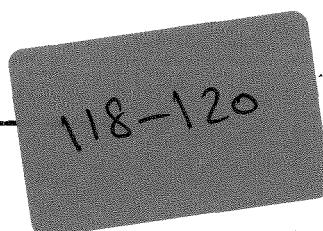


120

ORIGINAL DOCUMENTS IN SAFECase No. 118Date of filing: 8 Dec 93

** AWARD - Type of Award Judgment
 - Date of Award 8 Dec 93
24 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
 _____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

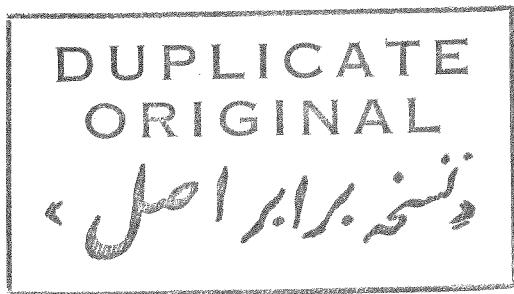
** SEPARATE OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____
 - Date _____
 _____ pages in English _____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دادگستری ایران - ایالات متحده



CASE NO. 118

CHAMBER ONE

AWARD NO. 553-118-1

NINNI LADJEVARDI (formerly BURGEL),
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دادگستری ایران - ایالات متحده
FILED	ثبت شد
DATE	8 DEC 1993
۱۳۷۲ / ۹ / ۱۴ تاریخ	

AWARD

Appearances:

For the Claimant : Mr. Stuart I. Friedman,
Counsel for Claimant,
Ms. Patricia N. Takemoto,
Assistant to Mr. Friedman,
Dr. Ahmed Ashraf,
Expert Witness.

For the Respondent : Mr. Ali H. Nobari,
Agent of the Government
of the Islamic Republic
of Iran,
Mr. B. Izadi,
Deputy Agent of the
Government of the Islamic
Republic of Iran,
Mr. Ali Akbar Riyazi,
Legal Adviser to the Agent,
Mr. Fridoon Momeni,
Legal Adviser to the Agent,
Mr. Khayyam Dadashzadeh,
Administrative and Contrac-
tual Assistant,
Mr. Mirdawoodpour Rahmat,
Administrative and Contrac-
tual Assistant,
Mr. Abasalt Binai,
Legal Assistant.

Also present : Mr. D. Stephen Mathias,
Agent of the United
States of America,
Ms. Mary Catherine Malin,
Deputy Agent of the United
States of America.

I. PROCEDURAL HISTORY

1. On 19 November 1981, the Claimant NINNI BURGEL¹ ("the Claimant") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran" or "the Respondent") seeking the amount of U.S.\$10,248,500 plus interest and costs, as compensation for the alleged expropriation of the assets of Jinmod, Inc. ("Jinmod"),² a clothing manufacturing company, including profits Jinmod would allegedly have earned under a contract with the Iranian Air Force, or, alternatively, for the alleged expropriation of her shares of Jinmod's capital stock. The Claimant alleges that her Claim arose sometime between May 1979 and 25 November 1979, when the alleged expropriation of Jinmod's property took place, or, alternatively, on 21 August 1979, the date of an addendum to an Iranian law extending expropriation of shares of stock in industrial companies owned by 51 named individuals, including the Claimant's father, to shares held in the names of these individuals' wives and children.

2. After having been granted one extension of time, the Respondent filed a Statement of Defence on 1 June 1982, stating that the Claimant is a national of Iran, that nationality is a domestic affair subject to the laws and regulations of Iran, and that the Claim is therefore beyond the Tribunal's jurisdiction under the provisions of the Claims Settlement Declaration. The Claimant filed a "Reply to the Question of Jurisdiction raised in the Statement of Defence" on 1 September 1982, invoking, inter alia, the doctrine of dominant and effective nationality as a basis for the Tribunal's jurisdiction.

¹ The Claimant asserts that following the divorce from her husband, Mr. Frank Burgel, subsequent to the filing of the Statement of Claim, she changed her name back to her maiden name, NINNI LADJEVARDI. This change is reflected in the caption of this Case.

² This Claim relies on the Claimant's alleged 80 per cent ownership interest in Jinmod.

