IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASES NOS. 412, 415
CHAMBER THREE
AWARD NO. 550-412/415-3

ZAMAN AZAR NOURAFCHAN,
GEORGE NOURAFCHAN,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

FINAL AWARD

Appearances:

For the Claimants:	Ms. Zaman Azar Nourafchan, Claimant; Mr. Burton V. McCullough, Attorney; Mr. Rafi Nourafchan, Witness.
For the Respondent:	Mr. Ali H. Nobari, Agent of the Government of the Islamic Republic of Iran; Dr. Bijan Izadi, Deputy Agent of the Government of the Islamic Republic of Iran; Dr. Nemat Mokhtari, Mr. Khosro Tabassi, Legal Advisors to the Agent of the Government of the Islamic Republic of Iran; Mr. Kamal Majedi Ardakani, Witness.
Also present:	Mr. D. Stephen Mathias, Agent of the Government of the United States of America; Mrs. Mary Catherine Malin, Deputy Agent of the Government of the United States of America.

I. INTRODUCTION

1. On 18 January 1982 ZAMAN AZAR NOURAFCHAN (Case No. 412) and her cousin GEORGE NOURAFCHAN (Case No. 415) (together the "Claimants") each submitted a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran" or the "Respondent") seeking compensation for the alleged expropriation of real property in Iran.

2. The Claimants are dual Iran-United States nationals. Zaman Nourafchan was born to Iranian parents in December 1957 in Santa Monica, California. In December 1975 she obtained both a United States passport from the United States embassy in Tehran and an Iranian passport. George Nourafchan was born to Iranian parents in October 1951 in Milan, Italy. He was issued an Iranian identity card by the Iranian embassy in Rome on 1 October 1953. He was granted permanent resident status in the United States in November 1972 and was naturalized as a United States citizen on 19 September 1980.

3. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, in which it determined that it has jurisdiction over claims against Iran by dual 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." Accordingly, on 28 June 1985 the Tribunal invited the Parties to file all evidence they wished the Tribunal to consider in determining the dominant and effective nationality of the Claimants.

4. The Tribunal pronounced itself on this issue in Zaman Azar Nourafchan and George Nourafchan and The Islamic Republic of Iran, Interlocutory Award No. ITL 75-412/415-3 (15 Dec. 1989), reprinted in 23 Iran-U.S. C.T.R. 307 (the "Interlocutory Award"). Finding that from the mid-seventies Zaman Nourafchan's attachment to the country of her birth predominated over her ties with Iran, the Tribunal concluded that her dominant and effective

nationality from the date her claim is alleged to have arisen until 19 January 1981 was that of the United States. The Tribunal also found that, upon his naturalization on 19 September 1980, George Nourafchan's United States nationality was dominant and effective. The Tribunal further decided that the issue of the date on which the claims arose had not yet been fully briefed. Consequently, it decided to join this question to the merits.

5. The present Final Award decides all remaining jurisdictional issues and the merits of these Cases. On 8 October 1990 Zaman Nourafchan submitted her Memorial thereon, including documentary exhibits. George Nourafchan submitted his Memorial on 12 October 1990. The Respondent filed a Reply Memorial on 18 July 1991. Zaman and George Nourafchan each filed a Rebuttal Memorial on 9 December 1991, to which the Respondent replied by a Rebuttal Memorial including exhibits filed 9 June 1992.[1] A Hearing was held on 20 October 1992.[2]

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[1]On the same day the Respondent submitted a document containing a legal brief on dual nationality that had previously been filed by claimants in other cases, including Case No. 809. The brief recorded arguments that, having first been made by the claimant at the Hearing held in Case No. 771, Zaman and George Nourafchan invoked in their Memorials. After the Chamber informed the Tribunal Registry that it had no objection to the filing of the legal brief in the present Cases, this document was filed on 22 June 1992.

[2]By submission filed on 17 September 1992 the Claimants notified the Tribunal that they intended "to use at the arbitration hearing a map of Tehran together with recent photographs of the real property which is the subject of their claims to assist the Tribunal in understanding the nature and extent of the claims." On 30 September 1992 the Respondent protested that "the Claimants' use of any document, whether maps or other documents, copies of which have not been submitted to the Respondent at the stage of exchange of pleadings, would deprive [it] of its right of defence, as it is not possible to examine and comment on the new documents at the Hearing." The Respondent therefore requested "that the Claimants be barred from presenting new documents at the Hearing."

