr. Golzar, the legislation invoked by TRC had no effect on the proxy, which was granted to Mr. Golzar in his private capacity. TRC contended that no trace could be found in its files of the meeting allegedly held on 13 November 1978 and concluded that the minutes relied upon by the Claimant and Mr. Golzar legally did not exist.

34. TRC further argued in Paris that Mr. Golzar had declared before this Tribunal that he had transferred to the Claimant 59% of its shares. TRC maintained that, as a result of this transfer, the Meeting of 13 November 1978 - assuming it was held - could not have granted a valid power of attorney to Mr. Golzar. TRC referred in this respect to its by-laws requiring a quorum of 60% for a Shareholders' Meeting. According to TRC, this quorum was not reached at the Meeting of 13 November 1978 because the Claimant, who by that time had become the owner of 59% of the shares, did not attend.

35. The Claimant and Mr. Golzar replied that the absence of the former at the Meeting did not affect the validity of the decisions taken thereat. In support of their position, they relied on a provision in the Deed whereby Mr. Golzar had reserved

³ The sale was upheld before the Tribunal de Grande Instance and the Cour d'Appel of Paris. The decision of the Cour d'Appel of Paris was quashed by the Cour de Cassation and the case subsequently was referred to the Cour d'Appel of Versailles.

the authority to manage TRC during a period of 15 months. They argued that Mr. Golzar, who was present at the Meeting of 13 November 1978, represented not only the 1% of the shares that he still owned, but also the 59% that he had previously transferred to the Claimant. They concluded that the required quorum was reached.

36. Finally, TRC argued that the sale of the apartment should be nullified because it was tainted by collusion between the Claimant and Mr. Golzar who, it claimed, are brothers.⁴

37. Having outlined the general background of the Paris Litigation, the Tribunal will now focus on the precise nature of the statements made by TRC regarding the Deed in the course of those proceedings. The first such statement is contained in TRC's brief submitted to the Cour d'Appel dated 2 June 1986: "Now, whereas Mr. Golzar indicated in a sworn declaration made before the Iran-United States Claims [Tribunal], that on August 15, 1978, he had assigned to Mr. Golshani 59% of the shares in [TRC]. Whereas under these conditions, he remained owner of only 1% of the shares in [TRC]."

38. Several statements regarding the Deed are also contained in TRC's brief submitted to the Cour de Cassation dated 4 August 1988. The first of these statements reads as follows:

[Mr. Golzar] ... planned to carry out a fraudulent scheme with his half-brother, Mr. Golshani ... [He] planned, in order to foil possible seizure, to transfer his property to his half-brother, through an instrument called a donation (which was in reality a sale). For a price of 190 billion 700 million rials, Mr. Golzar transferred to Mr. Golshani, specifically, 59/60ths of a total of 60% of the shares and rights he owned in the plaintiff company; the price was naturally paid out of the sight of the notary drawing up the bill of sale.

39. Other excerpts from the above brief are also relevant:

⁴ Despite what is stated in footnote 22, supra, the Claimant and Mr. Golzar denied being related both before the Tribunal de Grande Instance and the Cour d'Appel.

[I]t cannot be seen how the majority necessary for the ... authorization [to sell the apartment] could have been attained without the presence of Mr. Golshani, the owner of 59% of the shares or without his being represented.

* * *

[T]he instrument by which Mr. Golzar sold his shares to Mr. Golshani shows that the seller retained only the management powers ...

* * *

[TRC] furthermore notes that Mr. Golzar had transferred, in an instrument dated August 15, 1978, nearly 60% of the company's shares to Mr. Golshani.

40. It thus appears that in its brief submitted to the Cour d'Appel, TRC essentially referred to a declaration made by Mr. Golzar before the Tribunal in which he indicated that he had transferred 59% of the shares to the Claimant. That being the case, it is hard to see how this particular statement could form the basis of an estoppel barring the Respondent from claiming in this proceeding that the Deed is a forgery or could be construed as an admission on the part of the same Party that the Deed is authentic.

41. The more problematic declarations are those contained in TRC's brief submitted to the Cour de Cassation. Although TRC did not expressly state that the Deed was authentic, one would normally not make the statements appearing in paragraph 39, supra, unless one believes that the Deed is authentic. At the same time, however, it should be recognized that TRC, in the same brief, described the transfer as a "fraudulent scheme."

42. The Respondent on 16 May 1988 alleged for the first time before this Tribunal that the Deed was forged. The Tribunal notes that this date precedes the date on which the statements referred to in paragraph 39, supra, were made. Consequently, when TRC made those statements, the Claimant was already aware that the Respondent contended before the Tribunal that the Deed was a forgery. The fact that such was the case has a bearing on

whether the Respondent should be estopped from alleging that the Deed is forged.

43. Furthermore, the question arises to what extent TRC's statements in the Paris Litigation can be attributed to the Government of Iran, the Respondent in this Case. Although it has been decided previously by the Tribunal that TRC is an "entity controlled by the Government of Iran" as provided for in Article VII, paragraph 3 of the Claims Settlement Declaration,⁵ it is clear that, under the internal laws of Iran, the Company is not part of the structure of the State. This being the case, the Tribunal is reluctant to consider the statements made by TRC as those of the Government of Iran in the absence of additional circumstances justifying such attribution.

44. In this respect, it is significant whether the Respondent, at the time it first alleged that the Deed was forged or later, was aware of and acquiesced in the statements contained in TRC's brief submitted to the Cour de Cassation. Because the Respondent initially raised its forgery allegation in its letter dated 16 May 1988 and because TRC's brief submitted to the Cour de Cassation was filed on or about 4 August 1988, it is unlikely that the Respondent was aware of the statements TRC was going to make at the time the Respondent first contended before the Tribunal that the Deed was not an authentic document.⁶ Although the reference by TRC to the declaration made by Mr. Golzar before the Tribunal shows that the Company had access to at least part of the file in the Case at hand, this, by itself, does not

⁵ DIC of Delaware, Inc. et al. and Tehran Redevelopment Corporation, Award No. 176-255-3, pp. 14-15 (26 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 144, 154-155; see also Housing and Urban Services International, Inc. and Government of the Islamic Republic of Iran et al., Award No. 201-174-1, pp. 16-17 (22 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 313, 325.

⁶ Theoretically, although the final version was not notified to the Claimant and Mr. Golzar until 4 August 1988, it is possible that a draft of the brief submitted to the Cour de Cassation was written by TRC's attorney and viewed by the Respondent prior to 16 May 1988. The record, however, fails to establish that this scenario reflects the actual train of events.

warrant the conclusion that the Respondent was aware of and acquiesced in the statements regarding the Deed made by TRC in the course of the Paris Litigation.

45. In view of the considerations expressed in paragraphs 42, 43 and 44, supra, the Tribunal believes that there is insufficient basis to hold that the Respondent is estopped from alleging that the Deed is a forgery, or has admitted that the document is genuine.

46. The Claimant also argues that TRC's statements made during the Paris Litigation tend to corroborate the Deed's authenticity.⁷ To the extent that that is correct, the Tribunal shall take account thereof when assessing the evidence presented by the Parties regarding the authenticity of the Deed.

B. The Burden of Proof

47. The Claimant acknowledges that he has the initial burden of proving prima facie that the Deed is authentic. Once this is accomplished, according to the Claimant, the burden of proving that the Deed is a forgery shifts to the Respondent.

48. Regarding the burden of proof, the Respondent relies on a legal opinion by Professor Brigitte Stern of the University of Paris X. According to Professor Stern, the general rule regarding the burden of proof in international law is embodied in the maxim: actori incumbit probatio. She is of the opinion that this principle implies that a respondent does not assume the burden of proof unless that party "allege[s] other facts in support of its defence." She maintains that the Respondent in this Case does not present such other facts but merely "denies

⁷ At the same time, the Claimant contends that the authenticity of the Deed is confirmed by the French Courts' conclusions regarding the transfer of the shares. However, as the authenticity of the Deed was not at issue before the French Courts, the Tribunal believes that little can be deduced from those conclusions.

the value of the evidence adduced by the [C]laimant." Professor Stern also recognizes, however, that there are a number of exceptions to the general rule, the most significant for our purposes being the presentation of prima facie evidence by the claimant, which shifts the burden of proof to the respondent.

