IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

IN THE NAME OF GOD



Case No. 812
Chamber Three
Award No. 546-812-3



ABRAHIM RAHMAN GOLSHANI,
Claimant,

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

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Separate Opinion of Mohsen Aghahosseini

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I concur in the present Final Award which dismisses the Case for the Claimant's failure to prove his ownership of the property at issue therein. The Award, however, arrives at that conclusion on the basis of its finding that the Claimant has failed to make out a prima facie case of authenticity with respect to a Deed of Conveyance through which he asserts his ownership. I, on the other hand, would have found that the Deed in question is a forgery. Such a finding, I believe, would have been warranted not only by the facts presented in the Case, but also by strong general policy considerations. Indeed, this is a Case in which the Tribunal some three years ago directed the Parties, as will be seen shortly, to confine their pleadings to the single issue

of alleged forgery and thereafter, rejecting the Respondent's invitation to broaden the scope of the intended preliminary consideration to cover just one more immediate and less complex subject, repeatedly affirmed its determination to first pronounce itself on that, and on that issue alone. Having so instructed the Parties, having received their extensive pleadings, having heard a host of forgery experts at a lengthy hearing, and finally, having thoroughly deliberated the subject, a belated change of mind by the Tribunal not to deal in the Award with the issue of forgery but to reject the Claim on the basis of the Claimant's failure to offer a prima facie case of authenticity, seems very strange. But then, it is strange only if the Case, and the Award to which it has led, are looked at in isolation. A broader study of the Tribunal's case-law will readily reveal that the course of action here adopted, far from being an isolated one, is just another application of this Tribunal's reluctance to call a forged document by its proper name, when it comes to realize its true character. The only factor distinguishing the within Case from other relevant precedents of the Tribunal is perhaps the fact that this time, in order not to touch on the taboo of forgery, the Tribunal has additionally had to go back on its own promises. But more on that later.

This "Separate Opinion" seeks to demonstrate, first, that the evidence submitted by the Parties pursuant to the Tribunal's directives establishes, conclusively, that the Deed of Conveyance in question is a forgery; and secondly, that the Award's refusal to pronounce itself on the issue of forgery violates not only the facts of the Case and the Tribunal's earlier directives, but the dictates of good policy considerations. The first is dealt with in Part One, and the second in Part Two. Both Parts are preceded by a short treatment of two preliminary issues.

## Two Preliminary Issues

### 1. The Burden of Proof

Both Parties in the present Case agree that the burden of proving the authenticity of the Deed of Conveyance through which the Claimant asserts his ownership of the allegedly affected property must be shouldered by the Claimant. This, I think, is only right. The authenticity of the Deed is an integral part of the Claimant's Case. Only by proving the authenticity of the Deed can the Claimant demonstrate that he is the owner of the assets in question, and only then will the limited jurisdiction of this Tribunal be established. If the Claimant fails therefore to prove the authenticity of the Deed, so does his Claim. The specific allegation of forgery is, of course, a different matter. There, it is the party asserting the forgery-- in this Case the Respondent-- who must carry the burden of persuasion.

The Award agrees with these propositions, but apparently goes on to hold that even where a party carries the burden of proving an assertion, this burden will shift onto the other party if the former adduces sufficient evidence to establish a prime facie case. This, I suggest, is an error, based apparently on a failure to distinguish between the two quite separate issues of the appropriate party to carry the burden of proof, and the standard of proof.

The Rule that the burden of proof lies on him who affirms a fact and not on him who denies it (ei qui affirmat, non ei qui negat, incumbit probantio) admits of no exception-- none whatsoever. Nor is there any room under the Rule for a shift in the burden of proof at any of the middle stages of the proceeding. Throughout the case and at the end of the day, the duty to prove an asserted fact remains with him who makes it. In

the absence of satisfactory proof on his part, he can never succeed in his assertion on the basis of his adversary's failure to carry a shifted burden.

Next, there is of course the quite separate issue of the standard of proof: proof "beyond reasonable doubt" in criminal cases, and "on the preponderance of evidence" in civil cases. Now, when in a civil case the Claim is supported by prima facie evidence, the defendant may either challenge and successfully discredit the evidence, or fail to do so. In the former, the Claim naturally fails because the evidence having been discredited, the burden of proof is not satisfactorily carried. In the latter, the Claim prevails, not because the defendant has failed to shoulder a shifted burden, but because the adduced and unchallenged prima facie evidence preponderates-- prevails-- where it is not discredited. In other words, the asserting party in such a case simply succeeds in discharging his duty to prove his assertion "on the preponderance of evidence".

## 2. The Governing Law

It is conceded on all hands, rightly, that the law governing the authenticity or otherwise of the Deed in question is that of Iran. It was in Iran, as will be presently seen, that the Deed was assertedly executed, and it was there that the assets it purports to have transferred are situated (locus regit actum).

# Part One

Nearly three years ago, this Chamber decided to treat as preliminary the issue of whether or not a Deed of Conveyance, which forms the basis of the Claimant's asserted ownership over the property in question in the Case at hand, is a forgery. The Parties, directed by the Chamber, exchanged two rounds of pleadings. Aided by their experts, they examined the originals of each other's documents. A three-day Hearing, exclusively devoted to this single issue, was held in April 1991. Extensive deliberations have since taken place.

This Part seeks to review the submitted evidence, and to demonstrate that the document in question is indeed a forgery. After a summary of the background information and of the Parties' contentions in section 1, the evidence submitted by the Claimant in support of the asserted authenticity of the Deed will be examined in section 2. The Respondent's evidence in support of its allegation that the Deed is a forgery, and the Claimant's response thereto, will then be evaluated in section 3.

## 1. The Facts, the Procedure, and the Parties' Contentions

### 1.1. The Factual and Procedural Background

1.1.1. This is a claim in which the Claimant, Mr. Abrahim Rahman Golshani[1], asserts that the Respondent, the Government of the Islamic Republic of Iran[2] has, without compensation,

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[1]. Hereinafter referred to as the Claimant or Mr. Golshani.

[2]. Hereinafter referred to as the Respondent or Iran.

expropriated his assets in Iran worth, as initially estimated by him, over 1.7 billion dollars.

Mr. Golshani, an Iranian citizen by birth, was born on 20 December 1945, in Tehran. In 1969, when he was 24 years of age, he went to the United States for the furtherance of his studies. On 9 August 1978, still at a university, he became a naturalized citizen of the United States.

He states that the advanced educational program in which he was enrolled required the completion of a six-month management internship with a United States or foreign company. To achieve that, he says, he sought and received the approval of Mr. Rahman Golzar Shabestari[3], his brother[4], to perform the intended internship with Tehran Redevelopment Corporation[5], of which Mr. Golzar, an Iranian citizen, was assertedly the managing director and a majority shareholder. While on his educational internship in Iran, and for reasons which shall be discussed later, he purchased, in the Spring of 1979, the assets of Mr. Golzar in TRC and in a number of other corporations. Subsequent events, public and private, which then characterized the business and political environments in Iran, forced him, and Mr. Golzar, to leave the Country in May 1979, both believing that their lives were in danger.

After May 1979, the assertion goes, the Respondent enacted and enforced certain laws which formally nationalized TRC and

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[3]. Hereinafter sometimes referred to as Mr. Shabestari or Mr. Golzar.

[4]. In the Briefs, the degree of kinship between Mr. Golzar and Mr. Golshani has not been made clear. They have been variably presented as "brothers", "members of a family", and "members of an extended family".

[5]. Hereinafter referred to as TRC.

other transferred corporations, already de facto expropriated by the previous actions of the Respondent.

The Claimant submitted his Statement of Claim on 19 January 1982.

1.1.2. The Statement of Claim, prepared and submitted by a Mr. Chester D. Taylor, Jr., and a Mr. Richard S. Trutanic[6], consists of a Text to which a number of Appendices are attached. These include two separate Affidavits by Mr. Golzar and Mr. Golshani,[7] and a detailed valuation of the assets of Mr. Golshani as of May 1979.

The Text, after a brief reference to "Jurisdiction and Parties", sets to describe, under the title of "Statement of Facts", the assets allegedly expropriated:

First, TRC, a capital stock corporation established in 1974. This was initially owned by Mr. Golzar (60%), a Mr. Bagherzadeh (10%), and a Mr. Daneshvar (30%). "In early November 1978", says the Statement of Claim, "Mr. Daneshvar transferred all of his shares to Mr. Golzar"[8], and "[i]n the spring of 1979, Mr. Golzar transferred all of his shares to the Claimant, Mr. Golshani."[9]

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[6]. Of the law firm of Hogan & Hartson, Washington, D.C. They were later assisted by a Mr. Gerald Gilbert and a Mr. Barrett Prettyman Jr., both of the same law firm.

[7]. There are also three short Affidavits by former senior executives of TRC, all testifying to the value of TRC's assets as of May 1979.

[8]. In the Persian version of the Statement of Claim, it is further asserted that this transfer was officially registered with the Corporate Registration Bureau. Statement of Claim, Persian version, para. 12.

[9]. Doc. 1, para. 12.

There then follows a detailed description of TRC's assets, projects, industrial enterprises, plants, employees and equipment, and its holdings in eight subsidiary companies. Each subsidiary is in turn described, with location, field of activities, projects and the percentage of its holdings by TRC.[10]

Second, the equity owned by the Claimant in addition to TRC. This consisted of a number of separate corporate entities, the particulars of each of which are given in minute detail.

Having fully described the assets assertedly owned by Mr. Golshani at the time of the alleged expropriation, the Statement of Claim proceeds to deal with the date on which the said assets were transferred from Mr. Golzar to the Claimant:

> " At all times after the initial incorporation of TRC, and until the spring of 1979, the President and Managing Director of TRC was Mr. Rahman Golzar. At that time, for the reasons set forth hereinbelow, he transferred his authority as President and Managing Director to his brother, Mr. Parviz Golshani. He was also at all times after the initial incorporation of TRC, and until that time its principal stockholder. At about the same time, for the reasons set forth hereinbelow, he transferred all of his shares of capital stock in TRC to his brother, Mr. Abrahim Rahman Golshani, the Claimant."[11] (emphases added)

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[10]. This, and other detailed information about the allegedly expropriated properties appear more fully in the Affidavit of Mr. Golzar, where over two hundred figures are provided in that respect. Doc. 1, Mr. Golzar's Affidavit, Appendix C, paras. 1-20.

[11]. Doc. 1, para. 21. These assertions in the Statement of Claim are similarly repeated in Mr. Golzar's Affidavit:

> "In early 1978, I personally acquired all of the shares owned by Hossain Daneshvar, which resulted in

(continued...)

This is then followed, under the title of "Factual Basis of the Claim", by an almost daily account of the events and circumstances which finally brought about, in the Spring of 1979, the transfer of this business "empire"[12] from Mr. Golzar to Mr. Golshani.

Drawing from the Affidavits of Mr. Golzar and Mr. Golshani, the Statement of Claim refers to 11 February 1979, as the beginning of Mr. Golzar's harassment by the officials of the Provisional Government, by the armed militants, and by the local Committees. It describes how, one day after 11 February 1979, a group of armed militants assertedly raided Mr. Golzar's residence; how, three days later, he was detained by the armed revolutionaries of the Central Committee and was released later; how, about a week later, he and his brother-in-law were again taken hostage by the militant forces of the Provisional Government; how, in later days, he and other TRC executives were prevented from entering TRC's Headquarters; how, in late February, Mr. Golzar was forced to abandon his residence; how, for several months after 11 February 1979, Mr. Golzar attempted, unsuccessfully, to continue to manage TRC; and finally how, in the Spring of 1979, "Mr. Golzar, believing that his life was in danger, and in the belief that it might be necessary for him to leave his country to save his life... transferred his shares of capital stock in TRC and other corporations to the Claimant".

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[11](...continued)
my owning approximately ninety( 90) percent of the outstanding capital stock of TRC. 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, Mr. Abrahim Rahman Golshani. At that time I also transferred to him all of my right, title and interest in the sperate companies that I owned until that time". Doc. 1, Mr. Golzar's Affidavit, Appendix C, para. 20.

[12]. This is the Claimant's own description of TRC and other assertedly transferred corporations.

Mr. Golzar, says the Statement of Claim, "did this in the belief that the Claimant, a United States' citizen, could more effectively operate TRC under the unfortunate circumstances then prevailing in Iran."[13]

1.1.3. Two additional points in the Statement of Claim may be noted:

First, both Affiants, Mr. Golzar and Mr. Golshani, contend that the document accomplishing the asserted transfer is not available to them. They promise, however, to produce it if and as soon as it becomes available to them.

Second, in a three-page valuation of the assets, attached to the Statement of Claim, the total value of TRC is estimated at $ 1,591,364,600, and the total value of Mr. Golshani's other assets at $ 119,347,850. Together, they make an estimated value of $ 1,710,712,450. But while the Statement of Claim, and the two Affidavits, make it repeatedly clear that Mr. Golzar had been the owner of only 90% of TRC's shares, and hence transferred only 90% of TRC's shares to Mr. Golshani, the Relief Sought in the Statement of Claim is precisely $ 1,710,712,450, covering, not 90%, but the total value of TRC.

1.1.4. In October 1982, nearly nine months after the filing of the Statement of Claim, the Claimant submitted an Amended Statement of Claim. Retaining the formats and contents of the Statement of Claim and its Appendices, the Amended Statement of Claim:

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[13]. Doc. 1, paras. 12-14.

a) Omits all references, in the Statement of Claim and in Mr. Golzar's Affidavit, to the transfer of 30% shares of TRC, in early November 1978,[14] from Mr. Daneshvar to Mr. Golzar. Mr. Golzar, under the new version, is presented as the former owner, not of 90%, but of 60% of TRC's shares.

b) Retracts from the earlier assertion, in the Statement of Claim and in Mr. Golzar's and Mr. Golshani's Affidavits, that Mr. Golzar had transferred to Mr. Golshani all his ownership interest in TRC and in his other holdings. Mr. Golzar, according to the new version, "retained one-sixtieth (1/60th) of his interest in TRC in order to permit him to participate in management of the Project"[15]

c) Contradicts the earlier contention, repeated more than ten times in the Statement of Claim and in the Affidavits of Messrs Golzar and Golshani, that the alleged transfer took place in the Spring of 1979. The transfer, says the new version, took place on 15 August 1978, through Deed No. 25345 drawn up by NPO No. 319 in Tehran.[16]

d) Retains the references, in the Statement of Claim and in the two Affidavits, to the events after 11 February 1979, when the Provisional Government came to power in Iran, but adds a few words about the disturbances in Iran as from January 1978. All references to Mr. Golshani's United States' nationality, and to his acquaintanceship among members of the Provisional Government -- previously given as two reasons for the transfer -- are withdrawn.

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[14]. Or early 1978, as Mr. Golzar's first Affidavit has it. See supra, footnote 12.

[15]. Amended Statement of Claim, Doc. 4, para. 24.

[16]. Id., para. 12.

e) And, finally, reduces the amount of the Relief Sought from $ 1,710,712,450 to $ 1,056,904,460, so as to take into account the reduction made in the percentage of the assertedly transferred shares.

1.1.5. On 28 March 1983, the Claimant submitted yet another amendment, Amendment No. One to the Amended Statement of Claim. In it he made certain minor changes to his earlier pleadings, and submitted, for the first time, a copy of the alleged "Definitive Conveyance Document"[17]; the document by which, according to the Claimant, the transfer of assets from Mr. Golzar to the Claimant had been officially recorded.

1.1.6. Following the Decision by the Full Tribunal in Case No. A18[18], the Chamber proceeded to first deal with the issue of the Claimant's dominant nationality. The contents of the Parties' extensive Briefs on that issue are, save for the following two points, outside the bounds of the present review:

First, Mr. Golshani, in his Affidavit attached to his Brief of 29 August 1985, stated that:

> Since coming to the United States in 1969, I have traveled abroad... only twice, both times to Iran.... The second occasion was in 1978, when I went to Iran for my educational internship... On that trip I also spent time in Italy, France and England... all travel was on the basis of my United States passport, except for travel to Iran, when I was forced to use my

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[17]. Hereinafter referred to as the "Deed of Conveyance", or simply the "Deed".

[18]. Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251.

Iranian passport because of the turmoil in Iran at the time."[19] (emphasis added)

Second, the Respondent in its Brief of 1 September 1988,[20] informed the Tribunal that, noting a host of irregularities in the submitted copy of the Deed, it had requested that the matter be immediately investigated by the appropriate Iranian authorities. Extensive inquiries which had then been conducted by the Inspectorate of the State Organization for the Registration of Deeds and Real Property, the State General Inspectorate Organization, the Inspectorate of the Ministry of Finance, and the Red Crescent Organization of Iran had all independently concluded that the Deed was a forgery. The matter had then been referred to the Office of the Public Prosecutor in Tehran, where an Examining Magistrate in charge of the case had issued warrants for the arrest of the two accused, Messrs Golzar and Golshani. The Respondent suggested that since, on the basis of conclusive evidence collected by the said authorities, the forgery of the Deed was evident, the Tribunal should, before dealing with the issue of the Claimant's nationality, consider whether the Claimant had ever acquired any rights in the asserted assets, the breach of which would have entitled him to resort to this Tribunal. The Respondent's suggestion was rejected.

1.1.7. On 30 June 1989, a majority[21] in Chamber Three issued an Interlocutory Award[22] in which they held that "[f]or the purpose of the Tribunal's jurisdiction, the dominant and

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[19]. Doc. 36, Mr. Golshani's Affidavit, pp. 8-9.

[20]. Doc. 55, p. 5.

[21]. With the present composition: Judge Gaetano Arangio-Ruiz, Chairman, and Judge Richard Allison, Member.

[22]. Award No. ITL 72-812-3 (30 June 1989).

effective nationality of the Claimant... is that of the United States"[23].

The Parties were then instructed to submit their written Memorials on all the remaining issues in accordance with a given timetable.

1.1.8. Accepting an earlier request by both Parties, the Chamber decided on 8 May 1990, to treat as preliminary, the two issues of alleged forgery of the Deed and the Claimant's ownership of the Claim. Later, on 25 June 1990, the majority issued, on their own initiative, an unwanted "Clarification" by

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[23]. A review of that Award is outside the scope of this "Separate Opinion", but it must be said that the Award is a prime example of a monstrous injustice:

First, in order to conclude that the Claimant had not maintained long-term business interest in Iran, the Award, relying on the Claimant's initial assertion in the Statement of Claim, states that " the property allegedly expropriated was obtained by the Claimant only in 1979 when his brother allegedly transferred title to him." (Id., para. 22.) And yet, seven years prior to the date of the Interlocutory Award, the Claimant had changed his version of the events and had since maintained, in all his subsequent Pleadings, that the transfer had taken place on 15 August 1978. Indeed, he had submitted to the Tribunal the alleged Deed, bearing the date 15 August 1978. How could the majority fail to note these developments?

