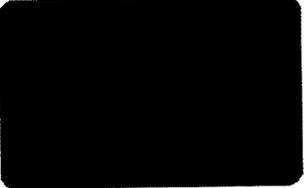


ORIGINAL DOCUMENTS IN SAFE



Case No. 322-132

Date of filing: 23 July '91

** AWARD - Type of Award Final
- Date of Award 23 July '91
21 pages in English 23 pages in Farsi

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

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

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

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

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعوى ایران - ایالات متحده



CASE NO. 322

CHAMBER ONE

AWARD NO. 516-322-1

VERNIE RODNEY POINTON and
MARY LOU POINTON,

Claimants,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعوى ایران - ایالات متحده
FILED	ثبت شد
DATE	23 JUL 1991
	تاریخ ۱۳۷۰ / ۵ / ۱

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Claimant
Mrs. Mary Lou Pointon,
Claimant
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Mr. Karam Ali Kamayestani,
Legal Assistant to the Advisor

Also Present:

Ms. Lucy F. Reed,
Agent of the Government of the
United States of America
Mr. Michael F. Raboin,
Deputy Agent of the Government
of the United States of
America

TABLE OF CONTENTS

	<u>Page No.</u>
I. PROCEDURAL HISTORY.....	3
II. FACTS AND CONTENTIONS.....	7
III. REASONS FOR THE AWARD.....	14
1. Jurisdiction.....	14
2. Merits.....	15
2.1 Introduction.....	15
2.2 The Claim for Expropriation of the Claimants' Interests in MLETC, SIR and TIED.....	17
2.3 The Claim for Other Measures Affecting the Claimants' Property Rights in MLETC, SIR and TIED.....	19
3. Costs.....	20
IV. AWARD.....	21

I. PROCEDURAL HISTORY

1. On 15 January 1982, VERNIE RODNEY POINTON and MARY LOU POINTON ("the Claimants") filed a Statement of Claim against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran" or the "Respondent"). The Claimants seek compensation for the alleged expropriation of their interests in three Iranian corporations, Mary Lou English Training Center ("MLETC"), Services Iran, Incorporated ("SIR") and Tehran Iran Educational Dealer, Incorporated ("TIED"), and for other measures allegedly taken by the Respondent affecting their property rights in MLETC, SIR and TIED. In their Statement of Claim the Claimants also sought compensation based on breach of contracts and on the expropriation of their personal property. However, they withdrew the claim for breach of contracts during the Pre-Hearing Conference and the claim for personal property during the Hearing.

2. The Claimants have computed the amount of the damages they seek in two ways. First, they seek U.S.\$3,873,151,¹ which they assert is supported by inventories and other documents they have submitted, as partial compensation for the alleged expropriation and other measures affecting their property rights. Second, they seek payment of \$7,769,810.² This larger amount includes the above mentioned partial amount plus damages which, according to the Claimants, could be substantiated by documents within the possession or control of the Respondent.

¹All references to dollars in this Award are to United States dollars.

²In the Statement of Claim, the Claimants sought compensation in the total amount of \$15,674,248. Later, in the Restatement of Claim as well as in the Claimants' Response, they amended the relief sought to the amount mentioned above.

3. On 11 April 1983, Iran filed a Statement of Defence. Thereafter the Parties submitted further memorials and evidence pursuant to orders of the Tribunal. The Pre-Hearing Conference in this Case was held on 26 February 1986 and the Hearing on 13 March 1991.