3. On 20 September 1982, the Tribunal invited the Respondent to submit to the Tribunal by 22 November 1982 its Rejoinder to the Claimant's Reply. In the same Order the Tribunal scheduled a Hearing on the question of jurisdiction for 15 December 1982. On 9 December 1982, this Order was vacated. The Respondent was granted an extension until 26 January 1983 to file its Rejoinder to the Claimant's Reply. Both Parties were further requested to indicate by 26 January 1983 whether they desired an oral hearing on the jurisdictional issue and, if not, to file by that date any additional factual information which they wished to submit in connection with this issue. The Tribunal indicated that if both Parties waived a hearing on the jurisdictional issue, the Chamber would decide the issue based on the documents submitted. In a submission filed on 28 January 1983, the Claimant asked that she be permitted to reserve her right to request an oral hearing until she had the opportunity to examine the Rejoinder which had not yet been filed. By Order of 16 February 1983, the Respondent was granted an extension until 28 February 1983. The Parties were again requested to indicate by 21 March 1983 whether they desired an oral hearing on the jurisdictional issue.

4. The Respondent had filed no Rejoinder to the Claimant's Reply by 1 March 1983, when a letter was filed by the Deputy Agent of the Islamic Republic of Iran in which he, with reference to Iran's prior request for the Full Tribunal's view on the admissibility of the claims of dual nationals, asked the Tribunal to suspend its consideration of this Case. On 8 March 1983, a submission entitled "Memorial of the United States on the Issue of Dual Nationality" was filed by the Agent of the United States. By its Order of 6 July 1983, the Tribunal suspended further proceedings in this Case, pending the decision of the Full Tribunal on the question of the Tribunal's jurisdiction in cases where the claimant is a national of Iran under Iranian law and a national of the United States under United States law.

5. In accordance with its practice in similar cases, the Tribunal, citing the Decision of the Full Tribunal in Case No.

A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 25 June 1985 that "it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." In the same Order, the Tribunal requested the Claimant to file by 23 September 1985 all evidence that she wished the Tribunal to consider in determining her dominant and effective nationality. Likewise, the Tribunal requested the Respondent to file by 23 December 1985 all evidence it wished the Tribunal to consider on the issue of the Claimant's nationality.

6. Pursuant to this Order the Claimant submitted a "Supplemental Statement of Ninni Burgel" on 23 September 1985. Thereafter, the Respondent was granted two extensions to submit its evidence. The last one extended the date until 19 June 1986. The Tribunal in its Order of 9 July 1986 granted one further extension until 17 September 1986, stating that after that date, the Tribunal would take a decision regarding its jurisdiction on the basis of the evidence before it. The Tribunal denied the Respondent's request for a further extension in its Order of 21 January 1987, in view of the procedural history of the Case. The Tribunal indicated that it intended to commence deliberations regarding its jurisdiction on the basis of the evidence before it, unless both Parties informed it that ongoing settlement discussions would call for a postponement of the proceedings.

7. On 30 October 1990, the Respondent filed "Respondent's Brief and Evidence on the Issue of Claimant's Nationality." In view of the submission, the Tribunal by its Order of 6 November 1990 invited the Claimant to file by 30 January 1991 any evidence in rebuttal together with a brief, restricted to the issue of her dominant and effective nationality. The Tribunal also invited the Respondent to file by 1 May 1991 any evidence in rebuttal together with a brief on the same issue. In the same Order, the Tribunal indicated that after receipt of these filings it

intended to decide its jurisdiction on the basis of the documents submitted in this Case. The Claimant was granted three extensions until 1 November 1991. The Tribunal in its Order of 28 October 1991 granted one further extension until 2 January 1992, stating that after that date, the Tribunal would decide on further proceedings in this Case. On 31 December 1991, the Claimant filed "Claimant's Brief on the Issue of Her Dominant and Effective Nationality" as well as "Affidavit of Ninni G. Ladjevardi and Exhibits Thereto." Thereafter, the Tribunal by its Order of 21 January 1992 invited the Respondent to file by 16 April 1992 any evidence in rebuttal together with a brief on the issue of the Claimant's dominant and effective nationality. After having been granted five extensions, the Respondent filed "Respondent's Rebuttal Brief on the Issue of Claimant's Dominant and Effective Nationality" on 11 March 1993.

8. Both Parties having filed their rebuttals, the Tribunal by its Order of 24 March 1993 took note of the Claimant's request for "oral argument on the issue of her dominant and effective nationality" contained in her submission, filed on 31 December 1991, and in accordance with Article 15, paragraph 2, of the Tribunal Rules scheduled a Hearing, restricted to the issue of the Claimant's dominant and effective nationality, for 11 June 1993. On 8 April 1993, the Agent of the Government of the Islamic Republic of Iran filed a letter in which he requested the Tribunal to cancel the Hearing. By its Order of 20 April 1993, the Tribunal denied the request and confirmed that its Order of 24 March 1993 was still effective.