Having informed the Parties, by Order filed on 8 October 1992, that it would deal with this issue at the Hearing in accordance with the nature of the instruments the Claimants intended to use in the course of their oral presentation, the Tribunal at the Hearing applied its policy that, while the use

II. FACTS AND CONTENTIONS

6. The Claimants' claims of expropriation concern their alleged individual interests in two parcels of land. The first parcel, "Property no. 1," is located in the City of Tehran, Division or Section 10, Tarasht Territory, in Tract No. 2395. This land was divided into 29 blocks, and each block was divided into eight lots, designated lots 1 through 8. "Property no. 2" is a smaller property located in the same Tarasht Territory.

7. According to the Claimants, their uncle Nourollah Nourafchan became part owner of Property no. 2 in 1953 and of Property no. 1 in 1959. In evidence of Nourollah Nourafchan's ownership interest in these properties, the Claimants submit copies of a decision by the Tehran District Court of 21 July 1959 and a letter from the Central Bureau of Registration of Documents and Deeds dated 12 August 1975. By Deed of Conveyance no. 2204 dated 17 January 1967 Nourollah transferred part of those interests to a number of individuals, including Zaman Nourafchan's father in his capacity as her guardian. By Deed of Conveyance no. 2343 dated 13 February 1967 Nourollah transferred another part of those interests to a further group of persons, including Rabi Nourafchan acting on behalf of his son George. As a result of these transactions, the Claimants assert, Zaman and George each became the owner of an undivided 1/24th interest in Property no. 1 and an undivided 1/24th interest in half of Property no. 2.

8. The Claimants contend that Iran has expropriated their interests in both Property no. 1 and Property no. 2. With respect to Property no. 2, the Statements of Claim specify that

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of certain instruments designed to illustrate objectively a party's oral presentation should be distinguished from a party's submission at the Hearing of additional materials to be included into the record, under all circumstances the Tribunal must take into account fundamental principles of fairness and equality. Accordingly, the Tribunal rejected certain documents as constituting new evidence but permitted the use of maps and photographs to facilitate the examination of witnesses.

it was taken to serve as the location for Tehran's Mehrabad Airport. The Claimants explain that they "had sought compensation for the Government's condemnation of said property. The Government of the Islamic Republic of Iran has prevented the claimant from obtaining compensation for the condemnation of [that] land through their directives as outlined in Exhibits 'A-5 and A-6'." Exhibit "A-5" is a clipping from the Los Angeles-based "Iran News" of 9 August 1981, the Claimants' translation of which states, inter alia, that on "July 28th, 1981, the Islamic Parliament noted [sic] in favor of transferring all the uncultivated lands to the government." Exhibit "A-6" is a copy of the Tehran newspaper "Ettelaat" indicating, as translated by the Claimants, that on 27 June 1979 "[t]he law of cancellation of the ownership of unconstructed lands and the manner of development of these lands was approved today by the parliament."

9. In the Statements of Claim each of the Claimants seeks compensation in the amount of U.S.$4,795,765, being the sum of U.S.$4,296,640 for the interest in Property no. 1 and U.S.$499,125 for the interest in Property no. 2.

10. On 25 September 1984 the Claimants, represented by new counsel, filed Amended Statements of Claim. As to Property no. 1, the Claimants contend that they and the other owners thereof "were prevented from selling or developing the land by actions taken against them and similar landowners and by the directives described in Exhibit 5." This exhibit is the Ettelaat article the Claimants previously had invoked in evidence of the expropriation of their share of Property no. 2. Accordingly, the Amended Statements of Claim seek interest on the value of the interest in Property no. 1 from 27 June 1979, "the date the Islamic Republic of Iran voted for confiscation." The Amended Statements of Claim increase the amount sought by each of the

Claimants for this property from U.S.$4,296,640 to U.S.$7,418,188.63.[3]

11. Changing the asserted basis of the expropriation for Property no. 2, the Amended Statements of Claim state that the property "was purchased some time in 1953, at which time, unknown to the buyers and the sellers, the property had already been confiscated by the Islamic Republic of Iran." The record contains a revised Court ruling dated 27 July 1961 that, according to the Claimants, "describes the Islamic Republic of Iran's confiscation." This ruling identifies lands that have become part of Mehrabad airport or of the so-called "J-Garrison." The Amended Statements of Claim seek interest on the value of this property from 1 January 1954.

