IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 266
CHAMBER THREE
AWARD NO. 583-266-3

MOUSSA ARYEH,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

AWARD

Appearances:

For the Claimant:	Mr. Moussa Aryeh, Claimant; Mr. Lewis M. Johnson, Counsel.
For the Respondent:	Mr. M.H. Zahedin-Labbaf, Agent of the Government of the Islamic Republic of Iran; Mr. F. Momeni, Dr. A. Riyazi, Legal Advisers to the Agent of the Government of the Islamic Republic of Iran; Mr. H. Rouh-Afzay, Mr. Abolfazl Mazinaniyan, Observers.
Also present:	Mr. D. Stephen Mathias, Agent of the Government of the United States of America; Dr. Sean D. Murphy, Deputy Agent of the Government of the United States of America; Mr. Allen S. Weiner, Attorney-Adviser to the Department of State of the Government of the United States of America.

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I. INTRODUCTION

1. The Claimant in this Case is MOUSSA ARYEH, a dual Iran-United States national, residing in the United States (the "Claimant"). The Respondent in this Case is THE ISLAMIC REPUBLIC OF IRAN (the "Respondent" or the "IRI"). The Claimant contends that he was the owner of 16 pieces of real estate in the village of Vardavard in Karaj, a city approximately 40 km north-west of Tehran, and one piece of real estate in Tehran itself. The Claimant alleges that the properties were expropriated by the Respondent by means of a decree of expropriation that confiscated the assets of his entire family in or about May 1979. He claims an amount of U.S.$1,095,006.00, as revised, plus interest and costs.

2. The Respondent denies liability. It argues, inter alia, that: the Claimant is not of dominant United States nationality and therefore the Tribunal does not have jurisdiction over his claim; the Claimant could not have legally owned the properties in question, as he was an American national at the time of purchase; the IRI has not expropriated his property; and the Claimant's claim should be barred by the application of the caveat in Case No. A18.

II. PROCEDURAL HISTORY

3. The Claimant filed a Statement of Claim on 14 January 1982. The Respondent filed a Statement of Defence on 21 September 1982. On 2 May 1983, the Claimant filed a Rejoinder to the Respondent's Statement of Defence.

4. By Order of 28 June 1985, the Tribunal noted that the Full Tribunal in Case No. A18 had held "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," and ordered the Parties to file all the written evidence they wished the Tribunal to consider on the nationality issue. On 5 August 1985, 28 November and 21 December 1990 the Claimant filed evidence on his nationality; on 15 July 1991 the Respondent filed a request to dismiss the Case on the basis of the caveat in Case A18. By Order of 23 October 1991, the Tribunal joined all jurisdictional issues, including the issue of the Claimant's nationality during the relevant period between the time the claim allegedly arose and 19 January 1981, to the consideration of the merits of the Case and set a schedule for future pleadings.

5. On 5 January 1993 the Claimant filed a request for the consolidation of his Case with Cases 839 and 840, which cases involve the claims of two of his brothers, Ouziel and Eliyahou Aryeh. The Claimant also asked for the suspension of the proceedings "pending the outcome of negotiations between Claimants and Respondent." The Respondent objected to this request on 8 January 1993 and the Claimant responded thereto on 15 January 1993. By Order of 26 January 1993 the Tribunal noted that "there is not an apparent close connection between the Claims in Cases Nos. 839, 840 and this Case" and rejected the request for consolidation or co-ordination of the Cases. The Tribunal also rejected the request for suspension of the proceedings.

6. On 31 March 1993, the Claimant filed his Hearing Memorial. On 28 April 1994, the Respondent in turn filed its Hearing Memorial. On 2 May 1994 the Claimant filed an unauthorized second volume to its Hearing Memorial containing a valuation report, which document was accepted into evidence by Order of 13 May 1994. In the same Order the Tribunal invited the Respondent to reply to the Claimant's valuation report. On 31 October 1994

the Respondent filed its brief on valuation. On 20 January 1995, the Claimant filed his Rebuttal Memorial and on 24 October 1995 the Respondent filed its Rebuttal Memorial. In addition, on 26 October 1995 the Respondent filed the Brief of the Islamic Republic of Iran on the issue of the caveat in Case No. A18. On 29 February 1996 the Agent of the United States of America submitted for filing the Memorial of the United States on the application of the Treaty of Amity to Dual United States-Iranian Nationals, which was accepted into evidence by Tribunal Order of 29 February 1996.

7. On 19 April 1996 the Tribunal requested the Respondent to produce the complete document entitled "List of Decrees Issued by Courts of Islamic Republic of Iran," an extract from which had been filed by the Claimant on 16 March 1995. In response, the Respondent filed or telefaxed submissions on 10 and 15 May and 10 June 1996 asserting that it was unable to comply with the Tribunal's request.

8. A Hearing in this Case was held on 16 May 1996.

III. JURISDICTIONAL ISSUES

Dominant and Effective Nationality of the Claimant

9. The Claimant was born in Iran to Iranian parents on 5 September 1927,[1] and is therefore an Iranian national by birth. In addition, he was naturalized a United States citizen on 21 January 1966. There is no evidence in the record that the Claimant has relinquished or otherwise lost either his Iranian nationality in accordance with Iranian law, or his United States

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[1] This is the date in his Iranian registration of birth document; his United States Certificate of Naturalization and passport put his birthdate at 20 August 1927.

nationality in accordance with United States law. Consequently, the Tribunal finds that since 21 January 1966, the Claimant has been a national of both Iran and the United States.

10. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, in which it determined that the Tribunal 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."[2] Accordingly, for the Tribunal to have jurisdiction over his claim, it must be shown that Mr. Aryeh's United States nationality was dominant and effective during the relevant period, i.e., from the date his claim arose until 19 January 1981 (the Tribunal's jurisdictional cut-off date). For the limited purpose of establishing the parameters of the relevant period, the Tribunal accepts the earliest date of expropriation alleged by the Claimant -- April 1979 -- as the date on which his claim arose.[3] Consequently, for the purposes of its inquiry into the dominant and effective nationality of the Claimant, the Tribunal concludes that the relevant period is that between April 1979 and 19 January 1981.

11. In order to reach a conclusion as to the Claimant's dominant and effective nationality during the relevant period, the Tribunal must determine whether the Claimant had stronger ties with Iran or with the United States during that period. To this end, the Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties,

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[2] Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265 [hereinafter "Case No. A18"].

[3] Later in this Award, the Tribunal concludes that the expropriation took place on 14 May 1979. See infra para. 49. In either case, the nationality analysis is identical.

participation in public life and other evidence of attachment. See Case No. A18, 5 Iran-U.S. C.T.R. at 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between April 1979 and 19 January 1981, "it is necessary to scrutinize the events of the Claimant's life preceding this date. Indeed, the entire life of the Claimant, from birth, and all the factors which, during this span of time, evidence the reality and the sincerity of the choice of national allegiance he claims to have made, are relevant." Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

12. The record reveals that the Claimant lived in Iran from 1927 until March 1947, when he moved to the United States with his family at the age of 19 years. He claims to have lived in the United States ever since and never even to have visited Iran since that time. The Claimant was naturalized as a United States citizen on 21 January 1966. He married an Iranian-born woman, Sara Arabzadeh, on 5 February 1952 and she was subsequently naturalized as a United States citizen on 24 January 1969. The couple had seven children, all born in the United States and educated in American schools. The Claimant was issued a United States passport on 3 February 1966; his wife was issued a United States passport on 20 April 1971. In addition, the Claimant and his wife own a house in New York purchased on 16 July 1959. The Claimant states that they still live in that house. He also states that he "conducted business at one location in the City of New York . . . for the past twenty-five years." At the Hearing, the Claimant added that from 1947 until 1970, he conducted a business in Oriental rugs with his father, after which he went into business on his own.

13. The Claimant concludes that he is a dominant and effective United States national, as he has grown up in the United States,

all his emotional, social and economic ties are to the United States, and he has no ties to Iran beyond his claim for some property there.

14. While the Respondent states explicitly that it does not concede the dominance of the Claimant's United States nationality, it has produced little evidence to counter the Claimant's contentions on the issue, saying:

> Issues of nationality have a direct relationship with one's private life. Gaining knowledge of Claimant's private life is not always easy for the Respondent. . . . If the Respondent fails to present evidence in rebuttal of Claimant's dominant and effective U.S. nationality, it does not [necessarily] mean that Claimant's claim is established, and it must not be considered that the Respondent has conceded to Claimant's claim.

15. The Tribunal notes that the Claimant left Iran at a relatively young age and resided in the United States for at least 30 years before his claim allegedly arose, during which time he conducted business in the United States. Moreover, for some thirteen of those years he resided in the United States as a United States citizen. In addition, the Claimant is married to a naturalized United States national, his children were born and raised in the United States and he owns a home in the United States.

16. Accordingly, the Tribunal finds that although the fact that the Claimant acquired property in Iran demonstrates that he did not sever all his links with Iran, this factor does not outweigh his much closer and very lengthy ties to the United States. His economic and personal activities have been centered in the United States throughout his adult life. Consequently, the Tribunal finds that the dominant and effective nationality of the Claimant from the date his claim is alleged to have arisen (April 1979) until 19 January 1981 was that of the United States, such that

the Tribunal has jurisdiction over his claim in accordance with Article II, paragraph 1, and Article VII, paragraph 1, of the Claims Settlement Declaration (CSD).