Second, in order to determine the Claimant's intention whether or not to maintain ties with his country of origin, the Award states that "his return to Iran was only for the limited purpose of performing an internship pursuant to his graduate studies." (Id., para. 21.) That might have been the Claimant's intention when he left the United States for Iran, assertedly in August 1978. But it is his story, as we shall see shortly, that three days after his arrival in Tehran on 12 August 1978, he purchased, with a view to manage, that very business "empire" which he had initially chosen for his internship. Can a Tribunal, whose task is to determine the claimant's intention during the relevant period -- in this case between May 1979, when the claim allegedly arose, and 19 January 1981, when the Algiers Declarations were signed -- rely on the Claimant's initial intention on 12 August 1978, but disregard a development, just three days later, which evidences a complete reversal of his original intention?

which they limited the preliminary issues to the single issue of forgery. The Respondent objected, and I dissented. No one had requested any "clarification", and there was no justification for this unwarranted move.

There then followed two rounds of pleadings. The originals of a large number of documents were deposited with the Registry of the Tribunal. They were examined by the Parties and closely inspected by their experts. A three-day Hearing on the single issue of forgery was held on 23-25 April 1991. The result of all that, and of the deliberations in the past several months, is the present Award.

## 1.2. The Parties' Contentions

The Claimant submits that the Deed of Conveyance, the original of which is deposited with the Tribunal's Registry, is an authentic document. It was, he says, officially drawn up on 15 August 1978, by Notary Public Office[24] No. 319 in Tehran.

The Respondent, on the other hand, argues that the Deed is a forgery. It was fabricated, says the Respondent, not on 15 August 1978, but much later, sometime in the Summer of 1982; and not by NPO No. 319, but by the then head of NPO No. 369, who was a friend of Mr. Golzar.

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[24]. Hereinafter, NPO.

## 2. The Alleged Authenticity of the Deed

> "Claimant .... has met his burden of proving the Deed's authenticity by submitting clear and compelling evidence, not the least of which is the original notarized Deed itself.... In addition, Claimant previously submitted affidavits of the Deed's signatories, which were amended to correct inconsistencies discovered when the Deed was located in Iran and, eventually, transported to him in the United States.
>
> In further support of the Claim and of the Deed's authenticity, Claimant introduces herewith statements from independent experts whose analyses corroborate the Deed's authenticity and compel a conclusion that Respondent's various challenges to the Deed itself are meritless".[25] (footnote omitted)

It will be noted from the above that the Claimant, in discharge of his burden to prove the authenticity of the Deed, invokes three separate grounds : the Deed itself, the Affidavits of the Deed's signatories, and the corroborating analyses of independent experts. Of these, the last one, the "analyses of independent experts", consists of a Legal Opinion by an Iranian lawyer, and a Report by a graphologist. The former will be dealt with here, while the latter may be more conveniently evaluated in the section dealing with the Respondent's evidence of forgery.

### 2.1. The Deed itself

"[U]nder Iranian, international and U.S. law", says the Claimant, "official documents notarized by government officials are entitled to a strong presumption of authenticity and validity

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[25]. Doc. 145, pp. 6-8.

that can only be overcome with substantial and uncontroverted evidence to the contrary".[26] The Claimant is right. So is his Iranian law expert who, in support of the Claimant's submission, invokes Article 70 of the Registration of Deeds and Real Property Act, 1931.[27] The Article in pertinent part reads:

> "[A] document which is registered according to the law is an official document, and unless the forgery thereof is proved, all contents and signatures thereof shall be considered valid..."[28]

Where they both go wrong, however, is where they readily assume that the Deed in question <u>is</u> an official document notarized by government officials. Yet, that is the very point at issue: is this "a document registered according to the law"? Though the burden to prove that point must be carried, as said before, by the Claimant, the Respondent has adduced evidence which conclusively proves that this cannot be the case; that the Deed cannot have been "officially notarized by government officials".

2.1.1. The date of the Deed is 15 August 1978. It was on that date, according to the Deed, that the Parties presented themselves to NPO No. 319 and executed the Deed. The following two reasons, however, militate against the accuracy of the asserted date:

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[26]. Doc. 145, p. 9.

[27]. Doc. 145, Ex. 1, p. 5.

[28]. It is to be noted, however, that the presumption of validity with which a notarial document is treated is mainly due to a presumption of validity generally accorded to legally performed actions of a State. Where the State itself determines, as it does here, that the document is a forgery, there should remain little room for any such presumption.

First, The Claimant was naturalized in the United States (the State of California) on 9 August 1978. Assertedly, he then left the United States for Iran. On that trip, using his American passport except for travel to Iran, he "spent time in Italy, France and England",[29] and he arrived in Tehran on 12 August 1978.[30]

Whether he could, in just less than three days, manage to obtain his American passport, and then prepare for and complete a trip which took him from his place of residence in the township of Antioch (California) first to Italy, France and England, and then to Tehran, is questionable.

A trip from Antioch to Tehran, even if made directly, would itself require well over a day, to say nothing of the time required for taking suitable flight connections to three additional countries, and the "time spent" in each one of them. There is, however, no need for conjecturing when Mr. Golzar, the Claimant's principal witness, is forthcoming enough. At the Hearing, he was questioned by the Respondent's Counsel:

"Q. On what date did you learn that he [Mr. Golshani] was an American national?

A. A long time before he returned to Iran I knew that he was an American national."[31]

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[29]. Doc. 36, Mr. Golshani's Affidavit, para. 16.

[30]. Transcript of the Hearing (hereinafter, Transcript), p. 292. Elsewhere (Doc. 146, Ex. 2, para. 10), Mr. Golshani asserts that he "travelled to Tehran in early August 1978", using, of course, his American passport in his earlier visits to Italy, France and England; a passport which could have been issued to him only after his naturalization on 9 August 1978.

[31]. Transcript, p. 261.

Mr. Golshani , of course, became a United States' national only on 9 August 1978. Add "a long time" to that, and you will have the date of his arrival in Iran. But be that as it may.

Secondly, according to the Claimant, it was in Tehran that Mr. Golzar first told him of his grave concerns about the continued operation of TRC, and it was in Tehran that Mr. Golzar first brought up the idea of transferring to him the ownership of TRC and other companies.[32] This is confirmed by Mr. Golzar, who says that "with Mr. Golshani's arrival, I confirmed in my own mind that it would be beneficial to transfer my ownership in TRC to him...".[33] Mr. Golzar goes on to say:

> "Accordingly, I directed my adviser to have a deed of conveyance prepared by a notary to transfer my interest in TRC to Mr. Golshani. The deed was prepared by someone in Notary Public Hedayati Rezvani's office, Notary Public Office 319, before the transfer took place. A few days later, on August 15, 1978, we were called by Mr. Rezvani and told the deed was ready."[34]

This simply does not add up. In again less than three days, there are, first, presumably meetings between Mr. Golzar and the Claimant in which the idea of transferring properties worth over 1.7 billion dollars[35] is brought up, discussed, and finalized.

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[32]. Doc. 146, Ex. 2, para. 10.

[33]. Doc. 146, Ex. 3, para. 30 (emphases added).

[34]. Id., para. 31 (emphasis added)

[35]. References here and hereinafter to the value of the allegedly transferred assets, and to Mr. Golzar's former ownership thereof, are merely to the Deed's contents and to the Claimant's assertions. Though the Tribunal has not been briefed on the issues, it is only fair to say that the evidence submitted so far indicates, not only that the suggested figure is extremely exaggerated, but that Mr. Golzar's ownership of at least a great part of the said assets is highly doubtful.

There is then the time required for the preparation of the Deed which, according to Mr. Golzar, becomes ready a few days after it is ordered. The Parties still manage to meet the Notary Public on 15 August 1978 to sign the Deed.[36]

That, however, is not the end of the tale. Here is a quotation from the Hearing Transcript[37]. The question is put to Mr. Golzar by the Claimant's attorney:

Q. Had you done anything in regard to the shares of the company several days before 15th August?
A. Yes. As far as the shares of the company were concerned, I transferred them to Mr. Rahman Golshani. I did that a few days before 15th August.

Most incredible in this scenario is the absence of any room for the implementation by the Parties, and by the N.P.O, of a host of Iranian imperative laws and regulations applicable to the transfer of properties, especially when they consist, as in here, of pieces of land, buildings, apartments, factories and company shares. Apparently, the Parties have felt no need to get, for instance, past tax clearance certificates; no need to obtain transfer tax certificates, amounting, in this case, to the equivalent of tens of millions of dollars; no need to pay municipality charges; and no need to obtain clearances from the local Registration Departments, or from the Corporate Registration Bureau, etc.

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[36]. And then, as will be seen presently, there is an asserted procès-verbal which, according to the Deed, had been previously drawn up by the Parties, setting forth "the details in great specificity and exactness" of all the properties transferred. See infra, 2.1.4.

[37]. pp. 243-244.

And yet, anyone with the slightest familiarity with the Iranian law and administration (or with the law and administration of any other country, for that matter) would know that these are absolutely essential requirements that cannot be avoided in a transfer of this nature. Nor can they possibly be fulfilled in just less then three days -- or for that matter, in three weeks[38].

2.1.2. A column on the top left of each of the two pages of the Deed itemizes the fees which should have been collected by the NPO for registration charges. Relying on fully cited and described imperative laws of Iran, and on the oral and written testimony of a host of experts in the field, the Respondent has demonstrated that the total registration charges to be received for, and reflected in, a deed of this nature would amount to no less than 240,000,000 Rials, or approximately $ 3,500,000.

Yet, the spaces provided in the column for reflection of the charges received by the NPO are all left blank. It is just inconceivable, submits the Respondent, that for a transaction of this magnitude the NPO would simply ignore the requirement to reflect in the Deed the monies it has received for itself and for various other State organizations. Furthermore, the Claimant and Mr. Golzar have nowhere even asserted, let alone produced any evidence, that they have paid any of these, or any other, charges in this respect.

As for Mr. Golshani, the purchaser, there is evidence, offered by his own principal witness, that he could not afford

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[38]. These requirements will be presently dealt with in greater detail. The reference to them here is only intended to show that they could not have been met in the extremely short period of time suggested by the Claimant.

to pay any of these charges, even if he had wanted to. Here is how that principal witness, Mr. Golzar, becomes irritated when he is asked whether Mr. Golshani had paid any part of the consideration for the alleged transaction:

> "It seems that you did not listen to me what I said before. I sent Mr. Golshani to America to study. As a student, he had no money to pay."[39]

He is right. As a student with no means, Mr. Golshani could not pay, not only any part of the astronomical figure of the Deed's consideration, but his share of the admittedly less astronomical, yet still extremely heavy, charges levied by law on a notarial transaction of this monumental magnitude.

The problem is, however, that this student nevertheless claims to have purchased a 1.7 billion-dollar "empire" through a Deed genuinely drawn up by an NPO. He apparently does not want to know that a notarial transfer of properties involving this much consideration happens to be a very costly affair. It requires not only the payment of 3.5 million dollars for registration charges but, as we shall see shortly, the payment of tens of millions of dollars for a host of other charges, including the transfer taxes.

2.1.3. The Deed, having identified the two transacting Parties, goes on to state that:

> "... there is no need to provide the particulars of each property conveyed in this document, due to the large number of properties involved..."

This is simply incredible. Properties, many of them immovable -- pieces of land, buildings, factories, and apartments -- are

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[39]. Transcript, p. 260.

assertedly transferred by, but not specified in, the Deed because they are large in number; and this, the Claimant wishes to make believe, is the genuine work of an NPO in Tehran. For the following reasons, says the Respondent, the Claimant should not be believed.

Under Articles 190 and 216 of the Civil Code of Iran, the subject-matter of any transaction must be clearly defined. In order to implement the said Articles, Paragraph 61 of the Code of Registration Circulars[40] requires that "the printed number of the deed of ownership of any real estate, together with the number and page-number under which the real estate is registered in the local Register, must be reflected in all its subsequent transactions." Under Article 32 of the NPOs' By-laws, 1938, "in every deed by which a real estate is transferred, the number allocated to the plot, together with the plot's boundaries and other specifications must be expressly reflected."

These cannot be dispensed with, not only because they are imperative laws but also because, as fully explained by the Respondent's experts on the Iranian notarial laws, they are dictates of common sense and practicality. As we shall see shortly, unless an estate intended to be transferred is fully specified in the deed, and its specifications are transmitted to the local Department of Registration to be reflected in the Register and in the deed of ownership, the State will continue to recognize as owner only the person in whose name the property is registered.

As for movable properties, Paragraph 72 of the Code of Registration Circulars lays down that "in any deed transferring a movable property, the description and particulars of the

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[40]. Collected up to October 1986, and published in the same year by the Organization for Registration of Deeds and Real Property.

subject-matter of transaction must be so reflected as to leave no ambiguities."[41]

Yet, in the Deed, movable properties have been purportedly transferred with astonishingly casual references. Indeed, shares worth hundreds of millions of dollars have been assertedly conveyed with no reference to their numbers, value or any other particulars.

2.1.4. The Deed further reads:

> "The transacting Parties have previously drawn up between themselves a procès-verbal setting forth the details [of the transferred properties] 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, for reflection in the records; 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".

This is not the only reference in the Deed to a procès-verbal. The specifications of a number of other properties allegedly transferred by the Deed, including the particulars of a number of transferred companies as well as those of "fourteen thousand, one hundred and three apartments", are also said to have been "reflected accurately and specifically in the said procès-verbal drawn up by the two transacting Parties."

This again is most unnatural.

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[41]. Id.

First, it is in clear violation of the notarial laws of Iran. In accordance with Article 56 of the Registration of Deeds and Real Property Act,

> "[t]he contents of a deed, including its text, its margins and its overleaf must be recorded in the Register from the beginning to the end and word by word."

No NPO is likely to so blatantly disregard this imperative Provision.

Second, if the procès-verbal, with its details, is the actual instrument of conveyance[42], and the Deed in question is drawn up simply "in order to provide further assurances", then it is the procès-verbal which exclusively provides information as to the transferred assets, and, more importantly as far as this Tribunal is concerned, the date of the transfer. Yet, that procès-verbal has not been submitted to the Tribunal, nor, admittedly, to the State, to the National Authorities, or to the Corporate Registration Bureau who were supposed to reflect its contents in their records.

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[42]. Which, of course, cannot be the case. Under Article 46 of the Registration of Deeds and Real Property Act:

> "The registration of deeds is optional except in the following instances:
> 1. All contracts and transactions related to the corpus or interest of real property previously registered in the Registers of real property.
> 2...."

Since, under Article 760 of the Iranian Civil Code, a conveyance is an irrevocable transaction, and since the real properties purportedly transferred in the Deed have all been previously registered in the Registers, the only means by which the conveyance in question could have been made was its official registration by an NPO.

2.1.5. The Claimant's admission

Mr. Golshani, the one who is supposed to have purchased by the Deed assets worth 1.7 billion dollars, the particulars of which are not to be found in the Deed itself but in a separate procès-verbal previously drawn up by the Parties, was asked at the Hearing why he had failed to submit to the Tribunal a document of this importance. He did not, he replied, remember any such thing. He did not recall the existence of a procès-verbal, he said.[43]

This, again, is very strange, to say the least. A buyer who claims to have signed, and presumably read, the Deed knows nothing of these parts of the Deed's contents. He knows nothing of the descriptions of the properties he has purchased. He specifically denies the existence of a procès-verbal on which he is supposed to rely before "the State, the National Authorities, and the Corporate Registration Bureau"[44]. His admission proves, I suggest, that until the date of the Hearing he had not read the Deed, not even once.

2.1.6 The Deed identifies Mr. Golzar as the owner of 60% of the shares of TRC and of certain other affiliated corporations, and purports to transfer the same to Mr. Golshani. Yet the evidence adduced by the Respondent establishes that Mr. Golzar had no shares in a number of those affiliated corporations, and that many of the 60% shares in TRC belonged not to him, but to

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[43]. Transcript, p. 331.

[44]. Elsewhere in the Deed it is stated that "both Parties have agreed... that there is no need to declare the contents of the Deed either formally or informally." The procès-verbal was, therefore, the only document to be relied upon by the Parties before any authority.

his wife and children.[45] Indeed, Mr. Golzar has now admitted[46] that many of TRC's shares were in fact registered in the names of his wife and children. He asserts, however, that he had full authority with regard to those shares.

If the Deed had been genuinely drawn up, submits the Respondent, the NPO would have required, as dictated by law, the proof of ownership of the shares,[47] and would have realized that Mr. Golzar had no shares in the affiliated corporations, and was not the owner of 60% of TRC's shares. An NPO in Iran is not likely to officially transfer properties which do not belong to the transferor. As for Mr. Golzar's unproven assertion that he had been authorized by his wife and children to transfer their shares in TRC, the NPO would have required him to produce evidence of such authorization, and would have reflected in the Deed, as required by law, the name and identity of each of the owners of the 60% shares together with the particulars of Mr. Golzar's authority to transfer shares which belonged to others. That, however, is not all.

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[45]. According to an Affidavit by TRC's Financial and Commercial Advisor, supported by a submitted copy of TRC's share Register, the personal shares of Mr. Golzar in TRC as of 15 August 1978 stood at 8.66%. He had no title to the shares of many of the purportedly transferred affiliated corporations. (Doc. 90, Ex. 12.)

[46]. Transcript, pp. 252-3.

[47]. Under Paragraph 42 of the Code of Registration Circulars (supra, footnote 40):

> "Prior to any transfer or conveyance of a corporation's shares, the NPO is obligated to enquire about the status of the corporation's shares from the Corporate Registration Bureau in Tehran and from Departments of Registration in Provinces, and only then proceed to draw up a deed."

Under Article 40 of the Act of 1969 Amending Parts of the Commercial Code of Iran:

> "The transfer of registered shares must be entered in the share register of the corporation, and the transferor or his representative or agent must sign the transfer in the said register... Any transfer in disregard of this provision shall have no validity as far as the corporation and third parties are concerned."

Had Mr. Golzar approached an NPO for the intended transfer, says the Respondent, he would have been informed that the proper means by which he could effectively transfer his asserted shares was to sign TRC's Register[48], and not to have an official deed of conveyance drawn up. The latter would, at best, be a nullity as far as the Corporation and third parties were concerned.[49]

Further, as admitted by Mr. Golzar and by the Claimant,[50] some of the named properties assertedly transferred by the Deed, amounting to millions of dollars,[51] belonged, partly or totally, not to Mr. Golzar but to TRC. And yet, as pointed out by the

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[48]. Besides, TRC's Articles of Association (Article 11) stipulates that prior to transfer of any registered shares, the approval of the Corporation's Board of Directors must be obtained. The Claimant has failed to produce any evidence indicating that such approval was obtained, and the Respondent has demonstrated that no such approval has ever been sought. The Deed itself, of course, makes no reference to any such approval having been obtained.

