IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

238

ORIGINAL DOCUMENTS IN SAFE

Case No. 44 — 44-238 — Date of filing: 12 Oct '94

** AWARD - Type of Award Final

- Date of Award 12 Oct '94

95 pages in English — pages in Farsi

** DECISION - Date of Decision _____

_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

_____

- Date _____

_____ pages in English _____ pages in Farsi

R/12

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASES NOS. 44, 46, and 47
CHAMBER THREE
AWARD NO. 560-44/46/47-3

SHAHIN SHAINE EBRAHIMI,
CECILIA RADENE EBRAHIMI,
CHRISTINA TANDIS EBRAHIMI,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

FINAL AWARD

Appearances:

For the Claimants:	Mr. Platt W. Davis III, Counsel; Mr. Hamid Sabi, Attorney for the Claimants; Mr. Shahin S. Ebrahimi, Ms. Cecilia R. Ebrahimi, Ms. Christina T. Ebrahimi, Claimants; Mr. Ali Ebrahimi, Mr. Cyrus Meshki, Party Witnesses; Mr. Mussa Siamak, Mr. Fariborz Ghadar, Mr. Robert Reilly, Expert Witnesses;
For the Respondent:	Mr. Ali H. Nobari, Agent of the Government of the Islamic Republic of Iran; Mr. Bijan Izadi, Deputy Agent of the Government of the Islamic Republic of Iran; Mr. Nozar Dabiran, Mr. Hamid Hedayati, Legal Advisers to the Agent; Mr. Behrooz Salehpour, Legal Assistant to the Agent; Dr. Reza Shabahang, Representative of Gostaresh Maskan Co.; Mr. Esmaeil Bakhshi Dezfuli, Attorney for Gostaresh Maskan Co.; Mr. Mohammad Hossain Karimi Fard, Mr. Hossein Fathi, Party Witnesses; Mr. Mostafa Goudarzi, Mr. Yadolah Mokarami, Mr. Antony G.P. Tracey, Mr. Ardavan Moshiri, Expert Witnesses;
Also Present:	Mr. D. Stephen Mathias, Agent of the United States of America; Ms. Mary Catherine Malin, Deputy Agent of the United States of America; Professor Richard A. Brealey, Tribunal Expert; Mrs. Suzanne S. Ebrahimi, Mr. Albolghasem Fakharian, Mr. Hamid Mahmoud Mazhari.

TABLE OF CONTENTS

I. INTRODUCTION AND PROCEDURAL HISTORY

1. SHAHIN SHAINE EBRAHIMI, CECILIA RADENE EBRAHIMI, and CHRISTINA TANDIS EBRAHIMI (collectively, the "Claimants") are the children of Ali Ebrahimi, an Iranian national, and Cecilia Louise DeFries, a United States national.[1] Claimants allege that the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (the "Respondent" or the "Government") expropriated their interests in Gostaresh Maskan Company ("Gostaresh Maskan" or the "Company"), an Iranian construction firm, on 13 November 1979. According to the Claimants, the Respondent appointed successive directors to govern Gostaresh Maskan, depriving them of their "ownership and related rights" as shareholders. They seek compensation for their shares in Gostaresh Maskan, totalling 19% of the Company's outstanding stock, in the amount of approximately U.S.$20,000,000. Claimants also request interest from the date of the alleged expropriation and an award of attorneys' fees and costs.

2. Claimants submitted individual Statements of Claim on 16 November 1981, alleging that Respondent expropriated their interests in Gostaresh Maskan.

3. By Order of 17 December 1981, the Tribunal directed the Respondent to file its statement of defense in each Case by 1 March 1982. By letter of 26 February 1982, the Respondent requested a two-month extension to file the respective statements of defense. By written communication of 1 March 1982, the interim Chairman of Chamber Three granted an extension of the filing deadline until 1 April 1982. By letter of 1 April 1982,

---

[1] On 16 November 1981, a claim was also filed by Marjorie Suzanne Ebrahimi in connection with the alleged expropriation of certain real estate in Tehran and the personal property located therein (Case No. 45). Marjorie Suzanne Ebrahimi was Ali Ebrahimi's second wife, since 1977, following his divorce from Cecilia Louise DeFries in 1975. This claim was briefed by the Parties jointly with the present claims until it was withdrawn by Mrs. Ebrahimi on 1 June 1992. By Order of 23 June 1992, the Tribunal terminated the proceedings in Case No. 45 pursuant to Article 34(2) of the Tribunal Rules.

the Respondent requested a 10-day extension of the referenced filing date. On 13 April 1982, and on 14 April 1982, respectively, the Respondent filed its "Statement of Defence," including certain counterclaims, against the claim brought by CHRISTINA TANDIS EBRAHIMI (Case No. 47), and against the claims of SHAHIN SHAINE EBRAHIMI and CECILIA RADENE EBRAHIMI, respectively (Cases Nos. 44 and 46).