IV. THE MERITS

A. Ownership

17. The Claimant contends that he was the registered owner of 17 pieces of real property in Iran: 16 plots in Vardavard, Karaj, and one property in Tehran. In support of this contention he has produced title deeds to all the properties at issue, which show that the properties were registered in his name: 14 of the Vardavard properties were purchased in 1969, one plot in 1970 and one plot in 1977. The sole property in Tehran was purchased in June 1966.

18. The Respondent does not deny that the Claimant was registered as the owner of the properties at issue. In fact, it states: "The truth of the matter is that Claimant's property continues to be registered in his own name in the Property Registers. . . . He can exercise his property rights with respect to his property." At the same time, however, the Respondent argues that under the provisions of Article 989 of the Iranian Civil Code, the Claimant did not have the capacity to own property in Iran from the date of his acquisition of United States nationality (i.e., 21 January 1966).

19. The Tribunal notes that the title deeds of the properties at issue confirm that the Claimant was the registered owner of those properties. It notes further that this fact is not contested by the Respondent. Indeed, the Respondent maintains that the Claimant continues to own the property, despite alleging that the Claimant's title is in some way defective. The Tribunal

is disinclined to question the official ownership records and is therefore satisfied that the record confirms that the Claimant was the registered owner of the properties at issue in this Case.

B. Expropriation

20. The Tribunal therefore turns to the question whether the official actions invoked by the Claimant constituted an expropriation of his property within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration.

1. The Claimant's Contentions

21. In his Statement of Claim, the Claimant contends:

> Sometime in April or May 1979, Teheran newspapers published a Decree of the Islamic Republic of Iran. Although [a] copy of the Decree is not now available to the claimant, the substance of the Decree follows.
>
> The Islamic Republic of Iran decreed that members of certain families, including the claimant and his family, could no longer own real estate or personal property of any kind from that time forward and could not lawfully transfer or otherwise sell real estate or personal property theretofore owned by them. The claimant was, therefore, deprived of all his right, title and interest in and to the real property described herein below.
>
> The real property . . . was, to the best of the claimant's knowledge, seized by local governmental officials who have transferred the real property to third parties.

22. In his memorial, the Claimant submits an article from the Iranian newspaper Javanan-e-Emruz dated 18 June 1979 containing a list of names of "persons whose properties have been confiscated or seized." Although the Claimant's name does not appear in the article, he points out that the list contains the names of several members of the Aryeh family and contends that it includes an entry that the Claimant translates as "Aryeh brothers." The Claimant alleges that this characterization

refers to him and his brothers.

23. The Claimant also relies on an extract from a document entitled "List of Decrees Issued by Courts of Islamic Revolution of Iran," which extract originally was submitted by the Respondent in Cases Nos. 842-844 before the Tribunal, and subsequently filed by the Claimant in this Case [hereinafter the "List of Decrees"]. The extract from this List of Decrees appears to be taken from an alphabetical list prepared by the Center for Statistics and Information of the Bonyad Mostazafan (the Foundation for the Oppressed) containing names of people whose property had been taken. The first entry in the list of members of the Aryeh family whose assets had been expropriated simply reads "Aryeh." The Claimant contends that this entry (which is dated 14 May 1979) is the blanket seizure order for the entire Aryeh family. He argues that the List of Decrees proves that the assets of the entire Aryeh family were expropriated, including those of the Claimant and other family members not individually named.

24. The Claimant argues further that he was known to be involved in a common land holding with other members of the Aryeh family, some of whom were individually named on various expropriation lists. He argues that this fact, too, supports his contention that his property was taken.

2. The Respondent's Contentions

25. The Respondent denies that it expropriated any property belonging to the Claimant. It contends that the Claimant's property has not been interfered with in any way and that the property continues to be registered in his name. More specifically, it argues in response to the article in Javanan-e-Emruz that: the source of the news is unknown, in that the Claimant variously identified the newspaper article as being from

Ettela'at and Javanan-e-Emruz; the words "Aryeh Bardaran" translated by the Claimant as "Aryeh brothers" is "by no means the same as Aryeh Brothers"; and even if the words did mean "Aryeh brothers" that phrase would have applied to well-known members of the family, rather than the Claimant and his brothers who by their own admission left Iran long before the Iranian revolution. The Respondent adds that the Claimant does not belong to any of the groups of people identified in the article as those who had their property expropriated.

26. In response to these contentions, the Claimant submits a later article from Javanan-e-Emruz, dated 25 June 1979 (i.e., one week after the original article), in which the newspaper states that the list published the previous week was the text of an official circular received by the Bureau for Registration of Documents and that the original text was in the possession of the newspaper.

27. In further response, the Claimant contends that there is clear evidence that the Revolutionary Council intended to deprive the most prominent Jewish families in Iran (including the Aryehs) of all their possessions in Iran. He argues that the Revolutionary Decree was all-embracing: many members of the Aryeh family were mentioned by name, and the catch-all phrase "Aryeh brothers" was used to ensure that the rest of the family was covered, i.e. the brothers of the Claimant's uncle, Morad Aryeh, and their sons. While the names of all the "brothers" may not have been known to the Respondent, the Claimant alleges that he and his brothers were known to be involved in a common land holding with two family members whose names do appear on the list, namely his sister-in-law and cousin, Mahindokht Aryeh, and her sister, Homa Aryeh Hakimzadeh.

28. In support of these contentions, the Claimant submits affidavits by Raphael Aryeh and Mahindokht Aryeh. Raphael Aryeh

(another brother of the Claimant) contends that the main reason for the Revolutionary government's targeting the Aryeh family was the family's history of close ties with the Shah. Mahindokht Aryeh (a daughter of Morad Aryeh and married to her first cousin, Raphael) attests to the family relationships and common land holdings owned by her, her sister, and Yahya Aryeh and his sons, Moussa, Ouziel and Eliyahou.

29. The Respondent also challenges the Claimant's reliance on the List of Decrees, contending that if the assets of the entire Aryeh family had been expropriated, as alleged by the Claimant, there would have been no need for separate and specific orders to be issued.

30. More specifically, the Respondent denies that the expropriation order invoked by the Claimant is a blanket order covering the entire Aryeh family: it presents evidence purporting to show that the Revolutionary Court decree number (number 291) appearing beside the entry "Aryeh" and invoked by the Claimant has nothing to do with the Aryeh family but relates to another matter entirely: a criminal charge against a Mr. Farzan Kashani in connection with the illegal export of foreign exchange from Iran. The Respondent argues:

> Thus Claimant's contention that Order No. 291 mentioned under item 50 of the list in question [the entry for "Aryeh"] relates to him has no basis in fact. The truth of the matter is that on 14 May 1979 the item numbers of the Orders issued by the revolutionary courts had not reached No. 291. Mention of No. 291 in the revolutionary court orders registration book on the date of 14 May 1979 is a mere slip of the pen. The person who prepared this list, who was a petty administrative employee, did not exercise sufficient care and diligence in preparing it.

At the Hearing, the Respondent reiterated that the entry was a "mistake" due to the "carelessness" of a clerk.

3. The Tribunal's Findings on Expropriation

31. The Tribunal notes as a preliminary matter that the Claimant has contended that in pre-Revolutionary Iran the Aryeh family was a prominent and wealthy Jewish family that was known to have close links to the former Shah of Iran. Indeed, the Claimant's uncle, Morad Aryeh, was the designated representative of the Jewish community in the Iranian Parliament or Majlis. This evidence has not been disputed by the Respondent.[4] It is against this background that the Claimant contends that his properties were expropriated by the revolutionary authorities.

32. The first piece of evidence of note submitted by the Claimant in support of his contentions is the 18 June 1979 article published in the Tehran weekly newspaper Javanan-e-Emruz, which lists the names of some 200 people whose assets had been expropriated by the Revolutionary government. Included in that list of names are at least 16 members of the Aryeh family, most of whom are cousins or other close relatives of the Claimant. In addition, there is an entry that the Claimant translates as "Aryeh brothers." The Respondent argues that this entry cannot mean "Aryeh brothers" as the Persian phrase is spelled "Aryeh Bardaran" instead of "Baradaran Aryeh." Allegedly both spelling and word order are incorrect. The Claimant acknowledges the discrepancy but contends that this is merely the result of a typographical error by the newspaper.

33. The Tribunal notes that during the pleadings the Respondent failed to provide an alternative explanation for the meaning of the disputed phrase, should it not mean "Aryeh brothers." However, at the Hearings in this Case and Cases Nos. 839-840 (involving the claims of two of the Claimant's brothers), the Respondent contended for the first time that the entry was a

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[4] The Respondent, in fact, acknowledges that the Claimant belonged to the "well-known Aryeh family."

hyphenated family name, loosely translated as "Lion-Lifters." The Tribunal notes that this explanation is belated and that the Respondent was unable to provide any further details of the "Lion-Lifter" family or its entry on the list. For instance, the Respondent has not provided a copy of the expropriation decree for the "Lion-Lifter" family or any other documentation recording its existence. Indeed, the IRI has not provided any documentation of the existence of a single "Lion-Lifter" family in all of Iran, let alone one so prominent that its assets might have been expropriated. Given the close similarity of the disputed phrase with the Persian phrase for "Aryeh brothers" and the fact that it appears on the list so close to other members of the Aryeh family, the Tribunal considers it to be far more likely that the newspaper made a minor typographical error.