12. The Claimants' next submissions, Memoranda on Nationality filed 30 August 1985,[4] invoke the law of 27 June 1979 in support both of the taking of Property no. 1 and of the taking of Property no. 2. The Claimants state that "[a]lthough the Iranian government assigned no specific date to the actual confiscation of the property that is the subject of this claim, on June 27, 1979 it did announce its intention to confiscate all the land in the category of the Nourafchan land." Referring again to the newspaper account in Ettelaat, the Claimants explain that "the Iranian parliament had on that date passed a law ordering nationalization of undeveloped lands in the cities at some unspecified (but 'limited') time in the future, if action had not been taken by the owners for 'development and construction of such land'."

13. Having invoked the law of 27 June 1979, the Claimants place the "actual nationalization" in "the fall of 1980." They

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[3]In light of its findings set forth in section III, infra, the Tribunal need not address a request made by the Respondent to determine the permissibility under the Tribunal Rules of this and further increases of the amounts of the claims.

[4]See Interlocutory Award at para. 3, reprinted in 23 Iran-U.S. C.T.R. at 308.

assert that, when Zaman Nourafchan's mother travelled to Iran in early 1980, "[s]he observed no evidence of confiscation nor received any notice of nationalization at that time." In late 1980, however, she allegedly received reports from acquaintances "that her land was occupied by a large number of 'squatters,' under government authority and sanction," while neither she nor members of her family could safely return to Iran to look after their property interests. The submissions of 30 August 1985 conclude, therefore, that "[d]espite the lack of an official confiscation pronouncement, by the end of 1980, this government-authorized and instigated confiscation was a matter of fact."

14. In its Memoranda on Nationality, filed 25 November and 13 December 1988,[5] the Respondent disputes the Claimants' ownership of the properties, contests the Tribunal's jurisdiction over the claims with regard to Property no. 2, and denies that any taking has taken place.

15. On the first issue, the Respondent states that between 1930 and 1932, when the Law for the Common Registration of Real Estate came into effect, land owners and tenant farmers in Tarasht applied for the registration of their land.[6] Due to the number of protests that were lodged, no title deeds were issued. The subsequent expansion of Tehran caused a number of the applicants to sell their property as undivided plots of land to investors, including the Nourafchan family.

16. As part of the effort to complete the registration of this land, the Respondent states, the Tehran District Court then issued its 1959 "non-finalized demarcation decision" allocating certain land to four landowners, including Nourollah Nourafchan, in the form of undivided parcels. In 1961 the Court then issued

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[5]See id. at para. 4, reprinted in 23 Iran-U.S. C.T.R. at 308.

[6]In accordance with the Iranian system of apportioning water rights, they applied on the basis of the number of hours their lands were irrigated by subterranean canals and nearby rivers.

its revised ruling confirming the separation of the lands to be used for the airport and for the garrison, i.e., Property no. 2, from the total area described in its decision of 1959.

17. Against this background, the Respondent points out that the 1967 Deeds[7] through which Nourollah Nourafchan subsequently transferred his share of the land to Zaman and George actually mention that numerous objections have been raised against the ownership and the area of the property so transferred; that no title deeds for the property have been issued; and further mention that, considering the absence of a title deed and the existence of disputes, the responsibility for the transfer rested with the parties to the transaction and not with the notary public or the registration office. Thus, the Respondent argues, the transaction was merely an informal transfer subject to the objections raised by third parties.

18. Specifically with regard to Property no. 2, the Respondent argues that the Claimants cannot base claims on lands that the 1961 ruling had excluded from the joint ownership of their predecessors-in-interest. Moreover, the Respondent argues, even if one were to ignore the effects of this ruling and were to assume, as the Claimants do in the Amended Statements of Claim, that the confiscation took place in 1953, the exclusively Iranian nationality of their predecessor-in-interest Nourollah Nourafchan would imply that Zaman's and George's claims concerning those lands do not meet the jurisdictional requirement of Article VII, paragraph 2, of the Claims Settlement Declaration that the claims be continuously owned by a United States national

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[7]The Respondent challenges the accuracy of the Claimants' English translations of these Deeds and of other evidence invoked by them. The Respondent's pleadings include a request to the Tribunal to strike the contested documents from the record or to have alternative translations prepared. As the Tribunal informed the Parties at the Hearing, on issues of translation it not only takes into account the Parties' positions but where necessary also consults its Language Services Division. See paragraph 45, infra.

from the date on which they arose to 19 January 1981, the date on which the Claims Settlement Declaration entered into force.