49. The Tribunal believes that the analysis of the distribution of the burden of proof in this Case should be centered around Article 24, paragraph 1 of the Tribunal Rules which states that "[e]ach party shall have the burden of proving the facts relied on to support his claim or defence." It was the Respondent who, at one point during the proceedings in this Case, raised the defence that the Deed is a forgery. Specifically, the Respondent has contended that the Deed, dated 15 August 1978, was in fact fabricated in 1982. Having made that factual allegation, the Respondent has the burden of proving it. However, the Tribunal need only concern itself with the question whether the Respondent has met that burden if the Claimant has submitted a document inspiring a minimally sufficient degree of confidence in its authenticity. It is therefore up to the Claimant first to demonstrate prima facie that the Deed is authentic.

IV. PRIMA FACIE AUTHENTICITY

A. General Observations

50. In support of his position that the Deed is prima facie authentic, the Claimant relies primarily on the original of the document in question, a legal opinion by Dr. M. Motazed-Baheri, several affidavits by the Deed's signatories and the conclusions of his handwriting expert, Ms. Petit de Mirbeck.

51. The Tribunal believes that, given the technical nature of Ms. de Mirbeck's observations, her opinion should be considered only in the context of the question whether the Respondent has met its burden of proving that the Deed is a forgery. The Tribunal, therefore, need not take into account her

conclusions in assessing whether the Claimant's evidence makes out a prima facie case of authenticity.

B. The Deed

1. Presumption of Authenticity

52. The Claimant maintains that, because of its official character, a notarial document of the kind relied upon is presumed authentic unless proven to be a forgery. In support of that position, the Claimant primarily invokes a legal opinion by Dr. Motazed-Baheri, former Minister of Justice of Iran and former Professor of Law at Tehran University. The Claimant also maintains that, under United States law, official documents such as the Deed carry a presumption of authenticity. Finally, the Claimant contends that "under international law [too] the regularity of the acts of public officials is presumed."

53. Dr. Baheri opines that, under Iranian law, an official document is presumed authentic unless proven to be forged. Dr. Baheri further writes that the failure to perform certain formalities subsequent to the registration of the Deed, e.g., the failure to collect certain fees or to record the summaries of the transactions, does not affect the presumption that an official document is authentic.

54. The Tribunal notes that Dr. Baheri defines an official document presumed to be authentic as "a document which is prepared by a government official (a Notary Public) in accordance with that government official's legal authority as well as applicable laws and regulations and which represents a legal agreement signed by the parties thereto." It follows, in the view of the Tribunal, that not every document that, at first glance, gives the impression that a notary public somehow may have been involved in its preparation warrants a presumption of authenticity. To trigger the presumption, there must be a minimum of indicia suggesting that the document indeed was "prepared by a government official (a Notary Public) in

accordance with that government official's legal authority as well as applicable laws and regulations."

55. These considerations should not be read to imply that it must be demonstrated that, to be presumed authentic, the document and the transaction it incorporates must comply in every respect with all applicable regulations. The fact that, for instance, insufficient registration fees may have been paid or the notary may have neglected to perform some formality with regard to the Deed, by itself, does not warrant the conclusion that the document is not authentic. Nevertheless, if the omissions reflected in a document purportedly of notarial character are of such a nature or number that the document on its face does not inspire the "confidence and security" normally associated with an instrument of that kind (see paragraph 65, infra), the document in question, in the Tribunal's view, may not be an official document entitled to a presumption of authenticity.

56. In view of the foregoing, the Tribunal must now proceed to examine the Deed to determine whether it may properly be considered an official document as understood by Dr. Baheri.

2. General Characteristics of the Deed

57. The bulk of the text of the Deed was handwritten in Persian on two rather large pre-printed sheets of paper. The Imperial emblem - the Sun and the Lion - appears as a watermark in the paper and is printed on top of each of the sheets in addition to, inter alia, a number of pre-printed columns of text interrupted by spaces, some of which have been filled out, while others have remained blank. Inscriptions upon the upper part of the Deed state that it was issued by Notary Public Office No. 319 and registered on 15 August 1978 under No. 25345 on page 152 of Book No. 31 of that Office. What appear to be the signatures of the Notary and his assistant, as well as a notarial seal also feature on the upper parts of both pieces of paper. The Claimant and Mr. Golzar have signed the Deed at the bottom of each of its sheets. The document is dated 15 August 1978. Finally, the text

of Note 3 to Article 34 of the Law Amending the Registration Law (regarding the residence of the transacting parties) is pre-printed on the lower part of the paper.

58. The text of the Deed recounts that on 15 August 1978 the Claimant and Mr. Golzar "presented themselves" to execute the document. A substantial part of the Deed is devoted to a general description of the assets that were purportedly transferred by Mr. Golzar to the Claimant. These assets are the following:

- (1) 59/60 of 60% of the shares in TRC;
- (2) 59/60 of 60% of 65% of the shares in the Ekbatan Bank;
- (3) 59/60 of 60% of the shares in the Shirgah Company;
- (4) 59/60 of 60% of 79% of the shares in the Savalux Company;
- (5) 59/60 of 60% of the shares in the Kakh Company;
- (6) 59/60 of 60% of the North Shahyad Development Company;
- (7) 59/60 of 60% of the Caspian Shore Company;
- (8) 59/60 of 60% of TRC's main office building located in Tehran at Khiyaban-e Bizhan ("TRC's Main Office");
- (9) 59/60 of 60% of three buildings located at Maydan-e Naft/Khiyaban-e Mirdamad, Nader Shah and Farahzad (the "Three Buildings");
- (10) 59/60 of 60% of 51,000.00 square meters of land in Dizin (the "Dizin Project");

- (11) 59/60 of 60% of 700,000.00 square meters of land and 220,000.00 square meters of constructed and roofed warehouse space located at Qal'eh-e Suleyman Khan on the Karaj Road (the "Solimankhanieh Warehouses");
- (12) 59/60 of 60% of 6,163,000.00 square meters of land located in Abadan (the "Abadan Project");
- (13) 59/60 of 60% of 35,000.00 square meters of land located at Khorramshahr riverside (the "Khorramshahr Project");
- (14) 59/60 of 60% of 14,103 apartments located in Tehran constituting the Ekbatan Housing Development;
- (15) 59/60 of 60% of 3,000,000,000.00 rials representing the value of various machinery;
- (16) 59/60 of 60% of 7,000,000,000.00 rials representing the value of various household and building furnishings and equipment;
- (17) 59/60 of 60% of the Doors, Windows, Fancoile, Frames and Paint Production Factories;
- (18) 59/60 of 60% of the Belair Television Assembly Factories;
- (19) 59/60 of 60% of the Ekbatan Company Club; and
- (20) all shares owned by Mr. Golzar in the Bank Saderat Iran.

59. Finally, at the bottom of the second page of the Deed, there appears a note stating, inter alia, the following:

The parties stipulate between themselves that from today and until the end of the following fifteen full solar months, the Conveyor (Seller) shall continue to administer and manage all the companies which are the subject of this transaction. Moreover, just as he has done until now, he will deal with, sign and handle all documents, procès verbaux, letters, correspondence and other affairs, so that in the meantime the Conveyee (Buyer) can acquire sufficient know-how to run the companies by himself.

60. In contemplating the list appearing in paragraph 58, supra, one is struck by the monumental nature of the acquisition claimed to have been accomplished by the Deed. The document purports to transfer, in one single transaction, not only numerous major industrial enterprises but also millions of square meters of land, various buildings and a mass of movable properties. The magnitude of the transaction is further underscored by the consideration referred to in the Deed. The relevant provision states that "[t]he conveyance sum amounts to one hundred nineteen billion, seven hundred million rials, all of which has, according to the statements by both transacting Parties, been submitted to the Conveyor (Seller)."⁸

3. Indicia of Authenticity

61. Several of the Deed's characteristics support the position that the Deed is prima facie authentic. It is written upon Government issued paper⁹ the vintage of which, as shown by the Imperial emblem and the watermark, is consistent with the stated date of registration. It has been signed by the two transacting Parties and it bears the apparent signatures of the Notary and his assistant. It also carries what appears to be a notarial seal.

⁸ At the then prevailing exchange rate of approximately 70 rials to the dollar, this would amount to U.S.\$1,710,000,000.00.