34. The Respondent further points out, however, that even if the disputed phrase does mean "Aryeh brothers," it would not necessarily refer to the Claimant and his brothers but rather to other, more prominent, members of the Aryeh family. While the evidence on this point is not conclusive, the Tribunal finds it credible that the phrase would have been intended to apply to those Aryeh brothers who were known to be living outside Iran but whose names were not necessarily known to the authorities at that time.

35. Moreover, the Government of Iran has used similar designations in other expropriation lists available to the Tribunal. For instance, in the List of 51 names of people whose property had been taken that is attached to the Law on Protection and Development of Iranian Industries, three entries are composed of a family name followed by the word "brothers" and another entry is a named individual followed by the word "and brother."[5]

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[5] The Law on Protection and Development of Iranian Industries was approved on 1 July 1979 by the Islamic (continued...)

The entries in question read: "The Amid-Hozour brothers"; "The Fooladi brothers"; "The Lavi brothers"; and "Enayat Behbahani and brother." In light of this circumstance, the Tribunal concludes that this formulation was not infrequently adopted by the Revolutionary authorities.

36. The Tribunal notes, however, that some confusion was created in the record by the fact that the Claimant also submitted another newspaper article early in his pleadings, which he identified as an extract from the Tehran daily newspaper Ettela'at. The Claimant alleged that the phrase "Aryeh brothers" also appeared in this report. This contention was disputed by the Respondent, and the Tribunal's Language Services Division confirmed that the phrase did not appear. In his rebuttal brief, the Claimant conceded that he no longer relied on the article "since Claimant's attorney has not been able to verify the existence of the [relevant phrase] in the original Farsi." The Respondent contends that this shows bad faith on the part of the Claimant. At the Hearing, however, the Claimant's counsel explained that the article was removed from the pleadings when the Claimant engaged new counsel and that the original filing was due merely to confusion.

37. The Tribunal notes that the disputed filing consists of one page from Ettela'at and another page from Javanan-e-Emruz, and that the original Persian version of the Ettela'at article was also submitted by the Claimant. The Tribunal considers that these facts show that the submission was merely confused and that no attempt was made to misinform the Tribunal. Moreover, there is no evidence that the extract from Ettela'at was intended to be a comprehensive statement of all expropriations; thus, the fact that the Claimant's name does not appear on the Ettela'at

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[5](...continued)
Revolutionary Council and published in Official Gazette No. 10031-9/5/1358 (31 July 1979).

list establishes nothing more than that the Claimant was not specified on this particular list. The Tribunal therefore does not consider this issue to be of particular significance.

38. In light of the aforementioned considerations, the Tribunal concludes that, while not dispositive, the newspaper article from Javanan-e-Emruz is a factor that supports the Claimant's contention that his property was expropriated. See Jahangir Mohtadi, et al. and The Government of the Islamic Republic of Iran, Award No. 573-271-3, para. 65 (2 December 1996), reprinted in _ Iran-U.S. C.T.R. _, _ ("While newspaper reports alone may not be sufficient to establish the Claimant's contentions, the Tribunal regards these reports as contemporaneous evidence that corroborates several of the Claimant's contentions . . . .") ("Mohtadi"); Rouhollah Karubian and The Government of the Islamic Republic of Iran, Award No. 569-419-2, paras. 133-37 (6 March 1996), reprinted in _ Iran-U.S. C.T.R. _, _ ("Karubian").

39. The second piece of evidence upon which the Claimant relies is the consolidated list of expropriation decrees (the List of Decrees) compiled by the Center for Statistics and Information of the Foundation for the Oppressed,[6] in which an alphabetical list of members of the Aryeh family whose assets had been expropriated starts with the entry "Aryeh," unaccompanied by any first name. The Claimant contends that this entry is the blanket seizure order for the entire Aryeh family. He argues that it shows that the assets of the entire Aryeh family were expropriated, including those of the Claimant and others not individually named. The Respondent contends that if the assets of the entire Aryeh family had been expropriated, as claimed by the Claimant, there would have been no need for separate and

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[6] The Bonyad Mostazafan, or Foundation for the Oppressed, is the body that was most active in implementing the expropriation decrees of the Revolutionary Courts and redistributing expropriated assets.

specific orders to be issued.

40. The Tribunal notes first that the entry "Aryeh" appears close to the beginning of an alphabetically arranged list and bears its own sequential number on the List (number 50). There is no entry for a first name in the column reserved for that purpose next to the family name, unlike every other entry on the extract. In addition, it bears the lowest entry number (number 25) and decree number (number 291) and the earliest date (14 May 1979) of all the Aryeh entries. Furthermore, there is a decree code next to the name, in the column for that purpose -- the decree code being a number "1" for "seizure," according to the key at the top of the List of Decrees. Moreover, while, according to the key, the decree code "3" symbolizes "annulment of decree," this number does not appear next to the entry "Aryeh." This decree appears, therefore, not to have been revoked.

41. The Respondent, however, has provided evidence purporting to show that the number of the entry refers to another matter entirely, see para. 30, supra. This evidence consists of a judgment from what appears to be the Criminal Courts of Tehran recording the conviction of a Mr. Ebrahim Farzan Kashani for violation of Iranian foreign exchange control regulations. The Respondent contends that this evidence shows that there was no separate expropriation decree for the Aryeh family and that the appearance of the decree number 291 next to the entry "Aryeh" on the List of Decrees was merely a mistake by a minor clerk.

42. In this regard, the Tribunal notes that the Respondent has not explained the relationship between the "Courts of [the] Islamic Revolution of Iran" and the Criminal Courts of Iran or Tehran. Nor has the Respondent explained whether several different systems of numbering might have existed in different courts. Furthermore, the Respondent's contention that on 14 May

1979 (the date adjoining the entry "Aryeh") "the item numbers of the Orders issued by the revolutionary courts had not reached No. 291" is not borne out by the List of Decrees. Instead, it is apparent that the numbering of other decrees issued within the same period is either comparable or in fact much higher than No. 291. For instance, the Order dated 22 May 1979 for individual members of the Aryeh family bears No. 1544; the Order dated 7 October 1979 for a Mr. Aboulfath Ardalan bears No. 1374. In addition, the list of judgments of the Criminal Courts of Tehran submitted by the Respondent bears dates in March 1982 and Judgment number 291 of that list is dated 18 March 1982 -- nearly three years after the expropriation decrees listed in the List of Decrees. This fact suggests strongly that the list of judgments from the Criminal Courts derives from a different source than the List of Decrees and that the two documents are not related.

43. In addition, the Tribunal is not convinced that the existence of specific expropriation orders for individual members of the Aryeh family necessarily implies that no blanket order for the Aryeh family would have been issued. On the contrary, there appears to have been a significant degree of duplication between different governmental authorities (or by the same authorities at different times) during the Revolution. For instance, a 12 April 1979 expropriation decree issued by the Public Prosecutor General's Office containing 209 names (the "List of 209")[7] includes the names of some 16 members of the Aryeh family. According to the consolidated List of Decrees, however, the assets of some 13 of those Aryehs named on the 12 April 1979 List of 209 were again expropriated by an order dated 22 May 1979. Furthermore, the name Morad Aryeh (which had appeared on both previous lists) appears on the 31 July 1979 "List of 51" attached

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[7] This list was submitted by the Government of Iran in Reza Nemazee and The Islamic Republic of Iran, Award No. 575-4-3 (10 December 1996), reprinted in _ Iran-U.S. C.T.R. _.

to the Law on Protection and Development of Iranian Industries. An Amendment to this Law dated 12 August 1979 extends the expropriatory scope of the List of 51 to the spouses and children of those named on the List of 51. Again, the assets of most of the children of Morad Aryeh had already been expropriated by the 12 April and the 22 May 1979 decrees. In this context, the existence of a blanket expropriation order for the Aryeh family dated 14 May 1979 would not appear to have excluded the possibility of repetition.

44. The Tribunal concludes that the Respondent has not provided evidence capable of rebutting the contention that the entry "Aryeh" is exactly what it appears to be -- that is, an expropriation order referring to the entire Aryeh family rather than to an individual. While this might not have been the usual practice of the revolutionary authorities, in light of the identity of the family in question and in light of the noted inability of the Respondent to rebut convincingly the Claimant's position, this is by far the most plausible interpretation. Even if there were other branches of the Aryeh family in Iran, or other completely unrelated Aryehs, given the prominence of the Claimant's branch of the family, it is highly likely that this branch was the intended target of any expropriation decree. This is borne out by the fact that all the individuals named on the aforementioned expropriation list are closely related to the Claimant -- they are the Claimant's uncle and a number of first or second cousins. Consequently, the Tribunal concludes that the entry "Aryeh" on the List of Decrees, too, suggests that the assets of the entire Aryeh family were taken. Finally, the Tribunal notes that although the Claimant's first piece of evidence, the article from Javanan-e-Emruz, refers to "Aryeh brothers" and his second piece of evidence, the List of Decrees, refers simply to "Aryeh," this difference in no way undermines the Tribunal's conclusion that both pieces of evidence support a finding that the Respondent expropriated the Claimant's

property.