9. The Hearing took place on 11 June 1993 as previously scheduled. At the Hearing, both Parties distributed new documentary evidence to the Tribunal and the other Party.

II. FACTS AND CONTENTIONS

10. The Claimant was born in New York City, the United States, on 12 May 1951. Her parents were both Iranian citizens. According to the Claimant, her birth in the United States was not due to fortuitous circumstances but rather to the ties that her family had with the New York area. The Claimant states that her paternal grandfather had formed in Scarsdale, New York, a trading company called General Foreign Sales Corporation in February 1949. In November of the same year he had purchased there a home in which, the Claimant says, her mother resided with her and her siblings at various times from 1949 until 1970, when the Claimant's parents purchased their own home in Scarsdale. The Claimant asserts that her mother has always spent at least three months of every year since 1961 in the United States. The Claimant further asserts that her father lived in the United States for several periods, during which he became heavily involved in the American financial and business communities. According to the Claimant, her mother fully espoused American values at an early age and inculcated them in her children.

11. The Claimant states that in early 1952 her father returned to Iran for business reasons and that she accompanied him. She lived in Tehran from 1952 until 1963. When she reached school age while in Tehran she started attending The Community School. The Claimant's expert who testified at the Hearing described The Community School as having a predominantly American faculty, curriculum and social life. Although the Articles of Association of The Community School show that the school was established pursuant to the provisions of the By-law concerning the Establishment of Foreign Schools, the Claimant's expert said at the Hearing that its graduates were formally qualified for admission to Iranian universities. According to the expert's estimate, 40-45% of the students of The Community School were Iranian. The Claimant contends that although The Community School taught some courses in the Persian language she never learnt to read or write Persian proficiently. She also says that during this period she

neither attended nor belonged to any Iranian institutions, clubs or organizations of any kind.

12. In 1963, the Claimant returned to the United States and attended the Hewlett School on Long Island in New York for two school years. The Claimant contends that during this time she received no formal or informal instruction in anything Iranian and that she did not read or write Persian.

13. In 1965, the Claimant, allegedly reluctantly but as a minor who could not disregard her father's wish, returned to Iran. During her high school years from 1965 through 1969 the Claimant again attended The Community School in Tehran. The Claimant contends that during this period, too, her only affiliation outside of the home was with this school.

14. At the age of 18 the Claimant returned to the United States and spent the period from the fall of 1969 through 1971 at Finch College in New York. Again, the Claimant contends that her education did not include any subjects related to Iran. She maintains also that socially and culturally her life was typically American. She claims to have maintained a checking account at Chase Manhattan Bank and to have worked as a door-to-door "Avon Lady" salesperson in New York to earn money for a school break vacation in California. Her friends and interests were allegedly mainly American. In 1971 the Claimant transferred to Boston University in Boston, Massachusetts, from which she graduated in 1973 with a Bachelor of Science Degree in Business Administration. In 1972 the Claimant allegedly obtained a Massachusetts drivers license. According to the Claimant, in Boston, as in New York, her life, education, cultural and social interests were typically American.

15. After finishing her studies in September 1973, the Claimant moved to her parents' home in Scarsdale and went to work as a secretary/researcher for a New York corporation, Patents

International Affiliates, Inc. ("PIA") in which her father owned an interest.

16. At about this time, 1973, the Claimant also began dating Mr. Frank Burgel, a German national, who was a graduate student in Columbia University's Business School. After Mr. Burgel's graduation in May 1974, the couple moved to Iran some time toward the end of 1974 or during the first half of 1975 and was married there in July 1975. The Claimant then lived with her husband, allegedly at his wish, in Tehran until December 1978. Their first child, Sheila, was born in Iran on 18 September 1977. The Claimant contends that she and her husband never intended to stay in Iran permanently but only for as long as it would take to construct the clothing manufacturing factory, Jinmod,³ put it into operation and install competent management to run it in their absence. The idea to establish Jinmod had allegedly grown from Mr. Frank Burgel's course paper prepared for the Business School and the funds to build it allegedly came from Mr. Burgel's family instead of the Claimant's family. The Claimant asserts that she and her husband never purchased a home in Iran. According to the Claimant, she travelled to the United States during this period a minimum of twice a year to see her friends and relatives. Thus, she claims to have spent between 1-1/2 and 4-1/2 months each year in the United States. Moreover, her own and her daughter's medical care was allegedly principally provided in the United States by American doctors.