[49]. Mr. Golzar has later stated that he did effect the transfer in TRC's Register and that he signed the Share Certificates. At the Hearing, however, he was shown the original Register and the Share Certificates, but he refused to examine them.

[50]. Doc. 4, Ex. C, pp. 3-9.

[51]. These are items nos. 2, 3, 4, 6, 8, 9, 12, 13, 14, 15, 16, 17 and 18 in the Deed.

Respondent[52], it is elementary that the personality of a corporation is distinct from the personalities of its shareholders; and assets belonging to a corporation cannot be directly transferred by its shareholders -- not even on a pro-rata basis. It is hard to imagine that a notary public in Iran would draw up a notarial deed of conveyance effecting the sale by Mr. Golzar of assets belonging to TRC. Every share is the sum of the assets and liabilities that it represents. For transferring the shares of a corporation, one may not itemize the assets of the corporation.

2.1.7. The Deed lists, among the assets transferred, "[a]ny and all shares belonging to the conveyor and located in Bank Saderat Iran (the number of shares have been stipulated and specified between the transacting parties)."

This, too, is problematic. For as directed by the Iranian Monetary and Banking Act, 1972, the transfer of bank shares in Iran can only be effected by the parties signing the share register of the relevant bank. It can never be effected by a deed of conveyance. The Bank has now testified that its Register does not show any such transfer[53].

2.1.8. With regard to the consideration of the alleged transaction, the Deed states:

> "The conveyance sum amounts to one hundred nineteen billion, seven hundred million rials, all of which

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[52]. The point is dealt with extensively in a Legal Opinion by the Dean of the Faculty of Law of Tehran University, and submitted to the Tribunal by the Respondent. (Doc. 72, Ex. 5).

[53]. Doc. 55, Ex. 5; Doc. 72, Ex. 1-b.

has, according to statements by both transacting Parties, been submitted to the conveyor (Seller)."

First, the Claimant has now admitted[54] that despite what is stated in the Deed, he never paid any portion of the conveyance sum to Mr. Golzar. On the contrary, it was his intention to manage the allegedly conveyed businesses in Iran and pay that astronomical sum out of the profits derived from his future management.[55]

Second, the sum is at any rate concocted sometime after the submission of the Statement of Claim. This requires some explanation:

In the Statement of Claim, the total value of TRC plus the entire value of the Claimant's additional assets is estimated by him to be $ 1,710,712,450.[56] This figure, according to the Claimant, is calculated on the basis of "[a] rate of exchange of $1.00 equivalent to 70 Rials"[57]. Applying the rate of exchange adopted by the Claimant, The figure of $ 1,710,712,450, when rounded, translates into 119,700,000,000 Rials.

Strangely, while the Claimant asserts throughout the Statement of Claim that he is entitled to the value of 90% of

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[54]. Transcript, p. 304.

[55]. This admission has again a direct bearing on the Interlocutory Award issued by the majority (Award No. ITL 72-812-3). To invoke his own admissions, Mr. Golshani is an Iranian who, just three days after his naturalization as a United States citizen, returns to his country of origin, and only three days later purchases a business empire with a view to manage it for at least as long as it takes to derive benefits sufficient to pay a 1.7 billion-dollar consideration. He is nevertheless judged by the majority to have had no business contact with Iran at the time.

[56]. Doc. 1, Ex. P.

[57]. Id.

TRC's shares, he seeks compensation for the total value of TRC plus other assets, namely $ 1,710,712,450.[58]

In the Amended Statement of Claim, the Claimant admits that he is not the owner of 90%, but 59% of the shares of TRC. He accordingly seeks to amend the amount of the relief sought, reducing it to $ 1,056,904,460. And yet the conveyance sum -- the value of 59% of the shares of TRC and other transferred companies -- is exactly 119,700,000,000 Rials, the figure given by the Claimant as the value of either 100% or 90% of TRC's shares plus other assets.

Clearly, the figure of 119,700,000,000 Rials is not a genuine consideration for 100% or 90% or 59% of TRC's shares plus other assets. Otherwise, the Claimant who in October 1982, when he sought the amendment, was fully aware of the contents of the Deed would not have requested the reduction of the amount of the relief sought to $ 1,056,904,460. This is because, according to the Deed, the value of 59% of TRC's shares plus other assets is 1,710 million dollars. It seems clear that the Deed was prepared sometime after the date on which the Statement of Claim was submitted. In order to come up with a conveyance sum, the round figure of $ 1,710 million was multiplied by 70 (rate of exchange), arriving at 119,700,000,000 Rials. It was apparently forgotten, however, that the figure given in the Statement of Claim included the value of 100% of TRC's shares, while the Deed needed the value of only 59% of the shares.

2.1.9. In Iran, just as in any other country, the notarial transfer of property, especially of real property, requires the prior fulfillment of certain conditions and formalities. As imposed by the pertinent laws, these conditions must be met partly by the notary public, and partly by the transacting

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[58]. Doc. 1, para. 38.

parties themselves. Some of these have already been dealt with. A few other, absolutely essential requirements will now be referred to.

First, before any real property can be transferred, the seller must pay all the past due taxes and obtain a Certificate of Tax Clearance from the Ministry of Finance. The notary public is required, by law, to reflect the number of the Certificate in the Deed. Here are the relevant provisions:

> "For the absolute transfer of any real property, the notary public has the duty to demand from the seller the Tax Clearance Certificate for the past dues, and to reflect the Certificate's number in the deed."[59]

In order to implement this, a Registration Circular[60] stipulates:

> Before receiving the Tax Clearance Certificate, a notary public may not, with due regard to the Provisions of Direct Taxation Act, proceed to formulate deeds pertaining to the transfer of real property.[61]

Second, there is the requirement to pay taxes imposed on transfer income. Under Article 19 of the Direct Taxation Act, 1945, any income derived from the transfer of real property situated in Iran is subject to income tax. Further provisions of the said Act provide for the rate of the imposed tax, and for the duty of the notary public to collect the same against official receipt.

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[59]. Article 34 of the Direct Taxation Act, 1945. Under Article 24 of the same Act, any transfer of property against consideration by means of an accord or conveyance is subject to identical taxes.

[60]. See Supra, footnote 40.

[61]. Paragraph 113 of the Code of Registration Circulars, supra, footnote 40.

Third, there is the duty imposed on a notary public to seek and to obtain the Clearance Certificate for the Municipality Charges levied upon the real property intended to be transferred:

Under a Proviso to Article 73 of the Municipalities Act, 1955:

> Prior to effecting any transaction, the notary public is duty bound to seek in writing from the relevant Municipality a Clearance Certificate for the charges imposed on the real property. The Municipality is required, within ten days after the receipt of the inquiry, either to issue the Certificate or to inform the notary public of the amount of the charges due.

Fourth, the notary public is by law required[62] not to execute any deed for the transfer of a previously registered real property, before he has inquired from the pertinent local Registration Department, and has been informed by the same, that there exists no impediment to such a transfer. Under a proviso to the said Article, for transfer of any real property situated in Tehran, the notary public must inquire and ensure that the property in question is not subject to any judicial attachments.

Fifth, if the property intended to be transferred is a factory, the notary public is required to receive from the seller a Clearance Certificate issued by the Social Security Organization, indicating that all social security dues have been satisfied.[63]

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[62]. Article 31 of the NPO's By-laws, 1970.

[63]. Article 37 of the Social Security Law, 1960.

Finally, in accordance with a Circular issued by the State Organization for the Registration of Deeds and Real Property[64], whenever a notary public seeks to draw a single deed for the transfer of more than one piece of real property, he must prepare and send a separate inquiry for each of them, and separately reflect the replies in the deed.

These are the clear provisions of the law. The Respondent, citing the same, has presented the Tribunal with legal opinions by experts on the Iranian law, including one by a former Judge of the Supreme Court of Iran, and another by the present Dean of the Faculty of Law of Tehran University. They all have expressed the view that these imperative provisions may not be dispensed with. Practitioners, including the current Director General of Iran's Registration Organization have submitted affidavits to the same effect, and have orally testified before the Tribunal. A great number of deeds executed by NPO No. 319 on or close to the date of the Deed in question have been deposited with the Tribunal's Registry. Each deed contains detailed references to the inquiries made by the NPO and the replies received. Each contains references to the numbers and other particulars of the received certificates.

Yet the Deed is simply silent on all these. There is no reference to any inquiry, no reference to any approval, no reference to any tax clearance certificate, no reference to any municipality charges, and no reference to the collection by the NPO of any transfer tax. It is worth noting that this last one alone, the transfer tax, would, in view of the magnitude of the asserted transaction, amount to the equivalent of tens of millions of dollars. The question must then be inevitably asked whether a Deed with so many irregularities and with such blatant disregard for every one of a host of imperative rules governing

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[64]. The Code of Registration Circulars, supra, footnote 42.

the drawing up of notarial documents can still be regarded as an authentic work of an NPO in Iran.

The Respondent has further submitted the replies to inquiries made in this respect by the Iranian Ministry of Finance. There, the Ministry had requested its various Departments -- in Provinces in which the allegedly transferred properties are located -- to examine whether their files indicated the receipt of any inquiry, or the payment of any tax, with respect to this asserted transaction. All have certified that they have not been approached, and that they have not received any payment on that account. Nor have Mr. Golzar and the Claimant ever asserted, despite the Respondent's challenge, that they have met any of these requirements, or paid any of these charges. Indeed, they could not have done so. It will be recalled that in their version of the events, from the date on which the idea of transfer was first brought up by Mr. Golzar to the date on which the Deed was allegedly signed, there passed no more than three days. This could not have provided the NPO with sufficient time to make the necessary inquires and to receive the necessary certificates from, for instance, the Department of Finance in the Province of Khuzistan, six hundred miles south of Tehran, where parts of the assertedly transferred properties are situated.

## 2.2. The Affidavits by the Two Signatories of the Deed

The Claimant's second piece of evidence in support of the asserted authenticity of the Deed consists of two Affidavits by him and by his principal witness, Mr. Golzar. These, as already mentioned, were first submitted together with the Statement of Claim, and were later amended in the Claimant's subsequent submissions. The probative weight of the said Affidavits will now be examined, with necessary references, here and there, to

the later statements by the two Affiants at the Hearing. It will be seen that these Affidavits, too, far from establishing the authenticity of the Deed, prove at once that it is a forgery. But before that, two preliminary points:

First, international tribunals do not give much weight to affidavits. One reason for that is that there are normally no sanctions against perjury before such fora.

Second, Mr. Golshani is the Claimant, and Mr. Golzar is the real party in interest. Their Affidavits are simply another way of asserting a claim. As directly interested parties, their Affidavits carry little weight, if any.

2.2.1. In each of their Affidavits attached to the Statement of Claim, Messrs. Golzar and Golshani first give a separate, most detailed, account of the allegedly expropriated assets. The history of the formation of TRC and the subsequent changes in its capital, the names and particulars of TRC's subsidiaries (with percentages of holdings), the particulars of TRC's projects (with percentages of completion), the capitals, assets and particulars of the projects of each subsidiary, are given in minute detail.

In the said parts of their Affidavits, Messrs. Golzar and Golshani repeat, times out of number, that until the Spring of 1979, Mr. Golzar was the majority shareholder and managing director of the companies in question. It was, they contend, only in the Spring of 1979, that he transferred his assets to the Claimant.

This is then followed, in each Affidavit, by a most detailed account of the circumstances and reasons that forced Mr. Golzar to transfer, and Mr. Golshani to accept, the ownership of the

assets in question which, in terms of value, can only be described as astronomical.

The problems, according to the Affiants, began with the accession to power of the Provisional Government in Iran, on 11 February 1979. A day by day account of the alleged difficulties of the Affiants with, and their harassment by, the Provisional Government, the armed militants, and the local Committees, occupies more than five pages of Mr. Golzar's Affidavit. The account is too extensive to quote in full, but to get the flavor, a summarized version may be provided:

> "The circumstances in early May 1979 and in the immediately preceding three months in Iran were particularly dire for myself personally... 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 validity of continued operation of TRC and my other businesses under my management....
>
> 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... These militants were under control of the local Niavaran Committee...
>
> 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... were I was detained... by representatives of the provisional government....

> About a week after February 11, 1979, about 50 militants under control of the government kidnapped my brother Abrahim...
>
> During the weeks following February 11, 1979, constant psychological pressure was inflicted upon me... Agents of the government made repeated phone calls threatening imprisonment... During the weeks after the revolution, these phone calls increased in frequency to the point that they occurred several times a night. Frequently I was prevented from entering the TRC headquarters by government agents, and I was eventually barred forcibly from entering the building....
>
> 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....
>
> During the first months after February 11, 1979, the government and its agents launched a campaign of official investigations and executions.... The tenor of the official pronouncements concerning these events was distinctly anti-ownership..." [65]

Mr. Golzar, having so described his alleged predicaments in the period beginning with 11 February 1979, concludes that "[b]y early May 1979, it was evident that I could no longer attempt to manage, or supervise the management of TRC and the other companies."[66] He goes on to say that under these circumstances:

> "I transferred my shares of capital stock in TRC and the other companies to Mr. Golshani in the belief and hope that, as a United States citizen, and with acquaintances in the provisional government, he could

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[65]. Doc. 1, Ex. C, pp. 12-15.

[66]. Id., p. 15.

better operate these businesses in those terrible times."[67] (Emphases added)

Mr. Golshani offers precisely the same reasons for his apparently reluctant acceptance:

> "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. Because of my acquaintances with officials in the provisional government, I believed that I would be permitted by the Provisional Government to continue operation of TRC.... I accepted the transfer of his shares of TRC and other interests in the other businesses under these circumstances"[68].

The events leading to the transfer of shares, and the reasons therefor, are similarly described in the text of the Statement of Claim. The three senior executives of TRC who have submitted affidavits in support of the Claim, also state that they continued to work for TRC until May 1979.

Nine months later, in their Amended Statement of Claim submitted in October 1982, Mr. Golzar and Mr. Golshani seek to retract all this. They assert in there that the transfer took place, not in the Spring of 1979, but on 15 August 1978. How do they try to explain this? In justification, they offer the following three reasons:

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[67]. Id., pp. 11-12.

[68]. Doc. 1, Ex. G, pp. 3-4.

First, the initially submitted Affidavits were prepared in great haste[69].

Second, the Affiants had their respective memories of events which had occurred sometime earlier, at very turbulent times.[70]

Third, Mr. Golzar, who at the time was in Paris and spoke little English, was forced to communicate his recollection of events to counsel through an interpreter during long distance telephone calls.[71]

For those reasons, the assertion goes, the two Affidavits contained certain "minor mistakes"[72] which were later corrected sua sponte.[73] None of these is remotely convincing.

First, what were the Affiants mistaken about? About their recollection that their predicaments began only by the coming to power of the Provisional Government in 11 February 1979? That the armed militants assertedly invaded Mr. Golzar's residence on 12 February 1979? That the following day members of Niavaran Committee threatened to kill Mr. Golzar? That he was held captive at gun point on 14 February 1979? That the following day he was taken to the Central Committee of the Provisional Government? That about a week later his brother was kidnapped by militants? That the agents of the Provisional Government

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[69]. Doc. 145, p. 16.

[70]. Doc. 94, p. 4; Doc. 145, p. 16.

[71]. Doc. 145, p. 16.

[72]. Id.

[73]. Id., p. 17. The assertion that this was a sua sponte correction of earlier statements is inaccurate. The Claimant was required to produce the alleged Deed of Conveyance. The date on that Deed is 15 August 1978. He had therefore no alternative but to try to bring his earlier detailed version of events into line with the date of the Deed.

thereafter made repeated phone calls threatening him with imprisonment and confiscation of his assets? That it was in the first months after February 1979 that the tenor of the official pronouncements became distinctly anti-ownership? That during the weeks following February 1979, Mr. Golzar was subjected to constant psychological pressure? That these, and other detailed events, finally led him to believe, in May 1979, that the only means by which he could rescue the projects was to transfer them to an American citizen who was less subjected to harassment and had friends in the Provisional Government ?

Can all these be characterized as "mistakes"?

Second, if the "mistakes" were caused by the hasty preparation of the Statement of Claim, why is there so much detail about the assets (over two hundred figures) and, more importantly, about the events from February to May 1979?[74] The point, of course, is not that a particular date, for instance, is omitted, or a particular event is not adequately explained. It is, on the contrary, that an Affiant wishes to retract a detailed, day by day description of events which, according to him, were the only reasons for the idea, and materialization, of a most unusual step for a proprietor to take. Haste, distance, turbulent times, or lack of fluency in English have, therefore, nothing or very little to do with it. Besides, the turbulent times are those in February to May 1979 period, while the new version is that the transfer took place in August 1978.

Furthermore, the excuses offered by the Claimant's counsel concerning Mr. Golzar's distance and lack of fluency in English

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[74]. Details of Mr. Golzar's alleged predicaments and the threats to his life and properties during the February to May 1979 period continued to appear in every single brief and affidavit submitted by the Claimant after he amended the Statement of Claim.

Mr. Golzar's failure in May 1979 to tell the militants that, having transferred his assets in August 1978, he had no longer anything for them to confiscate, remains unexplained!

relate, exclusively, to the first parts of the Affidavits, where information about the assertedly transferred companies are said to have been more fully possessed by Mr. Golzar[75]. What is apparently forgotten is that the retractions are sought, not with regard to those parts but with respect to the description of circumstances leading to the alleged transfer and the reasons therefor. Here, of course, we have the Affidavit of Mr. Golshani, who personally went through the alleged events, and who did not need Mr. Golzar's assistance to recall under what circumstances and for what reasons he became a party to the transaction. Residing in the United States and having no language impediments, he has offered precisely the same description of the events which led him to accept the transaction in May 1979.[76] What was he affected with when he, too, separately described those events and similarly concluded that the transfer took place on 1st May, 1979?[77]

Under the new version, Mr. Golshani is, of course, a student who, just three days after his arrival in Tehran to complete an internship, enters into a contract which, if true, would have few parallels: he becomes the owner of properties allegedly worth over 1.7 billion dollars. If that were the case, is it conceivable that he would then prepare an Affidavit in which he would not only fail to remember the date of that transaction, just three days after his arrival in Tehran, but provide a detailed, day by day account of the events in February to May 1979 which, according to him, formed the bases of, and the

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[75]. And in that regard, of course, there is no suggestion that any mistakes were made.

[76]. Other senior executives of TRC, who submitted affidavits in support of the Claim, have not suggested otherwise.