4. By Order of 19 April 1982, the Tribunal scheduled a pre-hearing conference for 1 October 1982. By a separate Order of 19 April 1982, the Tribunal invited each of the Claimants to file their response to the Respondent's counterclaims by 28 May 1982. On 21 May 1982, each of the Claimants filed a response to the referenced counterclaims.

5. By Order of 8 July 1982, filed on 19 July 1982, the Tribunal ordered the Parties to submit their memorials on the jurisdictional issues by 1 September 1982. On 1 September 1982, the Respondent submitted individual "Statement[s] of Defence" in which it objected to the Tribunal's jurisdiction over the claims on the ground that the Claimants are Iranian nationals.

6. By letter received on 1 September 1982, the Claimants requested that the pre-hearing conference be postponed pending a decision on the jurisdictional issue. On 9 September 1982, the Claimants filed a "Joint Memorial of Claimants in Support of Jurisdiction" discussing the jurisdictional issues in each of the Claims.

7. By Order filed on 15 September 1982, the Tribunal cancelled the referenced pre-hearing conference and directed the Parties to submit their final briefs on the jurisdictional question by 29 October 1982.

8. By Order of 22 October 1982, the Tribunal indicated that it would decide the jurisdictional issue on the basis of the written submissions unless either Party filed a request for a hearing on this issue by 15 November 1982. On 29 October 1982,

Respondent filed its "preliminary" memorial on jurisdiction in each of the three Cases. By letter of 11 November 1982, the Respondent made the referenced request for a hearing.

9. By Order of 16 November 1982, the Tribunal scheduled a hearing for 16 December 1982 to hear evidence on the issue of the nationality of the Claimants for purposes of the Tribunal's jurisdiction.

10. On 19 November 1982, the Agent of the the United States submitted a "Memorial of the Government of the United States" on the nationality issue. By its letter of 24 November 1982, the Respondent requested that the scheduled hearing be cancelled in view of the Tribunal's acceptance of the above-mentioned Memorial of the Government of the United States "in flagrant violation of the provision [sic] of Article 15 (Note 5) of the Tribunal's provisionally adopted rules." By Order of 26 November 1982, filed on 29 November 1982, the Tribunal cancelled the referenced hearing and invited the Parties (i) to indicate by 10 December 1982 whether they would wish to comment on the Memorial filed by the U.S. Agent on 19 November 1982, and (ii) if so, to file such comments no later than 25 January 1983. By letter of 10 December 1982, filed on 13 December 1982, the Respondent informed the Tribunal that it would comment on the referenced Memorial and that it reserved the right to request a hearing. By letter of 25 January 1983, filed on 26 January 1983, the Respondent requested a 25-day extension to file these comments. By Order of 1 February 1983, filed on 4 February 1983, the Tribunal extended the Respondent's filing deadline until 21 February 1983. By letter of 21 February 1983, the Respondent requested a two-month extension to file the referenced comments. By Order of 22 March 1983, the Tribunal extended the Respondent's filing deadline until 31 May 1983, indicating that it would not grant any further extension requests without "compelling" reasons. By letter of 10 April 1983, filed on 11 April 1983, the Respondent requested that the Tribunal annul the previously indicated deadlines and issue an order to stay proceedings until the Full Tribunal decided Case No. A18. By letter of 6 May 1983, the

Chairman of Chamber Three informed the Claimants that no further proceedings would be scheduled in these cases pending the Full Tribunal's decision in Case No. A18. By letter of 16 May 1983, the Respondent requested the Chairman to "nullify" the Chamber's Order of 22 March 1983, and formally to suspend the proceedings pending the Full Tribunal's decision in Case No. A18. By letter of 30 May 1983, the Iranian Agent informed the Chairman that he had inferred from the Order of 6 May 1983 that the proceedings had been stayed and that the Respondent had not submitted its response to the above-mentioned U.S. Memorial on that ground.