⁹ The Parties agree that the pre-printed sheets are issued by an Iranian governmental institution.

62. Nevertheless, a number of other aspects of the Deed are problematic. According to the Deed, "[Mr. Golzar] conveyed all of his legitimate, assumptive, real and objective rights to [Mr. Golshani]." Among those rights the Deed lists the stock in TRC, although, according to Mr. Golzar's statements made at the Hearing, some or all of those shares in fact were registered in the name of his wife and children. The Deed thus purports to transfer shares in a company from a transferor who is not the record owner of the shares without any mention of the identity of such record owners and without any indication whether the transferor was the beneficial owner or was acting on the record owners' behalf pursuant to a power of attorney or otherwise.

63. Even more remarkable is the Deed's blending of TRC's assets and those allegedly owned by Mr. Golzar. In his affidavit submitted together with the Amended Statement of Claim, Mr. Golzar stated that, until the time of the transfer, he was the controlling stockholder of TRC and "the principal owner and manager of several other corporations and land development projects." Mr. Golzar went on to write that, apart from the Ekbatan Housing Development, TRC "own[ed] or controll[ed] eight subsidiary companies." Among those he listed, inter alia, the Savalux Company (79% owned by TRC), the Shirgah Company (51% owned by TRC), the Ekbatan Bank (65% owned by TRC) and the North Shahyad Company (wholly owned by TRC). In addition, Mr. Golzar declared that TRC owned several other industrial enterprises, assets and construction projects. For instance, he stated that "TRC also owned 90,000 square meters of land which were developed into the [Ekbatan Company Club], located adjacent to the [Ekbatan Housing Development] ... [and that a]nother development owned by TRC was the Khorramshahr Project." Following the description of TRC's assets, Mr. Golzar enumerated the corporations and land management entities that he owned personally. Those mentioned include, inter alia, Solimankhanieh Warehouses and 50,000.00 square meters of land located in Dizin.

64. The Deed, however, lists as properties conveyed by Mr. Golzar not only his alleged personal interests in many

assets, such as the majority of the shares in TRC, the Solimankhanieh Warehouses and the land in Dizin, but also his pro rata share in TRC's holdings, such as the Savalux Company, the Shirgah Company, the Ekbatan Bank, the North Shahyad Company, the Ekbatan Company Club and the Khorramshahr Project. In so doing, the Deed disregards the fact that the legal personality of TRC is distinct from that of its shareholders.¹⁰ Thus, the Deed purports to transfer twice Mr. Golzar's pro rata share in TRC's holdings: directly, pursuant to a transfer by Mr. Golzar and, indirectly, through the transfer of his alleged stock in TRC.

65. The above characteristics of the Deed must be considered in the light of the statements regarding official documents made by Dr. Baheri, the Claimant's expert on Iranian law:

Certain transactions - in particular, those involving real property - must be capable of being relied upon by anyone. It can be said that the most important foundation for a civilized nation is confidence and security in transactions and contracts ... The precautionary measures taken by the Iranian legislature in formulating the laws for preparation of official documents are purely for the purpose of enhancing the confidence and security of the public in transactions represented by an official document and for safeguarding the rights of third parties who are affected by the statements made in an official document.

66. The Deed, which, inter alia, purports to transfer to the Claimant a number of properties from a person who was not their owner, seems difficult to reconcile with the very purpose of official documents, as expounded by Dr. Baheri, namely the enhancement of "the confidence and security of the public in transactions represented by [such documents]."

67. Another striking aspect of the Deed is the very brief manner in which the transferred assets are described. This

¹⁰ Nowhere in the Deed is there any indication that Mr. Golzar was acting on behalf of TRC when transferring those properties.

applies especially to the real estate purportedly transferred. For instance, item 10 of paragraph 58, supra, is summarily described as "fifty-one thousand square meters of land ... located at Dizin;" item 12 as "six million, one hundred sixty-three thousand square meters of land located in Abadan, next to the Abadan TV Transmitter Center;" item 13 as "thirty-five thousand square meters of land located at Khorramshahr riverside;" and item 9 as "three buildings located at Maydan-e Naft/Khiyaban-e Mirdamad, Nader Shah and Farahzad." The entire Ekbatan Project is described as "fourteen thousand, one hundred and three apartments having various dimensions, sizes, indicating [sizes] and numbers, and whose original plate number is a part of plate number two thousand, three hundred ninety-five, of Tehran, District 10." Most of the other buildings and parcels of land referred to in the Deed are described in a similarly casual manner.

68. The Deed itself, however, refers to a second document that is alleged to contain additional information regarding the transaction. More specifically, the Deed states the following:

Because there is no need to provide the particulars of each property conveyed in this document due to the large number of properties involved, and because on the other hand the transacting Parties have already drawn up between themselves a *procès verbal* setting forth the details in great specificity and exactness, the said *procès verbal* will thus be relied upon by both Parties, as well as by the State and national authorities and the Corporate Registration Bureau, to be reflected in the record; and the present Deed of Conveyance, as will be mentioned below, is being drawn up and registered in this Office in order to provide further assurances, and it is definite, final and binding upon both Parties.

69. The above implies that this second document (the "*Procès-Verbal*") contains, at a minimum, the exact specifications of the properties referred to in the Deed and, perhaps, also other essential details regarding the transaction. It is evident, in the Tribunal's opinion, that, absent such further specifications, the Deed could not be regarded prima facie as a genuine notarial instrument. This is so because, without any such additional

descriptions, it would be impossible to identify exactly what the Claimant is supposed to have acquired. For the same reason, it would be impossible to record the transfer in the appropriate governmental agencies with a view to perfecting the transaction.¹¹ The existence of the Procès-Verbal, which is alleged to contain such further specifications, therefore is pivotal in the Tribunal's determination whether the Deed is an authentic notarial instrument.

70. A question that normally would need to be addressed first in this context is whether it is possible under Iranian law for the specifications of the real estate allegedly transferred to be contained in a document separate from the Deed. The Tribunal, however, has not been briefed sufficiently on this issue by both Parties and, therefore, cannot make any assumptions on this point.

71. The Procès-Verbal was not submitted into evidence by the Claimant. Furthermore, when questioned about it at the Hearing, the Claimant was unable to recall its existence. Although realizing that businessmen often are not greatly concerned with the legal formalities affecting their commercial dealings, the Tribunal finds the Claimant's complete failure to recall such a crucial document quite amazing. In the light of the anomalies affecting and the matters omitted from the Deed, this fact weighs heavily against finding the Deed to be an official document entitled to a presumption of authenticity.

4. The Tribunal's Determination

72. The Deed depicts Mr. Golzar as the transferor of a number of properties including the shares in TRC, some of which, however, were registered in the name of his wife and children, while title to others was held by TRC. In so doing, the Deed

¹¹ See, e.g., the statement contained in the Deed that "the ... procès verbal will ... be relied upon by ... the State and national authorities and the Corporate Registration Bureau, to be reflected in the record."

purports to transfer to the Claimant several properties from a person who was not their owner. At the same time, the Deed in effect transfers some of those properties twice by failing to take account of TRC's separate legal personality. It is questionable, in the Tribunal's opinion, whether a deed with such characteristics, which appear fundamentally at odds with the very purpose of official documents as expounded by Dr. Baheri, the Claimant's expert on Iranian law, is a document that may be considered to have passed genuinely through the regular Iranian notarial process.

73. Furthermore, in the Tribunal's view, it is clear that absent further specifications of the assets purportedly transferred in addition to those contained in the Deed itself, the two page document cannot be considered an authentic notarial document. These additional specifications pertain to, inter alia, the Shirgah Company, the Savalux Company, the Solimankhanieh Warehouses, the 14,103 apartments constituting the Ekbatan Housing Development, TRC's Main Office, the Three Buildings, the Dizin Project, the Abadan Project, the Khorramshahr Project and the buildings and lands associated with the Doors, Windows, Fancoile, Frames and Paint Production Factories, the Belair Television Assembly Factories, as well as those associated with the Ekbatan Country Club. It is the Claimant's position that those additional specifications are contained in the Procès-Verbal. However, not only was that document not submitted in evidence, but the Claimant could not recall its existence at the Hearing.