[77]. Persian version of the Statement of Claim (Doc. 1, para. 12).

reasons for such a transaction?[78] Can it be imagined, for instance, that he was simply mistaken when he stated in his Affidavit that he accepted the transfer because he had acquaintances in the Provisional Government?

2.2.2. Assuming, arguendo, that the Affiants were simply "mistaken", and that the transfer did take place in August 1978, the question still remains as to what were the reasons for a transfer of this magnitude.

In August 1978, of course, there were no armed militants to assertedly harass Mr. Golzar, no Committees to arrest him or to threaten him with his life, no Provisional Government with anti-ownership pronouncements, or with friends of Mr. Golshani serving as its Members. The former regime was still in full control[79], and no one, expert or otherwise, could in his wildest imagination foresee a change of that regime. What then persuaded Mr. Golzar to transfer these businesses "at tremendous personal sacrifice", to quote the Claimant's own words?[80] Indeed, what forced him to do this so hastily, in just less than three days after the arrival of Mr. Golshani in Iran?

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[78]. Despite his efforts to make his new version seem credible, Mr. Golshani cannot take his mind off the events in 1979. In his Amended Affidavit (Doc. 4, Ex. G. p. 3) he says that Mr. Golzar transferred his shares to him because he believed that "I would be better able to operate the business in the times prevailing during 1978 and 1979." (emphasis added) But if the transfer took place on 15 August 1978, how could Mr. Golzar have thought of the times prevailing in 1979?!

[79]. A few minor and insignificant incidents in one or two provincial cities in Iran are irrelevant to the point here discussed.

[80]. Amended Statement of Claim, Doc. 4, p. 13.

One remaining suggestion is that Mr. Golshani, as a United States national, could better manage the Companies. But this is directly contradicted by Mr. Golshani who, referring to his arrival in Tehran, says that he was forced to use his Iranian passport because of the situation in Iran.[81] He also asserts that: "The violent nature of anti-American activities in Iran during that period understandably made me somewhat cautious about publicly proclaiming my United States citizenship."[82]

The suggestion is further contradicted, flatly, by the text of the alleged Deed:

> "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... There is no need to declare the contents of this document, either formally or informally..."

The Parties to this stipulation are, it will be recalled:

a) A seller who states repeatedly that he was forced to transfer his assets because it was evident that he could no longer attempt to manage his businesses and that, if he did so, he would jeopardize the lives of himself and others, and

b) a buyer who has returned to Iran only to complete a short period of internship.

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[81]. Doc. 36, Mr. Golshani's Affidavit, p. 9.

[82]. Id., p. 12.

Yet, they sign an authentic Deed under which the seller is to continue to manage the companies "just as he has done until now"; and the intern buyer, who plans to go back to the United States after six months, is to take over the management of the transferred businesses in Iran only after fifteen months. The whole idea behind the transfer is, we are told, to let the Revolutionaries know that not Mr. Golzar but a United States national is the new owner of the properties in question, but the Parties to the transaction stipulate not to disclose the contents of the Deed by which the intended transfer is to be recorded!

2.2.3. In their first Affidavits, Messrs Golzar and Golshani claim that 90% of TRC's shares were transferred. In their later Affidavits they seek to change this into 59%. How do they explain this? Mr. Golzar says that when Mr. Daneshvar, the owner of 30% shares in TRC, fled Iran in early 1978, he left his bearer shares with him, and since TRC's bearer shares are owned by the holder, Mr. Golzar thought that he had become entitled to 90% of TRC's shares.[83]

This is unconvincing. Had he or had he not purchased those shares, bearer or otherwise?[84] Had he, or had he not paid, or agreed to pay, any consideration for those shares which, based on the asserted value of TRC, amounted to eight hundred and sixty million dollars? This fanciful explanation, at any rate, relates to Mr. Golzar's own belief, to wit, he mistakenly believed that he had become the owner of 90% of TRC's shares. He has no explanation to offer as to why he had asserted in his original

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[83]. Doc. 146, Ex. 3, para. 28.

[84]. See Mr. Golzar's Affidavit, Appendix C to the Statement of Claim, para. 20, where he says: "In early 1978, I personally acquired all of the shares owned by Hossain Daneshvar..." (emphases added)

Affidavit that through the Deed he had transferred 90% of TRC's shares, while the alleged Deed registered only a 59% transfer.

His suggested date of "early 1978" is also inaccurate. It is directly contradicted by the Statement of Claim, where it is asserted that the transfer of shares from Mr. Daneshvar to Mr. Golzar took place in early November 1978.[85] Besides, conclusive evidence adduced by the Respondent, and by Messrs Golzar and Golshani in another litigation against TRC before the French Courts, shows that Mr. Daneshvar personally participated in a shareholders' meeting of TRC on 13 November 1978![86]

Mr. Golshani, in his latest Affidavit asserts that he still believes that he is entitled to compensation for the value of 89% of TRC's shares, but he goes on to say that since on the advice of his attorneys he has concluded that it would be impossible to prove his ownership of the 30% interest represented by Mr. Daneshvar's bearer shares, he has decided not to pursue the claim beyond 59% of the shares. "Therefore", he says, "I feel that there is no inconsistency in alleging a larger percentage of ownership in the Statement of Claim and a smaller percentage in the Amended Statement of Claim."[87]

He, too, misses the point, or so he pretends. The inconsistency is not in what he believed he was entitled to, but in the allegation he made in his first Affidavit, just as Mr. Golzar did, that in the Deed he had assertedly signed, 90% of TRC's shares had been transferred to him, while the Deed before the Tribunal records a 59% transfer.

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[85]. Doc. 1, para. 12.

[86]. Doc. 72, Ex. 6.

[87]. Doc. 146, Ex. 2, para. 23.

Besides, Mr. Daneshvar, the former owner of 30% of the shares, is apparently outside Iran. It should not have been difficult to persuade him to attest to the fact that he did in fact sell his shares to Mr. Golzar. Finally, the whole story based, as it is, on the alleged difficulty to prove the ownership of bearer shares is belied by the statement in the Statement of Claim that the transfer from Mr. Daneshvar to Mr. Golzar had been "officially registered with the Corporate Registration Bureau."[88]

2.2.4. According to the Deed, Mr. Golzar transferred fifty nine per cent of his sixty per cent share in TRC and other companies to Mr. Golshani. He retained one per cent for himself.

In his later Affidavits, Mr. Golzar repeatedly contends that he retained this one per cent in order to participate in the management of the transferred companies, and to take part in their Board of Directors' meetings.[89] For a period of nine months (August 1978 to the date of his departure from Iran in May 1979), he participated, then, in the management of those companies on the basis of this one per cent share.

Yet in the two Affidavits submitted with the Statement of Claim, and in the Statement of Claim itself, it is repeatedly asserted that all of Mr. Golzar's shares, all of his assets, were transferred to Mr. Golshani. Had Mr. Golzar forgotten about the role he had played for nine months in the affairs of those companies? Had Mr. Golshani, too, forgotten about the role of Mr. Golzar as a co-manager for this long period of time? Was it again because of the problem of language, or distance, that they both failed to remember that in the Deed, Mr. Golzar had retained

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[88]. Statement of Claim, Persian version, Doc. 1, para. 12.

[89]. Doc. 4, Ex. C, para. 21.

one per cent of the shares so as to enable himself to participate in the management of TRC, and that he did so for nine months?

### 2.2.5 The Place in which the Deed was Assertedly Signed

Throughout the Hearing, Mr. Golzar and the Claimant persisted in their assertion that they signed the Deed and the Register of NPO No. 319, not in the Office of the Notary Public, but at the Headquarters of TRC. The Notary Public and one of his assistants, they insisted, brought the Register to Mr. Golzar's Office, on the 8th floor of a building in Bejan Street in Tehran.[90]

The Respondent, invoking the pertinent laws of Iran, rejected this assertion and argued that, save in extremely exceptional circumstances where the Public Prosecutor, on the advice of physicians, so authorizes, the Register cannot be taken out of the office of a notary public. Even when he so authorizes, the Public Prosecutor must, by law, assign a representative to accompany the notary public throughout the time the Register is taken out of his office.[91]

But the Claimant remained adamant:

> "Respondent makes much of the fact that the notary and his assistant came to Mr. Golzar's office. But that was common practice at the time, particularly for this man who had to sign literally hundreds of such documents every month.[92]

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[90]. Transcript, p. 282.

[91]. Transcript, pp. 408-9.

[92]. Transcript, p. 463.

Yet, in the Amended Statement of Claim submitted in 1982 -- nine years closer to the event than the date of Hearing -- the Claimant makes this admission:

> "On August 15, 1978, Mr. Golzar transferred... his... ownership interest in TRC to the Claimant... in the official office of registration of transfer of real estate.... affiliated with the Ministry of Justice (Daftar-Khaneh number 319...)[93]

The Persian words in parentheses mean "Notary Public Office...". Together, the text reads: "... in the official office of... Notary Public Office number 319".

2.2.6. In the earlier Affidavits, there was no assertion that the transfer of shares from Mr. Golzar to Mr. Golshani had been recorded in the Share Register of TRC, or reflected on its Share Certificates. In his Affidavit of March 1991,[94] Mr. Golshani contended for the first time, however, that the transfer had been recorded in the Register. At the Hearing,[95] Mr. Golzar made the same assertion. He also contended that the transfer had been reflected on the Share Certificates.[96] Yet at the same Hearing, he declined to look at the originals of TRC's Register and Share Certificates produced by the Respondent.

Astonishingly, the Claimant has failed to request the production of these documents by the Respondent, even though they would have constituted, if they did reflect the transfer, a most direct and conclusive means of proving the 1978 transfer.

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[93]. Doc. 4, p. 5 (emphasis added).

[94]. Doc. 146, Ex. 2, para. 23.

[95]. Transcript, pp. 251-252.

[96]. Transcript, p. 260.

Indeed, they would have dispensed with the need to prove the authenticity of the Deed of Conveyance. But then a party who refuses to look at certain documents at the Hearing cannot be expected to request their production.

2.2.7. The foregoing points in the Affidavits were those which directly contradicted the contents of the Deed and therefore negated its authenticity. The following are examples of a few other contradictory statements in the Affidavits, tending to show that the Affidavits cannot be given any probative value:

2.2.7.1. In order to justify the Claimant's failure to produce the alleged Deed at the time of filing the Statement of Claim, much is said in the Affidavits about the conditions under which Messrs Golzar and Golshani fled Iran. All that must be rejected because:

First, Mr. Golzar has now admitted, at the Hearing, that just before leaving Iran, he had his passport renewed[97]. He could, therefore, leave Iran legally, and he probably did so. As for Mr. Golshani, it is his story that he was a student who had just completed a training course in Iran. It is also his story that the contents of the Deed had not been disclosed. What then prevented him from leaving the country legally?

Second, the assertion that a small document, with such importance, or at least a copy of it, could not be taken out of Iran by Mr. Golzar or Mr. Golshani, or by any other person, is just incredible.

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[97]. "[T]he last day when I wanted to flee Iran I gave [my passport] to authorities to extend it for me and they did so." Transcript, p. 258.

Third, The Deed was, as admitted by Mr. Golshani,[98] hidden in a safe place.[99] Messrs. Golzar and Golshani, therefore, knew precisely where it was. Between May 1979 and January 1982, they had well over nineteen months to either direct someone to bring it out of Iran (for which there were no conceivable legal or practical impediments) or, alternatively, request someone to look at the document and refresh their memories with regard to its contents. Had they done so, they would not have made those "minor mistakes", provided, of course, that the document did exist at that time.

2.2.7.2 In the Persian version of Mr. Golshani's Affidavit, attached to the Amended Statement of Claim[100], he asserts that "I acquired all my rights, title, privileges and interest in these companies and projects in August 1978 as a gift from Mr. Rahman Golzar"(emphasis added).

In the English version, the reference to acquiring the assets as a gift is simply omitted.

2.2.7.3 In his last Affidavit,[101] Mr. Golzar refers to a telephone conversation with Mr. Golshani in early 1978. "After this conversation", he says, "I began considering transferring

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[98]. Doc. 146, Ex. 2, p. 4.

[99]. Mr. Golzar has made a similar admission. When he was asked by the Claimant's counsel at the Hearing whether a copy of the alleged Deed was subsequently found, he replied: "It had not been lost to be found. Mr. Golshani had entrusted it with somebody who, through certain means, could take it out and bring it abroad afterwards." Transcript, p. 247.

[100]. Doc. 3, Ex. G, para. 3.

[101]. Doc. 146, Ex. 3, pp. 3-4.

my shares in TRC to him because I felt that, as an American, Mr. Golshani would be more insulated..."

And yet Mr. Golshani did not become a United States' citizen until 9 August 1978.[102]

## 3. Further Evidence of Forgery

So far, the Deed has been examined in the light of two pieces of evidence submitted by the Claimant in support of the Deed's authenticity. The conclusion, the inevitable conclusion, is that based on the Claimant's own evidence, the Deed could not have been genuinely drawn up by a notary public on the asserted date. On the contrary, many of its features, and the statements by its two signatories, make it clear that it is a later fabrication.

The Claimant's third, and last, piece of evidence, the testimony of a graphologist, will be examined in the present Section, intended to deal with further evidence submitted by the Respondent in support of its allegation that the Deed is a forgery.

### 3.1. The Seal.

Every document officially drawn up by an NPO in Iran must, by law, be fixed with the seal of the NPO. It is the single, most vital symbol of a notarial document. Each NPO is supplied by the State Registration Organization with a single seal, the

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[102]. There are other contradictions and inconsistencies in the Affidavits, all of which are disclosed in a chart submitted by the Respondent in Doc. No. 90, Ex. 12.

safekeeping of which is the responsibility of the notary public himself. No new seal will be issued unless the old one is first returned.

The seal of a sample NPO operating in Tehran is inscribed with the following four lines:

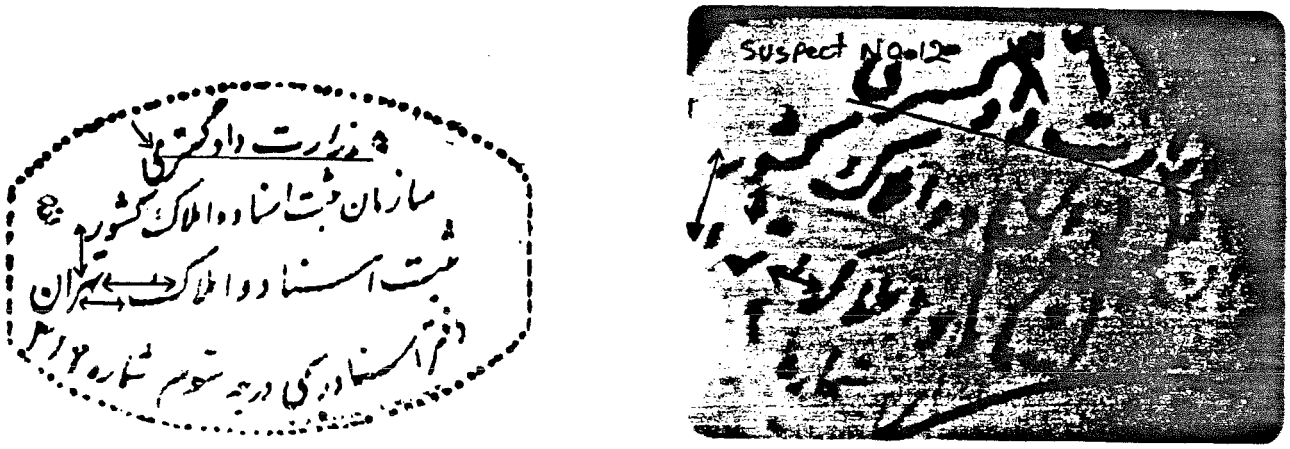
Ministry of Justice
State Organization for Registration of Deeds and Real Property
Registration of Deeds and Real Property of Tehran
Notary Public Office, First Degree, No. 369

The Deed of Conveyance submitted by Mr. Golshani does, as is to be expected, bear the impression of such a Seal on each of its two pages.

On behalf of the Respondent, three experts with vast experience in the field of forgery detection, inspected, in the presence of the Claimant, the original Deed at the Tribunal's Registry. Advanced methods of detection, including microscopic and ultraviolet photography, were employed, and the photographs so obtained were contrasted with the impressions of the Seals of NPOs Nos. 319 and 369 on a number of genuinely issued documents. The Seal of NPO No. 319, now deposited with the Tribunal, was also examined.

The experts later submitted their separate and detailed reports, in which they concluded:

First, that the impressions appearing on the two pages of the Deed do not belong to the Seal of NPO No. 319. Here, for visual comparison, are the copies of two impressions:




To the left is a slightly enlarged copy of the impression of the genuine Seal of NPO No. 319[103]. The Seal itself is deposited with the Tribunal. To the right is a magnified copy of a photograph, taken in ultraviolet light, of the impression of the Seal appearing on the first page of the Deed. Sharp differences between the two are marked with arrows.

Second, that the fourth line in the impression of the Seal appearing on the second page of the Deed constitutes a most conclusive piece of evidence of forgery: The Persian word "Darajeh", meaning "degree", is twice inscribed.[104]

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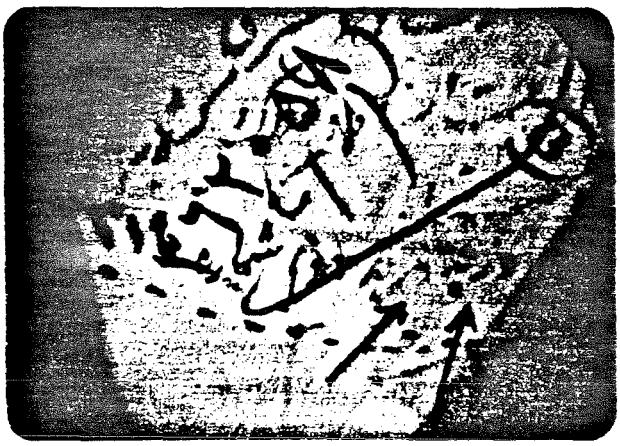
[103]. In proof of that, the originals of a number of deeds drawn up in 1978 by NPO No. 319 and bearing the same impression have been submitted to the Tribunal.

[104]. The forgery, submits one of the experts, is as obvious and as comic as a forged $100 bill, with the figure 100 on two of its corners, and the figure 10 on the other two.