45. In further support of his contentions, the Claimant argues that he was known to be involved in a common land holding with other members of the Aryeh family, some of whom were individually named on expropriation lists. In that regard, the Claimant has submitted an affidavit by Mahindokht Aryeh (a daughter of Morad Aryeh and married to her first cousin, Raphael, a brother of the Claimant). Ms. Aryeh herself appears on the list in Javanan-e-Emruz and she attests to the family relationships and land holdings held in common by her, her sister (Homa Aryeh Hakimzadeh, whose name also appears on the list in Javanan-e-Emruz), her sister-in-law (Esther Hezghia, who is also named) and Yahya Aryeh and three of his sons, Moussa, Ouziel and Eliyahou.

46. The Tribunal notes first that the Respondent has not contested that the disputed property formed part of a common land holding by various members of the Aryeh family. In fact, the Respondent's expert states, based on an inspection of the property records at the Registration Department for his September 1994 valuation report, that the property was "joint" rather than partitioned. This is confirmed by the title deeds in the record, which show that all 17 pieces of land involved in Moussa Aryeh's claim are registered as "undivided" shares of larger pieces of land, implying that the property was held in common. In addition, the title deeds reveal that three of the Vardavard properties were transferred to the Claimant from Mahindokht Aryeh. Similarly, five of the pieces of property claimed by the Claimant's brothers, Ouziel and Eliyahou, as acquired under the Will of their father, Yahya Aryeh, were purchased from Mahindokht Aryeh.[8] In sum, this evidence is consistent with the Claimant's contention that he and his brothers were involved in a common land holding with other members of the Aryeh family.

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[8] See Cases Nos. 839-840.

47. Logically, then, there are two possibilities as to the fate of these pieces of "undivided" land: either they could have been partitioned or they could have remained undivided. There is no evidence that any of the properties was ever divided; nor does the Respondent argue that such a partition took place. Indeed, the Respondent's valuation expert, who maintains that he inspected the actual site of the land, reduced his assessment of the value of the land based on his assertion that "[p]artition of Claimant's share out of those lands involves carrying out of administrative formalities, spending of a lot of time, . . . as well as spending of substantial amounts of money." Such a reduction obviously would have been unnecessary if a partition -- which apparently would have involved an onerous procedure -- had occurred. The Tribunal considers it extremely unlikely that any partition of the Vardavard lands took place and therefore concludes that the land remained undivided.

48. As noted above, the names of Mahindokht Aryeh, Homa Aryeh Hakimzadeh and Esther Hezghia Aryeh, the other owners of the property, appear on several expropriation lists. The Respondent does not deny that it expropriated the real property belonging to them. Given the high probability that the Respondent expropriated the land belonging to Mahindokht, Homa and Esther, it is thus likely that it also expropriated the property at issue in this Case and thereby the Claimant's interest in the property.[9] In conclusion, the fact that the Claimant's

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[9] To be sure, there is a remote possibility that the Claimant presently owns land jointly with the Government of Iran. This would only be possible, however, if -- in the midst of the revolutionary turmoil -- the IRI effected a partial transfer of the land (involving the interests of Mahindokht and Homa Aryeh and Esther Hezghia) and left the Claimant's interests untouched. The Respondent has not made this contention and, in any event, has not indicated whether joint ownership with the IRI would even be possible. Moreover, in considering the possibility of joint ownership with the IRI, it is worth reiterating that the Claimant was a member of a prominent and wealthy Jewish family with close

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properties formed part of a family landholding strongly supports the Claimant's contention that his property was taken by the Respondent.

49. The Tribunal considers that the evidence presented by the Claimant, taken together, strongly suggests that the entire Aryeh family had been targeted by the Revolutionary government. In addition, the evidence demonstrates that the Claimant's property formed part of a common landholding with other members of the Aryeh family who were individually named in expropriation decrees. Accordingly, in light of the evidence in its entirety, the Tribunal concludes that the Claimant's real properties were expropriated by the Respondent on 14 May 1979.

50. In light of the Tribunal's conclusion on expropriation, it is unnecessary to examine the Claimant's arguments that his property rights were infringed by actions attributable to the Respondent constituting other measures affecting property rights. The Tribunal therefore turns to the Respondent's contention that this claim should be barred by the application of the caveat in Case No. A18.

C. The A18 Caveat

51. In Case No. A18, the Full Tribunal decided that the Tribunal has jurisdiction over claims by dual Iran-United States nationals with dominant and effective United States nationality against the Government of Iran (and vice versa), adding an "important caveat" to its decision: "[W]here the Tribunal finds jurisdiction based upon a dominant and effective nationality of the claimant, the

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[9](...continued)
links to the former Shah.

The Tribunal thus finds the notion that the Islamic Republic of Iran currently owns land jointly with the first cousin of those whose property it indisputably expropriated to be too improbable to require serious consideration.

other nationality may remain relevant to the merits of the claim."[10] This issue has been discussed extensively by the Parties in the pleadings and at the Hearing.

1. The Respondent's Contentions

52. One of the Respondent's central arguments in this Case is that because the Claimant claims before the Tribunal as a United States national and because his claim involves benefits limited by Iranian law to sole Iranian nationals, his claim is barred by the A18 caveat. The Respondent contends that the mere ownership by a dual national of real property in Iran in itself bars the claim from compensation by the Tribunal and thus that the caveat filters out, at the threshold of the merits, claims "incapable of proceeding to the stage of consideration of the substance." This assertedly occurs through the application of the international law principles of abuse of rights, good faith, clean hands, misrepresentation, concealment of material facts, estoppel and state responsibility.

53. The Respondent contends that Iranian law prohibits foreigners from owning real estate in Iran, except in certain limited situations that are not relevant to this Case. It argues further that the property claimed was acquired and held exclusively on the basis of the Claimant's Iranian nationality, and under the international law rule of estoppel he cannot now bring a claim before the Tribunal on the basis of his American nationality. In addition, the Respondent argues that because the Claimant allegedly concealed his United States citizenship, even if his property had been expropriated, no state responsibility would have attached to the IRI, which thought it was dealing with an exclusive national of Iran.

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[10] Case No. A18, Decision No. DEC 32-A18-FT, 5 Iran-U.S. C.T.R. at 265-66.

2. The Claimant's Contentions

54. In response, the Claimant contends that neither dual nationality nor the ownership of real property in Iran by dual nationals was or is illegal under Iranian law. He argues that Article 989 of the Iranian Civil Code contains nothing that prohibits the taking of a foreign nationality by an Iranian national; nor does it make illegal the purchase and continued ownership of real estate in Iran by an Iranian national who has taken another nationality without renouncing his Iranian nationality.

55. The Claimant argues rather that, according to Article 989, acquisition of dual nationality by an Iranian citizen results merely in the foreign nationality being disregarded within Iran. The Claimant argues further that for those dual nationals who own real estate in Iran, upon the acquisition of a second nationality, the only legal consequence is that their real estate becomes subject to sale by the Public Prosecutor. In that event, however, Article 989 expressly provides that the proceeds of the sale are to be paid to the former owner. Thus, Article 989 assertedly confirms a dual national's right to receive compensation when the government exercises its statutory authority to sell the real estate.

56. The Claimant also argues that the international law principles cited by the Respondent -- abuse of rights, good faith, clean hands and estoppel -- are not relevant to the facts and circumstances of this case and have moreover already been rejected by the Full Tribunal in Case No. A18.

57. The Claimant argues further that it was the practice of the Iranian government to accept the dual national status of its citizens. Indeed, the Claimant contends that "Gabriel Aryeh informed Iranian registrars and government banking officials at

the time that he was acting for his brother who was an American." In support of this contention, he presents an affidavit by Gabriel Aryeh (the Claimant's brother), who alleges that prior to the 1979 Revolution, high-ranking officials were generally aware of and encouraged investment in Iran by dual nationals. The Claimant denies that he concealed his United States nationality from any Iranian government authority.

58. In response to this latter point, the Respondent alleges that the Claimant must have concealed his United States nationality in order to acquire the property. It argues further that the Claimant has provided no evidence that government officials encouraged dual nationals to invest in real estate, and it asserts that, in any event, "statements of officials who had no competence on the subject can never lend legality to Claimant's unlawful act."

59. At the Hearing, the Claimant invoked both legal and equitable considerations in contesting the Respondent's interpretation of the caveat. He pointed out that in the Protiva Award[11] the Tribunal had held that in evaluating whether particular rights were reserved by Iranian law to sole Iranian nationals, the controlling statute was Article 961 of the Iranian Civil Code. This Article provides that foreigners are entitled to the same civil rights in Iran as Iranians, except where the right is explicitly reserved by law to Iranian nationals or explicitly denied to foreign nationals.[12] The Claimant concluded

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[11] Edgar Protiva, et al. and The Government of the Islamic Republic of Iran, Award No. 566-316-2 (14 July 1995), reprinted in _ Iran-U.S. C.T.R. _.