74. The Deed admittedly contains several indicia suggesting that it is a notarial document: it is printed on Government issued paper with the appropriate Imperial emblem and watermark, it was signed by the transacting parties, it appears to bear the signatures of the Notary and his assistant and it contains what appears to be a notarial seal. Nevertheless, in view of the short-comings in the Deed referred to in paragraphs 62 et seq., supra and the Claimant's failure to submit and to remember the Procès-Verbal, the Tribunal is unable to conclude that the

Claimant has succeeded in establishing that the Deed is an official document entitled to a presumption of authenticity.

75. Despite that determination, the Claimant still has the opportunity to prove that the Deed is prima facie authentic through corroborating evidence. The Tribunal, therefore, will proceed to consider in the next section of this Award the corroborating evidence proffered by the Claimant. In addition to TRC's statements made during the Paris Litigation, such evidence includes the affidavits of the Claimant and those of Mr. Golzar.

C. The Affidavits of the Claimant and Mr. Golzar

76. To corroborate the Deed's authenticity, the Claimant relies on a number of his own affidavits and several others signed by Mr. Golzar. Those affidavits, which were supplemented by the affiants' testimony at the Hearing, purport to explain how the Deed came into existence. The first two affidavits submitted by the Claimant and Mr. Golzar were filed as appendices to the Statement of Claim on 19 January 1982. Two further affidavits by the same persons containing amendments to their first affidavits were filed together with the Amended Statement of Claim on 5 October 1982. Those affidavits were again amended on 28 March 1983. In addition, on 27 March 1991, the Claimant and Mr. Golzar submitted two final affidavits professing to corroborate the Deed's authenticity.

77. The affidavits and statements made by the Claimant and Mr. Golzar cover various aspects of the Deed's history. In the following sections the Tribunal will proceed to review those aspects, which, for the sake of clarity, have been grouped under a number of different topics.

1. The Date of the Transfer

78. Prior to the submission to the Tribunal of a copy of the Deed, the Claimant and Mr. Golzar indicated that the transaction

had taken place in 1979.¹² Specifically, in his first affidavit filed 19 January 1982, Mr. Golzar referred to the spring of 1979 as the time he had transferred his shares in TRC to the Claimant. In his affidavit filed on the same date, the Claimant mentioned early 1979 as the date of the transaction.

79. Despite the above statements, both affiants referred to a much earlier date in their ensuing affidavits. In his affidavit filed 5 October 1982, the Claimant stated that the transfer had occurred in August 1978. In his second affidavit filed on the same date, Mr. Golzar referred to 15 August 1978.¹³

80. Assuming the Deed was actually drawn up in August 1978, the question arises how to explain that its signatories referred to spring or early 1979 as the date of the transaction in their initial affidavits. With regard to this question, the Claimant's attorney wrote that "[given the circumstances under which they were prepared], the sworn affidavits of Claimant and [Mr. Golzar] quite understandably contained minor mistakes and seeming inconsistencies." He described those circumstances as follows:

In preparing their sworn affidavits in support of the [Statement of Claim], Claimant and [Mr. Golzar] had only their respective memories of events that had occurred more than 40 months before at a time when both of them had been under tremendous physical and psychological stress as a result of the dangerous situation in Iran and the trying circumstances of their leaving the country. Moreover, Claimant did not learn of his opportunity to pursue his claim before the Tribunal until November 1981; in order to meet the deadline for filing his claim, he and [Mr. Golzar] were forced to prepare their affidavits in great haste. Finally, [Mr. Golzar] - who at that time was in Paris and spoke very

¹² A copy of the Deed was first submitted by the Claimant on 28 March 1983. The Claimant filed the original document on 21 May 1990.

¹³ In the same affidavit, Mr. Golzar nonetheless also referred twice to 14 July 1978. By his affidavit filed 28 March 1983, he corrected the two sentences referring to 14 July 1978, changing them to 15 August 1978. By his third affidavit, also filed 28 March 1983, the Claimant likewise amended his earlier affidavit by replacing "August 1978" with "August 15, 1978."

little English - was forced to communicate his recollection of events to counsel through an interpreter during long distance telephone calls.

In addition, the Claimant declared in his affidavit filed 27 March 1991:

My main focus at that point in time was to be certain that all of my assets in Iran which were part of TRC and its affiliated companies were included in the Statement of Claim. Determining exactly when the actual transfer of stock took place seemed less important to me, as I knew that the deed would show the date of transfer.

Similarly, Mr. Golzar stated in his affidavit filed on the same date that "[his] priority was chiefly with accounting for all the assets left in Iran ... [and that he] was less concerned with other details contained in the affidavit."

81. In sum, the Claimant and Mr. Golzar maintain that their initial version of the date of the transaction was a mistake that resulted from the unavailability of the Deed combined with the confusion reigning in their minds at the time they prepared their affidavits and their focus on the precise enumeration of the assets allegedly transferred, rather than on other aspects of the transfer.

82. For a number of reasons, the Tribunal is not particularly impressed by that explanation. In his first affidavit filed 19 January 1982, Mr. Golzar described the course of events affecting himself and the Claimant during the months preceding the execution of the Deed. His detailed account of those events is reprinted in paragraph 84, infra. From a preliminary point of view, it must be noted that it is rather curious that Mr. Golzar, while not being able to remember whether the Deed was executed in 1978 or 1979, nonetheless managed to provide the

Tribunal with an almost day by day account of the incidents affecting him and the Claimant in early 1979.¹⁴

83. Furthermore, one of the episodes alluded to by Mr. Golzar - the alleged kidnapping of the Claimant and the associated death threats in mid to late February 1979 - should have had a profound impact on the Claimant. It is odd that the Claimant failed to remember in early 1982 whether he signed the Deed before or after that horrible experience. The alleged kidnapping is not the only dramatic event in the Claimant's life that normally should have helped him remember whether the Deed came into existence in 1978 or 1979. It is his contention that the transaction was discussed, prepared and consummated in what surely must have been a very intense and hectic three days immediately following his arrival in Tehran on 12 August 1978 (for more on this issue, see paragraphs 94 et seq., infra). His assertion that the reference to 1979 in his first affidavit was the result of a mistaken recollection assumes that he had forgotten that, as a young student, he had acquired a vast business empire as soon as he arrived in his country of birth to take up the internship with TRC. Similarly, that assertion assumes that he failed to remember whether the transaction occurred prior to the Revolution (during the former Shah's regime) or thereafter (subsequent to the advent of the Provisional Government on 11 February 1979). Finally, the Claimant's explanation presupposes that the train of events preceding the transaction slipped not only his mind, but, at the same time, that of Mr. Golzar; and that they both made an identical mistake of believing that the asserted transaction occurred in the Spring of or early 1979.

2. The Motivation Behind the Transfer

84. According to the Claimant and Mr. Golzar, one must take into account the political and economic situation prevailing in

¹⁴ Interestingly, Mr. Golzar did not alter the chronology of the events referred to in paragraph 84, infra, in his affidavit filed 5 October 1982.

Iran at the time in order to understand what motivated the transfer. It is alleged in Mr. Golzar's affidavit filed 19 January 1982 that the problems started with the accession to power of the Provisional Government in Iran. In that affidavit, Mr. Golzar wrote as follows:

The circumstances in early May 1979 and in the immediately preceding three months in Iran were particularly dire for myself personally, TRC and TRC personnel, and for the government and country generally. Commencing with the day of February 11, 1979, when the provisional government came to power, the following events occurred affecting both my personal safety and the viability of continued operation of TRC and my other businesses under my management.

(a) On February 12, 1979, the day after the accession to power of the provisional government, a group of armed militants came to my residence and fired their guns and made other profane gestures threatening my property and my life. These militants were under control of the local Niavaran Committee, and they announced the intention of the Committee to execute me, my family members, and all other persons whom they considered murderers and thieves.

(b) On or about the evening of February 14, 1979, two nights after the provisional government assumed power, the militants forcibly broke into my residence and held me captive at gun point. The militants announced that I and my businesses were under "investigation" by the Niavaran Committee, and they interrogated me. The following morning they took me to the Central Committee of the provisional government on Iran Street, Tehran, where I was detained for five hours, and repeatedly questioned and threatened by representatives of the provisional government.