4. On 17 April 1991, more than a month after the Hearing, the Claimants filed a submission requesting the Tribunal to reopen the Hearing pursuant to Article 29 of the Tribunal Rules. In it the Claimants stated that the testimony given by Mr. Behrooz Neirami as a witness in the Hearing should be further tested, particularly in light of the conflicting evidence in the record and the potential unreliability of the testimony. The Claimants then requested the Tribunal to appoint an expert to report on certain subjects specified by the Claimants, relevant to the contents of Mr. Neirami's testimony. In addition, the Claimants asserted that they had learned three days prior to the Hearing that Mr. Jack Buckamier, the Claimant in Case No. 941, had been a partner of Mr. Neirami in a business unrelated to this Case. After the Hearing the Claimants contacted Mr. Buckamier, who provided an affidavit which, according to the Claimants, corroborates some of their statements and calls into question the reliability of Mr. Neirami's testimony. Based on the foregoing the Claimants requested that Mr. Buckamier's affidavit be accepted into the record. Finally, the Claimants requested the Tribunal to "[g]rant such other relief as may be deemed appropriate".

5. On 23 April 1991 Iran filed a reply to the Claimants' submission in which it opposed the requests. Iran, while objecting to the Claimants' submission as an unauthorized and inadmissible filing, stated, inter alia, that the Claimants' request to appoint an expert was in fact a motion by a partner for gathering evidence against another partner rather than an issue related to the proceedings in this Case. Finally, Iran requested the Tribunal to reject the Claimants' new submission and to dismiss their request.

6. Before turning to the substantive issues of this Case, the Tribunal will consider whether to accept the Claimants' motion in light of Tribunal Rules and practice. To begin with, Article 29(2) of the Tribunal Rules provides:

The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

In previous awards the Tribunal has dealt with the issue of the reopening of hearings largely in connection with unauthorized post-hearing submissions. The Tribunal notes that it has usually refused to admit such submissions on the basis of fairness, orderliness, and possible prejudice to the other parties.³

³The issue of unauthorized post-hearing submissions was discussed in Harris International Telecommunications, Inc. and The Islamic Republic of Iran, et al., Award No. 323-409-1, para 67 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 49. See also Rexnord Inc. and The Islamic Republic of Iran, et al., Award No. 21-132-3, p. 6 (10 Jan. 1983), reprinted in 2 Iran-U.S. C.T.R. 6, 9; John Carl Warnecke and Associates and Bank Mellat, Award No. 72-124-3, pp. 2-3 (2 Sept. 1983), reprinted in 3 Iran-U.S. C.T.R. 256, 257; Dames and Moore and The Islamic Republic of Iran, et al., Award No. 97-54-3, p. 4 (20 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 212, 214; William L. Pereira Associates, Iran and The Islamic Republic of Iran, Award No. 116-1-3, pp. 3-4 (19 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 198, 200; Dames and Moore and The Islamic Republic of Iran, et al., Decision No. DEC 36-54-3, p. 15 (23 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 107, 115-116; Computer Sciences Corp. and The Government of the Islamic Republic of Iran, et al., Award No. 221-65-1, pp. 4-6 (16 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 269, 272-273; McCullough and Company, Inc. and Ministry of Post, Telephone and Telegraph, et al., Award No. 225-89-3, para. 6 (22 Apr. 1986), reprinted in 11 Iran-U.S. C.T.R. 3, 5; Cosmos Engineering, Inc. and Ministry of Roads and Transportation, Award No. 271-334-2, para. 29 (24 Nov. 1986), reprinted in 13 Iran-U.S. C.T.R. 179, 189-190.

7. The Tribunal now applies these principles to the requests made by the Claimants. First of all the Tribunal must point out that according to Article 24, paragraph 1 of the Tribunal Rules each party has the burden of proving the facts relied on to support his claim or defense, and that the Tribunal evaluates, as part of its judicial functions, the evidence furnished by the parties. The fact that evidence given by a witness who is presented by one party conflicts with the evidence produced by the other party does not, in itself, create the type of exceptional circumstances which would incline the Tribunal to appoint an expert to examine whether a witness has been truthful. With respect to the present Case, the Tribunal must consider whether the Claimants have met their burden of proving the alleged expropriation or other measures affecting their property rights. The Tribunal also notes that the Respondent has relied on the testimony by Mr. Neirami in its defense. Because in reaching its award in this Case the Tribunal, for the reasons stated below, does not deem it necessary to rely on the testimony presented by Mr. Neirami, there is no reason to determine his testimony's veracity and accuracy. Therefore, the request to appoint an expert is without merit and is denied.