17. For all of the period the Claimant was in Iran she contends that she had no contact with any social, cultural or other Iranian institution. The only contact she had with any entity outside her family was allegedly her job at the Tehran branch of Citibank, N.A., the United States banking institution at which she worked for approximately two years as a credit analyst prior to Sheila's birth in September 1977. In addition, the Claimant held a membership card to Key Club, allegedly an American night

³ Jinmod was incorporated under the laws of Iran on 21 June 1975.

club organization in Tehran, which according to the Claimant's expert was frequented by both Iranians and foreigners.

18. The Claimant states that she left Iran permanently with her daughter Sheila in December 1978 and that at the time her husband remained abroad on business. The Claimant's only visit to Iran after December 1978 was for an approximately two-week period in July and August 1979, when she returned to Iran to see her father who allegedly was in hospital in critical condition and not permitted to leave Iran at the time.

19. The Claimant emphasizes that she has lived most of her adult life in the United States and that since December 1978 she has lived exclusively in Scarsdale, New York. The Claimant alleges that by virtue of her firm roots in the United States she immediately re-immersed herself into American life upon her return in 1978. Her second child, Alexander, was born on 7 March 1979 in New York City. The Claimant has produced a copy of a deed showing that her home in Scarsdale was purchased on 16 February 1980 by a company called Oaklane Corporation. The Claimant's counsel asserted at the Hearing that the company was owned by the Claimant and her husband but no proof to support this assertion was submitted. In the autumn of 1980 her daughter was enrolled in The Ridge Street Country School in the Town of Rye, Port Chester, New York. Both children are allegedly being raised as Americans and neither of them knows Persian. The medical care of the children has been provided in New York. Also during this time the Claimant held several charge accounts and bank accounts in the United States. She alleges to have held a New York State drivers license since 1979.

20. The Claimant's first United States passport was issued on 3 January 1952. While in Tehran, on 28 December 1954, the Claimant was registered as a United States citizen at the United States Embassy in Tehran on the evidence of this passport. Claimant's second passport was issued on 3 September 1963 for three years. Her third, fourth and fifth passports were issued

on 8 August 1969, 19 August 1974 and 18 July 1979 respectively, each for five years. The Claimant's present passport was issued on 18 September 1984 and it remains in effect through September 1994. The Claimant has submitted two letters from the United States Department of State attesting to the issuance of these passports. She has also produced copies of her two latest United States passports. The Claimant alleges that she has travelled under her United States passports for all the extensive travel she has done, the only exception being her entry into and exit from Iran for which she had to use her Iranian passport.

21. The Respondent notes that the Claimant was born to Iranian parents and that by virtue of Article 976(2) of the Civil Code of Iran,⁴ she is a national of Iran. The Claimant's parents registered her birth with the Iranian Consulate in New York and obtained an Iranian identity card for her. The Respondent asserts that the Claimant has continuously preserved her Iranian nationality and argues that the Claimant, by having her photo attached to an Iranian identity card in August 1969, confirmed that she identified herself as an Iranian. It appears from the evidence submitted by the Respondent that the Claimant was issued an Iranian passport in 1964, 1969, 1974 and 1979.

22. The Respondent argues that the Claimant has failed to establish that during the relevant period she was dominantly and effectively a national of the United States.

23. Although admitting that the Claimant stayed in the United States on three occasions, Iran asserts that even while residing in that country she lived amidst members of her Iranian family. Iran also points out that, in the words of the Claimant, her father has always been "a loyal Iranian subject". To show the Ladjevardi family's ties with Iran, the Respondent has submitted evidence of the family's extensive activities in trade, industry

⁴ Art. 976(2) provides that "[t]he following persons are considered to be Iranian subjects: ... [t]hose born in Iran or outside whose fathers are Iranian."

and banking in Iran as well as of the important posts that some members of the family held in pre-revolutionary Iran. Iran further alleges that the Claimant knows the Persian language very well.

24. Relying on the Articles of Association of the Community School Educational Foundation, the Certificate of Registration of that School and the Diploma issued by The Community School to the Claimant, the Respondent asserts that although The Community School paid more attention to the teaching of foreign languages, it was formed under Iranian law as an Iranian school. The Respondent further asserts that the diplomas of The Community School, including the one given to the Claimant, were issued by the Iranian Ministry of Education and had the same value as diplomas given by any other Iranian school as far as higher education or employment in Iran were concerned.