(c) About a week after February 11, 1979, about 50 militants under control of the government kidnapped my brother Abraham [the Claimant], and his brother-in-law, Mehdi Kavassi [sic], and held them hostage for \$300,000 ransom for a period of forty-eight (48) hours. They were kidnapped at the offices of TRC and kept in confinement on the fifth floor of the company's headquarters. Showing them hanging ropes, they were subjected to repeated threats of death by hanging from a high place on the outside of the building. They were not released until I paid the full amount of ransom money.

(d) During the weeks following February 11, 1979, constant psychological pressure was inflicted upon me

and upon officers of TRC and their families. Agents of the government made repeated phone calls threatening imprisonment, death, bodily harm, and confiscation of property ...

(e) On two occasions during the first month after February 11, 1979, I personally met with the Ayatollah Khomeini. These meetings were occasioned by my personal request for a meeting. I requested the meeting to obtain the assurance of the government that it would allow me to continue operation of TRC and permit the Project to be completed ...

(f) In late February 1979, after receiving further threats to my life, I concluded that my personal safety was so endangered that I could no longer safely stay in my residence. I abandoned my house and went into hiding in Iran.

(g) During the first months after February 11, 1979, the government and its agents launched a campaign of official investigations and executions. Numerous government officials were executed during this period. A number of businessmen were also detained and executed by the militant forces of the government during this period of time. Some of the persons who were killed were my personal friends and business acquaintances. The tenor of the official pronouncements concerning these events was distinctly anti-ownership and suggested increasing personal danger for all businessmen in the country. I believed at that time that I would be executed if I were again apprehended by the government.

85. Having thus described the situation in which he and the Claimant assertedly found themselves in the period beginning 11 February 1979, Mr. Golzar concluded that "[b]y early May 1979, it was evident that [he] could no longer attempt to manage, or supervise the management of TRC and the other companies." In the same affidavit, he stated that "[h]e transferred [his] shares of capital stock in TRC and the other companies to [the Claimant] in the belief and hope that ... he could better operate these businesses in those terrible times."

86. In his affidavit filed 19 January 1982, the Claimant set forth similar reasons for the transfer:

[Mr. Golzar] transferred his shares of the capital stock of TRC and his interests in the other companies to me

because he believed that ... I would be better able to operate the businesses in the times prevailing after the provisional government came to power on February 11, 1979. In the weeks following February 11, 1979, [Mr. Golzar]'s personal safety, his family, and his businesses were greatly endangered.^[15]

87. As stated in paragraph 79, supra, the Claimant and Mr. Golzar's position regarding the date of the Deed changed. Since their affidavits filed 5 October 1982, the Claimant and Mr. Golzar have maintained that the transfer had occurred in August 1978 instead of 1979. Accordingly, the affiants retracted their exposé according to which the events outlined in paragraph 84, supra, triggered the transfer. Mr. Golzar now began his account of the circumstances which prevailed in Iran and which led to the alleged transfer of the properties in 1978 with the following two new paragraphs:

(a) Beginning January 10, 1978, demonstrations and street riots began to occur in various parts of Iran including Tehran, and the situation deteriorated every day. By the middle of 1978, these riots and demonstrations took the form of setting fires to public facilities, government buildings, and banks. They also took the form of creating disturbances in production facilities of factories and firms. The disturbances were mainly aimed at high-ranking managers and major shareholders and were increasing in frequency and severity every day. These disturbances caused managers and shareholders to feel insecure and unprotected by the law. The Iranian newspapers were reporting on these unpleasant and frightening occurrences every day.

(b) As the major shareholder of TRC, I was a principal target of these threats and demonstrations. There were frequent disturbances at the facilities of TRC and at the plants of the other businesses. There were incidents of workers disobedience in the labor complex at the [Ekbatan Housing Development] and its affiliated workshops. Some of the radical elements and project workers became preoccupied with creating

¹⁵ The Tribunal views this explanation in the light of the statement by Mr. Golzar contained in his affidavit filed 19 January 1982, according to which the Claimant, some months before the purported transfer (which at that time was alleged to have taken place in the Spring of 1979), had been kidnapped and threatened to death by "50 militants under the control of the government." (See paragraph 84, supra)

disturbances within the factories and the manufacturing units. These disturbances increased during 1978 to the point that work ceased on several occasions. I hoped that by transferring ownership of the businesses the disruption of operations and management would abate.

(c) On February 12, 1979, the day after the accession to power of the provisional government ...

88. Similarly, the Claimant amended his statement referred to in paragraph 86, supra. In the new version, he no longer referred to his ability to operate better the businesses "in the times prevailing after the provisional government came to power on February 11, 1979," but "in the times prevailing during 1978 and 1979."

89. Whatever the chronology of the events triggering the asserted transfer may have been, one of the main driving forces behind the Deed allegedly was Mr. Golzar's concern to have a person in place to oversee the completion of the Ekbatan Housing Development in his stead. Assertedly, Mr. Golzar believed that, as a major shareholder in and manager of one of Iran's most important construction companies, he might have been harassed by the revolutionary militants to the point of being unable to accomplish that task himself. In this respect Mr. Golzar states the following in his affidavit filed 5 October 1982:

I transferred my shares of capital stock in TRC and my interest in the other companies to Mr. Golshani in the belief and hope that, under his ownership, the [Ekbatan Housing Development] could be completed and the other businesses could continue to operate. I had devoted my whole life to establishing a good reputation in the construction and development industry. I did not want to see all of my hard work and good reputation lost by failing to complete the Project and disappointing the 75,000 people expecting to become residents. Nevertheless, the circumstances for myself personally, TRC and TRC personnel were becoming increasingly worse in 1978. I felt that the only way to assure completion of the [Ekbatan Housing Development] would be to transfer controlling ownership to my close relative, Mr. Golshani, who was not a subject of controversy and harassment at the time.

90. Similar statements are contained in Mr. Golzar's affidavit filed 27 March 1991:

The civil unrest which took place in Iran prior to the overthrow of the Shah by the Islamic Government very much affected my personal safety and the continuing operation of TRC and its affiliated companies. A number of my employees were militants involved in the revolutionary movement. By late fall 1977, I began to fear for my personal safety. In addition, I began to worry about the continuing operation of my company should I no longer be able to manage it. I spent many years building the company, and did not wish to see it ruined by the government upheaval and civil strife taking place in Iran at that time. Completing the project for the benefit of the country of Iran was very important to me; if I was not able to do so, I wished to be certain that it would be accomplished by someone else.

91. The question arises why Mr. Golzar should have chosen the Claimant as his possible replacement.¹⁶ At the time the Claimant and Mr. Golzar contended that the Deed was executed in 1979,¹⁷ they both maintained that the former was chosen, inter alia, by reason of their belief that "[b]ecause of [his] acquaintances with the officials in the Provisional Government,

¹⁶ At the time of the alleged transfer, the Claimant had no professional experience to speak of in the construction business. In contrast, Mr. Parviz Golshani, another brother of Mr. Golzar, who, as Senior Vice President of TRC, was "a principal manager responsible for the construction of the Ekbatan Housing [Development]," probably was better prepared to finish the project. Furthermore, it follows from Mr. Golzar's affidavit filed 19 January 1982 that he in fact had designated Mr. Parviz Golshani as one of the persons who were destined to take over the management of the companies:

It was my intention and hope that by transferring my property to the Claimant, an American citizen, and leaving the management of TRC and the other corporations in the hands of other executives, including my brother Parviz Golshani, who had my power of attorney, my safety might be assured, the [Ekbatan Housing Development] could be completed, and the businesses saved from further economic chaos and destruction.

(Emphasis added)

¹⁷ See, i.e., their affidavits filed 19 January 1982.

... [he] would be permitted by the Provisional Government to continue operation of TRC and complete the [Ekbatan Housing Development] which had employed and housed many people in Iran." However, all references to the Claimant's alleged acquaintances with members of the Provisional Government as a motive for the transfer were deleted in their affidavits filed 5 October 1982. Presumably, this is because, in those affidavits, the Claimant and Mr. Golzar stated that the Deed was executed in August 1978 instead of 1979, at which time the Provisional Government was not yet in existence.¹⁸

92. Another important reason why the Claimant was allegedly picked as Mr. Golzar's possible successor was his American nationality. In his affidavit filed 27 March 1991, Mr. Golzar stated that in early 1978, after having had a telephone conversation with the Claimant,¹⁹ "[he] felt that, as an American, [the Claimant] would be more insulated and the company would be a less inviting target of the revolutionaries.^[20] As of early 1978, there were no attacks by revolutionaries directed against Americans, and the Imperial Government of Iran had good relations with the United States Government."