8. As to the affidavit of Mr. Buckamier, the Tribunal is of the view that orderliness, fairness and possible prejudice to the Respondent in this Case require that the affidavit in question not be accepted. Even if the Tribunal were to take the affidavit into account it is evident that Mr. Buckamier has no direct knowledge of the alleged expropriation and other measures at issue in this Case, and that therefore his affidavit appears to have no relevance to the Tribunal's decision.

9. The remaining issue is whether there is any basis for granting "such other relief as may be deemed appropriate". Again, the Tribunal refers to Article 29, which provides that during the interval between the close of the Hearing

and the Award no hearings may be reopened unless the Tribunal "considers it necessary owing to exceptional circumstances". In light of the fact that the Claimants have not established any such circumstances, there is no need for the Tribunal to explore the possible grounds for reopening the Hearing. In light of the foregoing, the Claimants' motion is denied in its entirety.

II. FACTS AND CONTENTIONS

10. The Claimants state that they formed MLETC in 1973, SIR in 1974 and TIED in 1975, and that between them they owned two thirds of the shares of stock of each. All three corporations were organized under the laws of Iran. According to the Claimants MLETC was a multi-purpose training organization teaching Persian and English as foreign languages, SIR was a multi-purpose service organization, and TIED an educational equipment and supply company.

11. The Claimants assert that in August 1977 they left Iran for a short vacation in Europe. Prior to their departure they had moved out from their house and allegedly arranged a lease of a smaller house. They state that they planned to return to Tehran in three weeks but that during their vacation it became necessary for them to travel to the United States to obtain medical attention for Mr. Pointon. The Claimants contend that while staying in the United States they were advised not to return to Iran because of a possible danger to United States citizens.

12. The Claimants allege that MLETC, SIR and TIED had contracts with agencies and entities controlled by the Government of Iran.⁴ They contend that each of these

⁴According to the Claimants MLETC had contracts with
(Footnote Continued)

contracts was for a period of two years, and that most of the contracts, in all probability, would have been renewed for many years. Although, as mentioned above, the Claimants have withdrawn their claim based directly on the alleged breach of these contracts, they continue to assert the existence of the contracts and to maintain that they are relevant to the issue of damages suffered by them.

13. The Claimants state that MLETC was taken over by the Respondent pursuant to a law entitled "The Legal Bill Concerning the Management of Non-governmental Educational Units like Government's Units" approved on 21 February 1980 by the Revolutionary Council of the Islamic Republic of Iran. They assert that the Bill brought all private schools licensed by the Ministry of Education, as they allege MLETC was, under the control of the Ministry and made it illegal to operate private schools for profit.

14. As to SIR and TIED, the Claimants contend that they fall within the scope of a law entitled "The Legal Bill Concerning the Appointment of Provisional Director or Directors for Supervising Production, Industrial, Commercial, Agricultural and Service Units whether in Public or Private Sector" approved on 16 June 1979 by the Revolutionary Council of the Islamic Republic of Iran. This

(Footnote Continued)

various organizations including: the Iranian Navy Officer Candidate Students; Iranian Ministry of Foreign Affairs; Iranian Government Plan and Budget Organization; Iranian Armed Forces; Iranian Ministry of Mines and Iranian Copper Industries; Iranian Ministry of Economics; Iranian Ministry of Health, Iranian Government Hospital Organization; Iranian Electronic Development Center, Telephone Company of Iran; ISIRAN; Iranian Radio & Television Company; Iranian Ministry of Education, Vocational and Technical Department; Iranian Steel Industry and Iranian Machine Shop Industries Company. As to SIR and TIED, the Claimants state that SIR had contracts with the Telephone Company of Iran, Iranian Armed Forces and Iranian Ministry of Health, and TIED with the Iranian Air Force.