Below is a magnified copy of an ultraviolet photograph of that impression. The repeated word is indicated with arrows:



The fourth line of the inscription thus reads: "Notary Public Office, Third Degree Degree No. 319"![105] That is not the case with the impression of the Seal on the first page of the Deed, simply because in there, as can be readily seen, the space for the two words "Third Degree" -- and only the space for those two words -- is conspicuously blank. While the rest of the impression is fully legible to the naked eye in any normal copy, no impression of these two words appears even in a magnified microscopic photograph. It remains to be said that, as is visually clear, and as submitted by the Respondent's experts, the repetition of the word "Degree" cannot be attributed to some additional movements, or to the reflection of two impressions over, or alongside, one another.[106] If that were the case, the impression would have contained the double reflections, however faintly, of other words as well, at least in the magnified photographs.

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[105]. As to how this came about, <u>see infra</u>, 3.3.

[106]. Doc. 90, Ex. 5, Mr. Vaziri's Affidavit, pp. 4-5.

The experts' reports, together with an album of photographs in which their findings were visually demonstrated, were submitted to the Tribunal. The experts later testified to the same effect at the Hearing, and offered themselves for questioning.

In his subsequent Briefs, the Claimant chose not to say a word about this singularly conclusive piece of evidence; not a word about the experts' characters; not a word about their competence[107] and not a word about their findings on the point at issue.

The Claimant, as will be seen presently, did invoke the written and oral testimony of an expert witness. Indeed, in his Memorial of 27 March 1991, to which the testimony of the Claimant's expert is attached, there is a heading which reads:

> "An internationally renowned handwriting expert has concluded that the signatures and other markings on the Deed are authentic."[108]

The singularly relevant mark on the Deed is, of course, the impression of the Seal. It had been extensively dealt with in the Respondent's Briefs, and it had formed the major part of its experts' reports. Yet, contrary to what the above-quoted title

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[107]. The Claimant does suggest in one of his Briefs that as "official experts" they are "officials of the Government of Iran and therefore are in the exclusive employment of Respondent." (Doc. 145, p. 37)

Yet anyone familiar with the Persian language, including the Claimant, knows that the title "rasmi" (or "official") in this context means "authorized" or "licensed", and nothing else. Attorneys are, for instance, referred to as "official attorneys" because they, too, are licensed to practice law. They are not in the employment of the Government of Iran. See The Law Governing Authorized Experts, Doc. 90, Ex. 4.

[108]. Doc. 145, p. 21.

suggests, there is no reference to it in the Report of the Claimant's expert who expressly stated, at the Hearing, that she had not been asked to examine the Seal![109]

The point may be summarized. The most relevant inquiry into the authenticity of a notarial document must center on whether it is affixed with the genuine seal of an NPO. On behalf of the Respondent, three experts, whose integrity and expertise are not challenged, have testified, in writing and orally, that the Seal whose impression appears on the Deed is an obvious and comic fabrication. In support of their findings, these experts have, using advanced methods, produced a number of photographs which demonstrate their findings to the naked eye. All this has remained unrebutted.

3.2. The Signatures of the Notary Public of NPO No. 319 on the Two Pages of the Deed

Next to the Seal in importance, it is the signature of the notary public which signifies the official character of a notarial deed. The Deed submitted by the Claimant does purport to contain, naturally enough, the signatures of the Notary Public of NPO No.319 on the upper left corner of each of its two pages. The question, as with the Seal, is whether they are authentic.

The three forgery detection experts presented by the Respondent were very clear on the subject.

First, they submitted in their sworn statements that based on a comparison between, on the one hand, the signatures on the

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[109]. Transcript, pp. 361-2. The Claimant seems to suggest otherwise. Transcript, p. 489: "She was not asked not to look at the stamp, she was not told to ignore the stamp. She was told to look at the entire document."

Deed and, on the other, the signatures of the then Notary Public No. 319 on a number of authentic deeds, they had detected gross differences between the two sets. The signatures differed, particularly, in terms of individual characteristics, the starting and the ending points of the decorative writings, and the tilt and speed of the writings, especially in the upper side of the signatures. The two signatures on the Deed, they concluded, do not belong to the (now deceased) Notary Public of NPO No. 319.

The expert presented by the Claimant, a French lady, had a different, though less emphatic, view.

> "[The] similarities [between the signatures on the authentic deeds and the] signatures appearing in [the Deed] permit us to ascribe them to the same hand despite the difference in the point of departure."[110]

At the Hearing, one of the Respondent's experts offered more explanations, with the aid of previously submitted enlarged photographs:

> "If you look at [any of the authentic signatures] you will see it starts from the upper part. It turns and even the end of it crosses the last part of the oval, whereas the signature which is alleged here is abandoned in the middle of the oval. The other point which is interesting is that the indisputable signatures have been made by two movements of the pen. Aside from the oval shape ... there is a common return movement which is very small [and]... is placed on top of the signature. The signatures which are alleged here of course do not have this characteristic... [T]hat makes us experts think that the alleged

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[110]. Doc. 146, Ex. 6, p. 19.

> signatures do not belong to the head of the notary public 319."[111]

In contrast to this firm view, the Claimant's expert appeared very hesitant:

> "It is a hypothesis, but I have to tell you that it is not excluded that there is not a difference [between the authentic signatures and the signatures appearing on the Deed]. There are certain contrasts. There are certain resemblances. Therefore, the discussion about this remains open.[112]

And when pressed by the Bench, her stand became more equivocal:

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[111]. Transcript, pp. 120-121.

[112]. Transcript, p. 358 (emphases added). This is the furthest she goes in support of the Claimant's assertion that the signatures on the Deed are authentic. There are, however, other statements made by her at the Hearing which show her to be utterly confused and where, at times, she suggests that the signatures on the Deed do not belong to the person who signed the authentic deeds. Here are two examples:

Q. [C]ould the person who signed the deed of conveyance,... also have signed the other 12 documents that you now have before you...?

A. I would be surprised that he would have signed 12 of them because I am already surprised why he signed the four of them. I put together the four. Then why did he sign the other eight big or smaller? I would be surprised if he had signed the 12 of them.... He could have signed the four, he could have signed the eight.

Q. Could the person who signed the 12 also have signed... the deed of conveyance?

A. You want to say that the writer of the 12 documents and instead an external person could have indicated the signature of the notary public? No, I do not think so because these signatures are quite superior. Those signatures are quite superior to these signatures here. (Transcript, p. 359.)

Q. [W]hat did you conclude as to the signature on the deed of conveyance that has been challenged here? Was the signature on that deed made by the same hand as some or all of the signatures on the eight specimen deeds?

A. I think that the eight signatures are from the same hand, and it could have been from the hand of the author of the deed of conveyance if we think that he had written it very rapidly in an uncomfortable situation... [T]he eight are made more homogeneously, more comfortably, than the signatures which are on the deed of conveyance. But it is possible that the author has several type of signatures and in my career I have seen this. That is why I am very cautious and very careful in this.[113]

In rebuttal, the Respondent's experts thought that there was no reason for hesitation:

"[S]he has not taken into consideration what the direction of the movement of the pen has been for making the signature, whether it is come from down upwards or up downwards... [T]he person who [has signed the authentic deeds]... would have two movements with his pen... to create the shape of the signature. Once he would go from the upper part, he would have a circular movement and would go to the lower part, and in the second movement... he would... have a hook-like movement. That is the kind of movement that she has also made reference to in the genuine documents in her comparison. However, she has chosen to be silent with regard to ... why the second movement... the hook-like movement of the pen, does not exist on the two pages of the deed of conveyance. This is a very important point that she has ignored, although she has taken into consideration in the

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[113]. Transcript, pp. 375 (emphases added).

> signatures which were the basis of the comparison... In my opinion, as far as the signature is concerned, I have to say that it is a very obvious point. It is very concrete. You can touch it, perceive it..."[114]

The point may now be summarized. Next to the Seal , any inquiry into the authenticity of a notarial document must center on whether or not the document bears the authentic signature(s) of a notary public. On behalf of the Respondent, three experts have opined and graphically demonstrated that the signatures on the two pages of the Deed are "very obvious" and "concrete" forgeries. The Claimant's only expert, on the other hand, believes that the signatures on the authentic documents "could have been from the hand of the author of the deed of conveyance if we think that he had written it very rapidly in an uncomfortable situation." She emphasizes, however, that "the discussion about this remains open."

The conclusion to be drawn from all this is too obvious to require elaboration.

### 3.3. The Testimony of Mr. Afsharzadegan

It will be recalled that, according to the Respondent, the Deed was not drawn up in 1978 by NPO No. 319, but it was fabricated much later, sometime in 1982, principally by a Mr. Ahmad Afsharzadegan, who then headed NPO No. 369, and who was a friend of Mr. Golzar.

On 23 December 1990, Mr. Afsharzadegan, living in London since 1983, wrote to inform the Respondent of his willingness to

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[114]. Transcript, pp. 393-4.

reveal the truth about the fabrication of the Deed in question, and about his role in the commission of that crime. After nearly nine years, he said, he could no longer cope with his "agonizing thoughts".

Later, in a lengthy Affidavit executed on 3 January 1991, in London, he gave a detailed account of his background as a well-to-do and successful notary public in Tehran; of his friendship and working relations with Mr. Golzar; and of Mr. Golzar's first telephone contacts with him from abroad in 1982, requesting his assistance in fabricating a backdated deed. In there, he described how he initially resisted but later, infuriated by what he called the Revolutionaries' excesses, succumbed to the request. He gave a vivid account of how he then met with Mr. Golzar's front man in Tehran, a man called Hossein Agha; how a draft of the intended Deed, prepared by Mr. Golzar, was hurriedly improved; how he determined that NPO No. 319 was suitable for his purposes[115]; how he called at NPO No. 319, and met a Mr. Makhmalbaf and, pretending to be looking for an old deed, went through the Registers and identified a suitable one[116], Register No. 31; and how he, together with Mr. Golzar's

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[115]. NPO No. 319 had been headed by a Mr. Hedayati Rezvani, until his retirement on 29 March 1980. As is usual, another NPO, NPO No. 109, was then put in charge. NPO No. 109 was at the time headed by a Mr. Radmanesh and assisted by a Mr. Makhmalbaf, who acted, respectively, as the Acting Notary Public and Acting Assistant Notary Public of NPO No. 319 until they were both suspended on 24 May 1982. Upon the suspension, NPO No. 366 was chosen as the Acting NPO No. 319.

According to Mr. Afsharzadegan, NPO No. 319 was chosen because, being inactive at the time, it was least likely to be regularly inspected, and because it had a number very close to the number of his own NPO, number 369.

[116]. The main tool of an NPO is its Register. It is in the Register that every deed is recorded and signed by the parties and by the notary public, and it is the Register which serves as the final source of reference.

man, later revisited NPO No. 319 and this time stole the Register.

He further described how, back at his office, a suitable entry in Register No. 31 was identified;[117] how a regular visitor and an acquaintance, a Mr. Ali Asghar Moghadam Nia,[118] was requested to write the fair copy on the officially printed papers belonging to his own NPO; and how the signature of the head of NPO No. 319 in 1978, Mr. Hedayati Rezvani, was imitated.[119]

One of the more difficult parts, he said in his Affidavit, was the preparation of a seal. Because they had no access to the Seal of NPO. No. 319, they had to fabricate a new one. Using the Seal of his own NPO, a duplicate was first prepared. The intention was, originally, to substitute digit "6" in the figure 319 appearing on the duplicate Seal with digit "1", so as to make the figure read 319. When the duplicate Seal became ready, however, a serious deficiency was detected: Mr. Afsharzadegan's NPO, as reflected on its Seal, was of first degree, while NPO No. 319 was of third degree. The word "First" in the duplicate Seal

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[117]. This was the entry for deed no. 25345, the number which now appears on the Deed of Conveyance. There, a person called Hekmat had formally recorded a deed of "admission". It was chosen, according to Mr. Afsharzadegan, because the contents of such a deed, unlike a deed by which property is transferred, would not be transmitted to the Registration Department, or to the Ministry of Finance, etc.

[118]. For fear of detection, he said, he was not willing to have the forged Deed written by any of his staff.

[119]. This, as he explained at the Hearing, was easily overcome: "Then we needed the signature of the head of the notary public ... By taking into consideration the ledger that we had at our disposal, we got rid of this problem very quickly. That is to say, to imitate the signature... which is in the shape of an oval or semicircle was very easy." (Transcript, pp. 157-8.)

had to be thus hurriedly scratched by a blade, and replaced by the word "Third".[120]

The next part of Mr. Afsharzadegan's revelations in his Affidavit is perhaps less dramatic. Apparently, in 1983 and before he went on one of his regular vacations to Europe, he sought to destroy, lest anyone should see, Register No. 31, still with him in his office. He tore it page by page, he said, and disposed of the same in a toilet. Later in London, when he contacted his NPO by telephone, he became aware of the presence of an Examining Magistrate and the police in his office. This investigation had begun, as we shall see, immediately after the particulars of the Deed had been disclosed by the Claimant. Having realized that the crime was about to be detected, Mr. Afsharzadegan decided not to return to Iran.

The final part of Mr. Afsharzadegan's Affidavit is devoted to the description of his meetings with Mr. Golzar in Paris; and to his stated reasons for finally deciding to disclose the facts. The gravity and the magnitude of the crime, of which he became aware only when he was told about the claim submitted to this Tribunal, and the constant criticism to which he was subjected by his family, who blamed him for their predicament and shame, caused him continuous agony and pain, leading to near insanity. He had suffered enough, he said.

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[120]. It will be recalled that while the rest of the Seal's impression on the first page of the Deed is clearly visible, the space for the two words "Third Degree" is, surprisingly, blank. In the impression on the second page, on the other hand, the word "Degree" appears twice.

Apparently, the Seal was first affixed on the second page and, realizing thereafter that in scratching and replacing the appropriate words, the word "Darajeh" had, by mistake, been twice inscribed, the perpetrators saw to it that this part of the Seal was covered with an object: Hence, the conspicuous absence of this part in the impression on the first page.

Mr. Afsharzadegan later testified to the same before the Tribunal, and he offered himself for cross-examination.

Mr. Afsharzadegan may not be a man of the best character. Besides Messrs. Golzar and Golshani, he is, after all, the principal perpetrator of this daring offence. Indeed, his stated reasons for finally accepting to take part in the forgery, and those for coming forward to reveal the truth, may not necessarily be a true reflection of the facts. He does refer in his Affidavit to an original offer of 3 million tomans (approximately $ 400,000) for his services; and it is not improbable that his silence over the past nine years does owe something to a thought on his part that Mr. Golzar might eventually compensate him for his vital role. Yet the facts he has revealed about the forgery and the manner in which it was committed are simply impeccable, and bear the stamp of truth.

As we shall presently see, his version is in full conformity with the results of nine years of investigations by an Iranian Judge, by the Iranian Police, and by a host of experienced Iranian Inspectors. The papers on which the Deed is written belong, not to NPO No. 319, but to his NPO, No. 369. The Seal affixed on the Deed belongs, not to NPO No. 319, but to his NPO. Most of Mr. Golzar's notarial affairs were carried out, not by NPO No. 319 -- a third degree NPO -- but by Mr. Afsharzadegan's NPO. His story about leaving Iran for vacation in Europe, his short telephone conversation from London with an Examining Magistrate at his NPO, and his decision not to return to his family and to his Country after that conversation, are all verified. His admission that he conspired to steal, and did steal, Register No. 31, and subsequently disposed of it in a toilet does explain why after nearly nine years of search, the

Iranian Judiciary and Police have not been able to locate the Register.

Besides all this, here is a man who, but for his role in the commission of this despicable offence, was of some social status. He was financially prosperous, living by 1991 with his family in London. It is difficult to see why such a person should, for no reason, suddenly decide to appear before an international Tribunal and give details of the commission of a serious offence, not only by a confederate -- whom he is supposed not to have known -- but by himself as well.

How does the Claimant react to these revelations? Characteristically, instead of attempting to rebut the main issues, he seeks to raise a few irrelevant, or secondary, points, to each of which the Respondent in its subsequent pleadings, and Mr. Afsharzadegan in his oral testimony, have convincingly responded. These may be summarily referred to:

First, why, the Claimant wants to know, should Mr. Afsharzadegan and Nia[121] have waited nine years to simultaneously present their version of the events? This, he says, "is alone enough to cast strong doubts on the truthfulness of those affidavits."[122] One simply fails to see the strength of this argument. Is it not more likely that Mr. Afsharzadegan in all those years continued to entertain the hope that he would eventually be rewarded for his assistance in the commission of the offence, and when the Hearing approached and he was still uncompensated, he decided not to allow Mr. Golzar to reap the benefits of a joint venture? As for Mr. Nia, the nature of his

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[121]. See infra, 3.5.

[122]. Doc. 145, p. 35.

role in the affair is such, as we shall presently see, that he could not have taken the initiative of coming forward to testify, before he was identified and informed of the use made of his services.

Second, Mr. Afsharzadegan's version is that when, around September 1982, he called on NPO No. 319 to steal the Register, Mr. Makhmalbaf was in charge of the said NPO. The Respondent's evidence demonstrates, on the other hand, that Mr. Makhmalbaf had been suspended as from May 1982. Based on this, the Claimant argues that Mr. Afsharzadegan's story must have been fabricated. The Respondent, however, has a convincing answer. The suspension of a notary public or his assistants never entails the closure of the office to the thousands of its clients who might want to refer to the NPO in relation to their previous transactions. On the contrary, the suspension is only a temporary withdrawal of the notary public's or his assistant's license to draw up notarial documents. The best evidence of that, says the Respondent, is the fact that when Mr. Makhmalbaf was arrested as late as 10 September 1983, he was arrested at his desk in NPO No. 319; a fact which was reflected in a police report submitted by the Respondent to the Tribunal well before the questioning of this part of Mr. Afsharzadegan's revelations by the Claimant.[123]

Third, Mr. Afsharzadegan could have fabricated the Deed much easier if he had used a Register belonging to his own NPO. In that way, says the Claimant, he would have less exposed himself to the risk of detection. Mr. Afsharzadegan's reply is again simple enough. He had no desire to so deeply involve himself and his NPO in the forgery. He wanted the traces of this to be as far away from his own NPO as possible.

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[123]. Doc. 116, Ex. 3.

