CLAIMS TRIBUNAL

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CASES NOS. 390, 391 & 392
CHAMBER ONE
AWARD NO. ITL 77-390/391/392-1

LILLY MYTHRA FALLAH LAWRENCE,
Claimant,
and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

INTERLOCUTORY AWARD

I. THE PROCEEDINGS

1. On 18 January 1982 the Claimant LILLY MYTHRA FALLAH LAWRENCE ("the Claimant") filed three Statements of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran"). In Case No. 390 she claims the sum of U.S.$10,125,000 as compensation for the alleged taking of shares, stock and other interests in the assets and capital of Bank Bazargani as a consequence of its nationalization. Case No. 391 concerns her claim for the sum of U.S.$10,000,000 as compensation for the alleged taking of land and buildings constituting a residence at Avenue Fallah, Elahieh, Tehran. Finally, in Case No. 392, she claims the sum of U.S.$5,000,000 as compensation for the alleged taking of the contents of the house at Avenue Fallah, Elahieh, Tehran.

2. Iran had filed no Statement of Defense by 6 July 1983, when the Tribunal suspended further proceedings in these Cases until after the decision of the Full Tribunal on the question of the Tribunal's jurisdiction in cases where the claimant was a national of Iran under Iranian law and a national of the United States under the United States law.

3. In accordance with its practice in similar cases, the Tribunal, citing the decision of the Full Tribunal in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 25 June 1985 that "it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." The Tribunal ordered the Claimant to file by 24 September 1985 all evidence that she wished the Tribunal to consider in determining her dominant and effective nationality. Likewise, the Tribunal requested Iran to file by 24 December

1985 all evidence that it wished the Tribunal to consider on the issue of the Claimant's nationality.

4. The Claimant submitted the evidence on her United States nationality on 20 September 1985. Iran filed a "Statement of Defence on the Claimant's Nationality" in Case No. 390 on 26 April 1988 and in Case No. 391 on 18 May 1988, and "Evidence on the Issue of the Claimant's Nationality" in Case No. 392 on 31 May 1988. On 25 August 1988 the Claimant filed "Claimant's Reply Brief and Submission of Additional Evidence on the Issue of Dominant and Effective Nationality" in Cases Nos. 390, 391 and 392. On 26 May 1989 Iran filed "Respondent's Rebuttal Brief and Evidence on the Claimant's Nationality Issue" in Cases Nos. 390, 391 and 392.

5. The Claimant contends that she is a national both of Iran and of the United States and that her dominant and effective nationality is that of the United States. Iran asserts that the Claimant has failed to establish her United States nationality, and that even if it had been established, her dominant and effective nationality remains that of Iran.

II. FACTS AND CONTENTIONS

6. The Claimant was born in Iran in 1939. In 1946, at the age of seven, she left Iran to attend school in England, where she remained until 1958. After travelling in Europe for approximately a year, she entered the United States in June 1960. On 1 August 1960 she married Francis Lawrence, a United States national, and took residence in New York. She applied for naturalization and was granted United States citizenship in the United States District Court for the Southern District of New York on 15 June 1964. The Claimant states that she has continuously held a United States passport since becoming a United States citizen. In

support of that contention, she has produced photocopies of relevant pages of two passports, one issued on 14 July 1981 and the other on 27 April 1988. The Claimant has resided permanently and continuously in New York since 1960. She has filed joint federal, state and local income tax returns, has been involved with several charitable organizations, and has participated in political campaigns in the United States. The Claimant also states that she owns the apartment in New York where she presently resides, that she maintains a joint checking account with her husband at an American bank, Bankers Trust Company, that she maintains both hospitalization and medical insurance with an American insurance company, that she has served on a jury, and that she has voted in federal, state and local elections.