Bill, according to the Claimants, provided the legal basis for the Respondent's expropriation of SIR and TIED.

15. Further, the Claimants allege that MLETC, SIR and TIED were de facto expropriated in January/February 1979 when the headquarters of each, which were in the same building, was taken over by Revolutionary Guards. To support their contention the Claimants have produced a number of sworn and unsworn written statements.

16. The Claimants argue that they are entitled to full compensation for the alleged expropriation and other measures. They argue that the standard of full compensation is required by the Treaty of Amity.⁵ In addition, they point out that the same standard is also established by customary international law.

17. The Claimants argue that compensation should be based on the values of MLETC, SIR and TIED as going concerns, and that the fair market value of the shares of these corporations should be determined as of the date of the alleged expropriation. They contend that the partial inventories of the corporations, allegedly made for MLETC in 1976-1977 and reconstructed or prepared afterwards for SIR and TIED, approximate the net book value of the corporations. In addition, they have estimated the goodwill of each corporation and assumed that MLETC and SIR would have been profitable for seven years following the alleged expropriation. With respect to TIED, however, the Claimants are not claiming compensation for lost profits. Based upon this valuation, allegedly supported by documentary evidence, they claim the amount of \$3,873,151.

⁵Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 August 1955, entered into force, 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900.

18. However, the Claimants assert that they are entitled to a total of \$7,769,810 in damages, inclusive of \$3,873,151, and that the documents necessary to substantiate these additional amounts are in the possession of, or available to, the Respondent. The Claimants have several times during the proceedings requested the Respondent to produce, and the Tribunal to order the Respondent to produce, such documents. Although their original request was stated in a general fashion, in their later submissions they made a specific request that the Tribunal require the Respondent to produce particular tax returns, official corporate records, bank records, certain other corporate documents, and copies of any contracts with agencies of the Government of Iran. The Claimants urge that should the Respondent fail to provide the above mentioned documents the Tribunal should invoke the "adverse inference" rule and accept as true the allegations and evidence presented by the Claimants.

19. Iran argues that the Claim should be dismissed for lack of jurisdiction. First, it contends that the Claimants together held less than fifty percent of the stock of each of the three corporations, and that therefore they do not meet the ownership requirements of Article VII, paragraph 1 of the Claims Settlement Declaration. Iran has submitted a certificate from the General Department for Corporate Registration as well as corporate minutes and official notices stating that the Claimants together held 49% of the shares of MLETC, 46.6% of the shares of SIR, and 44.14% of the shares of TIED. Mr. Behrooz Neirami, a shareholder in MLETC and TIED, and Mr. A.M. Mirfakhrai, a shareholder in SIR, stated the same conclusions in their affidavits and when they appeared as witnesses in the Hearing.

20. Second, Iran states that it has neither expropriated the Claimants' equity interests nor taken any measures against their property rights. It is Iran's view therefore that the Claimants should assert any claims they have concerning MLETC, SIR and TIED against their partners and

shareholders before a forum other than this Tribunal. Furthermore, it argues that the Claimants' contentions, in connection with the alleged de facto expropriation, refer to the popular movements in the course of the Islamic Revolution in Iran. Such a claim, according to Iran, is excluded from the Tribunal's jurisdiction on the basis of paragraph 11 of the General Declaration and Article II, paragraph 1 of the Claims Settlement Declaration.