25. As far as the Claimant's student days in the United States are concerned, Iran claims that she lived there as an essentially Iranian student and that she benefited from the financial privileges and special student exemptions granted by the Iranian government to Iranian students. As proof, Iran submits copies of a certificate issued by the Iranian Ministry of Foreign Affairs confirming the Claimant's status as an Iranian student and of a certificate signed by the Secretary-General of Coordinating High Council by virtue of which the Claimant was exempted from paying exit dues when leaving Iran. The Claimant argues that the use of Iranian student certificates when dealing with Iran was dictated by Iran, and therefore indicates nothing of "choice" on the part of the Claimant. Iran has also submitted copies of government documents that appear to show that the Claimant spent at least a part of her summer holidays in 1970, 1971 and 1972 and of her winter holidays in 1971 and 1972 in Iran. Iran contends that the Claimant took permanent residence in Tehran in early 1974.

26. Iran states that the Claimant, in compliance with Article 1060 of the Civil Code of Iran,⁵ which according to the Respondent is applied to all Iranian women irrespective of their religion, obtained a permit from the Ministry of the Interior to marry Mr. Frank Burgel, a foreign national. She also registered her marriage contract with the appropriate Iranian authorities. In the marriage contract the Claimant is identified as a national of Iran and her husband as a Moslem businessman. According to an Affidavit from Mr. Ali Tavassoli, submitted by the Respondent, Mr. Burgel converted to Islam before the wedding in order to conform with Art. 1059 of the Civil Code of Iran.⁶ The Affidavit further describes Iranian customs and traditions which were observed at the wedding. The Claimant argues that as a Moslem she wanted to comply with Islamic laws and that since the Iranian Civil Code is in this respect a codification of Islamic law, she coincidentally complied with Iranian law too. According to the Claimant's expert, conversion of non-Moslem bridegrooms in particular is a fundamentally religious rule. The Respondent also notes that after the birth of the Claimant's first child, Sheila, an Iranian identity card was obtained for her.

27. With reference to the Claimant's employment with the Tehran branch of Citibank, Iran claims that the Claimant worked at that bank as an Iranian, because according to the Labour Law of Iran, a foreigner would have needed a work permit which the Claimant, however, has not presented.

28. While noting that the Claimant has not produced any evidence of her own property ownership in the United States, the Respondent has produced documents showing that in 1977 the Claimant together with her sister bought a piece of land in Tehran.

⁵ Article 1060 provides that "[m]arriage of an Iranian woman with a foreign national is dependent, even in cases where there is no legal impediment, upon special permission of the Government."

⁶ Article 1059 provides that "[m]arriage of a female Moslem with a non-Moslem is not allowed."

Likewise, Iran has submitted evidence of the Claimant's ownership of bank shares at the time of nationalization of banks in Iran. The Respondent concludes that since there were certain limitations on the ownership of immovable property and bank shares in Iran, the Claimant must have purchased these properties by using her Iranian nationality. The Respondent also alleges that the Claimant had purchased shares in several Iranian companies. Such ownership has not been disputed by the Claimant.

29. Iran contends that under Iranian law the Claimant would not have been able to acquire eighty per cent of the shares of Jinmod as a United States national. According to the Claimant, however, the restrictions placed on the ownership of property by non-Iranian nationals were not applicable to the stock of a garment manufacturing corporation such as Jinmod. The Claimant also contends that Jinmod's production license made no reference to limitations on foreign ownership. Also, when Jinmod's Articles and Memorandum of Association were specifically approved by Iran's Company Registrar's Office, it was allegedly specifically provided that all shares of Jinmod were to be bearer shares.

30. Iran points out that in the Claimant's Exhibit, containing the official records of her attendance at Boston University, the Claimant has given her permanent address as "167 Farmanieh Avenue, Tehran, Iran." Also, in her United States passport applications in 1963, 1969 and 1974 the Claimant has given Iran as her permanent residence. In her United States passport application in 1974 she has further stated her intent to continue to reside in Iran, whereas in some earlier applications she had stated her intent to return to the United States to reside there permanently. Iran cites also the Claimant's submission of 1 September 1982 according to which she "had in fact not planned to leave Iran permanently until sometime later [than December 1978]" to support its argument that the Claimant herself considered her permanent domicile to be in Iran and that her return to the United States was solely due to the revolution in Iran. In addition, Iran refers to "Notices of Changes in Jinmod"

attached to the Statement of Claim, showing that in 1979 and in 1980 Mr. Burgel was appointed as member and Vice-Chairman of the Jinmod's Board of Directors. Based on this, Iran contends that Mr. Burgel remained in Iran at the time when the Claimant allegedly left Iran for good and argues that under Art. 1005 of the Civil Code of Iran,⁷ the Claimant was legally domiciled in Tehran at least up to the time that her husband was physically present in Iran.