Fourth, Afsharzadegan's version that he -- an experienced Notary Public -- drew up the Deed does not concord with the Respondent's repeated assertion that the Deed contains many professionally unacceptable flaws. Once again, the Respondent has a convincing answer. It was not Mr. Afsharzadegan who drafted the Deed. The Draft, as he has so vividly described, had been earlier prepared and given to him by Mr. Golzar's front man in Tehran. Mr. Afsharzadegan's contribution in this respect was limited to a hurried attempt at improving the text of what had been previously drafted. More importantly, Mr. Afsharzadegan had been asked to do the impossible. He had been asked to transfer, by a single deed, tens of factories, corporations, and parcels of land scattered all over Iran; to transfer, by the same single deed, thousands of apartments without giving their particulars; to transfer properties which did not belong to the seller; to transfer banks' shares which, by law, have a different means of transfer; to transfer real property allegedly worth hundreds of millions of dollars, without reflecting in the deed any of the necessary clearance certificates; and to transfer all these without receiving any of the charges levied against them. No amount of skill and experience would suffice to give a genuine appearance to a deed of this nature.[124]

### 3.4. Mr. Afsharzadegan's Supplemental Affidavit: Mr. Golzar's Confessions Are Tape Recorded

It will be remembered that Mr. Afsharzadegan's first Affidavit was executed on 3 January 1991. Twenty days later, he

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[124]. In addition to the said points, the Claimant in rebuttal of Mr. Afsharzadegan's written and oral testimony relies on certain instances of apparent inconsistencies between the Affidavit of Mr. Afsharzadegan and those of the Respondent's other witnesses. These shall be accounted for in their appropriate place, infra, 3.11.

executed a Supplemental Affidavit, again in London . The Affidavit and its Supplement were simultaneously submitted to the Tribunal as exhibits to the Respondent's Brief of 23 January 1991.[125]

In his Supplemental Affidavit, Mr. Afsharzadegan further reveals that he has had a then recent telephone conversation with Mr. Golzar,[126] all of which is tape recorded. In this recorded conversation, says Mr. Afsharzadegan,

a. Mr. Golzar reveals his awareness of the fact that Register No. 31, in which the alleged Deed is supposed to have been recorded, has been stolen by Mr. Afsharzadegan, and is therefore not in the possession of the Government of Iran.

b. Mr. Golzar, unaware that Mr. Afsharzadegan has disposed of the Register[127], inquires whether Mr. Afsharzadegan has turned the Register over to the Respondent. Mr. Afsharzadegan replies that he has not, and Mr. Golzar asks him not to do so for at least two or three more months, by which time, Mr. Golzar says, the Case will be over.

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[125]. Doc. 116, Ex. 17A and B.

[126]. It will be recalled that under the Claimant's version, Mr. Golzar is only a disinterested witness, and Mr. Afsharzadegan a non-involved Notary Public. The two are supposed not to know each other.

[127]. This telephone conversation takes place before Mr. Afsharzadegan's first Affidavit is submitted to the Tribunal. As mentioned above, the Affidavit and its Supplement were both submitted to the Tribunal in a later Brief.

c. Mr. Golzar admits that the Deed was prepared by Mr. Afsharzadegan.

d. Mr. Golzar admits that it is he who is the real party in interest; that it is he who in fact pursues the Case before the Tribunal; and that it is he who will decide who will get what share out of an eventual award in the Claimant's favour.

e. Mr. Golzar promises to compensate Mr. Afsharzadegan for his services in the affair.

Mr. Afsharzadegan concludes his Supplemental Affidavit by a direct challenge: should the Claimant deny any of these admissions, the tape will be readily presented to the Tribunal. Yet, there appeared not a word of denial in the Claimant's subsequent Brief. Indeed, not a reference to this most revealing piece of evidence.

At the Hearing, Mr. Afsharzadegan nevertheless produced the tape together with its complete transcript in Persian, and its English translation. He requested the Tribunal to spend half an hour listening to this conclusive piece of evidence. This was on Tuesday, 23 April 1991, the first day of the Hearing. The Tribunal initially decided to hear the tape, and a cassette player sought. The transcript of the tape was put at the Claimant's disposal to examine it overnight.

The next day, the Claimant's Counsel, having gone through the transcript overnight, "strongly objected" to the admission of the tape and its transcript, on two grounds: <u>first</u>, the proffering of the evidence for the first time during the Hearing was improper, he argued; and <u>second</u>, there were in his view

significant differences between the English translation and the Persian version[128] Neither objection could remotely justify the rejection of this, yet another piece of telling evidence.

As to the first, it will be remembered that this was not evidence to which reference was made only at the Hearing. Indeed, some three months before the Hearing, Mr. Afsharzadegan had specifically asserted in his Supplemental Affidavit that he possessed a tape which recorded Mr. Golzar's confessions. He had provided the Claimant in writing with the specific points on which Mr. Golzar had made admissions. He had challenged the Claimant to deny them, in which case he indicated his preparedness to submit the tape to the Tribunal. It was the Claimant who had chosen not to deny the existence of the tape or its contents in his subsequent Brief. The transcript, and the tape, were thus merely further proof of Mr. Afsharzadegan's unchallenged Supplemental Affidavit.

As to the second, this should not have troubled the Claimant or the Tribunal in the least. The Tribunal has in its employment a number of qualified English-Persian interpreters, some of whom were present at the Hearing. The tape was available, and so were the transcript and its English translation. The fact that the conversation in question had taken place had not been denied. A short time spent on checking the "inaccurately translated" points in this most relevant piece of evidence would have been worth it, by any account.[129] Yet the Tribunal, relying on the

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[128]. Transcript, p. 234.

[129]. The Tribunal could have alternatively placed the tape and the transcript at the Claimant's disposal, asking for his comments thereon later in a brief.

same two grounds invoked by the Claimant, decided not to admit the tape and its transcript into evidence. This is unfortunate. Still, Mr. Afsharzadegan's Supplemental Affidavit remains unrebutted and, as such, it is by itself a conclusive piece of evidence of Mr. Golzar's admissions. What is most disturbing in this regard is the fact that the inability of the Government of Iran to produce the Register -- the Register that Mr. Golzar pleads with Mr. Afsharzadegan to continue to hide for another two to three months -- forms the Claimant's main defence to the accusation of forgery. The Government of Iran, repeats the Claimant in all his Briefs, has failed to produce this vital piece of evidence which, if produced, would have proved the authenticity of the Claimant's Deed!

3.5. The Testimony of Mr. Moghadam Nia.

It will be recalled that Mr. Afsharzadegan, unwilling, lest his NPO be identified, to have the Deed written by any of his staff, sought the assistance of an acquaintance, a Mr. Ali Asghar Moghadam Nia. Mr. Moghadam Nia was a regular visitor, according to Mr. Afsharzadegan, and enjoyed a particularly good handwriting. He was asked to write the contents of the prepared draft on officially printed papers put at his disposal, and he did so. The evidence shows that he has been, in all likelihood, an innocent man, unaware of the nature of what he had been asked to do. Nevertheless, when identified, he readily admitted his role and said that he was prepared to face any legal consequences.

He, too, executed an Affidavit in which he gave details of how and under what circumstance he was asked to, and did, write the fair copy of the Deed. In order to assist the Examining

Magistrate in charge of the criminal investigation in Tehran[130], he volunteered to re-write the text of the Deed on separate sheets of paper. This, together with the specimens of the handwriting of all the scribes of NPO No. 319 in 1978, were referred by the Magistrate to the three handwriting experts, mentioned earlier.

The experts unanimously concluded, first, that the handwriting on the Deed does not belong to any of the scribes who served in NPO No. 319 in 1978; and secondly, that the Deed's handwriting is unquestionably that of Mr. Moghadam Nia. Their Report was filed by the Respondent and, at the Hearing, the experts, testifying to the same, graphically demonstrated their findings.

The Claimant's expert differed. Both in her submitted Report and in her oral testimony, she opined that the handwriting on the Deed does not belong to the person who wrote the contents of the Deed on separate sheets of paper, Mr. Moghadam Nia.

It is hardly necessary to provide details of how, at the Hearing, this view of hers was convincingly rebutted by the Respondent's experts.[131] Suffice it to say that, unlike the

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[130]. As to which see infra, 3.11.

[131]. "In [these individual] characteristics we found a conclusive and positive, probative evidence... to the effect that the handwriting which has been used in the two pages of the deed of conveyance are in conformity with the other handwriting. We are of the opinion that these handwritings contain very, very many reasons, technical reasons, which reveal the personality of the writer....

Principally speaking, in Persian where we have 16 dotted alphabets, these dots play a very important role.... and I can tell you there are 20 or 30 reasons here for what I would say.... [w]ith certainty... that many of the wordings and pen movements

(continued...)

three experts presented by the Respondent who have had years of experience in the field, the Claimant's "expert", a French lady, has readily admitted that she is innocent of the Persian language and handwriting, and that she has never had, in her lifetime, the experience of examining a written Persian text. Indeed, her written Report demonstrates that on occasions she simply fails to distinguish between the handwritten and printed parts of the text of the Deed.[132] She should not, I suggest, have allowed others to present her as an "expert" in the field, and she should have firmly declined to express any views on the extremely complicated subject of Persian handwriting. Here are two examples, if examples are needed, of how one who is totally ignorant of the Persian language and of the styles of its handwriting, is likely to go astray if they should venture into this unfamiliar field:

First, she says that one of the differences she has observed between the writing on the Deed, on the one hand, and Mr. Moghadam Nia's writing on separate sheets of paper, on the other, is that the former is more methodical and organized, in that it has more paragraphs and full stops, whereas in the latter

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[131](...continued)
and emphasis and various attributes of writings which create personal characteristics in the writing of Mr. Moghadam Nia... and the writing in the alleged deed of conveyance are the same, similar, and written by one person". (Transcript, pp. 211, 219-220.)

[132]. On p. 8 of her Report (Doc. 146, Ex. 6), for instance, she says that "we observe in the first column... three handwritten lines ... on which is affixed an illegible signature". Those three lines are, however, in printed form. Elsewhere in her Report (p. 2) she says that "(f)or the most part, these documents are written in Arabic." They are, of course, written, not in Arabic but in Persian.

"there are no paragraphs, no full stops".[133] Yet, a glance by a familiar eye at the two texts will demonstrate at once that strikingly, neither text contains any full stop whatsoever; and that the two have almost exactly the same number of paragraphs, albeit in the latter some paragraphs happen to end just next to the right hand margin of the text. That a French lady, unfamiliar with the Persian language, should fail to detect the end of paragraphs in a Persian text is understandable; that she should then venture to argue, as an "expert", that because the two texts have a "different" number of paragraphs they are not written by the same hand, is not.

Next, she says that an important difference, a quite remarkable difference,[134] between the two handwritten texts is the upward direction at the end of the lines in Mr. Moghadam Nia's sample writing, and the horizontal direction of the lines in the Deed:

> "Even if one takes into account that the lined paper in [the Deed] facilitates the horizontality of lines, still the systematic upward aspect in the [sample writing] sets the two ways of writing apart.
>
> In fact, if the two writers have the same graphic habits, one would at least observe from time to time a rising tendency in [the Deed] rather than none at all."[135]

She is evidently innocent of the fact that in Persian, writing with an upward direction at the end of the lines is only

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[133]. Transcript, p. 345.

[134]. Transcript. p. 345; the expert's Report, Doc. 146, Ex. 6, p. 2.

[135]. Id.

a different, optional method which a person may at times adopt, but which is never adopted in a notarial document.

It remains to be said that the revelation of the identity of the person who wrote the fair copy of the Deed was an additional task voluntarily undertaken by the Respondent. It was by no means any part of its burden to prove the forgery of the Deed.

### 3.6. The Book of Receipt and Payment of Registration Fees (known as the Stamp Book) of NPO No. 319.

The Respondent says that, with Register No. 31 stolen, and with no trace of this monumental transaction in the files of the Department of Registration, of the Ministry of Finance, of the relevant Municipalities, or of the Red Crescent Organization, it turned to the Stamp Book of NPO No. 319. Indeed, it was apparently this Book which first fully convinced the Respondent, and the Examining Magistrate in charge of criminal investigation in Tehran[136] that the Deed was a forgery. It is a bulky, sealed Ledger which, by law[137], must be kept in, and used by, every NPO in Iran. In it, each page is columnized, with printed headings for the serial number and the date of each entry, the number and the type of the entered deed, the names of the parties thereto and, finally, the registration fee received for it by the NPO on the basis of Article 123 of the Registration Act, as Amended (1973). The entries are all in handwritten form.

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[136]. See infra, 3.11.

[137]. Article 19 of the NPOs Act (1975), and its implementing by-laws.

Deed Number 25345, dated 15 August 1978 -- the number and the date appearing on the Claimant's document -- is entered under serial No. 204 on page 98 of the Stamp Book of NPO No. 319 for the year 1978. Its type is described as an "admission"[138] and it is executed by a person named Hekmat.[139] The value of the deed's consideration is given as nil, and the amount received as registration fee is 124 Rials, or approximately one dollar and eighty cents.

A copy of this page was submitted by the Respondent to the Tribunal. It was, argued the Respondent, yet another piece of evidence that what was submitted by the Claimant as Deed No. 25345, dated 15 August 1978, and assertedly executed in NPO No. 319 is a forgery.

The Claimant first questioned the authenticity of this evidence on the ground that while all other entries on page 98 are given names, "Hekmat" is a family name. And yet anyone conversant with Persian names, including the Claimant, would know that "Hekmat" is also commonly adopted as a given name. A certificate to that effect by the Personal Status Department of Iran was later submitted to the Tribunal[140]. As a more direct evidence, however, the original of the bulky Book itself was later submitted to the Tribunal for the Claimant and his expert to inspect. It is deposited with the Tribunal's Registry. Characteristically, after the submission of the original, the Claimant ceased to pursue the initial challenge.

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[138]. See supra, 3.3.

[139]. According to the Respondent, later investigation revealed that the NPO's copy of this deed, too, had been removed from the NPO at about the same time Ledger No. 31 was stolen.

[140]. Doc. 116, Ex. 18.

The Respondent, however, went further, and presented the Tribunal with the affidavits of two Inspectors of Tehran's Department of Registration[141]. Their task, said the Inspectors, is to routinely visit notary public offices in Tehran and inspect their Stamp Books to see if they are properly maintained and, in particular, whether the entries in the Stamp Books for received fees correctly represent the amounts of considerations in the deeds recorded in the Registers. Only in this way can the Government satisfy itself that its duties are properly collected and remitted, said the Inspectors.

In 1981, the Inspectors stated, they made just one of these routine visits to NPO No. 109 where the Books of NPO No. 319 were being kept. For a period covering 1978, they checked the amounts of considerations reflected in the Registers against the entries reflected in the Stamp Books. Wherever they discovered an inconsistency, they marked the entry in the Stamp Book with red ink, and they reflected the violations in their Inspection Report, signed by them and by the Notary Public. The NPO was then ordered, as is the practice, to immediately remit to the Government the total amount of money it had received but failed to transfer to the Government. The original of that Inspection Report, dated 2 March 1982, was now before them,[142] said the Inspectors. Looking at it, and looking at page 98 of the 1978 Stamp Book of NPO No. 319, it is visibly demonstrable that for the entries on page 98 of the Stamp Book, they had detected six instances of inaccurate reporting, all clearly marked against the relevant entries on that page. No violation is recorded,

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[141]. Doc. 72, Ex. B.

[142]. A copy of that Report has been submitted to the Tribunal (Doc. 116, Ex. 7A).

however, for Deed No. 25345, either against its entry on page 98, or in their Inspection Report.

The conclusions to be drawn from all this were clear, submitted the Inspectors. First, they must have seen and inspected Register No. 31, because it was in that Register that the deeds entered on page 98 and on many other pages of the 1978 Stamp Book were registered. If the Register had not been inspected, they would not have been able to mark the instances of violation in the Stamp Book. Indeed, they would have stated in their Inspection Report that because of the unavailability of the Register, they had not been able to conduct parts of their inspection. Secondly, Deed No. 25345 recorded in Register No. 31 must have been a transaction without consideration, with the correctly stated registration fee of 124 Rials. Otherwise, they would have marked, and reported a violation against, the relevant entry in the Stamp Book.

They would have indeed! It should be recalled that the stated consideration for the alleged transaction is 119,700,000,000 Rials, or approximately 1.7 billion dollars. The registration charges receivable for a deed of this magnitude amount, as already mentioned, to 240,376,000 Rials,[143] or approximately 3.5 million dollars. If the Inspectors had detected that the NPO had collected 3.5 million dollars as registration charges -- which included the Government duties -- but had reported the collection of only one dollar and eighty cents, they would not have hesitated to report it as a once-in-a-life discovery.

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[143]. Doc. 72, p. 42.

How does the Claimant react to this, yet another piece of conclusive evidence?

> "[T]he official investigation into the true identity of document 25345 began on May 23, 1982.... Thus,... Iranian inspectors would have no reason in 1981 to focus on that particular document from among hundreds of other documents, especially if it involved an extremely small sum of money (Rials 124) and did not appear to be deficient. It also is extremely unlikely that, in preparing a report many months after their inspection, the inspectors would remember and single out for attention a document as insignificant as the alleged Hekmat document. Yet the inspectors' affidavits indicate that the March 1982 report inexplicably and incredibly focuses on the alleged "hekmat document".[144]

The Inspectors, of course, say no such thing. They nowhere suggest that either they, or their Report, ever focused on Deed No. 25345. Their point, on the contrary, is that because Deed No. 25345 did not attract their attention as an instance of inaccurate reporting, its registration fee of 124 Rials must have been accurately reflected.

## 3.7. The Statement of Income of NPO No. 319

Every NPO in Iran is also required, by law, to keep a ledger of the Statement of Income. Each page, which reflects the

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[144]. Doc.94, pp. 35-36. The Claimant then concludes by his usual accusation of forgery: "Under these circumstances", he says, " it would be reasonable to infer that ... the inspectors' affidavits are a fabrication".

activities of one month, contains four entries, each reflecting the activities of one week.

Against each entry, the NPO records the number and the date of a receipt through which the stated amounts weekly collected for the appropriate authorities are remitted. The sum total of the remittances for every month is reflected at the bottom of each page. The notary public and his assistants, having certified the correctness of the stated accounts, sign the page and affix it with the NPO's seal. The Director and the Accountant of the Department of Revenue, having similarly certified the correctness of the stated accounts, sign, and affix the Department's seal onto, the page.

As another piece of evidence in support of the allegation of forgery, the Respondent first submitted a copy of a page in the Statement of Income of NPO No. 319 which covered the date of the alleged Deed. The fourth entry on that page, covering the period 10 to 17 August 1978, shows that the sum remitted for Registration Fee Revenue was 25000 Rials, or approximately $350; the sum remitted for Duty Charges was 4000 Rials, or approximately $ 57; and the sum remitted for the Red Crescent was 21000 Rials, or approximately $ 300.

As submitted by the Respondent, had the Deed, with its astronomical consideration, been genuinely registered, the Statement would have reflected, not the equivalent of a few hundred dollars but, as previously explained, millions of dollars.