19. With respect to the alleged expropriation, the Respondent notes that the law invoked by the Claimants -- which, the Respondent points out, was approved on 26, not 27 June 1979 -- is the Act to Abrogate Ownership of Never-Utilized Lands and the Manner of Development Thereof (the "Act"). This Act confirmed the state's ownership of all "mawat" land, which is land that has never been utilized or cultivated and remains in its natural state. According to the Respondent, the presence of subterranean canals and irrigation wells indicates that the property at issue is not mawat, however, but "bayer," i.e land that had previously been utilized but that, due to the owner's neglect or failure to utilize it, is presently unutilized. Thus, the Respondent argues that the Act relating to mawat land provides no basis for the Claimants' claim of expropriation. Legislation relating to bayer land -- the Urban Lands Act -- was not approved until after the date of the Claims Settlement Declaration. Moreover, according to the Respondent, the Urban Lands Act only provided for the expropriation of bayer land that was unowned; bayer land with known owners was to be purchased.

20. The Respondent also contests the second component of the Claimants' contentions with respect to the alleged expropriation, i.e., that squatters occupied their land in late 1980. According to the Respondent, this theory has been inspired by George Nourafchan's need to place the taking after the jurisdictionally relevant date of his naturalization as a United States citizen on 19 September 1980. In connection with the Claimants' argument, the Respondent further notes that the Act came into force immediately, as did regulations for its implementation (the "Implementing Regulations"); had the lands been mawat, therefore, they would have been affected immediately.

21. The Claimants' subsequent Memorials do not refer to the squatters. With regard to Property no. 1, the Claimants exclusively invoke the Act. They explain that the Implementing

Regulations, enacted on 13 August 1979, define mawat land so broadly as also to encompass bayer land.[8] "Accordingly," the Claimants conclude, "well before January 19, 1981, all urban lands within the legal boundary of Tehran which were either undeveloped 'mavat' or unutilized 'bayer' were nationalized."[9]

22. In support of the taking of the interests in Property no. 2 the Memorials invoke neither the squatters nor the Act. "Although the Government of Iran was using this land for Mehrabad Airport and J-Garrison as early as 1953," the Claimants state, "the government of Iran still allowed the property to be transferred, and title was still held by the rightful owners." That changed, however, in 1979, when "the Islamic Republic of Iran nationalized all property owned by American's [sic] including [Claimants'] property. . . . There was no practical way for Claimant[s] to protect [their] interests in Iran." The Claimants conclude that "[f]or all intents and purposes, [they]

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[8]The Claimants further explain that this extension of the nationalization program to bayer lands faced opposition from jurists who considered such nationalization to violate the sanctity of private ownership under Islamic law. On 3 February 1981, one and a half years after the Implementing Regulations took effect, the Guardian Council, charged in the Constitution of Iran with assuring that Iranian legislation conforms with Islamic rules, declared these Regulations "unenforceable" to the extent they applied to bayer lands. It is purportedly for this reason that the Urban Lands Act dealing with bayer lands later was enacted. See also paragraph 34, infra.

[9]To the extent that the Act and the Implementing Regulations provided for applicable exemption possibilities, the Claimants add that they "could not have saved [their] ownership of Property No. 1 by filing the required petitions with the Iranian Government within the time limit provided under the Nullification Act. Claimant[s] [were] not even aware or could be aware of such law, nor could Claimant[s] have returned to Iran to file the petitions. As a result of the hostility toward United States citizens, it was not safe for Claimant[s] to travel to Iran. Furthermore, Claimant[s] could not appoint an agent in Iran to file a petition for [them]. By order of the Revolutionary Public Prosecutor of Iran, powers of attorney signed in foreign countries were not recognized in Iran."

lost [their] interest in whatever real property [they] owned in Iran when the revolutionary government took control."[10]

23. Thus, for the purpose of their claims, the Claimants' Memorials place the expropriation of their interests both in Property no. 1 and in Property no. 2 in 1979. At that point, George Nourafchan argues, he was in effect already a United States citizen, even though, he acknowledges, "such citizenship was not officially recognized until September 19, 1980." George submits that "[t]his, however, was merely a pronouncement of a fact that was already a reality. For all intents and purposes, Claimant was already a United States citizen."

24. The Memorials increase the compensation sought for the Claimants' interests in Property no. 1 to roughly four times the figure previously claimed. The previous amount of U.S.$7,418,188.63 purportedly had been taken from a tax book published by the Iranian Ministry of Finance for the year 1976. The Claimants submit an affidavit from their uncle Rafi Nourafchan, who, being a former owner of lands in the Tarasht area himself, claims to be familiar with the real estate at issue. According to the affiant, the Ministry's official figures for tax purposes "are often much lower than the true market value." Rafi Nourafchan places the minimum value of each of the Claimants' interest in Property no. 1 at U.S.$27,197,159.63.