11. By Order of 28 June 1985, the Tribunal notified the Parties of the Full Tribunal's decision in Case No. A18 and in conformity with that decision it directed the Claimants to file their written evidence, pertinent to the jurisdictional question, by 2 September 1985, with the Respondent's time limit to respond to be fixed after the Claimants' filing. By letter filed 14 October 1985, the Claimants informed the Tribunal of their intention to rely on their "Joint Memorial of Claimants in Support of Jurisdiction" which was filed on 9 September 1982. The Claimants further argued in this letter that the Respondent had had an opportunity to respond to this memorial and that, accordingly, the Chamber could rule on the jurisdictional issue without further delay. By Order of 18 October 1985, the Tribunal directed the Respondent to submit its evidence on the Claimants' nationality by 3 January 1986. By letter of 21 October 1985, the Respondent objected to the Claimants' submission of 9 September 1982, because (i) it failed to comply with the deadline of 1 September 1982, and (ii) it consisted of a joint submission for all the claims whereas no decision to consolidate those claims had been made yet. The Respondent therefore requested that additional copies be submitted in each of the claims. By Order of 16 December 1985, the Tribunal ordered the Claimants to file nine additional copies of the "Joint Memorial of Claimants in Support of Jurisdiction." By letter of 3 January 1986, the Respondent requested a six-month extension of the time limit for the submission of its evidence on jurisdiction to be calculated as of the filing by the Claimants of the nine additional copies

of their "Joint Memorial." By a memorandum of 13 January 1986, the Co-Registrars of the Tribunal informed the Respondent of their receipt of twelve additional copies of the Claimants' "Joint Memorial." By letter filed on 17 January 1986, the Claimants requested that the Respondent's six-month extension request be denied on the ground that "Iran has had ample copies of this document for over three years" and that "Iran has cited no reason that it is disadvantaged by Claimant[s'] filing of the Joint Memorial in less than three weeks after receiving the Order."

12. By a separate letter filed on 17 January 1986, the Claimants requested that all the Cases (that is, including Case No. 45), and at the very least Cases Nos. 44, 46 and 47, be consolidated.

13. By Order of 20 January 1986, the Tribunal directed the Respondent to submit its response to the "Joint Memorial of Claimants in Support of Jurisdiction" by 3 April 1986. By its letter of 27 March 1986, the Respondent filed a six-month extension request for the referenced response. By Order of 4 April 1986, the Tribunal extended the time limit for the Respondent to submit its response until 3 July 1986. By letter of 2 July 1986, the Respondent filed another six-month extension request for the referenced response. By Order of 10 July 1986, the Tribunal extended the time limit for the Respondent to submit its response until 3 October 1986, adding that no further extensions would be granted "save for strong and compelling reasons." By letter of 3 October 1986, the Respondent requested "a reasonable time" for the filing of the required documents in view of (i) the fact that the relevant documentation was still scattered "in various departments and diverse places," (ii) the "Claimants' refusal in cases of this nature to provide the Respondent with information and evidence relevant to their dominant Iranian nationality," and (iii) the fact that Iran, "with its limited manpower, is presently involved in an imposed war . . . and in a number of international litigation[s] . . . ." By their letter filed on 16 December 1986, the Claimants

objected to the Respondent's third extension request. They also reiterated their request for (i) an immediate ruling on the jurisdictional issue, and (ii) consolidation of, at least, Cases Nos. 44, 46, and 47. By Order of 6 February 1987, the Tribunal denied the Respondent's extension request on the ground that the offered reasons did not constitute "strong and compelling reasons." The Order further indicated the Tribunal's resolve to decide the jurisdictional issue pursuant to Article 28, para. 3 of the Tribunal Rules "as soon as its working schedule permits" on the basis of the written evidence then before it. The Order also stated that the Tribunal would "defer this course of action only if it [was] informed that settlement negotiations are ongoing and have reached a stage which would justify a postponement of the proceedings." On 23 February 1987, the Tribunal issued a "Correction to Order" in regard to its Order of 6 February 1987 so as to correct certain inaccuracies in the Persian text of the referenced Order.

14. By letter filed on 4 January 1988, the Claimants urged the Tribunal to expedite its consideration of the jurisdictional question.