How does the Claimant seek to rebut this evidence? There is, he says, a discrepancy between the Stamp Book and the Statement of Income:

"Page 98 of the Stamp Book shows registration fees received on three days, August 13,14 and 15, 1978, in the total amount of Rials 39,411. However, the Statement of Income for the entire week of August 17, 1978 reflects registration fees of only Rials 25,000. Thus, the total registration fees for the week in question is less than the reported registration fees for three days of that week reflected on page 98 of the Stamp Book."[145]

This, as explained by the Respondent, reflects a misunderstanding of the figures appearing in the two documents:

It should be noted that the Stamp Book reflects the "Registration Charges" collected by the NPO for the registered deeds. The Statement of Income, however, shows a weekly allocation and remittance of those collections to the appropriate authorities, namely the Red Crescent, the Municipalities, and the Department of Public Revenue, which receive, respectively, 42%, 8% and 50% of the total Registration Charges. It happens that the portion allocated to Public Revenue (50%) is reported on the Statement of Income as "Registration Fee Revenue".

The Claimant resorts to the apparent similarity between the term used to describe the 100% of the collections in the "Stamp Book", viz. the "Registration Charges", and that used in the Statement of Income to designate the 50% allocated to the Public Revenue, viz. the "Registration Fee Revenue". In so doing, the Claimant ignores the 42% and 8% allocated to other governmental agencies out of the same collections. In short, the Claimant attempts to compare 100% of the collections to an amount

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[145]. Doc. 94, p. 37.

representing 50% thereof in order to discover -- not surprisingly -- an inconsistency between the two amounts.

The Claimant's attempt to cast doubt on the validity of the Statement of Income was, however, exposed in a detailed analysis later submitted by the Respondent.[146] The original of the document, at any rate, was deposited with the Tribunal's Registry. Once again, the Claimant characteristically ceased to pursue the initial argument.

3.8. The Absence of Any Summary of Transaction

Under Article 22 of the Registration of Deeds and Real Property Act, 1931,

> "[O]nce a real property is recorded in a Real Property Register, the State shall recognize as owner only the person under whose name the property is registered, or to whom the property is subsequently transferred and the transfer is duly reflected in the Real Property Register ..."

Under Article 46 of the same Act, any contract or transaction relating to real property, or to its interests must, if previously recorded in a Real Property Register, be officially registered through a notarial deed. The reason for this is simple. It is only with regard to officially transferred real property that NPOs are required, by law[147], to prepare and transmit to the pertinent Registration Department a "Summary of

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[146]. Doc. 115, pp. 42-46.

[147]. Articles 36 and 37 of the By-laws of NPOs, approved in 1938.

Transaction". The Summary, on especially prepared uniform sheets, reflects the names, fathers' names, and the identity card numbers of the transacting parties, and it contains an abstract of the officially recorded transaction. It is signed, in duplicate, by the parties, and by the notary public and his assistant. One signed Summary is given to the transferee and the other, as mentioned before, is transmitted, within five days after the execution of the deed, to the pertinent Registration Department. Violation of any of these requirements, says the law[148], will entail severe disciplinary measures.

The Department, having received the "Summary" must, as required by law[149], record the transaction against an entry in the Department's Register. The termination of the former ownership must then be recorded, in red ink, in the "Remarks" column of the Register. It goes without saying that in the absence of a Summary, the transferor will continue to be recognized, under Article 22, as the sole owner of the transferred property.

Since a conveyance is, under Iranian law, an irrevocable transaction[150], and since the Deed in question purports to transfer real properties previously recorded in various Registers[151], the transfer of such properties could only have been made by a notarial deed, with its Summary duly reflected in

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[148]. Id.

[149]. Article 104 of the By-laws of the Registration of Real Property Act (1938).

[150]. Article 760 of the Iranian Civil Code.

[151]. All real properties within the boundaries of major cities in Iran have now been registered. The relevant laws are fully described in an Affidavit by a former Justice of the Supreme Court of Iran, Doc. 72. Ex. 15.

those Registers. Otherwise, the person under whose name the properties are registered, i.e. Mr. Golzar, would continue to be recognized by the State as the only rightful owner. Yet Mr. Golshani, the allegedly current owner of the properties, has failed to produce his copy of the Summary. The Respondent's evidence, on the other hand, shows that no such Summary has ever been prepared and transmitted to the pertinent Registration Departments, and that the alleged change of ownership with respect to these properties has nowhere been recorded.[152]

3.9. Yet Another Piece of Conclusive Evidence

The date of the asserted transfer of TRC's shares from Mr. Golzar to Mr. Golshani is 15 August 1978.

Yet the evidence submitted by the Respondent, and unrebutted by the Claimant, shows that at an Extraordinary General Meeting of TRC's shareholders held on 13 November 1978, not Mr. Golshani but Mr. Golzar participated as the Managing Director of TRC. There, he submitted a detailed report on the affairs of the Company[153].

3.10. Still Another One, Again Unrebutted

On 31 March 1979, more than seven months after the date of the asserted transfer, Mr. Golzar executed a power of attorney drawn up, not by NPO No. 319 but by NPO No. 369, whereby he

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[152]. Doc. 72. Exs. 1A and 4A.

[153]. Minutes of the Extraordinary General Meeting of TRC's shareholders (Doc. 72, Ex. 6).

assigned to another brother, Mr. Parviz Golshani, the right, inter alia, to substitute for the Principal in any and all of the Principal's corporations, and the authority to assign to himself or to third parties all the Principal's assets, apartments, and shares in those corporations.[154]

On the basis of this very power of attorney, Mr. Parviz Golshani attended an Extraordinary General Meeting of TRC's shareholders, held on 8 April 1979. There, he was elected as a member of TRC's Board of Directors. There, he voted for a number of changes in TRC's Articles of Association. There, he presented himself and his Principal as the owners of 8880 shares out of a total of 10,000 shares represented. And there, no reference is made to a Mr. Abrahim Rahman Golshani.[155]

That step, taken by Mr. Golzar on 31 March 1979, is a legally feasible and financially sound step to be taken by a proprietor who is about to leave his place of business: to vest a trusted man with the power to run his businesses in his absence. Such a proprietor ought not to be readily believed if he asserted that nearly nine months before he decided to leave the Country, at a time when there was no reason for him to leave, he hurriedly signed away almost all his assets through a Deed of Conveyance, the registration of which would have cost him tens of millions of dollars. The problem is, however, that a power of attorney to his Iranian brother would not do Mr. Golzar any good. He needs a backdated sale of all his assets to a United States national, with access to this Tribunal.

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[154]. Deed (Power of Attorney) No. 46597, submitted to the Tribunal as Doc. 72, Ex. 7.

[155]. Doc. 72, Ex. 8.

3.11. The Findings of an Examining Magistrate

An extensive criminal investigation into the alleged forgery of the Deed has, parallel to the Case before this Tribunal, been conducted in Iran.

As revealed by the Respondent, this investigation began shortly after the particulars, and later a copy, of the alleged Deed were, via the Tribunal, conveyed to the Respondent. Strange features of the Deed immediately raised the Respondent's suspicion. Early inquiries by the Respondent revealed that the serial numbers of the officially printed papers on which the Deed was written vastly differed from the serial numbers of the papers on which other deeds were at about the same time, written by NPO No. 319. With the experts' assistance, it was soon established that officially printed papers with serial numbers immediately before and after the serial numbers of the Deed's papers, and with identical printing characteristics, were used, not by NPO No. 319, but by NPO No. 369, and not in 1978, but in 1982.[156]

After the discovery of those facts, the matter was, according to the Respondent, reported to the Department of Registration, and to the General Inspectorate Organization of Iran, where an inspector was instructed to investigate. This was

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[156]. Based on the serial numbers and other printing characteristics of the papers on which the Deed is written, the State Printing Company of Iran later certified that such papers were ordered only on 18 October 1978, and first became available on 12 December 1978, nearly four months after the date of the asserted Deed (Doc. 90, Ex. 2).

The originals of the sample deeds drawn up by NPO Nos. 319 and 369 in 1978 and 1982, respectively, were later submitted to the Tribunal. Printing characteristics of the two sets of papers were graphically displayed in the Respondent's Pleadings and elaborated upon at the Hearing.

in the Spring of 1983. In his Report, a copy of which was subsequently submitted to the Tribunal,[157] the Inspector gave a detailed account of his inquiries. First and foremost, he said, he wanted to see Ledger No. 31 of NPO No. 319 in which the Deed was supposedly registered. Mr. Makhmalbaf, the then Acting Assistant Notary Public, had initially asserted, according to the Inspector, that Ledger No. 31, together with certain other Ledgers had been earlier taken to the office of the Revolution's Public Prosecutor to assist them with their inquiries into certain other matters. But when invited by the Inspector to produce the necessary receipt, Mr. Makhmalbaf had withdrawn his earlier assertion and stated that Ledger No. 31 had been previously stolen.

In the absence of the Ledger, the Inspector said in his Report, he turned to the Stamp Book, where he found that Deed No. 25345 dated 15 August 1978 reflected an "admission" executed by a person called Hekmat. Noting a number of other irregularities, including the non-conformity of the Deed with the entry in the Revenue Book, the absence of the Deed's second copy in the NPO, the total lack of any record indicating that the NPO had made any of the inquiries necessary for a transfer of this nature, the apparently forged Seal and Signatures of the Notary Public, he concluded that the alleged Deed of Conveyance was a forgery. He accordingly suggested in his Report that the case be referred to the Office of Tehran's Public Prosecutor for further investigation. And so it was that a criminal investigation, conducted by an Examining Magistrate, began in July, 1983.

It is to be noted that under the Iranian legal system, the investigation by an Examining Magistrate is of a judicial

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[157]. Doc. 116, Ex. 6. The Inspector, now retired, later testified before the Tribunal.

character. A Magistrate is required, by law, to gather all credible evidence, no matter whether for or against the accused.

The Magistrate's investigation lasted for years. As the evidence submitted by the Respondent demonstrates, it has been a thorough and extensive investigation, involving the Iranian Police and Interpol. The services of a number of Registration Inspectors, handwriting experts, and experts on forgery detection have been utilized, and tens of witnesses have been repeatedly interviewed.

On 16 August 1990, the Magistrate arraigned the accused, Mr. Abrahim Rahman Golshani and Mr. Rahman Golzar Shabestari, for conspiring to forge, and forging, Deed of Conveyance No. 25345, with intent to cause damages to third parties. Mr. Golshani was further arraigned for the additional offence of using a forged document for financial gain, knowing that it was a forged document.[158]

As required by law, the arraignment was submitted to and reviewed by the Public Prosecutor of Tehran. He, too, found the evidence against the accused convincing and, accordingly, indicted the accused before the Criminal Courts of Tehran on the stated counts.

Many of the grounds on which the Magistrate relied in his arraignment are those which have been invoked by the Respondent in the present Proceedings, and thus need not be extensively repeated here. They were grounds, however, which the Magistrate established though his own independent investigation. Briefly stated, he concluded that, as determined by advanced microscopic

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[158]. The case against Mr. Afsharzadegan and a number of other person remains open, for want of further investigation.

and ultraviolet methods of detection employed by independent experts, the Seal affixed on the two pages of the alleged Deed was a fabrication; that it was a violated duplicate of the Seal belonging, not to NPO No. 319, but to NPO No. 369; that the signatures on the two pages of the Deed did not belong to the late Notary Public of NPO No. 319, and were forged; that the handwriting on the Deed did not belong to any of the scribes employed by NPO No. 319 in 1978; that based on serial numbers and other printing characteristics, it was evident that the papers on which the Deed was written had not been printed by the date of the alleged Deed, but sometime later; that these papers had been distributed not to NPO No. 319 but to NPO No. 369, and were utilized by the latter NPO not in 1978 but in 1981-82; that none of a number of formalities which should have been fulfilled prior to the execution of such a Deed had been fulfilled; that the 1978 Stamp Book and Revenue Book of NPO No. 319 correctly reflected the collection of 124 Rials as registration fee for Deed No. 25345; and finally, that the evidence clearly showed that Ledger No. 31 together with the second copy of the Hekmat document had, in 1982, been stolen from NPO No. 319 by the perpetrators of the forgery.

The findings of the Magistrate must be accorded great weight. As the submitted evidence shows, such findings are the results of seven years of meticulous investigation by an independent Judge into an issue which is governed, undisputedly, by Iranian law, and which falls, squarely, within his jurisdiction. Of his judicial integrity, suffice it to be said that although he came to realize the forged nature of the Deed in his early inquiries, he declined for years, as he said, to arraign the accused until he and his appointed experts were given the opportunity in 1990, to personally inspect, as required by law, the original of the Deed.

## 3.12. Two Characteristics of the Claimant's Defence

The Claimant's rebuttal arguments, if any, against the specific evidence of forgery have already been dealt with. The intention here is to briefly refer to two general strategies to which the Claimant has adhered throughout these proceedings on the issue of forgery:

First, the Claimant has made it his unfailing duty to question, with fanciful arguments, the authenticity of every document, every report, and every piece of evidence of which the Respondent has first submitted a copy. And then, when the Respondent, prompted by such allegations, has presented to the Tribunal the original of the challenged document, report, or ledger, the Claimant has simply ceased to follow his earlier stance. Such was the case, for instance, with regard to twelve deeds drawn up in 1978 by NPO No. 319,and five deeds drawn up in 1981-2 by NPO No. 369, copies of which were first submitted by the Respondent for comparison purposes. It required the submission of the original Ledger in which these deeds were registered to convince the Claimant that he could no longer credibly pursue his initial allegation of fabrication. Such was the case, too, with regard to page 98 of the Stamp Book of NPO No. 319. There again, the original of the Book had to be deposited with the Tribunal. Such was the case, again, with regard to the Revenue Book of NPO No. 319, the Certificate issued by the State Printing Company of Iran, and the many Inspection Reports prepared by the Inspectors of the Registration Department and of the General Inspectorate Organization of Iran.

Second, with a view to obfuscate the conclusive evidence of forgery, the Claimant has made it his policy to try to concentrate, not on the wealth of material evidence, but on a few irrelevant and at any rate insignificant points with regard to which some of those who have been questioned over the years by the Iranian Police and the Examining Magistrate, mainly Mr. Makhmalbaf, have not remained consistent. And yet this is most natural in an extensive investigation of this nature. A witness who helps the police with their inquiries may, for his own reasons, opt for not telling the whole truth at first, but does so later, when he is confronted with sufficient evidence. An example of how the Claimant attempts to make inappropriate use of this natural circumstance may be cited:

At the very beginning of the present investigation, when Mr. Makhmalbaf is first interviewed by an Inspector of the General Inspectorate Organization, he is asked to present Ledger No. 31. Mr. Makhmalbaf, unable to do so, states that in early 1981, a few ledgers belonging to NPO No. 319 were taken to the Office of the Revolution's Public Prosecutor to be examined in relation to certain other matters.[159] In a later interview, Mr. Makhmalbaf is asked to produce a receipt, or any other document, supporting his assertion. He is questioned, further, whether he ever reported the matter, as required by law, to the appropriate authorities. Unable to produce any such document[160], Mr. Makhmalbaf confesses, for the first time, that the Ledger has

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[159]. Doc. 72, Ex. 13, p. 2 of the Report to the Director General, Department of Registration of Deeds and Real Property.

[160]. The Office of the Revolution's Public Prosecutor has later certified that they had never asked for, or received, such Ledgers.

been stolen[161]. In yet another interview, on 19 September 1983, he identifies the culprit as Mr. Ahmad Afsharzadegan.[162]

It is on this, and the like of it, that the Claimant attempts to build up a defence. Relying on Mr. Makhmalbaf's assertion in his first interview that certain Ledgers of NPO No. 319 had been taken away by the Office of the Revolution's Public Prosecutor, the Claimant concludes that the Respondent's own evidence indicates that Ledger No. 31 -- a Ledger which would conclusively prove the authenticity of the Deed of Conveyance -- must be in the Respondent's possession[163]. "Neither Respondent nor Makhmalbaf", says the Claimant, "has offered any reason whatsoever why Makhmalbaf... would lie about the [Public Prosecutor Office] taking away Ledger Book 31, especially since such a lie could easily be exposed by making inquiries to the [Public Prosecutor Office]".[164]

But does this really require any explanation? It should not be forgotten that by virtue of his position, Mr. Makhmalbaf was responsible for the safekeeping of Ledger No 31. He was unable to produce it, or produce a receipt for its transfer elsewhere, when he was asked to do so. Is it strange, then, that he should have first tried to concoct an excuse but, left with no alternative, come to admit the truth later?

All this is, of course, purely academic. It will be recalled that according to Mr. Afsharzadegan's unchallenged

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[161]. Doc. 116, Ex. 6B, p. 2.

[162]. Doc. 116, Ex. 3B, Report of the Police, p. 4.

[163]. Doc. 145, p. 55.

[164]. Id., p. 57.

Supplemental Affidavit, Mr. Golzar, the Claimant's principal witness, pleads in his telephone conversation with Mr. Afsharzadegan not to place the stolen Ledger at the Respondent's disposal -- not for another two or three months, by which time, he says, the Case would be over.

That is the Claimant's principal witness in his telephone conversation with a co-culprit. Before this Tribunal, on the other hand, the Respondent is repeatedly censured by the Claimant for its inability to produce the Ledger, the stolen Ledger.

3.13. Two Final Points:

3.13.1. The Claimant, in his attempt to rebut the evidence of forgery, also invokes the doctrine of "estoppel". He submits that in legal proceedings before the French courts, involving a different dispute between TRC, on the one hand, and Messrs. Golzar and Golshani, on the other, TRC has asserted that the present Deed of Conveyance is an authentic document. Accordingly, says the Claimant, the Respondent should not be allowed to now argue that the Deed is a forgery. This argument must be summarily rejected, if only because none of the conditions commonly admitted to be essential for the application of the doctrine of "estoppel" or "preclusion" is here present:

First, the doctrine applies only in cases in which one single party adopts contradictory positions, or makes contradictory statements. Here, however, the party before the French courts, TRC, is an independent entity and, as such, is clearly different from the Respondent before this Tribunal, the Government of the Islamic Republic of Iran.

Next, under the doctrine, a party who invokes the rule must show that he has relied upon the statements or conduct of the other party, either to his own detriment or to the other's advantage. Yet in here, there is no suggestion that any such detriment is caused, or any such advantage is gained, by TRC's statements, if any, before the French Courts. The French Courts have not, as the evidence shows, based their findings on such statement and, more importantly, a position to support the validity of the Deed, had it been adopted by TRC, would have been identical to Messrs Golzar and Golshani's own position.

Further, the doctrine applies only to cases in which a fact, here the authenticity of the Deed, is clearly and unequivocally admitted. The evidence submitted to this Tribunal clearly shows, however, that the question of the authenticity of the Deed was never an issue before the French courts. Indeed, there is no evidence that TRC in those proceedings ever took any position with regard to the nature of the Deed. All that TRC's attorney said in there was this, that Mr. Golzar, having testified before the Iran-United States Claims Tribunal that he had on 15 August 1978 transferred his shares in TRC to Mr. Golshani, should not be allowed to take a contradictory position in the proceedings before the French Courts. Clearly, this is not a statement of fact, but an argument that Mr. Golzar, having made a statement of fact, should be estopped from arguing differently.