25. Regarding the effect of the Claimants' dual nationality on their claims before the Tribunal, the Memorials argue that Iranian law recognized the Claimants' dual nationality; that Iranian law permitted foreign nationals to own real property in Iran; that Iranian law allowed the Claimants to own such property; that Iranian government officials knew that persons possessing dual nationality owned real estate in Iran and consented to such ownership; and that, even if the Claimants were

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[10]The Memorials' subsequent discussion of the value of Property no. 2 nevertheless states that this land had already been "confiscated" by Iran; and the Claimants seek interest on this claim from 1 January 1954.

not authorized to own real property in Iran, they are entitled to the proceeds of the government's sale thereof.

26. The Respondent's Reply Memorials reemphasize what it terms the "lack of unconditional ownership by the Claimant." The 1967 Deeds, the Respondent argues, do not transfer the ownership of immovable property, but merely transfer a claim for that property. The Respondent contends that such a claim is not among the interests covered by Article II, paragraph 1, of the Claims Settlement Declaration. Consequently, the Respondent submits, the Tribunal has no jurisdiction.

27. The Respondent further argues that, if his claims arose before the date of his naturalization as a United States citizen, the latter conclusion also applies to George Nourafchan's attempt "to escape the Tribunal Rules and its fixed practice in the rendering of awards whereby the Tribunal always considers the date of issue of the certificate of naturalization as the beginning of its holder's U.S. nationality."

28. With regard to the alleged taking, the Reply Memorial generally states that "the Claimant[s] [have] presented no probative evidence to the Tribunal in support of [their] claim[s]." The Respondent reaffirms that the land at issue is bayer, that the Act regards only mawat land and "has nothing to do with bayer lands," and that Iran has not expropriated the property in question, whether by law or by its physical occupation.

29. In reaction to the Claimants' arguments on the subject of their dual nationality, the Respondent cites Chamber Two's pronouncement on the caveat in Edgar and Eric Protiva and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 73-316-2, para. 18 (12 Oct. 1989), reprinted in 23 Iran-U.S. C.T.R. 259, 263:

> This jurisdictional determination of the Claimants' dominant and effective U.S. nationality remains subject

> to the caveat added by the Full Tribunal in its decision in Case No. A18, supra, that "the other nationality may remain relevant to the merits of the Claim." The Tribunal will therefore in the further proceedings examine all circumstances of this Case also in light of this caveat, and will, for example, consider whether the Claimants used their Iranian nationality to secure benefits available under Iranian law exclusively to Iranian nationals or whether, in any other way, their conduct was such as to justify refusal of an award in their favor in the present Claim filed before the Tribunal.

30. Invoking provisions of the Iranian Civil Code, the Respondent asserts that it does not recognize the foreign nationality of its nationals, whether acquired by naturalization or by birth on foreign soil. Furthermore, subject to certain exceptions not applicable to the Claimants, Iranian law purportedly prohibits foreign nationals' ownership of property in Iran. The Respondent therefore argues that the Claimants could only have acquired and kept their lands on the strength of their Iranian nationality. Accordingly, the Respondent concludes, the Nourafchans' claims qualify for rejection under the caveat.

31. The Claimants' Rebuttal Memorials mostly reaffirm their previous arguments. With respect to Property no. 2, though, while 1953 is still mentioned as the time when Iran started to use that land, interest is not sought from 1 January 1954 anymore, but from "the date of expropriation," which the Rebuttal Memorials place "after the Iranian revolution." In reply to Iran's argument that their claims do not meet the requirement of Article II, paragraph 1, of the Claims Settlement Declaration, the Claimants maintain that their share is more than simply an "interest"; rather, it constitutes an undivided "ownership interest."

32. On the issue of the caveat, the Claimants invoke arguments Professor R. Lillich and Mr. H. Sabi have previously advanced on behalf of other claimants; see note 1, supra. The Claimants present as their conclusion that "[t]he conduct of a

dual national, to come within the strictures of the caveat referred to in Case A-18, must be shown to be so unconscionable, fraudulent or wrongful at the relevant time that accepted principles of international law preclude the Tribunal from rendering an award in the case of an otherwise meritorious claim." Arguing that "[c]ertainly Respondent has not shown anything close to [such] conduct," the Claimants assert that they "did not commit a fraud in acquiring the Property. It was given to [them] by [their] uncle, an Iranian national who acquired the Property legally in all respects. [Zaman] did not conceal her United States nationality when she acquired the Property." The Claimants further point out that the Respondent has ignored their argument that the proceeds of any public sale of the property would have to be paid to them.