31. The Respondent states that the Claimant has submitted no evidence of her allegedly American-oriented lifestyle. According to the Respondent, bank accounts and temporary jobs in the United States, even if true, and medical records and school reports of the Claimant's children, especially as they relate to the period after 19 January 1981, have no value as evidence of Claimant's dominant and effective nationality. Iran further maintains that holding of United States drivers licenses has no bearing on the alleged dominance of the Claimant's United States nationality either.

III. REASONS FOR THE AWARD

(a) Admissibility of Late Submissions

32. As noted in the discussion of the procedural history of this Case, both Parties distributed at the Hearing new documentary evidence to the Tribunal and the other Party. The Claimant distributed a document entitled "Affidavit of Frank Burgel" and a set of 4 colour photographs allegedly taken at Claimant's wedding. The Claimant's counsel stated that these photographs were being submitted in response to certain assertions contained in Respondent's final written Memorial of 11 March 1993. The Respondent distributed copies of several letters allegedly

⁷ Art. 1005 provides that "[t]he domicile of a married woman is the same as that of her husband...."

written by the Claimant to her mother in 1970. The Claimant objected to the distribution of the letters, stating that since the Respondent had already in its written memorial, filed on 11 March 1993, stated that it could gain access to those letters, the letters should have been produced well in advance of the Hearing in accordance with the time periods set by the Tribunal in its various scheduling Orders. While the Tribunal, noting that it was very exceptional that new documentary evidence submitted only at a Hearing should be accepted, allowed the distribution of these submissions, it reserved until after the Hearing its decision on their admissibility.

33. Turning now to an examination of this issue, the Tribunal first notes that Articles 22 and 28, paragraph 3, of the Tribunal Rules, taken together, provide authority for the Tribunal to establish and enforce deadlines for the filing of written submissions, provided that the parties are treated with equality. Fundamental principles of equality and fairness between the parties, possible prejudice to either party, as well as the orderly conduct of the proceedings, require that time limits be established and enforced. The Tribunal has therefore repeatedly stated that no party shall submit any document for the first time at the Hearing, or so shortly before the Hearing that the other party cannot respond to it in an appropriate way. See Harris International Telecommunications, Inc., and Islamic Republic of Iran, et al., Award No. 323-409-1, paras. 57 et seq. (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 45.

34. In this Case specifically, the Tribunal in its Order scheduling the Hearing, filed on 24 March 1993, drew the attention of the Parties to the following:

1) The Tribunal will not permit the introduction of new documents in evidence prior to the Hearing unless it finds that this is justified by exceptional circumstances and unless such documents are filed not later than two months before the Hearing.

2) At the Hearing, any Party is free to make any arguments it wishes, but new documents may not be introduced in evidence unless the Tribunal so permits, which permission

will not normally be granted except for evidence in rebuttal of evidence introduced in the Hearing.

35. As far as the submissions here at issue are concerned, the Tribunal notes that it need not decide on the admissibility of the "Affidavit of Frank Burgel", distributed by the Claimant, since the Claimant later at the Hearing admitted that the Affidavit was not relevant to the issue of the Claimant's dominant and effective nationality and withdrew the Affidavit.

36. Having regard to the remaining submissions, the Tribunal considers that neither the photographs distributed by the Claimant nor the letters distributed by the Respondent fulfil the conditions set in the Order of 24 March 1993 for the admissibility of new documents in evidence, and is therefore not prepared to admit those submissions. The submission of the photographs did not comply with the Tribunal's Order of 24 March 1993 which permitted new evidence only if submitted two months before the Hearing or in rebuttal of evidence introduced in the Hearing. The Claimant's counsel asserted that the photographs could not be submitted within the deadline because he obtained them later, but there is not sufficient explanation of why they could not have been found earlier. As to the letters submitted by the Respondent, those letters were admittedly available to the Respondent at the time of its last authorized filing. In such circumstances the Tribunal cannot overlook each Party's attempt to wait until the Hearing was in progress before distributing the submissions. Such a practice denies the other Party any time to consider the new evidence proffered and to prepare an adequate response. Thus, considerations of equality between, and fairness to, the Parties as well as the Tribunals' need to insure the orderly conduct of its own proceedings, require that the submissions not be admitted.