93. It follows from his statements that Mr. Golzar believed that the disruptions in the management and the operation of TRC were, at least in part, the result of the fact that he personally, as a prominent majority shareholder in the Company, was the center of the attention of the revolutionary forces. Apparently, he hoped that the execution of the Deed would allow him to step out of the spotlight and that this, in turn, would

¹⁸ At the Hearing, the Claimant explained his earlier statements by arguing that, at the time the Deed was executed, he knew a number of persons in the revolutionary movement whom he expected to become members of the later leadership in the Islamic Republic of Iran.

¹⁹ During the conversation, the Claimant asked Mr. Golzar whether he could perform his internship with TRC. See paragraph 94, infra.

²⁰ Reference is made to footnote 15, supra.

enhance the chances of successfully accomplishing the Ekbatan Housing Development. The Tribunal recalls, however, that the Deed stipulates that, during an initial period of fifteen months, Mr. Golzar would continue to manage all the companies that are the subject of the transaction (see paragraph 59, supra). Furthermore, the Claimant stated in his affidavit filed 27 March 1991 that the original copy of the Deed that was delivered to its signatories "was hidden in a safe place."²¹ An undisclosed transfer of ownership in combination with a general power of attorney granted to Mr. Golzar to continue the management of the companies,²² means that, from an outsider's point of view, the situation at TRC and its affiliated companies, to all intents and purposes, remained unchanged. Under these circumstances, one must wonder how Mr. Golzar possibly could have believed that he would no longer be the focal point of the revolutionaries' scrutiny.

3. The Time Frame of the Transfer

94. In his affidavit filed 27 March 1991, Mr. Golzar declared that he had a conversation with the Claimant, "with whom [he] was in close contact," in early 1978 during which the latter asked him if he could perform his internship, required by his school's curriculum, with TRC. Mr. Golzar contends that "[a]fter this conversation, [he] began considering transferring [his] shares in TRC to [the Claimant because of his American nationality]."²³

95. The Claimant maintains that he left the United States for Iran one day after his naturalization, on 10 August 1978, to begin the said internship with TRC, as previously agreed with Mr. Golzar. He claims that on his way to Tehran, he stopped in England, France and Italy, spending several hours in each

²¹ The other copy is claimed to have remained in the Notary Public's office.

²² See also footnote 28, infra.

²³ The Claimant was naturalized as a United States citizen as late as 9 August 1978.

country. He contends that he arrived in Tehran on 12 August 1978. The Claimant further stated at the Hearing that "[u]pon [his] arrival in Tehran, [he] immediately met with [Mr. Golzar] and other members of the family, and [they] had discussions, rather serious and long, regarding the condition of the country at that time and the turmoil and various other things that were happening at the time." Pursuant to this asserted conversation, Mr. Golzar "confirmed in [his] own mind that it would be beneficial to transfer [his] ownership in TRC to [the Claimant] in order to attempt to save the assets of the company."

96. Mr. Golzar contends that, having made that decision, "[he] directed [his] adviser to have a deed of conveyance prepared by a notary to transfer [his] interest in TRC to [the Claimant]." According to Mr. Golzar's testimony, only three days elapsed between the time he decided to proceed with the transfer and the day the Deed was ready for signing. The text of the Deed indicates that it was executed on 15 August 1978. At the Hearing, however, Mr. Golzar declared that he had already transferred the shares in TRC at the office of the Company a few days before 15 August 1978.²⁴

97. In sum, the Claimant and Mr. Golzar present the following scenario to the Tribunal:

(1) Although Mr. Golzar considered transferring his assets to the Claimant before he arrived in Tehran, this possibility was only first discussed with the Claimant immediately after his arrival on 12 August 1978.

(2) Following that discussion, presumably on 12 or 13 August 1978, Mr. Golzar transferred to the Claimant his alleged interest in TRC, claimed to be worth over U.S.\$930,000,000.00.

²⁴ No mention had been made of this prior transfer in the affidavits of the Claimant and Mr. Golzar.

(3) A few days later, on 15 August 1978, they executed the Deed (which had been prepared in the meantime) to confirm the prior transfer of the shares in TRC and to accomplish the transfer of the remaining properties listed in paragraph 58, supra.

98. Leaving aside the fact that the above is a remarkably tight schedule for the transfer of corporate assets of the magnitude so summarily reflected in the Deed, the scenario implies that that instrument and the allegedly accompanying Procès-Verbal were drafted in a mere three days.

99. It is useful at this point to focus on the information the Procès-Verbal is supposed to have contained regarding the transaction. With regard to a number of the properties listed in paragraph 58, supra, the Deed explicitly mentions that the Procès-Verbal contains descriptions of the various properties setting forth the details "in great specificity and exactness." This applies to the shares in the Shirgah Company, the Savalux Company, the Solimankhanieh Warehouses, the 14,103 apartments constituting the Ekbatan Housing Development and the various machinery referred to in item 15 of paragraph 58, supra. One would assume that the Procès-Verbal would also contain an accurate description of the other properties purportedly conveyed. If one were simply to take into account the real estate mentioned in the Deed, this would mean that the Procès-Verbal additionally incorporates the precise specifications of TRC's Main Office, the Three Buildings, the Dizin Project, the Abadan Project, the Khorramshahr Project and the buildings and lands associated with the Doors, Windows, Fancoile, Frames and Paint Production Factories, the Belair Television Assembly Factories, as well as those associated with the Ekbatan Country Club. The collection of all the information necessary to describe specifically and exactly in the alleged Procès-Verbal so many buildings and parcels of land located in various parts

of Iran²⁵- the Ekbatan Housing Development alone comprises more than 14,000 different apartments - must have been such a herculean task that one wonders how a notary public office could have managed to prepare it on such short notice in a mere three days.

4. The Consideration for the Transfer

100. The Amended Statement of Claim filed 5 October 1982 indicates that "on August 15, 1978, [Mr. Golzar] transferred [his] ownership interest in TRC to the Claimant, Mr. Golshani, according to Article 795 and other articles of the Iranian Civil Code." Article 795 is the first article of a section of the Iranian Civil Code dealing exclusively with gifts. In the Persian version of his affidavit attached to the Amended Statement of Claim, the Claimant asserts that "[he] acquired all [his] rights, title, privileges and interest in [the] companies and projects in August 1978 as a gift from [Mr. Golzar]."

101. Instead of referring to a gift of the properties, however, the Deed mentions that "according to the statements by both transacting Parties," a sum equivalent to U.S.\$1,710,000,000.00 has been paid to Mr. Golzar. According to the list reprinted in paragraph 58, supra, this consideration relates to a portion of TRC and the other properties (in most cases 59/60 of 60%). Strangely, the Statement of Claim values 100% of TRC and those other properties at the almost equal amount of U.S.\$1,710,712,450.00.²⁶

102. Notwithstanding the terms of the Deed, at the Hearing Mr. Golzar recognized that the Claimant "as a student, ... had no money to pay [the consideration]." At the same time he asserted that he fully expected that the Claimant eventually would be able

²⁵ Not to speak of any other formalities that presumably would have needed to be complied with in preparing the Deed.

²⁶ The latter amount was reduced to U.S.\$1,708,426,850.00 in the Amended Statement of Claim.

to repay him out of the proceeds of the Company. Regarding this issue, the Claimant stated the following:

I have never said that I have paid him so many billions of dollars. But as [Mr. Golzar] mentioned this morning, we had an agreement that during the time that I was being trained by him and if I was going to control the company, from profit or whatever money that was made through the company, I would compensate him for it.

The least that can be stated is that the explanation of the Claimant and Mr. Golzar regarding the issue of consideration and the provisions of the Deed are not a model of consistency.