33. Regarding the issue of ownership, the Respondent's Rebuttal Memorials note that registration of property is compulsory in Iran. However, the parties to the transaction "were not able to have the objections and disputes settled in their favor by virtue of a final judgment so that the ownership deed could be issued in their name." Thus, the Respondent contends, "[i]n order to circumvent their legal problems they resorted to drawing up a deed of conveyance (solh) of their claims and rights." The Respondent argues that such a deed is not proof of ownership.

34. With regard to the Act, the Respondent's Rebuttal Memorials explain that, according to the principles of Islam, "mavat land is recognized as no one's property, but remains at the disposal of the Islamic government." Thus, the Respondent argues, "should the Claimant[s] assert, contrary to truth, that the undivided land in question is mavat, the source of Claimant[s'] ownership of that land is unlawful . . . . [M]avat land . . . was never liable to private ownership so that the question of its nationalization could arise." The Respondent further comments that the Claimants' reliance on the Implementing Regulations to demonstrate that the Act also covers bayer land is unjustified, because of the Guardian Council's later

declaration -- see note 8, supra -- that the pertinent provisions were unenforceable as being inconsistent with Islamic law. According to the Respondent, the only legislation that did deal with bayer land was the Urban Lands Act, which merely expropriated land whose owner was unknown and came into force after the date of the Claims Settlement Declaration.[11]

35. The Respondent considers the Claimants' taking theory with regard to Property no. 2 "totally unfounded." The Respondent notes that the Claimants have not evidenced "how or by virtue of which law or unlawful act the property owned by Americans in Iran was confiscated," nor "in which official document or before which official authority the Claimant[s] declared [themselves] to be . . . American so that [they] could become subject to the law and action imagined by [their] counsels."

36. As part of its Rebuttal Memorials, the Respondent introduces two opinions on the meaning of the Tribunal's caveat. Arguing that a state only incurs international responsibility for a wrongful act committed against a foreign national, Professor B. Stern concludes that claimants who have constantly and openly appeared as Iranian nationals in their relations with the Iranian Government must not be allowed to succeed on the merits of their claims. Invoking the doctrines of abuse of rights and estoppel, Professor A. Cassese finds that, instead of undermining the rule of dominant and effective nationality, the caveat supplements it and constitutes an indispensable barrier against possible abuse and arbitrary conduct in international dealings.

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[11]At the Hearing, the Claimants' counsel commented that "the Guardian Council recognized that the Act in fact did cover the 'bayer' lands and they said: 'That's unconstitutional, we don't think we should do that, we don't think we should be taking 'bayer' lands.' And that's why they acted the way they did. I think that was the impetus behind the Urban Lands Act. But they can't retroactively go back and undo what they have done before. But I think it's sure good evidence that in fact the Nullification Act was intended and was enforced as we have indicated. Otherwise it would give no need to complain."

37. At the Hearing, while the Claimants announced that "some of the property we have been discussing today was taken over by the government of Iran during the 1960s and 1970s," they invoked June of 1979 as the date "when all of the property was taken which had not previously been taken."[12] In any case, the Claimants stated, they were "asking for compensation for all of them because they never received compensation for that piece of property. They had claims pending but those claims are not going to be paid now because the revolution took over."

38. The year 1979 being "the watershed . . . when the rights were really terminated in Tehran," the Claimants proposed to "value the land as of 1979, even though perhaps the government had taken it earlier." Based on revised estimates, the Claimants at the Hearing reduced their claims to less than half of the amounts previously sought, each now seeking U.S.$12,448,274.21.

III. THE TRIBUNAL'S FINDINGS

39. As stated in paragraph 2, supra, George Nourafchan was naturalized as a United States citizen on 19 September 1980. In the Interlocutory Award, the Tribunal noted that "any claim which arose before that date would be outside the Tribunal's jurisdiction."[13] See Interlocutory Award No. ITL 75-412/415-3 at para. 25, reprinted in 23 Iran-U.S. C.T.R. at 312. Their position on this issue having shifted in the course of their pleadings, the Claimants appear to have settled upon June 1979 as the date of the expropriation, both of their interests in Property no. 1 and of their interests in Property no. 2. George

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[12]Questioned about the earlier contentions regarding squatters, the Claimants' counsel stated that these "got it from Iran, because we think [Iran] took it in June 1979. If for some reason we're incorrect in that assumption, then they would have taken it even by physical force by taking over the property."