[12] Article 961 of the Iranian Civil Code reads:

Foreign nationals are also entitled to the enjoyment of civil rights except in the following cases:
1) In respect of the rights which the law has expressly recognized for the Iranian nationals only, or has expressly

(continued...)

that as there was no explicit provision reserving to sole Iranian nationals the right to own real property in Iran, the Claimant's ownership was not illegal.

60. Also at the Hearing, the Claimant referred to the Tribunal's decision in the Karubian case and submitted that "[i]f you believe that the precedent in Karubian is persuasive or binding, then you should dismiss this case." He argued, however, that the Karubian Award contained "errors" and was wrongly decided. These "errors" would include: that it did not use the standard set out in Article 961 of the Iranian Civil Code and that Iranian law did not restrict the right to own real property to sole Iranian nationals; and that it relied incorrectly on a putative 1906 Iranian Royal Decree that was not a valid law in 1979. The Claimant argued that any state choosing to restrict ownership of property should do so by means of "unambiguously worded publicly available laws that ordinary people can rely on." He concluded that no such laws exist or they would have been produced by the Respondent.

3. The Tribunal's Findings on the Caveat in Case No. A18

61. An appropriate starting point for a discussion of the caveat in Case No. A18 is the Tribunal's decision in the Saghi case, which held that

> [t]he caveat is evidently intended to apply to claims by dual nationals for benefits limited by relevant and

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[12](...continued)
denied . . . to foreign nationals.
2) In respect of the rights concerning personal status where these are not accepted by the law of the government of the foreign national.
3) In respect of the special rights that have been created solely from the point of view of the Iranian society (emphasis added).

> applicable Iranian law to persons who were nationals solely of Iran. However, . . . the equitable principle expressed by this rule can, in principle, have a broader application. Even when a dual national's claim relates to benefits not limited by law to Iranian nationals, the Tribunal may still apply the caveat when the evidence compels the conclusion that the dual national has abused his dual nationality in such a way that he should not be allowed to recover on his claim.[13]

After having renounced his Iranian nationality at the age of 18, one of the claimants in that case re-applied for Iranian nationality solely in order to own shares that he believed could only be owned by Iranian nationals. Applying the caveat to the facts of that case, the Tribunal held that to permit him to recover for the expropriation of the shares by using his American nationality would be to permit an abuse of right.[14] The Tribunal therefore dismissed those parts of his claim "where the equitable considerations giving rise to the application of the caveat are present."[15]

62. The Saghi decision identifies two separate situations where the caveat may come into play. The first situation is where the Claimant has enjoyed a benefit reserved to sole Iranian nationals. The second situation is where there has been some other abuse of nationality that might invoke the caveat. It is in this second category that Saghi applied the caveat. Unlike Allan Saghi, who deliberately manipulated his citizenship in an attempt to obtain certain advantages that he believed were reserved for Iranian nationals, the Claimant in the present Case

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[13] James M. Saghi et al. and The Islamic Republic of Iran, Award No. 544-298-2, para. 54 (22 January 1993), reprinted in _ Iran-U.S. C.T.R. _, _ ("Saghi").

[14] Saghi, Award No. 544-298-2, paras. 45-64, reprinted in _ Iran-U.S. C.T.R. at _.

[15] Saghi, Award No. 544-298-2, para. 60, reprinted in _ Iran-U.S. C.T.R. at _.

has in no way abused his nationality. "Use" is not the same as "abuse." The Claimant's mere use of an Iranian identity card, even if he had not disclosed his second nationality, simply does not rise to the level of an "abuse of nationality" within the meaning of Saghi. The Respondent's argument to this effect is thus unavailing. In addition, the Tribunal finds no evidence that would support the Respondent's contentions that the claim should be barred on the basis of the theories of clean hands, estoppel, misrepresentation, good faith or state responsibility (see paras. 52-53, supra). The pertinent question in this Case is therefore whether the Claimant enjoyed a benefit reserved to sole Iranian nationals. Central to the Tribunal's inquiry is the question whether Iranian law did, in fact, restrict ownership of immovable property to sole Iranian nationals.

63. Of direct relevance in this regard is the Karubian Award,[16] as the facts regarding the caveat in that case were substantially similar to those in the present Case. Karubian involved a dual Iran-United States national living in the United States who purchased property after he had acquired American nationality -- that is, after he had become a dual national. Chamber Two of the Tribunal unanimously held that under Iranian law the right to purchase real estate, apart from certain limited exceptions, is a benefit reserved for sole Iranian nationals. It noted that the claimant had purchased all the properties at issue in his capacity as an Iranian national after acquiring United States nationality. The Tribunal therefore held that if it were to allow him to recover against the Respondent in those circumstances, it would be permitting an abuse of right. Consequently, it decided that the A18 caveat barred the claimant's recovery.

64. The Tribunal now turns to the present Case. As a

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[16] Award No. 569-419-2, reprinted in _ Iran-U.S. C.T.R. at _.

preliminary point, the Tribunal notes that the evidence provided by the Claimant in the present Case is not sufficient to establish that Iranian government officials encouraged him, as a dual national, to purchase immovable property in Iran. The evidence provided consists merely of the Claimant's own allegations, supported only by the affidavit of his brother, Gabriel Aryeh. Moreover, there is no indication whether the persons named in Gabriel Aryeh's affidavit were acting in their official capacities or implementing government policy. The Tribunal therefore cannot accept the Claimant's contention that the Respondent should be estopped from arguing that he illegally purchased real property in Iran as a dual national. See also Karubian, Award No. 569-419-2, para. 153, reprinted in _ Iran-U.S. C.T.R. at _.

65. The Tribunal now turns to the question whether the right to purchase and own immovable property in Iran is a benefit limited by Iranian law to sole Iranian nationals. The starting point for this inquiry is Article 988 and Article 989 of the Iranian Civil Code.

66. Article 988 of the Iranian Civil Code sets out the conditions under which Iranian nationals may renounce their nationality (in order, presumably, to acquire a new one). Most relevant for present purposes is subparagraph 3, which provides that a person seeking to renounce his or her Iranian nationality must undertake

> to transfer to Iranian nationals, by one means or another and within one year from the date of their renunciation of [Iranian] nationality, their rights to immovable properties in Iran which they possess or which they may acquire through inheritance, even if Iranian law permits foreign nationals to own them.[17]

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[17] English translations of Iranian legislation have been provided by the Tribunal's Language Services Division or the 1995 M.A.R. Taleghany translation of the Iranian Civil Code.

67. Iranian nationals who "acquire[] foreign nationality . . . without the observance of the provisions of law" fall within the scope of Article 989 of the Iranian Civil Code, which provides that the foreign nationality of such an individual "will be considered null and void and he will be regarded as an Iranian subject." Significantly, Article 989 further provides that "[n]evertheless, all his landed properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale."

68. The Respondent bases its caveat argument on these two Articles of the Iranian Civil Code, contending that they render the acquisition of ownership of real property by a dual national or the continued ownership of real property after the acquisition of a second nationality illegal under Iranian law. In addition, the Respondent points to several other pieces of Iranian legislation that allegedly show that dual nationality was inimical to Iranian law and that ownership of immovable property was restricted to sole Iranian nationals, with very limited exceptions for foreign nationals. Indeed, the Respondent suggests that Iranian nationals who acquired a second nationality had even fewer rights to own real estate in Iran than foreign nationals who do not have Iranian nationality.

69. The earliest piece of legislation relied on by the Respondent is the "Law of Nationality of Iran," which appears to be a decree issued by Naseruddin Shah Qajar in approximately 1896 and published in a booklet of laws dealing with nationality and passports in approximately 1908 (the "pre-1929 Decree").[18] In

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[18] The Respondent does not state clearly when this Decree was issued. Its date was erroneously said to be 1906 in Karubian, Award No. 569-419-2, at para. 157, reprinted in _ Iran-U.S. C.T.R. at __. Dr. Mohammad Mossadegh, a former Iranian Prime Minister, in his article "Nationality in Iran" (published in 1926-27) puts 1896 (1313 Islamic lunar year) as the date of the Decree. Two other sources date the Decree from 1894. See

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addition to setting out the criteria under which an Iranian national may acquire a foreign nationality, the Decree contains, inter alia, the following provisions:

> Section Nine: Change of Iranian nationality, in spite of compliance with the stipulated requirements, is still subject to the permission and decision of the King. If an Iranian national living abroad acquires foreign nationality without obtaining such permission, he or she shall be barred entry into Iran. If he or she owns real estate or other property in Iran, he or she shall be forced to give up such property.
>
> Section Twelve: Iranian women who lose their Iranian nationality on account of their marriage with foreign nationals shall, like other foreign nationals, be prohibited from owning villages and real estate in Iran, and shall be deprived of the privileges of Iranian nationality, except those privileges allowed under treaties.
>
> Section Fourteen: Those who came to Iran from foreign countries and during their residence in Iran concealed their nationality and were treated in all matters as Iranian nationals, or purchased real estate in Iran, which privilege is exclusively available to nationals of Iran, shall be treated as nationals of the State of Iran, and their claim to foreign nationality will not be accepted (emphasis added).