(b) Jurisdiction

37. In order to determine whether the Claimant has standing before this Tribunal, the Tribunal must establish whether the

Claimant was a citizen of Iran, of the United States, or of both Iran and the United States during the relevant period, that is, from the date the Claim arose until 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If the Claimant was a citizen of both Iran and the United States, the Tribunal must determine the Claimant's dominant and effective nationality during that period. See Case No. A18, supra, para. 5, 5 Iran-U.S. C.T.R. 251. In this Case, the relevant period commenced when the Respondent allegedly expropriated the property for which the Claimant seeks compensation.

38. As stated in para. 1, the Claimant in her Statement of Claim provided two possible dates on which the alleged expropriation occurred; the first was the period between May 1979 through 25 November 1979, the second was 21 August 1979. Although the Claimant did not withdraw the May 1979 - 25 November 1979 period as a basis for the Claim, the Claimant in her "Brief on the Issue of Her Dominant and Effective Nationality" and Affidavit, filed on 31 December 1991, and at the Hearing, referred solely to 21 August 1979 as the beginning of the jurisdictional period in this Case. In its previous awards, the Tribunal -- when determining as a preliminary issue the Claimant's dominant and effective nationality -- has for that limited purpose, accepted the date alleged by the Claimant as the date on which the Claim arose. Therefore, the Tribunal will also here assume that the relevant period in this Case began on 21 August 1979.⁸

39. The Tribunal notes that there is no dispute that the Claimant, by virtue of her father being Iranian, is an Iranian national. The Tribunal is also satisfied that the Claimant acquired her United States citizenship by birth in that country, as evidenced by her birth certificate and her United States passports. There is no evidence in the record that the Claimant has relinquished or otherwise lost either her Iranian citizenship

⁸ See also Albert Berookhim et al. and Government of the Islamic Republic of Iran et al., Award No. 499-269-1, footnote 2 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 278, 283-284.

in accordance with Iranian law or her United States citizenship in accordance with United States law. Consequently, the Tribunal finds that during the relevant period, the Claimant was a citizen of both Iran and the United States.

40. Having found that during the relevant period the Claimant was a citizen of both Iran and the United States, the Tribunal proceeds to determine her dominant and effective nationality during that period. For that purpose, the Tribunal must establish the country with which the Claimant had stronger ties. The Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Case No. A18, supra, para. 5, p. 25, 5 Iran-U.S. C.T.R. 251, 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between the date the Claim arose and 19 January 1981, the events and facts preceding that period remain relevant to the determination of the Claimant's dominant and effective nationality during that period. See Reza Said Malek and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

41. As noted above, the Claimant is a United States citizen by birth who lived in the United States until early 1952. Thereafter, she resided in Iran continuously for more than eleven years until 1963 and again for about four years between 1965 and 1969; and was in the United States for about two years between 1963 and 1965 and again for five to six years between 1969 and a date toward the end of 1974 or during the first half of 1975. The Claimant then moved back to Iran and lived there with her husband and family for three to four years, until December 1978 when she left Iran for the United States. In light of the above, the pertinent issue in this Case is to determine whether the other evidence concerning the Claimant's life outweighs the fact that she lived an essentially longer period in Iran than in the United States.

42. Turning, therefore, to explore the other evidence submitted, the Tribunal first notes that the Claimant was born to a prominent Iranian family, whose permanent residence appears to have been in Iran. The Claimant herself spent her childhood and most of her school years in Iran. There is no specific evidence that she was exposed to American custom or culture at home, or that she participated in, or considered herself part of, the American community in Tehran. The fact that she was registered as a United States citizen at the Embassy in Tehran was a legal act that preserved her United States nationality, but does not of itself demonstrate that she was predominantly attached to American society. The evidence in the record suggests that the Claimant was exposed to certain American influence through The Community School in Iran. The Tribunal finds, however, that the evidence does not warrant the conclusion that her experience in the Community School resulted in her becoming predominantly American. The Tribunal notes that the Claimant presents no evidence concerning her lifestyle and her attachments during her school years.

43. At the age of twelve, the Claimant returned to the United States for two school years, but returned to Iran to continue her high school studies there. The Tribunal also observes that the record is largely barren of evidence that would provide a more detailed picture of this period in the United States.

44. Following her graduation from high school in Iran, the Claimant attended first Finch College and then Boston University in the United States. The evidence shows that she went to the United States and stayed there as a student, behavior that was not uncommon for Iranian students at that time. The Claimant has described her student days in the United States by stating that socially and culturally her life was typically American and that her friends and interests were mainly American. The evidence to support these assertions is, however, minimal. From about this time there is actually only proof of a bank account opened in October 1973, i.e., after the Claimant's graduation from the

university. Furthermore, Iran has produced evidence which appears to show that she spent at least a part of her vacations in Iran.