[13]Prior to his naturalization, George Nourafchan did not possess the nationality required pursuant to Article II, paragraph 1, of the Claims Settlement Declaration, as further defined in Article VII, paragraph 1, thereof. His argument described in paragraph 23, supra, must therefore fail.

Nourafchan contends that he has owned his interest since 1967, when it was transferred to him by his Iranian uncle. In light of these facts, the Tribunal concludes that George Nourafchan's claim has not been owned continuously by a United States national from the date on which it arose to the effective date of the Claims Settlement Declaration, as is required by Article VII, paragraph 2, thereof. The Tribunal rejects George Nourafchan's claim for lack of jurisdiction.

40. Regarding the claims of Zaman Nourafchan, the Tribunal notes that she traces her ownership of Property no. 2 to Nourollah Nourafchan. According to Zaman (henceforth also: the "Claimant"), the 1975 letter from the Central Bureau of Registration of Documents and Deeds establishes that her uncle acquired his share of Property no. 2 in 1953. While this letter merely refers to the 1959 verdict of the Tehran District Court, the Respondent has presented records documenting Nourollah's purchase, in 1954 and 1955, of lands in the Tarasht area. The Tribunal observes that two of the three purchase deeds so submitted specifically exclude from the transaction "the portion that, according to the final deed executed and registered in the Registration Book . . . had previously been transferred to the Civil Aviation Organization."

41. The record gives rise to doubt, therefore, whether the 1959 Court decision, allocating land to a group of four persons including Nourollah Nourafchan, also encompassed Property no. 2. Indeed, the Claimant appears to invoke this decision primarily to establish her predecessor's interest in Property no. 1. In any case, the Tribunal notes, on 27 July 1961 the Court issued its "Supplementary and Corrective Verdict" announcing, with regard to the Tarasht lands to which the present claims relate, "the areas and particulars of a part of the partitioned lands which have become a part of the Mehrabad Airport or 'J' Garrison."

42. The Tribunal further notes that Deed of Conveyance no. 2204 of 17 January 1967, invoked by the Claimant to substantiate

Nourollah Nourafchan's subsequent transfer of ownership to her, reflects this ruling. As part of a number of cautionary notes concerning the object of conveyance, the Deed states that "according to the Partition Decree by the court, a portion of the partitioned lands has been made a part of the property of the Mehrabad Airport and the Jay military base."

43. The record thus provides insufficient support for the alleged chain of ownership of Property no. 2. Accordingly, the Tribunal dismisses Zaman Nourafchan's claim in respect of Property no. 2 for lack of proof of ownership.

44. Regarding Property no. 1, the Claimant contends that her uncle's ownership interest in the property dates back to 1959.[14] The Tehran Court decision of that year establishes that, following a drawing of lots, the land was allocated in undivided form to a group of four persons including Nourollah Nourafchan. The Court's 1961 corrective verdict identifies "areas and particulars of a part of the partitioned lands . . . which had previously been occupied or the subject of dispute," but does not appear to affect the substance of its previous ruling regarding Property no. 1.

45. Zaman Nourafchan's claim for the land her uncle had thus acquired is based on Deed of Conveyance no. 2204 of 17 January 1967. Providing the names of the parties and describing the land

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[14]It is not clear from the record whether the earlier purchase deeds submitted by the Respondent -- see paragraph 40, supra -- encompass Property no. 1. The Tribunal notes that one of these deeds, dated 29 December 1955, cautions that "the object of transaction has been subjected to various protests, the results of which are not known. And the parties have taken full knowledge of the content of the inquiry, and since the property has not been registered, the responsibility of the conclusion of the transaction is in every respect incumbent on the parties to the transaction; and the Registration Department and the Notary Public bear no responsibility."

being transferred, the Deed as presented by the Claimant[15] does not express any reservations with regard to the object of the conveyance. Translation by the Tribunal's Language Services Division of the complete document indicates, however, that the ownership of the property was disputed.