70. The status of this Decree at the time the claim in this Case arose is unclear, as subsequent laws and regulations also addressed the issue of foreign ownership of real property in Iran. Also relevant, though not conclusive, is that the Decree was issued before the transition from monarchy to parliamentary democracy in Iran in 1906, whereas subsequent legislative provisions were approved by the Iranian parliament, as required by Iran's 1906 Constitution. These facts would suggest that the

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[18](...continued)
A.H. Oakes and W. Maycock, eds., British and Foreign State Papers, 1893-1894 180-82 (1899); and R.W. Flournoy, Jr. and M.O. Hudson, eds. A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties 473 (1929).

pre-1929 Decree was no longer in force during the relevant period. Nevertheless, it also suggests that there was at one time in Iran a prohibition on foreign ownership of real property. An article entitled "Nationality in Iran" written by the former Iranian Prime Minister, Dr. Mossadegh, and published in 1926-27 suggests that these provisions were still in force at that time. See Ayandeh Magazine, second term 1305 (1926-27) at pp. 261-65.

71. The next piece of relevant legislation is the 7 September 1929 Law on Nationality, which appears to have incorporated many of the provisions of the pre-1929 Decree and thereby superseded the pre-1929 Decree. For instance, Article 14 of the Law on Nationality seems to supersede Section 9 of the pre-1929 Decree, stating that

> Any Iranian national who acquires foreign nationality without observing the legal requirements referred to above will have his foreign nationality considered null and void and will be regarded as an Iranian national. But at the same time, all his immovable properties will be sold under the supervision of the local public prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale.

Significantly, the references in Section 12 of the pre-1929 Decree to foreign nationals being "prohibited from owning villages and real estate" and in Section 14 to the "privilege" of purchasing real estate being "exclusively available to nationals of Iran" do not appear in the 1929 Law on Nationality. Instead, the language and provisions of the 1929 Act are substantially similar to Articles 988 and 989 of the Iranian Civil Code. The 1929 Act appears, indeed, to have been a forerunner of those provisions of the Civil Code, which date from 1935 and remained in force beyond 1979.

72. In further support of its argument, the Respondent points to the Foreign Nationals Immovable Properties Act of 6 June 1931, which provides for the forced sale of all farmlands in Iran owned

by foreign nationals. The provisions of this Law were reaffirmed by the 1955 Law Concerning the Attraction and Protection of Foreign Investments in Iran. The Respondent also points to 4 May 1938 Iranian Ministry of Justice Regulations for the Offices of the Notaries Public, which stipulate that before registering property in the name of a foreign national, Notaries Public were required to review his or her residence permit and obtain permission from the local Registry Department for drawing up the transaction deed. Significantly, the Regulations further state that "[i]t is prohibited to draw up and register deeds of transactions of immovable property by nationals of Iran who have renounced their Iranian nationality and who, according to law, do not have the right to purchase immovable property in Iran." The effect and scope of these Regulations is unclear. In any event, they appear not to be directly applicable to the present Claimant, in that they apply to nationals of Iran who have "renounced" their Iranian nationality -- presumably a reference to formal renunciation in accordance with Civil Code Article 988. It is undisputed that the Claimant never formally renounced his Iranian nationality, an act that, as seems evident from the terms of Article 988, involved the fulfillment of strict requirements.

73. Subsequent legislation includes the By-Law Concerning Landed Property Ownership by Foreign Nationals (of 26 November 1948), which set out detailed criteria under which a foreign national could obtain permission to own real property in Iran. Permission would only be granted if the real estate was intended to be residential or business property of the foreign national. In addition, the foreign applicant was obliged to undertake to transfer the property to an Iranian national (or other foreign national with permission to own real property in Iran) within six months after Iran ceased to be his or her permanent place of residence. The Respondent also argues the relevance of the Decree Concerning Landed Property Ownership by Foreign Nationals (approved on 25 September 1963), which enabled foreign nationals

without Iranian permanent residence permits, but who regularly made seasonal trips to Iran to tour and use resort areas, to buy immovable property for their personal use. In subsequent pleadings in the Hakim case,[19] the IRI contends that this Decree, which had been passed by the Council of Ministers, failed to obtain the approval of the Iranian parliament and thus never became law.

74. In addition, several provisions of the 1935 Iranian Civil Code (which was in force at the date the claim arose) contain references to foreign or dual national ownership of real property. For instance, Article 8 of the Civil Code states that "[i]mmovable properties that foreign nationals have acquired or may acquire under the terms of treaties shall in every respect be subject to the laws of Iran." Article 986 of the Civil Code (dealing with the renunciation of Iranian nationality by a naturalized Iranian woman) confirms the existence of limits on foreign ownership under Iranian law, referring to "the limits [within which] such rights are granted to foreign nationals" and "immovable property in excess of what is permissible for foreign nationals to own." See also Note 2 to Article 987 of the version of the Civil Code in effect in 1979, denying to Iranian women who acquire foreign nationality by marriage the right to own immovable property "other than what they owned at the time of marriage. This right, however, shall not be transferred to their foreign heirs." Most importantly, of course, Articles 988 and 989 of the Civil Code set out the conditions under which an Iranian national may renounce Iranian nationality or acquire a second nationality and the consequences thereof for ownership of immovable property, see paras. 66 and 67, supra.

75. After considering the foregoing legal provisions, the Tribunal concludes that the Respondent has been unable to point

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[19] Kamran Hakim and The Government of the Islamic Republic of Iran, Case No. 953 (Chamber 2).

to a comprehensive provision in Iranian law that contains an express prohibition on the ownership of real estate by foreign or dual nationals and that would therefore fully support its contentions. This fact is particularly significant in light of Article 961 of the Iranian Civil Code, which states that foreign nationals are entitled to the same civil rights as Iranian nationals except where the right is explicitly reserved by law to Iranian nationals or explicitly denied to foreign nationals (see para. 59, supra). Assuming that this provision applied to dual as well as to foreign nationals, the Tribunal finds it to be significant that the Respondent has not cited a provision containing an explicit denial or reservation of the right in question, such as seems to be intended by Article 961. The Tribunal notes in addition that the Respondent is best placed to identify and proffer evidence that might have more fully supported its contentions. Such evidence could have included more directly applicable legislation, accompanied by legal commentaries and case law, which would have been within its easy access and control. See Mohtadi, Award No. 573-271-3, para. 100, reprinted in _ Iran-U.S. C.T.R. at _.

76. What does emerge from the legislation produced by the Respondent, however, is that ownership of real property in Iran by foreign nationals was subject to a complex legal regime of limitations and conditions. These provisions suggest that ownership of land by foreign nationals was possible only for limited purposes and only upon the granting of the requisite permission by the relevant authorities. It further seems likely that ownership of farmland in Iran was restricted altogether to Iranian nationals. In sum, the foregoing legislation indicates that Iranian law was generally averse to the ownership of real estate by foreign nationals.

77. While the legal provisions surveyed above either contain or imply the existence of restrictions on foreign ownership, many

of the provisions relied upon by the Respondent are more clearly applicable to foreign nationals than to dual nationals. The most obvious exceptions are Articles 988 and 989 of the Iranian Civil Code, which, according to the Respondent, render the acquisition of real property by a dual national or the continued ownership of real property after the acquisition of a second nationality illegal under Iranian law.[20] Of particular relevance is Article 989, which, in pertinent part, reads as follows:

> In case any Iranian subject acquired foreign nationality after the solar year 1280 (1901-1902) without the observance of the provisions of law, his foreign nationality will be considered null and void and he will be regarded as an Iranian subject. Nevertheless, all his landed properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him after the deduction of the expenses of the sale. . . .

78. Article 989 is directly intended to cover the situation of an Iranian national who acquires a second nationality without observing certain provisions of law not specified in that Article. On its face, this clearly describes the situation of

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[20] Article 988, in relevant part, reads as follows:

> Iranian nationals cannot abandon their nationality except on the following conditions:
> 1. That they have reached the full age of 25;
> 2. That the Council of Ministers has allowed their renunciation of their Iranian nationality;
> 3. That they have previously undertaken to transfer, by some means or other, to Iranian nationals, within one year from the date of the renunciation of their Iranian nationality, all the rights that they possess on landed properties in Iran or which they may acquire by inheritance even if Iranian laws permits their ownership by foreign nationals. . . .
> 4. That they have completed their military service.

the Claimant in the present Case. While Iranian law apparently chooses to disregard the second (non-Iranian) nationality for the purposes of domestic law ("his foreign nationality will be considered null and void and he will be regarded as an Iranian subject"), it attaches a consequence to the acquisition of this second nationality, namely that a dual national's real property "will be sold under the supervision of the local Public Prosecutor." In addition to the fact that Article 989 is applicable to a dual national such as the Claimant, it is uncontested that this provision was in force at the date the claim arose. The Tribunal therefore concludes that the provisions of Article 989 -- rather than other legislation discussed by the Respondent -- are central to determining the rights and duties of the Claimant in this context.