7. It appears that the Claimant has not resided in Iran since she left the country in 1946. She visited Iran several times while she was attending school in England and once during her trip in Europe in 1959. Between 1960, when she entered the United States, and 1976 she undertook a number of visits to Iran, each visit lasting a few weeks. From April to August 1975 and from December 1975 to February 1976 she stayed with her parents in Tehran. The Claimant asserts that the purpose of these visits was to see her family and that for her trips to and from Iran she used her Iranian passport. She alleges that she used her Iranian passport "as a matter of convenience," because "as a Muslim woman married to a non-Muslim, it would have been extremely difficult to travel with my American passport to Iran." The Claimant suggests that, because of the illegality of her marriage under Iranian law and of her acquisition of a foreign nationality without the approval of the Iranian Government, the use of her American passport would have been hazardous. However, on her last visit to Iran in 1976, she states that she was allowed to use her United States passport to enter and leave Iran. It appears that the

Claimant's parents lived in Iran until the outset of the Islamic Revolution.

III. REASONS FOR THE AWARD

8. The Tribunal must establish, for the purpose of determining whether the Claimant has standing before this Tribunal, whether the Claimant was a national of Iran, of the United States, or of both Iran and the United States. If the Claimant was a national of both Iran and the United States, the Tribunal must determine the dominant and effective nationality of the Claimant during the relevant period from the date the Claims arose to 19 January 1981, the date on which the Claims Settlement Declaration entered into force. The relevant period in Case No. 390 commenced on or about 7 June 1979, when the Claimant alleges that the Respondent nationalized the bank in which she held property interests. In Cases Nos. 391 and 392 the relevant period commenced in January 1979, when the Claimant alleges that the Respondent took the property for which she claims compensation.

9. The Tribunal notes that there is no dispute as to the Iranian nationality of the Claimant. The Tribunal also notes that the Claimant was born in Iran to Iranian parents, and that until 1983 she allegedly held an Iranian passport. There is no evidence before the Tribunal that the Claimant undertook to relinquish her Iranian nationality in accordance with the Iranian law, or that she had otherwise lost her Iranian nationality. The Tribunal is also satisfied that the Special Certificate of Naturalization, issued by the United States Department of Justice, establishes that the Claimant was naturalized as a United States citizen in June 1964. Accordingly, the Tribunal determines that during the relevant period the Claimant was a national of both Iran and the United States.

10. Having found that during the relevant period the Claimant was a national of both Iran and the United States, the Tribunal proceeds to determine the Claimant's dominant and effective nationality during that period. For that purpose, the Tribunal must determine, on the basis of the facts before it, the country with which the Claimant had stronger ties. The Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. Case No. A18, supra para. 3, p. 25, 5 Iran-U.S. C.T.R. 265. While the Claimant's standing is dependent on her dominant and effective nationality during the period between the date the Claims arose and 19 January 1981, events preceding that period remain relevant to the determination of the Claimant's dominant and effective nationality during the period.[1]

11. The Tribunal notes that after the Claimant left Iran at the age of seven, she never again resided in Iran. She has lived in the United States since 1960, has been married to a United States national since that year, and her private and public activities have been centered in the

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[1] See Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51:

> Although th[e] [relevant] period ... is crucial for the determination of the Tribunal's jurisdiction, it is not the only one to be considered in order to determine if the United States (or Iranian as the case may be) nationality of a Claimant is his "dominant and effective nationality" at the relevant time. Obviously, to establish what is the dominant and effective nationality at the date the claim arose, 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.

United States. The Tribunal also notes that there is no evidence in the record that the Claimant's ties to the United States weakened in any way during the relevant period. On the contrary, the fact that the Claimant's parents left Iran for England during the Islamic Revolution further loosened the Claimant's remaining ties to Iran.