21. Concerning the merits, Iran initially states that the Claimants have incorrectly interpreted the relevant Bills approved by the Revolutionary Council. According to the Respondent the Bill entitled "The Legal Bill Concerning the Management of Non-governmental Educational Units like Government's Units", approved on 21 February 1980, does not apply to private language classes or institutes run by private persons or companies, such as MLETC. The definition of a non-governmental educational institution is provided in Note 2 of a separate Bill entitled "The Legal Bill Concerning the Employment Status of Non-permanent Employees of Non-governmental Educational Institutions", approved on 14 June 1980. According to this definition a non-governmental educational institution specifically means an educational institution which functions under permission and formal licence granted by the Ministry of Education, which conducts the approved daily programmes, and which is managed in accordance with the Ministry's by-laws. Iran has submitted the texts of these two Bills and notes relating to them. Iran also has submitted a certificate from the Ministry of Education to the effect that MLETC has not been covered by this Bill, and that the Ministry has not had any interference in the affairs of that corporation. Moreover, Mr. Gholamreza Arefnassab, Director General of the Education Department in the Ministry of Education, has stated in an affidavit that MLETC was not subject to the above mentioned Bill, and that the Ministry of Education has not intervened in its affairs.

22. Similarly, with respect to SIR and TIED Iran states that they were not covered by "The Legal Bill Concerning the Appointment of Provisional Director or Directors for Supervising Production, Industrial, Commercial, Agricultural and Service Units whether in Public or Private Sector". Iran argues that SIR and TIED were not engaged in activities within the subject matter of this Legal Bill, and that therefore supervision by the Government would not have been called for. It also states that SIR and TIED had been practically non-operational since the Claimants' departure from Iran, and that Mr. Mirfakhrai, a director of SIR, and Mr. Neirami, the managing director of TIED, were present in Iran, so that there would have been no need to appoint provisional managers even if the companies were to fall within the scope of the Bill. Moreover, Iran contends that none of the managers or shareholders of SIR or TIED requested any government organization to appoint directors for them. In addition, Mr. Mirfakhrai and Mr. Neirami as witnesses at the Hearing stated that the Government had not intervened in the management of SIR, TIED or MLETC.

23. Iran denies the alleged de facto expropriation as well. It asserts that the Revolutionary Guards had not been established at the time the Claimants allege the takeover of the building housing MLETC, SIR, and TIED took place, and that the Claimants have not produced any acceptable and logical evidence to substantiate the attributability of the alleged acts to Iran. Likewise, Iran denies any responsibility with regard to the alleged properties of the three corporations and states that it did not interfere in the affairs of the corporations.

24. Furthermore, Iran asserts that the three corporations were not profitable. To support this assertion, it has submitted photocopies of correspondence between Mr. Pointon and his business associates in Iran. According to Iran this correspondence suggests that the Claimants' disappointment with their business activities was the principal reason that

they left Iran in the summer of 1977 and never returned. In this respect, Iran refers to the fact that the Claimants prior to their departure from Iran evacuated their house and delivered it to Mr. Zandi, their landlord. In addition, Iran states that the Claimants also sold all of their personal household goods to Mr. Zandi to pay the amounts owed to him for outstanding debts and rentals. Moreover, Iran has submitted affidavits and presented testimony at the Hearing which indicate that MLETC, SIR and TIED were no longer functioning at the time the alleged expropriation took place, and that the building which the Claimants assert was taken over by Revolutionary Guards had been vacated by that time. Iran also presented testimony and evidence demonstrating that the three corporations are still de jure in existence as shown by the registry of corporations.

25. In response to the Claimants' request for production of documents and to the Tribunal's Order which requested the Respondent to inform the Tribunal whether it was willing and able to supply the documents, Iran has denied that it had any of the materials in its possession. It has submitted thirteen replies from government organizations concerning the Claimants' request. Iran states that only two of these organizations, the Telecommunication Company of Iran and the Iranian Copper Industries Company, had entered into a contract with MLETC. These contracts, however, had been terminated, the former as from 4 April 1977 and the latter as from 24 January 1976. Iran explains that certain information on the status of MLETC, SIR, and TIED that it presented in this Case it obtained from the Claimants' Iranian partners.

III. REASONS FOR THE AWARD

1. Jurisdiction

26. The Tribunal is satisfied that the Claimants are United States citizens by birth, as evidenced by the photocopies of their birth certificates and passports.