5. The Amount of Shares Allegedly Transferred

103. As regards the evolution of the equity interests in TRC, Mr. Golzar wrote the following in his affidavit filed 19 January 1982:

Of the original capital stock issued [at the time of the incorporation of TRC in 1974], I personally owned sixty (60) percent, and Mohammad Ali Bagerzadeh and Hossain Danesvar owned (10) percent and thirty (30) percent respectively ... In early 1978, I personally acquired all of the shares owned by Hossain Daneshvar, which resulted in my owning approximately ninety (90) percent of the outstanding capital stock of TRC.²⁷ I retained a ninety (90) percent ownership of TRC until the spring of 1979, when I transferred all of my right, title and interest in the shares of TRC to my brother, Abraham Rahman Golshani ... My brother accepted this transfer and agreed to abide by the terms of our agreement. The document accomplishing this transfer is not available to me now. I will obtain it as soon as possible and submit it to the Tribunal.

In his affidavit filed on the same date, the Claimant also declared that "[a]s of early 1979 [he] was the owner of ninety (90) percent of the capital stock of [TRC]."

²⁷The Statement of Claim indicates that the transfer of shares from Mr. Daneshvar to Mr. Golzar took place in early November, 1978.

104. However, in his affidavit attached to the Amended Statement of Claim filed 5 October 1982, Mr. Golzar no longer made any reference to his alleged acquisition of Mr. Daneshvar's 30% stake in the Company in early 1978. His new position, as reflected in that document, is that "[he] retained a sixty (60) percent ownership of TRC until August 15, 1978, when [he] transferred fifty-nine sixtieths (59/60ths) of [his] shares of TRC and all of [his] interest in the affiliated companies to [his] relative, Abraham Rahman Golshani."²⁸ Similarly, the Claimant stated in his affidavit filed the same date that, as a result of the Deed, he "was the owner of fifty-nine (59) percent of the capital stock of [TRC]."

105. In their affidavits filed 27 March 1991, the Claimant and Mr. Golzar elaborated further on their switch of positions regarding the amount of shares allegedly transferred in August 1978. Mr. Golzar attempted to shed light on this matter by the following explication:

In early 1978 Mr. Hossein Daneshvar, who owned 30 percent of TRC, fled Iran out of fear for his safety. He left with me bearer shares representing his 30 percent ownership in the Company, and I intended either to return these to him if he one day returned to Iran, or to pay him for the shares. At the time Mr. Daneshvar fled, I had no funds with which to compensate him for the shares; he was aware of this. According to the Articles of Incorporation of TRC, bearer shares are owned by the holder; no formal transfer of ownership is necessary as would be the case with ordinary shares of a corporation. Thus, in early 1978 I owned 90 percent of TRC.^[29]

The Claimant stated the following in his affidavit:

²⁸ Mr. Golzar further claimed in that affidavit that he "retained one sixtieth (1/60ths) of [his] interest in TRC to permit [him] to participate in managing the [Ekbatan Housing Development] until its completion."

²⁹ Mr. Daneshvar did not testify at the Hearing, nor did he submit any affidavit to the Tribunal confirming Mr. Golzar's version of the events.

I understood from [Mr. Golzar] that Mr. Hossein Daneshvar had fled Iran in early 1978 and transferred his 30 percent interest in bearer shares of TRC to [Mr. Golzar]. The deed conveying the 59 percent interest did not contain these shares, but no formal transfer was necessary, as the Articles of Incorporation of TRC establish that the holder of bearer shares owns them. Because after August 15, 1978, I owned the majority interest in TRC, and because the bearer shares were kept in a safe at TRC, I believed that I owned them ... [B]y spring of 1982, I did not believe it was likely that I would be able to obtain the bearer shares representing a 30% percent interest in TRC. Thus, in July 1982, I filed the Amended Statement of Claim, reducing my claim to the 59 percent ownership of shares in the corporation which were transferred by the deed of conveyance ... While I still believe that I am entitled to compensation for the confiscation of 89 percent of the assets of TRC, I concluded on the advice of my attorneys that it would be impossible to prove my ownership of the 30 percent interest represented by the bearer shares.^[30]

The Claimant therefore concludes that "there was no inconsistency in alleging a larger percentage of ownership in the Statement of Claim and a smaller percentage in the Amended Statement of Claim."

106. The above explanation is premised upon the stock previously in the possession of Mr. Daneshvar being in the form of bearer shares. This appears to be contradicted by the affirmation contained in the Persian version of the Statement of Claim that the transfer of Mr. Daneshvar's shares had been "officially registered with the Corporate Registration Bureau."

107. If Mr. Golzar's physical possession of the shares previously in the possession of Mr. Daneshvar made him, as of early 1978, the owner of 90% of TRC's capital stock, this would mean that equity interests in TRC changed twice: the first time in early 1978 pursuant to the delivery of Mr. Daneshvar's bearer shares to Mr. Golzar and a second time as a result of the Deed. The Amended Statement of Claim, however, indicates that the

³⁰ There is no indication in the Amended Statement of Claim, however, that the Claimant abandoned his claim for the value of the 30% of the shares of TRC for lack of evidence.

equity interests, which were distributed originally as indicated in paragraph 20, supra, were changed only once, namely on 15 August 1978.

108. Another apparent inconsistency in the affiant's explanation is the fact that it leaves one percent of the shares of TRC unaccounted for. If the amount of stock referred to in the Statement of Claim is the sum total of the 30% owned by Mr. Daneshvar and the alleged 59% stake of Mr. Golzar, that document should have mentioned a transfer of 89% instead of 90% of the shares.³¹

109. Finally, the explanation is based on the premise that the 30% claimed to have been owned by Mr. Daneshvar was transferred to the Claimant by the latter's coming into physical possession of the bearer shares, whereas the transfer of the 59% allegedly owned by Mr. Golzar was accomplished separately by the execution of the Deed. The Tribunal, however, has been unable to find any support in the Statement of Claim for the contention that the acquisition of the 90% stake was so structured. To the contrary, several passages of that document sustain the proposition that the entire 90% was transferred in a single transaction incorporated in the Deed dated 15 August 1978:³²

I retained a ninety (90) percent ownership of TRC until the spring of 1979, when I transferred all of my right, title and interest in the shares of TRC to my brother, Abraham Rahman Golshani ... The document accomplishing this transfer is not available to me now.

(Emphasis added)

³¹ According to the valuation of TRC contained in the Amended Statement of Claim, 1% of the Company would be worth U.S.\$15,890,790.00.

³² For the same reason the Tribunal is not persuaded by the Claimant's explanation contained in paragraph 24 of his affidavit filed 27 March 1991 that there is no inconsistency between the reference to "early 1979" in his affidavit filed with the Statement of Claim as the date of the alleged acquisition of the 90% interest in TRC and to "August 1978" in the one filed with the Amended Statement of Claim.

I acquired all of my right, title and interest to these companies in early 1979, from my brother, Rahman Golzar Shabestari ... The written document which effected the transfer of TRC and the other companies to me still remains in Iran, and I will produce a copy of such document if I am able to obtain it.

(Emphasis added)

D. The Tribunal's Determination

110. Having reviewed the affidavits of the Deed's signatories, the Tribunal will now formulate its conclusions on the question whether the Claimant has succeeded in demonstrating that the Deed is prima facie authentic.

111. The preceding examination has revealed that the affidavits of the Claimant and Mr. Golzar lack coherence and consistency on several key aspects regarding the alleged transaction. These aspects include the events presented by the affiants as triggering the execution of the Deed, the date on which it was signed, the motivations for choosing the Claimant as Mr. Golzar's successor, the consideration for the transfer and the percentage of shares transferred.

112. The Statement of Claim filed 19 January 1982 and the affidavits of the Deed's signatories attached thereto portray the Deed as the culmination of a series of events occurring between February and May 1979 that profoundly affected the lives of the Claimant and Mr. Golzar, as well as the latter's capability of continuing the management of TRC and its affiliated companies. Those asserted events included the repeated death threats uttered against Mr. Golzar, which begun with the harassment by the militants of the Niavaran Committee on 12 February 1979, his detention by the same militants on 14 February 1979, the kidnapping of the Claimant a week after the advent of the Provisional Government and the killing of government officials and businessmen, some of whom were friends of Mr. Golzar, during the first months after 11 February 1979. It follows from the Statement of Claim and the attached affidavits by the Deed's

signatories filed 19 January 1982 that the disputed document was executed in the early part or the spring of 1979 because Mr. Golzar thought that, under such circumstances, he would no longer be able to manage TRC and its affiliated companies.