12. The Claimant visited Iran several times while she was a resident of the United States. Although those visits maintained the Claimant's ties to Iran, they remained relatively short, and never amounted to permanent residence in Iran. While the Claimant used her Iranian passport to enter and leave the country, except for her last visit when she was allegedly allowed to use her United States passport, the Claimant's use of an Iranian passport does not necessarily indicate that she was more closely attached to Iran than to the United States.[2] It also should be noted that the Claimant alleges that, prior to the dates the Claims arose, she owned shares and other interests in an Iranian bank and real estate in Tehran. While the fact that

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[2] See Nasser Esphahanian and Bank Tejarat, Award No. 31-157-2, pp. 17-18 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 157, 167-68:

> With respect to [the Claimant's] use of an Iranian passport to enter and leave Iran, the Tribunal notes that the laws of Iran in effect forced such use. Once [the Claimant] had emigrated to the United States and had become an American citizen, the only way he could return lawfully to Iran was as an Iranian national, using an Iranian passport. If he insisted on using his U.S. passport to enter Iran, he would be turned away or, at least, his U.S. passport would be confiscated and he would be admitted only as an Iranian. In effect Iran told its citizens that, if they took foreign nationality, they must also retain their Iranian nationality - or they would be forever barred from returning to Iran.

Accord Ataollah Golpira and The Government of the Islamic Republic of Iran, Award No. 32-211-1, p. 6 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 171, 174.

a dual Iran-United States national owns property in Iran or the United States, as the case may be, is generally evidence of attachment to that country, the Tribunal cannot deny the Claimant standing on the ground that she owned the allegedly expropriated property interests in Iran. The Claimant's alleged ownership of those interests forms a part of the merits of these Cases, and the Tribunal has not yet determined whether those interests, if eventually proved, were expropriated or not. If they were, the Claimant did not necessarily own any property in Iran during the relevant period.[3]

13. In these circumstances, the Tribunal determines that during the relevant period between the date the Claims arose and 19 January 1981 the Claimant's dominant and effective nationality was that of the United States.

14. The Tribunal notes that the subsequent proceedings in these Cases remain subject to the caveat, added by the Full Tribunal in Case No. A18, supra para. 3, p. 26, 5 Iran-U.S. C.T.R. 265-66, that "where the Tribunal finds jurisdiction based upon a dominant and effective nationality

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[3] To deny the Claimant standing on the grounds that she owned the allegedly expropriated property in Iran 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.

of the claimant, the other nationality may remain relevant to the merits of the claim."

IV. INTERLOCUTORY AWARD

15. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

(a) The Claimant LILLY MYTHRA FALLAH LAWRENCE has standing before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.

(b) The remaining jurisdictional issues are joined to the merits.

Dated, The Hague
5 October 1990

Bengt Broms
Chairman
Chamber One

In the Name of God

Assadollah Noori

Howard M. Holtzmann

In my opinion, the Tribunal does not, in principle, have jurisdiction over the claims of Iranians with dual United States nationality, either according to the Claims Settlement Declaration or pursuant to the well-established principles of international law, particularly the principle of sovereign equality, which is

rightfully the applicable principle with regard to the claims of dual nationals. The action taken by the majority of the Members of the Full Tribunal in Case A18, in resorting to the principle of dominant and effective nationality, constitutes, so far as the Algiers Declarations are concerned, a disregard for both the letter and the spirit of those Declarations. And insofar as the principles of international law are concerned, especially the principle of the sovereign equality of States, that action is tantamount to a disregard for the fundamental principles of international law.

It is my opinion, just as the Iranian arbitrators have stated in their Dissenting Opinion in Case A18, reprinted in 5 Iran-U.S. C.T.R. 275-337, that the Tribunal should rule that it lacks jurisdiction, and discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.

In addition to the foregoing considerations, I dissent to the reasoning and the decision of the majority in Chamber One in this Case, where it finds that the Claimant's dominant and effective nationality is that of the United States. I believe in particular that the majority has failed to take into account the point that the Claimant's lengthy residence in the United States was not that of an ordinary United States citizen. The Claimant did not live there as the spouse of an ordinary American contractor, but rather as the daughter of Reza Fallah, a member of the Board of Directors of the National

Iranian Oil Company and one of the prominent figures of the Shah's regime. In my opinion, the majority has not given due weight, in its Award, to the special political, financial and social status of the Fallah family and, consequently, to Mrs. Lilly Mythra Fallah's extremely close ties with Iran, at least prior to the victory of the Islamic Revolution.