Finally, the French attorney of TRC in the proceedings before the French courts has now testified before this Tribunal that it was not he, but Mr. Golzar's attorney, who first invoked the Deed by submitting a French translation of it to the Court of Appeals of Paris; that prior to the submission of the translated copy of the Deed, he had no knowledge of it; that he had never seen the original of the Deed and, not knowing the

Persian language, he could not have possibly commented on its authenticity; and finally, that having seen that the Deed submitted by Mr. Golzar's attorney contradicted his claim, he naturally decided to tell the Court that Mr. Golshani's evidence contradicted his own position.[165]

3.13.2. The motivation behind the forgery -- to present a United States' national with access to this Tribunal as the owner of the assertedly expropriated assets -- is clear enough. The question has been raised, however, as to why, if the forgery was committed sometime after the submission of the Statement of Claim, the perpetrators should have failed to take account of what they had testified to earlier. Specifically, why should they forge a Deed which failed to conform with what they had said about the date of the alleged transfer, about the percentage of shares owned by Mr. Golzar, and about the percentage of shares he conveyed to Mr. Golshani. Though this is well outside the scope of the Tribunal's present inquiries, some illuminating points, all revealed in the submitted evidence, may be recalled:

First, as to the date. The ideal date for Messrs Golzar and Golshani would of course have been one in the Spring of 1979. But the ideal apparently proved to be unattainable. In his Affidavit Mr. Afsharzadegan reveals his difficulty in trying to convince Mr. Golzar's front man that fabricating a backdated Deed was not an easy task. When he, Mr. Afsharzadegan, did finally consent to assist, his choices were extremely limited, with regard to the selection of not only an appropriate NPO,[166] but also of a Ledger and of an appropriate entry. In the single Ledger which he had managed to steal, he had to find an entry the

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165. Doc. 116, Ex. 14.

166. See supra, 3.3.

contents of which did not have to be reported to any Registration Department, or to any taxing or other authorities. An entry, further, which did not record a deed capable of becoming the subject of further transactions. These attributes he found only in a deed of "admission" dated 15 August 1978. There was, as he said in his Affidavit and oral testimony, no other choice.

Second, as to the percentage of TRC's shares owned by Mr. Golzar, it appears that when the Statement of Claim was filed in January 1982, Mr. Golzar still entertained the hope that Mr. Daneshvar, the owner of 30% shares, would not refuse to take part in the former's scheme. Hence, the presentation of Mr. Golzar as the conveyor of 90% of TRC's shares. But Mr. Daneshvar was apparently not prepared to cooperate.[167]

Finally, the inconsistency between the earlier assertion under which Mr. Golzar transferred all his shares in TRC, and the Deed, under which the transfer of only 59/60th of the shares was recorded, appears to be the result of an attempt on Mr. Golzar's part to explain away a known fact which directly contradicted the date of the asserted transfer. The problem was that by all accounts, including his own, Mr. Golzar had continued to act as the Managing Director of, and a shareholder in, TRC until his departure from Iran in May 1979. He should not, of course, have done so if he had truly sold all his shares in TRC on 15 August 1978. And thus it was that the one per cent retention found itself incorporated in the Deed: "I retained one sixtieth (1/60th) of my interest in TRC", he says in his later Affidavit,

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[167]. Reference in this respect may be made to the "Statement of Interpleader Claim" received by the Tribunal's Registry on 17 January 1985, but rejected on the same date for failing to meet the Tribunal's deadline for filing claims.

"to permit me to participate in managing the project until its completion."[168] What is forgotten here is, however, that according to his own version he sold his assets on 15 August 1978 only because he concluded that he could no longer manage, or participate in the management of, TRC.

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[168]. Doc. 4, Ex. C, p. 12.

## Part Two

The evidence submitted by the Claimant in support of the asserted authenticity, and by the Respondent in support of the alleged forgery, of the Deed was reviewed in Part One.

In the first section of this Part Two, the results of that earlier review will be first summarized. It will be concluded that the submitted evidence establishes, beyond the shadow of a doubt, that the Deed is a fabrication. A discussion of the Tribunal's policy of refusing to call a spade a spade, and of the unhappy consequences of such a policy, will then follow.

### 1. Summary Remarks On The Evidence Reviewed So Far

#### 1.1 On the Deed itself and on the Affidavits in Support of its Alleged Authenticity

A Deed which could not possibly have been executed on its purported date; a Deed which is riddled with irregularities; a Deed which is at variance with all the other submitted samples of genuinely executed deeds; a Deed which its contents, the contents of every paragraph of it, are directly contradicted by the admissions elsewhere of its asserted signatories; a Deed which fails to describe the properties that it purports to transfer; a Deed which repeatedly refers to a procès-verbal previously drawn up by the Parties, but of which one of its two signatories knows nothing; a Deed which fails to reflect, in its appropriate column, any of the supposedly collected registration

charges, amounting, in this case, to the equivalent of millions of dollars; a Deed which simply fails to indicate whether and where any transfer tax, or any other taxes, amounting, in this case, to the equivalent of tens of millions of dollars, have been collected; a Deed which purports to transfer properties not belonging to the conveyor; a Deed which is a legally improper means of transfer for many of the properties that it purports to transfer; a Deed which seeks to transfer the assets of a corporation by one of its shareholders; a Deed which has a concocted consideration; and, finally, a Deed which contemptuously disregards every imperative provision of the notarial laws of the country in which it is supposed to have been executed, cannot be regarded as the authentic work of a notary public office. It cannot, and must not, be accorded any probative weight.

And so with the Affidavits. The two Affiants, Messrs. Golzar and Golshani, seek to discredit their earlier detailed account, separately given, of why, when, and under what circumstances this inordinate transfer took place. They have no explanation to offer as to why their original account of the events should be discarded. Indeed, they have no explanation to offer as to why a Deed of such importance, or at least a copy of it, should not have been available to them at the time of preparing their initial Affidavits. Mr. Golshani, this former student of no means, fails in particular to explain why, if he did in fact enter into a 1.7 billion-dollar transaction on 15 August 1978, he should then execute an Affidavit in which not only the date of the asserted transaction -- just three days after his arrival in Tehran on 12 August 1978 -- is forgotten, but detailed events in February to March 1979, are presented as the only reasons bringing about the asserted transaction in the Spring of 1979. A transaction of this magnitude, if effected by a notarial

instrument, would require the payment of the equivalent of several tens of millions of dollars for taxes, registration fees, and other charges. He would not tell us if, let alone prove that, he paid any part of these charges and, if he did, where the money came from. More importantly, if Messrs. Golzar and Golshani's new version is to be accepted, they are left with no explanation, none whatsoever, as to why Mr. Golzar should, in August 1978, have made the decision to virtually give away the asserted assets; a decision which he made, in the Claimant's own words, "at tremendous personal sacrifice". No explanation at all as to why the whole affair should have been conducted with so much haste; in just less than three days from the inception of the idea to the signing away of the assets.

Each Affiant has further contradicted himself on the percentage of shares owned by the conveyor; on whether the conveyor retained for himself any of his shares; on whether the 1.7 billion-dollar consideration was actually paid; on whether 1.7 billion dollars is the value of 100% or 90% or 59% of TRC's shares plus other transferred assets; on whether the transfer took place in the office of a notary public or at TRC's headquarters; on whether the transfer was reflected in TRC's Register; on whether it was reflected on TRC's Share Certificates; and on whether this was a conveyance or a gift. Each Affiant has, besides, contradicted the contents of the Deed, every bit of it. They should not be believed.

Indeed, the question is not whether they should, or should not be believed, but rather, what is there to believe.

1.2. On the Further Evidence of Forgery Submitted by the Respondent

The unrebutted, indeed irrebuttable, evidence submitted by the Respondent visually demonstrates the fabricated nature of the Seal -- this most important symbol of a notarial document -- affixed on the two pages of the Deed. It proves, beyond the shadow of a doubt, that the impressions on the Deed belong to an unskillfully violated duplicate of the Seal, not of NPO No. 319, but of NPO No. 369. That, by itself, ought to have put an immediate end to this sordid Claim.

The evidence submitted by the Respondent further proves, beyond any reasonable doubt, that the signatures of the Notary Public on the two pages of the Deed are forged. Against the graphically demonstrated evidence submitted by the Respondent, the Claimant's own expert would not go further than to say that the issue "remains open".

The original of the 1978 Stamp Book of NPO No. 319 has been presented to the Tribunal. It shows that Deed No. 25345, dated 15 August 1978 -- the number and the date of the alleged Deed -- is an "admission" executed by a person named Hekmat. It shows, further, that as such, it is a Deed without any consideration, and for which the registration fee of Rials 124, or approximately one dollar and eighty cents, has been received. The registration fee for the asserted Deed, on the other hand, would have amounted to no less than Rials 240,000,000, or approximately 3.5 million dollars.

The original of the Statement of Income of NPO No. 319 for the week covering the date of the alleged Deed is before the Tribunal. It shows that the total sum remitted by the NPO to the

appropriate authorities for various charges made in that week amounts to less than Rials 50,000, or approximately 710 dollars. Had the alleged Deed, with its astronomical consideration, been registered, the Statement would have reflected, not a few hundred, but millions of dollars.

The principal perpetrator of the offence, a Mr. Afsharzadegan who headed NPO No. 369 until 1982, has come forward to reveal the truth. From his residence in London, he has executed an Affidavit in which he has minutely described why, when, and how he committed the offence. His impeccable revelations have all been corroborated. He has so testified before the Tribunal.

He, Mr. Afsharzadegan, has also submitted a Supplemental Affidavit. In there, he has summarized Mr. Golzar's confessions, in a telephone conversation, to his own role in the commission of the forgery. In there, too, Mr. Afsharzadegan has stated that the conversation is tape-recorded and would be readily submitted to the Tribunal, should the Claimant venture to challenge it. Not a word of denial in the Claimant's subsequent Brief.

Mr. Moghadam Nia, the person to whom Mr. Afsharzadegan had turned in 1982 for the writing of the fair copy of the Deed, has explained in his Affidavit how, when, and where he wrote the Deed. He, too, has testified before the Tribunal. Three competent experts, each with vast experience in the field, have firmly concluded that the Deed's writing belongs -- not to any of the scribes of NPO No. 319 in 1978 -- but to Mr. Moghadam Nia.

The State Printing Company of Iran has, based on serial numbers and certain other printing characteristics, certified that the papers on which the alleged Deed is written had not been

printed until sometime after the purported date of the Deed. A wealth of samples submitted to the Tribunal readily demonstrate that the officially printed papers on which the Deed is reflected were used, not by NPO No. 319 but by NPO No. 369, and not in 1978 but in 1982.

The Claimant has failed to produce his copy of the Summary of the Transaction, this singularly important means -- indeed the only means -- by which transfer of real property is reported to the appropriate Registration Department to be reflected in its Register. The evidence adduced by the Respondent shows, on the other hand, that no such Summary has ever been prepared by NPO No. 319, or received by any of the pertinent Registration Departments.

The Iranian Ministry of Finance, the Iranian Red Crescent, and all the Municipalities and Registration Departments in whose localities the assertedly transferred properties are situated have certified that they have examined their pertinent files, but found no trace of ever receiving, or responding to, any of the inquiries which must, by law, be made prior to a transaction of this nature. They have not been asked to assess taxes, or any other charges, and they have not received any. Nor have Messrs Golzar and Golshani ever asserted otherwise. Indeed, under their own version, there had been no time to meet these requirements, even if, arguendo, they had wanted to.

An Examining Magistrate conducting, parallel to the Case before this Tribunal, an extensive criminal investigation in Tehran, has concluded that the Deed of Conveyance is a forgery. Evidence on which he has relied in his arraignment of the accused -- Messrs. Golzar and Golshani -- shows that every document, every witness, every inspector, and every expert he examined or

interviewed pointed, without reservations, to the commission of the offence by the accused. The Public Prosecutor of Tehran has reviewed the gathered evidence and, upholding the Magistrate's findings, has indicted the accused before the Public Courts of Tehran.

An Inspection Report prepared in 1983 by two Inspectors of the Registration Department of Tehran is before the Tribunal. It demonstrates that Register No. 31 of NPO No. 319 -- the Register in which the alleged Deed of Conveyance is supposed to have been registered -- was available to, and closely inspected by, the Inspectors when they conducted their inspection of NPO No. 319 in 1981. It proves, further, that the NPO had correctly reported in its Stamp Book that Deed No. 25345 dated 15 August 1978 pertained to an "admission" by a person called Hekmat; that as such, the Deed had no consideration; and that for the Deed a registration fee equivalent to one dollar and eighty cents had been charged. Otherwise, if the NPO had collected the equivalent of millions of dollars for the registration fees but had reported the collection of the equivalent of only one dollar and eighty cents, this would have been easily discovered in the Inspectors' comparison of the Stamp Book with the Register, and the scandalous violation would have been reflected in their Inspection Report.

Finally, the evidence before the Tribunal shows that Mr. Golzar -- the one who is supposed to have transferred his shares in TRC to Mr. Golshani on 15 August 1978 -- has participated, as the Managing Director, in an Extraordinary General Meeting of TRC's shareholders held on 13 November 1978, submitting an extensive report on the affairs of the Corporation. The evidence shows, further, that more than four months later, on 31 March 1979, the self-same person has executed -- in NPO No. 369,

interestingly enough -- a comprehensive power of attorney in favor of his other brother, Mr. Parviz Golshani. On the basis of this very power of attorney, Mr. Parviz Golshani has participated in an Extraordinary General Meeting of TRC's shareholders, held on 8 April 1979, in which he has been elected as a member of TRC's Board of Directors. There, voting for certain changes in TRC's Articles of Association, he has represented himself as the owner, personally and by procuration, of 8880 shares out of 10000 shares represented. Not a word about Mr. Abrahim Rahman Golshani, the supposed owner of the shares since August 1978.

Against all this, the Claimant relies on the Deed of Conveyance itself, and on the Affidavits of the Deed's two signatories; the two pieces of evidence which not only fail to prove the authenticity of the Deed but are, in themselves, conclusive proof that the Deed is a forgery.

2. The Tribunal's Policy

2.1. Such was the evidence before the Tribunal -- the evidence which had been requested, and minutely examined over months of deliberations, by the Tribunal. How is it, then, that it is in the main simply ignored in the Award? The answer, I suggest, lies elsewhere.

2.2. In my "Separate Opinion" appended to Award No. 534-193-3,[169] I drew attention to this Tribunal's continual reluctance to face the growing problem of the abuse of its process by a considerable number of unscrupulous parties who, in Case after

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[169]. Reza Said Malek v. The Islamic Republic of Iran.

Case, relied upon altered or wholly forged documents to support their utterly unfounded claims -- a practice which not only wasted much of the Tribunal's time and resources, but threatened the very integrity of its process.

With no penal sanctions at its disposal, the Tribunal's only, though admittedly not quite adequate, course to counter the menace was, I suggested there, to be forthright in exposing the instances of abuse and in censuring the perpetrators. Such a measure, labelling, as it does, the perpetrators with a deserved stigma, might still prove effective, if not in solving the problem, at least in arresting its growth.

The alternative -- the Tribunal's failure to employ this only available means -- not only will be interpreted by unconscientious parties as a sign of the Tribunal's indifference to the misuse of its process, but will in fact act to encourage further use of fabricated evidence; evidence which, in the measured view of the prospective perpetrators, will be either accepted by the Tribunal as genuine or, at the worst, simply set aside as unauthentic, with no adverse consequences.

Yet, forthright is precisely what the Tribunal declines to be. In Case after Case, where the evidence would admit of no conclusion other than the forgery of the submitted documents, the Tribunal refuses not only to address the perpetrators' conduct, but to even characterize the documents as forged. Indeed, it invariably tries to employ formulae under which the rejection of the documents by the Tribunal would not affect the perpetrators' good character!

An example of this will be found in the very Award referred to above. There, an allegedly notarial document had been

submitted by the Claimant as a "conclusive proof" of his contentions; a document which, if authentic, would have supported, in the words of the Tribunal, "every aspect of the Claimant's Case". Having heard the Respondent's evidence on the alleged forgery of the document, the Tribunal concluded that "given the obscurity surrounding the true origin" of the document, it could not be accorded any evidentiary value, and that, in view of this determination, there was no need to address the Respondent's evidence in support of its forgery allegation. The present Award is just another instance of the application of the same policy. Only this time, the Tribunal's desire to protect the Claimant from the stigma of forgery has forced the Tribunal to violate its own earlier pronouncements.

As stated earlier, the Tribunal in the present Case informed the Parties nearly three years ago of its determination to consider the alleged forgery of the Deed as a preliminary issue "to be decided in an award". The Respondent's subsequent attempts to convince the Tribunal that there was at least one other issue which was of more immediate concern in the determination of the Case, and which did not involve the complex and technical aspects of the forgery issue, proved unsuccessful. The Parties, directed by the Tribunal, then exchanged two rounds of pleadings. Aided by their handwriting and forgery detection experts, they examined, at three sessions, the originals of the Deed and each other's documents, and submitted to the Tribunal a number of experts' reports. A three-day Hearing, which was exclusively devoted to the Parties' oral arguments on the single issue of alleged forgery, and at which a host of experts testified, was held in April 1991. Nearly two years have since passed, during which the submitted evidence, every bit of it, was minutely examined and deliberated upon. By law, by common sense, and by the rules of expediency the Tribunal ought to have

pronounced itself on the issue of forgery in the promised Award. Instead, the Tribunal, having concluded its deliberations, has apparently had a second thought: that there is after all the issue of the prima facie authenticity of the Deed, which must be satisfactorily proved by the Claimant and which, if the Claimant should fail to do so, would dispense with the need to deal with the issues of forgery. Hence, the present Award.

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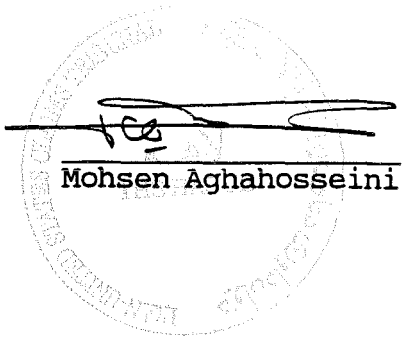
That the Tribunal has had to spend so much of its time and other resources on a Case of this nature is partly due, no doubt, to its failure to confront those who in earlier cases had sought to similarly abuse its process. By its refusal to more candidly reveal the true nature of the Case at hand, the present Award not only fails to serve as a deterrent, but is likely to encourage further abuses of the Tribunal's process in future. That is unfortunate.

Dated, The Hague,
2 March 1993



Mohsen Aghahosseini