113. In the Amended Statement of Claim filed 5 October 1982, however, the affiants asserted that their initial reference to the early part or the spring of 1979 as the date of the execution of the Deed was a mistake and that the document, in reality, was signed in August 1978. The conclusion that follows is that the events outlined in the preceding paragraph could not have prompted the execution of the Deed, contrary to what was suggested in the Statement of Claim. This must be so, simply because, according to the new version of the events presented by the affiants, the Deed was signed prior to their occurrence.

114. The credibility of the affiants' explanation for their switch of position regarding the date of the transaction depends, inter alia, on the likelihood that, at the time they prepared their initial affidavits filed 19 January 1982, both of them could have forgotten that the Deed was signed in August 1978. Apart from the sheer fact that it seems unlikely that the Claimant and Mr. Golzar failed to remember the approximate date of the Deed, while nonetheless recalling with great accuracy the dates of the numerous and various events mentioned in paragraph 84, supra, the plausibility of such a mistake has to be considered in the light of the question whether there were any marking events that could have helped the Claimant and/or Mr. Golzar recollect more precisely when the Deed was executed. The Tribunal is of the opinion that there were several such events: the alleged kidnapping of the Claimant, the advent of the Provisional Government and, perhaps most importantly, the timing of the transaction in relation to the Claimant's arrival in Tehran on 12 August 1978. Given the existence of these memorable events, the Tribunal finds it hard to understand how the Claimant and Mr. Golzar could have forgotten that the Deed was signed in August 1978. It is particularly difficult for the Tribunal to accept that the Claimant could have failed to remember that, as

a young student, he had acquired such an enormous business empire immediately after he arrived in Iran to take up the internship with TRC.

115. The fact that it is implausible that the affiants could have made a mistake regarding the approximate date of the transaction is not the only weakness affecting the credibility of their change of position on the timing of the alleged transfer. As stated in paragraph 112, supra, the affiants have referred to a series of detailed events immediately following the advent of the Provisional Government which prompted the transfer of the assets to the Claimant. The affiant's explanation for their error with regard to the date of the Deed additionally assumes that they both mistakenly could have proceeded to identify a complex set of incidents which they both contended to be the reason for the asserted transfer in 1979.

116. Aside from the problems affecting the affiants' presentation of the events triggering the preparation of the Deed and the date on which it was signed, the Tribunal finds that most of the affiants' explanations of the underlying motivations for the preparation of the Deed and for the choice of the Claimant as Mr. Golzar's successor also are unconvincing. With regard to that issue, Mr. Golzar has testified that he believed that the Deed would facilitate the accomplishment of the Ekbatan Housing Development because, by allowing him to step out of the spotlight, the transfer would abate the disruptions in the management and the operation of TRC caused by the revolutionary militants. The Tribunal fails to understand, however, how the Deed's signatories could have hoped to appease the revolutionaries with a Deed that was never intended to be publicized - to the contrary, it was "hidden in a safe place" - and that granted Mr. Golzar a power of attorney to continue the management of TRC during a further period of 15 months.

117. The Tribunal is equally unimpressed by the affiants' explanation why precisely the Claimant was chosen as Mr. Golzar's successor. At the time the Claimant arrived in Tehran on 12

August 1978 he was a student with no significant experience in the construction business who intended to take up an internship with TRC. It is incredible to expect a student intern to head a massive construction company. That the Claimant nonetheless was chosen seems all the more questionable when one considers that other, more experienced men were available to whom the continued management of the companies could have been entrusted. As one of the reasons for their choice, the signatories of the Deed declared in the early stages of these proceedings that the Claimant was selected in view of his contacts with the Provisional Government. The Provisional Government, however, only came into existence on 11 February 1979, whereas the Deed was allegedly signed on 15 August 1978.

118. Other aspects of the testimony of the Claimant and Mr. Golzar also lack consistency. In the Statement of Claim, reference was made to Article 795 of the Iranian Civil Code as the legal basis for the transaction, thus implying that the assets were transferred as a gift. Contrary thereto, the Deed states that "according to the statements by both transacting Parties," the sum of U.S.\$1,710,000,000.00 was paid to Mr. Golzar. Despite what is written in the Deed, the Claimant and Mr. Golzar contended at the Hearing that the former did not pay any consideration to the latter but that he was expected to do so in the future out of the proceeds that the Company would have generated.

119. As regards the amount of shares transferred, the Statement of Claim indicates that Mr. Golzar transferred to the Claimant 90% of the outstanding capital stock of TRC, two thirds of which he had obtained at the time of the incorporation of the Company, while he had acquired the remaining 30% from Mr. Daneshvar in early 1978. The Amended Statement of Claim, however, no longer makes any reference to the acquisition by Mr. Golzar of Mr. Daneshvar's stake in TRC but declares that the former retained 60% of the shares in the Company until the execution of the Deed on 15 August 1978. Nevertheless, the Claimant contends that there is no inconsistency between the

Statement of Claim and the Amended Statement of Claim. According to the Claimant, Mr. Golzar did acquire bearer stock representing 30% of TRC from Mr. Daneshvar in early 1978 and did transfer those shares to him in August of the same year. The Claimant maintains that both transfers were accomplished by the transfer of the physical possession of the bearer shares to Mr. Golzar and, later, to the Claimant. The Claimant contends, however, that, prior to the filing of his Amended Statement of Claim, he decided to abandon the claim for the value of those shares because he realized that he would not be able to prove his ownership thereof, as he was no longer in possession of the bearer certificates.

120. The Tribunal discerns several flaws in the Claimant's explanation for his evolving position regarding the amount of shares he received from Mr. Golzar. The contention that Mr. Daneshvar's former shares were in bearer form seems hard to square with the statement contained in the Persian version of the Statement of Claim according to which the transfer of Mr. Daneshvar's shares had been "officially registered with the Corporate Registration Bureau." Furthermore, the Claimant's explanation assumes that the equity interests in TRC changed in early 1978, as well as in August of the same year. However, according to the Amended Statement of Claim, the equity interests only changed once, on 15 August 1978. The explanation further assumes that the 30% claimed to have been owned by Mr. Daneshvar was transferred to the Claimant by the latter's coming into physical possession of the bearer shares whereas the transfer of the 59% allegedly owned by Mr. Golzar was accomplished separately by the execution of the Deed. The Statement of Claim, however, suggests that the entire 90% was transferred in one single transaction incorporated in the Deed.

121. In sum, the Tribunal, having been unable to conclude on the basis of the Deed alone that it is an official document entitled to a presumption of authenticity, has considered the Claimant's corroborating evidence and found many disturbing inconsistencies.

V. THE TRIBUNAL'S CONCLUSIONS

122. Taking into account all the considerations expressed in the foregoing, including TRC's statements made during the Paris Litigation, the Tribunal believes that the Deed and the affidavits of its signatories do not inspire the minimal degree of confidence in the Deed's authenticity required to shift the burden of proof to the Respondent. The Tribunal thus decides that the Claimant's presentation does not make out a prima facie case of authenticity and that, consequently, it need not address the question whether the Respondent has met its burden of proving that the Deed is a forgery. In view of this determination, the Claim is dismissed for lack of proof of ownership.

VI. COSTS

123. Considering the outcome of this Case, the Tribunal, applying the criteria outlined in Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 35-38 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 323-24, finds it reasonable to award the Respondent costs of arbitration in the amount of U.S.\$ 50,000.00.

VII. AWARD

124. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The Claim of ABRAHIM RAHMAN GOLSHANI is dismissed for lack of proof of ownership.

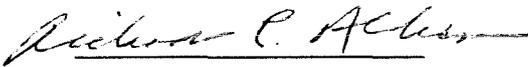
(b) ABRAHIM RAHMAN GOLSHANI is obligated to pay to the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN the sum of U.S.\$ 50,000.00.

Dated, The Hague,
2 March 1993

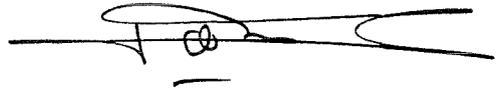


Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison
Concurring and
Dissenting Opinion



Mohsen Aghahosseini
Concurring. See
Separate Opinion