27. Iran argues that the Claimants together held less than fifty percent of the stock of each of the three corporations, and therefore do not meet the ownership requirements of Article VII, paragraph 1 of the Claims Settlement Declaration. The Tribunal is mindful of this paragraph's requirements concerning the holding of an interest in a corporation equivalent to fifty percent or more of its capital stock. The Tribunal observes that the Claimants were originally claiming for breach of such contracts which were allegedly concluded by MLETC, SIR and TIED, and not by the Claimants. However, when the Claimants withdrew this claim, Iran's argument became inapplicable, because in their remaining claims the Claimants are seeking compensation as United States citizens for expropriation and other measures affecting their property rights. Thus, their percentage of ownership in the corporations does not have any impact on the issue of jurisdiction.

28. The Respondent also argues that the Government of Iran has neither expropriated nor taken any measures against the Claimants' property rights. In addition, Iran contends that the claim, as far as the de facto expropriation in this Case is concerned, is excluded by operation of paragraph 11 of the General Declaration and of Article II, paragraph 1 of the Claims Settlement Declaration, which provide that the Tribunal has no jurisdiction over claims arising out of the events of "popular movements". The Tribunal holds that these remaining arguments form part of the merits of this Case. For example, with regard to Iran's argument relating to the acts of popular movements, the Tribunal notes that

the Claimants have specifically alleged that the acts are attributable to Iran.⁶ Since the Tribunal cannot divorce Iran's arguments from the merits, these arguments will not be considered at this stage.⁷

29. Consequently, the Tribunal is satisfied that it has jurisdiction over the claims.

2. Merits

2.1 Introduction

30. In order to meet their burden of proof the Claimants must establish two distinct elements; first, that they had ownership interests or other property rights in MLETC, SIR

⁶The Tribunal has rejected similar objections in Kenneth P. Yeager and The Islamic Republic of Iran, Award No. 324-10199-1, para. 33 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 92, 100-101, and Alfred L.W. Short and The Islamic Republic of Iran, Award No. 312-11135-3, para 12. (14 July 1987), reprinted in 16 Iran-U.S. C.T.R. 76, 79.

⁷To deny the jurisdiction on these grounds would amount to endorsing a fin de non-recevoir, that is, in the words of the Permanent Court of International Justice, a "ground[] of defence based on the Merits of the case and calculated to cause the judge to refuse to entertain the application[.]" Case Concerning Certain German Interests in Polish Upper Silesia (Ger. v. Pol.), [1925] P.C.I.J. (ser. A) No. 6, p. 19 (Judgment on Jurisdiction of 25 Aug.). See also id. pp. 15-16; The Electricity Company of Sofia and Bulgaria (Belg. v. Bulg.) [1939] P.C.I.J. (ser. A/B) No. 77, pp. 77-78 (Judgment on Jurisdiction of 4 Apr.) (noting that "the argument ratione materiae ... developed and used [by the Applicant] in support of the preliminary objection to the jurisdiction forms a part of the actual merits of the dispute," and that "[t]he Court cannot therefore regard this plea as possessing the character of a preliminary objection") See also id. pp. 82-83. See, e.g., Lilly Mythra Fallah Lawrence and The Islamic Republic of Iran, Interlocutory Award No. ITL 77-390/391/392-1, para. 12 (5 Oct. 1990), reprinted in ___ Iran-U.S. C.T.R. ___. See also Albert Berookhim, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 499-269-1, para. 17 (27 Dec. 1990), reprinted in ___ Iran-U.S. C.T.R. ___.

and TIED and, second, that an expropriation or other measure affecting their property rights, attributable to Iran, took place.

31. The Tribunal notes that while there is a dispute concerning the exact number of shares owned by the Claimants, there is no dispute that the Claimants together owned at least 49% of the shares in MLETC, 46% in SIR, and 44.14% in TIED. However, in view of the conclusions reached in this Award, the Tribunal need not determine the precise amount of share ownership or other property rights owned by the Claimants. Thus, the Tribunal finds that since there is no dispute that the Claimants own some shares in each of the three companies they meet the requirements of the first element.