79. The Claimant is a dual Iran-United States national with dominant and effective United States nationality, see para. 16, supra. The Claimant's current claim for compensation for the alleged expropriation of his immovable properties is brought in his capacity as a United States national. As envisaged by the Case No. A18 caveat, therefore, the Claimant's other nationality may remain relevant to the merits of the Case. As discussed above, the Tribunal has concluded that under Iranian law, the right to purchase real property in Iran was severely limited and restricted for non-Iranian nationals. In addition, the right of an Iranian national to retain real property in Iran after the acquisition of a second nationality was circumscribed by Article 989 of the Civil Code. The Claimant in this Case purchased the properties that are the subject of his claim in his capacity as an Iranian national -- after he had acquired United States nationality. Indeed, the Claimant himself acknowledges that the properties were purchased in his name using his Iranian identity card. While the Claimant's actions do not rise to the level of an abuse of nationality, see para. 62, supra, the complex legal regime of limitations and conditions on dual national ownership

of land leads the Tribunal to conclude that this is a case in which the caveat in Case No. A18 should be applied. See Karubian, Award No. 569-419-2, para. 161 reprinted in _ Iran-U.S. C.T.R. at _.

80. The Tribunal turns now to the impact of the caveat on this otherwise meritorious claim. In this regard, as noted in para. 78, supra, the Tribunal considers that the most relevant provision in the current context is Article 989 of the Iranian Civil Code, because it was clearly intended to cover the situation of an Iranian national who acquires a second nationality without renouncing his or her Iranian nationality, i.e., a dual national like the present Claimant. Moreover, it is the only piece of legislation made available by the Respondent that both deals with the rights of dual national owners of Iranian real property and that was indisputably in force at the time the claim arose.

81. It is clear that Article 989 contemplates the sale by public authority of the real property owned by an Iranian who acquires a second nationality (and thereby becomes a dual national in terms of international law). However, it is equally clear that the Iranian legislature did not envisage a result that would deprive a dual national landowner of ownership of his or her land without compensation. On the contrary, the second part of Article 989 explicitly provides for payment to a dual national former landowner of the proceeds arising from a forced sale of his or her property by the public prosecutor. This provision indicates unambiguously that irrespective of any alleged unlawfulness in owning immovable property, a dual national does not lose any rights to the monetary proceeds from the sale of such property.

82. To be sure, the literal terms of Article 989 refer only to the situation in which a dual national owns property at the time

he or she acquires the second (non-Iranian) nationality. Here the Claimant purchased the property in question *after* becoming a United States national. There is, however, no piece of Iranian legislation that has been brought to the Tribunal's attention that directly addresses the question of property acquired after an Iranian obtains a second nationality. Given this seeming gap in the law and given the fact that Article 989 most closely addresses the present situation, the Tribunal considers Article 989 to be the piece of Iranian legislation most relevant to the present Case.

83. Moreover, ignoring the compensation mechanism of Article 989 so as to bar the claim altogether or interpreting Article 989 as itself barring compensation to an Iranian who purchases property after acquisition of a second nationality would be incompatible with the basic law of Iran at the relevant time. Article 15 of the 1907 Supplementary Constitution, which continued in force at the time of the expropriation in May 1979, states, "[n]o one may be dispossessed of his property, except in cases authorized by religious law, and then only after the fair value (of such property) has been determined and paid." Thus, even to the extent that one ignores the mandatory compensation envisaged in Article 989 or reads Article 989 itself as a prohibition on the purchase of property after the acquisition of a second nationality, no provision of Iranian law (whether Article 989 or otherwise) can be interpreted as permitting an uncompensated taking of property, since such a reading would clash with the unambiguous language of the Constitution.

84. Since Iranian law itself -- that is, both Article 989 of the Civil Code and Article 15 of the 1907 Supplementary Constitution -- guarantees recompense for the taking of property, applying the caveat in such a way as to deny compensation completely cannot be justified. The caveat is essentially an equitable instrument, intended to remedy any bad faith use of nationality by a claimant

with dual nationality that might arise from the Tribunal's decision in Case No. A18. See Saghi, Award No. 544-298-2 at para. 54 (referring to the "equitable principle" expressed by the caveat). Under these circumstances, it would not be equitable to apply the caveat in a way that would place the Claimant in a worse position than Iranian law itself would have done under similar circumstances. Moreover, to do so under the rubric of a principle grounded in equity (the caveat) would not only work an injustice upon the Claimant but would also confer an unwarranted advantage upon the Respondent, which would be unjustly enriched thereby. On the other hand, it would also be unfair to award the Claimant the full market value of his property in the present situation since he would have received less than full compensation under Iranian law -- that is, Article 989 -- had he purchased the property before acquiring United States nationality.

85. Accordingly, the Tribunal concludes that, while the caveat in Case No. A18 is relevant to this Case, its application should result not in the barring of the entire claim, but in the applying of a discount to the market value of the property. This discount reflects the reduced price the property would raise in a forced sale such as that envisaged in Article 989 of the Iranian Civil Code, as well as the expenses attendant upon such a sale.

86. In light of the fact that the pleadings do not address this point, the Tribunal must rely on its discretion to quantify a discount that is "reasonable and equitable taking into account all the circumstances in this Case." Seismograph Service Corporation, et al. and National Iranian Oil Company, et al., Award No. 420-443-3 (31 March 1989), reprinted in 22 Iran-U.S. C.T.R. 3, 80 ("Seismograph"). See also Mohtadi, Award No. 573-271-3 (2 December 1996), para. 101, reprinted in _ Iran-U.S. C.T.R. at _. In determining the price an owner would obtain when

his or her property is "sold under the supervision of the Public Prosecutor," the Tribunal is obviously hampered by the fact that the Respondent has provided no evidence of any supervised sales pursuant to Article 989 in this or any similar case. See Respondent's Rebuttal Memorial Brief on the Issue of Caveat in Case No. A18, at p. 35 ("In none of the cases pending before the Tribunal has Iran sold a dual national's real estate in implementation of" Article 989.). Nonetheless, taking into account general principles of commercial practice, the Tribunal concludes that the average difference between the full market value of a property and the price obtained for that property in a forced or judicial sale ranges between 10% and 15%. In addition, Article 989 provides that compensation paid to a dual national former landowner should be comprised of the proceeds from a forced sale "after the deduction of the expenses of the sale." The costs associated with such a sale would, on average, reduce the amount of compensation by a further 10% to 15%. Accordingly, in order to approximate most closely the effects of an application of Article 989 of the Iranian Civil Code, the Tribunal concludes that a discount of 25% should be applied to the value of the property.

V. VALUATION

87. The Claimant submits a valuation report by Mr. Manoochehr Vahman, who was an Authorized Assessor and licensed surveyor for the Iranian Ministry of Justice and several large Iranian financial institutions from 1968 to 1981, including Bank Rahni, then the largest mortgage bank in Iran, where he acted as an appraiser. He allegedly has extensive experience in appraisal of real property, surveying and architectural design.

88. Mr. Vahman's valuation is based on property values in late 1979 and early 1980. He claims to be familiar with the general

location of the properties, to have examined official government listings of regional property prices for Tehran and the vicinity published just before the Revolution, and to have consulted unnamed colleagues in Iran. He estimates the total value of the property in Vardavard to be 69,970,600 Rials ($992,842.85)[21] and the property in Tehran to be Rials 7,200,000 ($102,163.88). The total claimed is therefore $1,095,006.73. These figures are based on an estimate of 1,400 Rials per square meter for the Karaj properties and 16,000 Rials per square meter for the property in Tehran.[22]

89. In response to the Claimant's valuation report, the Respondent contends that in the course of and after the Revolution the price of real estate in Iran fell sharply because of: people leaving Iran and putting their property on the market; legislation canceling the ownership of mavat[23] land; and the relaxing of regulations governing construction permits. The Respondent further argues that the value of the Claimant's expert's opinion is diminished because he was not in Iran at the alleged date of expropriation; he had not personally inspected the property; and the Claimant (as an interested person) is not reliable as a source of information on the properties.

90. In addition, the Respondent submits an expert opinion by Mr. Kamal Majedi Ardakani, who was employed by the National Organization for the Registration of Documents and Real Property

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[21] The exchange rate used is 70.475 Rials to one U.S.Dollar, taken from the International Monetary Fund Supplement on Exchange Rates for May 1979, the date of the taking.

[22] After correction for computational and other errors, using Mr. Vahman's own estimates in Rials per square meter, the figure for the property in Vardavard becomes $1,052,438.45, yielding a total (for the Vardavard and Tehran properties) of $1,154,602.33.

[23] Mavat land is land that is undeveloped and that has no prior record of development.

from 1961 to 1993 as a topographical engineer and assessor. At the date his affidavit was given, he had been an authorized expert licensed by the Iranian Ministry of Justice for 18 years. Mr. Ardakani contends that he has reviewed the records submitted by the Claimant and inspected the property. He values 13 of the properties in Vardavard at 150 Rials per square meter, which, converted at the 1979 exchange rate of 70.475 Rials to one dollar, results in an assessment of approximately $90,057.13. He values the Tehran property at 6,000 Rials per square meter which, converted at the same exchange rate, results in an assessment of $38,311.46. His total valuation (excluding several of the plots in Vardavard) therefore comes to approximately $128,369.[24]

91. In response to the Ardakani valuation report, the Claimant submits a second report by his own expert, Mr. Vahman, who contends that Mr. Ardakani's valuations are so low as to be "unrealistic and absurd." Mr. Vahman defends his qualifications and states that he was in Iran at the time of the expropriation. He contends that he fully allowed for the depressed real estate market in the 1979-1980 post-revolutionary period, and notes that the valuation of all these properties in 1977 and 1978 was approximately 30% higher than the values he reported for 1979. He contends further that Mr. Ardakani's qualifications suggest that, while he has experience in matters such as surveying, he has very little experience in the appraisal of property values.