46. Describing the object of conveyance as "[a]ll of the conceivable claims and rights, whether objective or by judgment, and whether potential or actual," with respect to the land, the Deed registers "the knowledge and awareness of the Conveyees" with regard to an official inquiry of 19 December 1966, "it having been explained to the Conveyees that as indicated in the Inquiry, protests had been submitted to the Western District [Registration Office] with respect to the property itself and its boundaries, which were forwarded to the court, the disposition of some of which [disputes] was not yet known." "The object of [this] conveyance," the Deed notes, "is a part of the [property] for which no deed of ownership has been issued."

47. Considering, therefore, that "up to the present time no deed of ownership has been issued and there exists a dispute and protest over the above-referenced lands," the Deed emphasizes that "the Parties to this conveyance bear the responsibility for this instrument, and neither this Notary Public Office nor the Registration Bureau bears responsibility therefor." Noting that "the area of the object of the conveyance has not been fully specified," the Deed further states that "since the object of the conveyance is the subject of litigation and the claims have been transferred, the Conveyees have, by way of precaution, undertaken to make themselves jointly and severally responsible to pay from

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[15]The Claimant initially submitted an English translation as an exhibit to her Statement of Claim. Following protests from the Respondent -- see note 7, supra -- her Memorial included a slightly expanded version. While maintaining that "an accurate translation has been provided," the Claimant's Rebuttal Memorial announced that "another translation will be prepared and will be submitted as soon as possible." No further submission was made, however.

their own funds any duties and taxes as might be owing under whatever heading."

48. Having recorded the consideration for the transfer -- "100 grams of rock-candy and the sum of 500,000 rials" -- the Deed finally acknowledges that "[b]y way of precaution, the rights of option, particularly the option of deceit even in the case of gross deceit, have been waived by the Parties."

49. The Claimant's pleadings do not offer an explanation for the reservations in the Deed of Conveyance. In reply to the Respondent's repeated claims of the Claimant's "lack of unconditional ownership" -- see paragraphs 17 and 26, supra -- Zaman's Rebuttal Memorial merely invokes the earlier 1959 Court judgment, which "reveals that Claimant is the true owner." Likewise, when asked at the Hearing how the claim before the Tribunal took account of the competing claims reflected by the Deed, the Claimant's counsel replied that "[t]he 1959 court ruling made it very clear that the Nourafchans were not a part of these disputes." Requested to comment on the subsequent 1967 Deed, counsel stated that "nobody ever disputed the ownership of the land that was given to them in 1959," claiming, further, that "between 1967 and 1979 parcels of that land were sold by the Nourafchans."

50. Noting the absence of other relevant information,[16] the Tribunal finds the 1967 Deed of Conveyance insufficient to establish Zaman Nourafchan's asserted part ownership of Property no. 1. Instead of title, it appears that she merely acquired a claim to the land. While interference with such a claim may constitute a proper cause of action before this Tribunal,[17] Zaman Nourafchan has not provided any information for the Tribunal to

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[16]The 1975 letter from the Central Bureau of Registration of Documents and Deeds only describes the 1967 Deed of Conveyance and does not resolve the ownership question raised therein.

[17]Cf. Esahak Saboonchian and The Islamic Republic of Iran, Award No. 524-313-2, para. 19 (15 Nov. 1991), reprinted in 27 Iran-U.S. C.T.R. 248, 254.

assess and to value her claim on this basis. In conclusion, the Tribunal must also reject her claim in respect of Property no.1.

IV. COSTS

51. The Tribunal decides that the Parties in Case No. 412 shall bear their own costs of arbitration.

52. With respect to Case No. 415, the Tribunal notes that George Nourafchan pursued a claim that he himself alleges to have arisen on a date well before his naturalization as a United States citizen. Maintaining a claim that his own pleadings thus patently place outside the Tribunal's jurisdiction calls for an award of costs against him. Noting, on the other hand, the similarity of the merits of his case to the claim of Zaman Nourafchan against which the Respondent had to defend itself, the Tribunal awards U.S.$10,000 as compensation for the legal costs incurred by the Respondent in Case No. 415.

V. AWARD

53. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. The claim of ZAMAN AZAR NOURAFCHAN is dismissed on the merits.

b. The claim of GEORGE NOURAFCHAN is dismissed for lack of jurisdiction.

c. The Claimant GEORGE NOURAFCHAN is obligated to pay to THE ISLAMIC REPUBLIC OF IRAN the sum of Ten thousand United States Dollars (U.S.$10,000) in respect of its costs of arbitration.

Dated, The Hague
19 October 1993

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God

Richard C. Allison

Mohsen Aghahosseini
Concurring in the dismissal of the claims