32. Turning to the second element, the Tribunal observes that the Claimants are alleging that they are entitled to compensation on the basis of expropriation and de facto expropriation, and also on the basis of "other measures" attributable to the Respondent. The Claimants, however, have not clearly articulated what is meant by these "other measures". Considering the arguments presented by the Claimants in their memorials and at the Hearing, and the evidence they have submitted, the Tribunal will first examine whether MLETC, SIR, or TIED were expropriated by either of the Legal Bills mentioned by the Claimants. The Tribunal will then consider the Claim based on "other measures" by exploring whether the Claimants have proven the occurrence of any actions by the Respondent amounting to a de facto expropriation or to other measures affecting property rights.⁸

⁸The Tribunal stated in Harza Engineering Company and The Islamic Republic of Iran, Award No. 19-98-2, p. 9 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 504:
"a taking of property may occur under international law,
(Footnote Continued)

2.2 The Claim for Expropriation of the Claimants' Interests in MLETC, SIR and TIED

33. The Claimants contend that MLETC was expropriated by "The Legal Bill Concerning the Management of Non-governmental Educational Units like Government's Units". After considering the contents of this Bill and the official notes which are a part of that law the Tribunal recognizes that the Bill was only applicable to units or institutions that functioned pursuant to a formal licence granted by the Ministry of Education. The Claimants have failed to produce persuasive evidence that MLETC was licensed by the Ministry of Education and was managed in accordance with the Ministry's by-laws, and that it conducted the approved daily curriculums. Moreover, they have produced no other evidence relating to the alleged application of the Bill. Therefore, the Tribunal concludes that the Claim based on expropriation of the Claimants' shares in MLETC pursuant to the Legal Bill must be dismissed.

34. The Tribunal will now turn to the Claimants' argument relating to the alleged expropriation of SIR and TIED by virtue of "The Legal Bill Concerning the Appointment of Provisional Director or Directors for Supervising Production, Industrial, Commercial, Agricultural and Service Units Whether in Public or Private Sector".⁹ In the Tribunal's practice the appointment of government managers has been regarded as a significant factor in finding a

(Footnote Continued)

even in the absence of a formal nationalization or expropriation, if a government has interfered unreasonably with the use of property". See also Tippets, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2, p. 11 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225-226.

⁹The Bill was issued on 16 June 1979 as Decree No. 6738 by the Prime Minister of the Provisional Government of the Islamic Republic of Iran. It was published in the Official Gazette on 8 July 1979 as Law No. 7/2571 of 19 June 1979.

taking.¹⁰ On the other hand, it should be noted that the appointment of such managers has not, in certain cases, been found to constitute a taking.¹¹ But, in this Case the preliminary question, of course, is whether a government manager was appointed pursuant to the Bill.

35. Initially, the Tribunal notes that there is no evidence in the record showing the appointment of government managers for SIR and TIED. In addition, considering the nature of the activities of SIR and TIED the Tribunal believes it doubtful that the law was applicable to these companies, or that either company was active at the time the Legal Bill was enacted. Consequently, the claims relating to SIR and TIED are dismissed for lack of evidence.

¹⁰See Starret Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 32-24-1, p. 52 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 154; Tippets, Abbett, McCarthy, Stratton, supra, pp. 9-12, 6 Iran-U.S. C.T.R. at 224-226; SEDCO, Inc., et al. and National Iranian Oil Company et al., Interlocutory Award No. ITL 55-129-3, p. 39 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 277-278; Phelps Dodge Corp., et al. and The Islamic Republic of Iran, Award No. 217-99-2, paras. 19-22 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 128-130; Thomas Earl Payne and The Government of the Islamic Republic of Iran, Award No. 245-335-2, para. 24 (8 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 11.