92. In further response, the Respondent submits a second valuation report by Mr. Ardakani, in which he defends his qualifications, criticizes Mr. Vahman's expertise and contends

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[24] After correction for computational and other errors, and including the Karaj plots not included in the valuation (using Mr. Ardakani's own estimate of 150 Rials per square meter), the figure for the properties in Vardavard becomes 7,946,850 Rials [$112,762], yielding a total (for both the Vardavard and Tehran properties) of $151,073.46.

that the Claimant's land was not located within the city boundaries and therefore was not in a choice location and that land prices declined far more sharply in 1978 and 1979 than the Claimant contends.

93. Neither valuation expert was present at the Hearing. The Claimant's counsel contended that Mr. Vahman "has used the services of colleagues in Iran whose work he has known and observed over a considerable period of time. These colleagues inspected the properties and reported to Mr. Vahman on the conditions of the properties, and market situation in the first part of '79."

94. Also at the Hearing, the Respondent reiterated that the Claimant's evidence was not "valid" as Mr. Vahman had not visited the property and the only sources for his valuation come from the deeds and what the Claimant provided: "as stated by the witness himself, he left Iran and naturally he was not in the current of the changes and the fluctuations of the price of real estate in Iran." Other "fundamental problems" with his report include allegedly not taking into account property sold by those wanting to leave Iran, and the fact that much land was distributed by the government at that time. The Respondent contended further that the plots in Karaj were agricultural rather than residential, because the Municipality of Karaj allegedly had not issued any building permits for the land in the years before the alleged taking, giving the land a correspondingly lower value.

95. In sum, then, while there is no apparent dispute that the Vardavard properties covered an area of 52,979 square meters and the Tehran property 450 square meters, the Parties' estimates of the value of the properties per square meter diverge widely. The Claimant's expert values the Vardavard property at 1,400 Rials per square meter, whereas the Respondent's expert values the same land at 150 Rials per square meter. Similarly, the Claimant's

expert values the Tehran property at 16,000 Rials per square meter, whereas the Respondent's expert values that property at 6,000 Rials per square meter. Expressed differently, the Respondent values the Karaj properties at approximately one-tenth of the Claimant's estimate and the Tehran property at roughly one-third of the Claimant's estimate. The Tribunal therefore turns to the respective qualifications of the Parties' expert witnesses.

96. The Tribunal notes first that the Claimant's expert witness, Mr. Vahman, is qualified in architecture and has extensive experience in surveying and appraising property in Iran: in his career he had "[a]ppraised over seven thousand apartment buildings, houses, lots and other properties" and had "[r]eviewed an additional four-hundred cases (including commercial, agricultural and industrial properties as well as undeveloped lands) for various government ministries." In addition, he lived in Iran until 1980 and was therefore in the country at the time of the taking in May 1979.

97. Mr. Ardakani, on the other hand, is qualified in topographical engineering. He also gave evidence for the Respondent in the Mohtadi case and in that Award, the Tribunal noted that although he had occupied two positions in Iranian government offices dealing with land transactions, it was unclear whether he had ever assessed property values in either of those two functions, and that he had admitted never to have been a property broker and never to have appraised property for tax or insurance purposes. Mohtadi, Award No. 573-271-3, para. 96, reprinted in __ Iran-U.S. C.T.R. at __.

98. The Tribunal turns now to the content of the experts' opinions, noting first that Mr. Vahman's valuation appears to be thorough in that he has taken into account such factors as location, zoning, available utilities, public transport and the

existence of buildings or other improvements on the properties. Nevertheless, the extreme brevity of his reports and the fact that he did not personally visit the properties diminish the persuasiveness of his evidence.

99. As to Mr. Ardakani's valuation, the Tribunal notes that it appears to be based on the assumption that the properties in question formed part of the residential housing market, whereas instead the Vardavard property was zoned for commercial and industrial purposes. While the Parties agree that most land prices decreased during and after the Revolution -- Mr. Vahman claims to have reduced his values by at least 30% to take this factor into account -- there is not necessarily a strict correlation between a decline in housing prices and a decline in land zoned for commercial and industrial purposes. For the same reason, the importance Mr. Ardakani attached to the impact on the Vardavard properties of legislation dealing with mavat [undeveloped] land seems to be misplaced. In addition, it is also quite unclear whether reform of the law on mavat land would have had a noticeable impact on urban land situated within Tehran itself, such as the Tehran property.

100. The title deeds submitted by the Claimant provide very little guidance on the question of valuation. According to the deeds, the Claimant paid 1,500,000 Rials "together with other lands" for 9 plots in Vardavard in 1969 and 1970; 1,000,000 Rials for one plot "with other lands" at an unknown date; 3,500,000 Rials "with other lands" for two plots in 1969; 3,012,000 "with other lands" for one plot in 1969; 312,000 Rials for another plot in 1969; and 1,500,000 Rials for the remaining plot in 1977. From the records before the Tribunal it is entirely unclear in most instances what amount was paid for each plot, or which plots were purchased together. It is also uncertain whether the figures on the title deeds would, in any event, reflect the actual amounts paid. The amount in the deed for the Tehran

property is 225,000 Rials (or approximately U.S.$3,194). Again, it is unclear whether this figure accurately reflects the actual purchase price; even adjusting for the effects of inflation and increases in the value of real property, U.S.$3,194 does not appear to be a realistic figure for such a plot within Tehran. Moreover, the Respondent itself does not argue that the property was worth such a minuscule amount in 1979.

101. Given the deficiencies and evident inconclusiveness in the Parties' valuation evidence, the Tribunal must to some extent rely on its discretion to assign a value to the properties that is "reasonable and equitable taking into account all the circumstances in this Case." Mohtadi, Award No. 573-271-3, para. 101, reprinted in _ Iran-U.S. C.T.R. at _ (quoting Seismograph, Award No. 420-442-3, reprinted in 22 Iran-U.S. C.T.R. 3, 80). See also Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 314-24-1 (14 August 1987), reprinted in 16, Iran-U.S. C.T.R. 112, 221. The Tribunal notes, however, that the Respondent's valuation expert appears to be somewhat less appropriately qualified for the task at hand. In addition, he has omitted to provide documentation supporting his contentions regarding comparable land values, despite his acknowledged access to such documents. In fact, he states that

> [t]he standard of evaluation of Claimant's property . . . was as follows: If a similar transaction had taken place precisely or approximately concurrent with the relevant date (the date on which expropriation of property has been alleged), that price has constituted the basis of evaluation. If not, the price of the last transaction made on the relevant date, taking into account the events of the revolution affecting the property price, constituted the basis of evaluation.

In this regard, the Tribunal notes that "the Respondent could have remedied any deficiencies in its valuation evidence without

difficulty. Documents within the control and access of the Respondent -- such as government statistics, tax records and registration records of sales of comparable properties in 1979 -- would have been relatively easy for the Respondent to procure." Mohtadi, Award No. 573-271-3, para. 100, reprinted in _ Iran-U.S. C.T.R. _.

102. In light of the foregoing factors, the Tribunal concludes that a fair and reasonable assessment of the value of the properties in May 1979 would be 840 Rials per square meter for the Vardavard properties and 9,600 Rials per square meter for the property in Tehran. Over a total area of 52,979 square meters for the Vardavard properties, the figure of 840 Rials per square meter yields a result of 44,502,360 Rials or U.S.$631,463.00. For the 450 square meter property in Tehran, the figure of 9,600 Rials per square meter yields a result of 4,320,000 Rials or U.S.$61,298.00. The total value for all the properties at issue is therefore U.S.$692,761.00.

103. As noted in para. 86, supra, the Tribunal will apply a discount of 25% to the amount of U.S.$692,761.00, in order to give effect to its ruling on the caveat in Case No. A18. Consequently, the Tribunal concludes that the Claimant should be compensated in the amount of U.S.$519,571.00 for expropriation of his properties in Vardavard, Karaj and Tehran.

VI. COSTS

104. Considering the outcome of the Award, the Tribunal, applying the criteria outlined in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (217 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 323-24, decides to award the Claimant U.S.$15,000.00 in costs of arbitration.

VII. AWARD

105. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent, the Islamic Republic of Iran, is obligated to pay the Claimant, Moussa Aryeh, the amount of Five Hundred Nineteen Thousand Five Hundred Seventy-One United States Dollars and No Cents U.S.$519,571.00 plus simple interest at the rate of 8.1% per annum (365-day basis), calculated from 14 May 1979 up to and including the day on which the Escrow Agent instructs the Depositary Bank to effect payment to the Claimant out of the Security Account;

(b) The Respondent is obligated to pay the Claimant costs of arbitration in the amount of Fifteen Thousand United States Dollars and No Cents (U.S.$15,000.00.);

(c) The above-stated obligations shall be satisfied by payment out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

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

Dated, The Hague
25 September 1997

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God

Richard C. Allison

Mohsen Aghahosseini
Dissenting Opinion