45. After having finished her studies the Claimant worked in the United States for a New York corporation until her return to Iran. The five Affidavits from those who knew the Claimant while she lived in the United States are all short and largely lacking in specificity in their descriptions of the Claimant's lifestyle. Besides the minimal descriptions contained in these Affidavits the Claimant has submitted no evidence of what her personal life was like or of any community activities in which she was involved.

46. In 1975 the Claimant married Mr. Frank Burgel, a German national, in a traditional Iranian ceremony in Iran, and moved back to Iran where she together with her husband established a garment manufacturing company in accordance with Mr. Burgel's long-time plans. During this period she either already possessed or acquired both movable and immovable properties in Iran. As far as the Respondent's assertion is concerned that she did so by relying on her Iranian nationality, the Tribunal finds that this assertion is not entirely supported by the evidence. However, the fact remains that at that time the Claimant had more substantial financial interests in Iran than in the United States. As regards the Claimant's adult life in Iran in general, the Tribunal notes that the Claimant was employed by Citibank, N.A., a United States banking institution for approximately two years. However, she does not present any evidence that she cultivated or had any direct contacts with American nationals in Tehran. She does state that she travelled frequently to the United States. However, no further description of those visits has been given. It is further to be noted that the Claimant admittedly had not planned to leave Iran as early as in December 1978 when the social movement leading to the downfall of the previous Iranian regime was at its climax and that when she nevertheless did so, her husband apparently remained in Iran.

47. The Claimant contends that she used her six United States passports for almost all the international travel she has made. This assertion, however, remains to a large extent unproven as far as the period before 21 August 1979 is concerned, since the Claimant has only submitted copies of the passports issued in July 1979 and September 1984.

48. In light of the evidence, the Tribunal concludes that the Claimant's dominant and effective nationality was not that of the United States in December 1978 when she returned to the United States. The Claimant's additional evidence concerning the period between December 1978 and 21 August 1979 relates principally to the fact of her residence in the United States, but does not include proof of her lifestyle or community activities. In light of the Claimant's continuing familial and economic ties to Iran, ties that the Claimant provides no evidence of having severed or of having attempted to sever, such a short period of residence in the United States is not alone sufficient to prove the dominance and effectiveness of her United States nationality at the time the Claim arose and consequently during the relevant period.

49. Consequently, the Tribunal determines that during the relevant period the Claimant's dominant and effective nationality was not that of the United States, and that therefore the Claim of Ninni Ladjevardi (formerly Burgel) does not fall within the Tribunal's jurisdiction.

IV. AWARD

50. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) the Claim asserted by the Claimant NINNI LADJEVARDI (formerly BURGEL) is dismissed for lack of jurisdiction under

Article II, paragraph 1, and Article VII, paragraph 1, of the Claims Settlement Declaration;

b) the Claimant NINNI LADJEVARDI (formerly BURGEL) is obligated to pay the Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN costs of arbitration in the amount of U.S.\$10,000.

Dated, The Hague
8 December 1993



Bengt Broms

Chairman

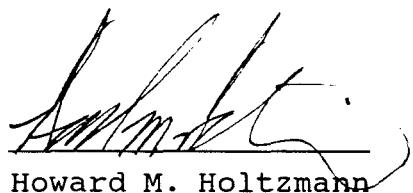
Chamber One

In the Name of God



Assadollah Noori

I concur in the results of the present Award, but believe that in principle, the Tribunal does not have jurisdiction over the claims of Iranians with alleged dual United States nationality, either according to the Claims Settlement Declaration or pursuant to the well-established principles of international law, particularly the principle of sovereign equality, which is rightfully the applicable principle with regard to the claims of dual nationals. The action taken by the majority of the members of the Full Tribunal in Case A18, in resorting to the principle of dominant and effective nationality, constitutes, so far as the Algiers Declarations are concerned a disregard for both the letter and the spirit of



Howard M. Holtzmann

those Declarations. And insofar as the principles of international law are concerned, especially the principle of the sovereign equality of States, that action is tantamount to a disregard for the fundamental principles of international law. In my opinion, just as the Iranian arbitrators have stated in their Dissenting Opinion in Case A18, reprinted in 5 Iran-U.S. C.T.R. 275-337, the Tribunal should rule that it lacks jurisdiction, and discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.