¹¹For example in Otis Elevator Company and The Islamic Republic of Iran, et al., Award No. 304-284-2, para. 40 (29 April 1987), reprinted in 14 Iran-U.S. C.T.R. 283, 297 the Tribunal pointed out that there were "two important elements which, when considered with the unusual factual background to this Case, distinguish it from previous decisions of the Tribunal". Those elements were that the evidence suggested that a director of the company involved invited an Iranian government agency to appoint a government supervisor for the company, and that there was no persuasive evidence that the government supervisor assumed control of the company. Id., paras. 40-44, 14 Iran-U.S. C.T.R. at 297-298. See also Motorola, Inc. and Iran National Airlines Corporation, et al., Award No. 373-481-3, para. 59 (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 73, 85-86.

2.3 The Claim for Other Measures Affecting the Claimants' Property Rights in MLETC, SIR and TIED

36. The Claimants have produced five sworn statements, one unsworn statement and one handwritten statement which they contend demonstrate the de facto expropriation of the headquarters of MLETC, SIR and TIED. The Tribunal notes that two of these statements are made by unidentified persons, and therefore they lack any evidentiary value. In addition, the Tribunal observes that the remaining statements are relatively short, and do not include any information about the persons giving the statements. Although these individuals have asserted that they personally witnessed occasions when Revolutionary Guards went in and out of the building which housed MLETC, SIR, and TIED, there is no clear indication of the length or extent of the Revolutionary Guards' activities. Nor have they provided any other information, except for the conclusion that the building was "occupied", about any other measures taken by the Revolutionary Guards affecting MLETC, SIR and TIED. Thus, even if the factual contentions of these statements are accepted as true, they do not lead to any firm conclusion. Indeed, the fact that someone has observed Revolutionary Guards going in and out of the corporation's headquarters does not, in itself, amount to a de facto expropriation, or to any other measure affecting property rights.

37. As previously pointed out, the Claimants state that they have submitted documentary evidence to support their entitlement to compensation in a partial amount of \$3,873,151. The Tribunal notes that this documentary evidence consists of undated and unsigned partial inventories of MLETC, SIR and TIED which the Claimants allegedly found, obtained, reconstructed and/or prepared afterwards. Although any persuasive corroborating evidence is lacking, the Claimants assert that their affidavits

affirm the accuracy of these documents. The crux of the matter, however, lies elsewhere. Namely, these documents relate only to the valuation of the companies; they shed no light whatsoever on the alleged expropriation or other measures.

38. Similarly, it appears that the documents requested by the Claimants would relate only to the issue of valuation. The Tribunal also notes that the Claimants have not argued that the documents would prove an expropriation or other measures affecting their property rights, but rather contend that the documents would establish that they are entitled to damages in a total amount of \$7,769,810. Since establishing that the expropriation or other measures affecting property rights took place must precede any consideration of the value of those rights, there is no need to determine the value of the corporations or to decide the issue concerning the request for production of documents. In light of the foregoing, the Tribunal finds that the Claimants have not produced sufficient evidence to support their allegations, and therefore the Claim based on "other measures" must also be dismissed for lack of evidence.

3. Costs

39. The Claimants seek compensation for the costs incurred with respect to the proceedings in this Case. By submission filed on 27 March 1991, they stated that their legal expenses and costs were \$67,850. Iran requests the Tribunal to order the Claimants to pay all damages incurred in connection with the proceedings. In view of the outcome of the proceedings, the Tribunal finds it reasonable to award Iran costs of arbitration in the amount of \$5,000.

IV. AWARD

40. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

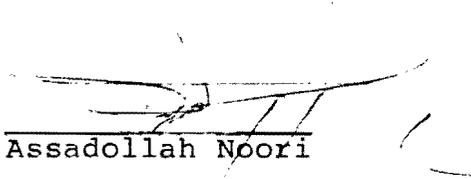
- a) The claims against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN are dismissed for lack of evidence.
- b) The Claimants VERNIE RODNEY POINTON and MARY LOU POINTON are obligated to pay THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN the costs of arbitration in the amount of \$5,000.

Dated, The Hague
23 July 1991



Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori



Howard M. Holtzmann