15. By letter of 10 May 1988, the Respondent requested the Tribunal to issue an order directing the Claimants under Claims Nos. 44, 46 and 47 to produce documentary evidence "related to their connections with Iran, failing which it will not be possible to prepare a reply memorial." By a separate letter of the same date, which was filed in each of the Cases Nos. 44, 46 and 47, the Respondent requested that Claimants be directed to produce certain specific information or documentation in connection with each Claimant's nationality.

16. On 13 June 1988, the Respondent filed its "Respondent's Brief on Jurisdiction as to Claimant's Nationality" in Case No. 44. Under its letter of 27 June 1988, the Respondent filed an "Amendatory Addendum" to this brief so as to correct "certain errors" in the referenced document. On 3 March 1989, the

Respondent filed its "Respondent's Jurisdictional Brief on Claimant's Nationality" in Cases Nos. 46 and 47.

17. On 16 June 1989, the Tribunal issued an Interlocutory Award on the jurisdictional issues in each of the Cases No. 44, No. 45, No. 46 and No. 47, holding that the dominant and effective nationality of each of the Claimants during the relevant period was that of the United States. Shahin Shaine Ebrahimi, et al. and The Government of The Islamic Republic of Iran, Interlocutory Award, Award No. ITL 71-44/45/46/47-3 (16 June 1989), reprinted in 22 Iran-U.S. C.T.R. 138 ("Ebrahimi"). The Tribunal thus concluded that Claimants could properly submit their claims for its consideration. The Iranian Member of the Chamber at that time (Mr. Parviz Ansari Moin) signed the Award indicating that he would file a Dissenting Opinion.

18. On 25 July 1989, the Tribunal issued an Order directing the Parties to submit joint legal briefs in regard to the merits of the Claims Nos. 44, 46 and 47 and directed (i) the Claimants to submit their memorial and evidence on all remaining issues no later than 24 October 1989, and (ii) the Respondent to submit its memorial and evidence within three months following receipt of the Claimants' submissions.

19. On 15 September 1989, the Iranian Member of the Chamber filed a Dissenting Opinion in Persian to the above-mentioned Interlocutory Award. The English version of this Opinion was filed on 14 November 1989. In his Opinion, Mr. Ansari concluded that the dominant and effective nationality of each of the Claimants was that of Iran, and that, accordingly, the Tribunal should have dismissed the claims for lack of jurisdiction.

20. By letter filed on 25 October 1989, the Claimants requested a "short extension" of the filing deadline for their memorial on the merits, indicating that they expected to file the requested documents on or before 27 October 1989. Claimants filed their joint Hearing Memorial on 27 October 1989.

21. By letter of 22 January 1990, referring to the Tribunal's Order of 25 July 1989, the Respondent requested a six-month extension of its filing date for its briefs on the merits. By their letter filed on 29 January 1990, the Claimants urged that the Respondent's request be denied. They added that "[n]evertheless, Claimants would not object to a two-month extension, to March 26, 1990, provided it is made clear that no further extensions will be authorized." By Order of 5 February 1990, the Tribunal extended the Respondent's filing date until 27 April 1990. The Order further fixed the Parties' filing deadlines for their rebuttal memorials as follows: (i) for the Claimants, two months as of the Respondent's submission date; and (ii) for the Respondent, two months as of the filing of the Claimants' rebuttal memorial. The Order directed the Parties to file three originals and thirty copies of each document submitted. By its letter of 27 April 1990, the Respondent requested a six-month extension due to the "concurrence of the Now Rouz (Iranian New Year) Holidays as well as the Holy Month of Ramadan." By Order of 8 May 1990, the Tribunal extended the Respondent's filing deadline until 27 July 1990. By letter of 27 July 1990, the Respondent requested a six-month extension due to "the financial and technical dimensions of the captioned cases and the fact that the audit firm which is examining the books and other documents of G[o]staresh Maskan Co., is not able to timely prepare and submit its audit report as its preparation would require considerable time." By their letter filed on 6 August 1990, the Claimants objected to the Respondent's third extension request indicating that "Respondent has known since July 25, 1989, of its obligation to file its direct case in a timely fashion." By Order of 9 August 1990, the Tribunal extended the Respondent's filing deadline until 29 October 1990, adding that "[n]o further extension of time will be granted without specific and compelling reasons." By its letter of 29 October 1990, the Respondent announced that the Persian version of its briefs was ready for filing and requested a 30-day extension to complete the English translation thereof. By Order of 5 November 1990, the Tribunal extended the Respondent's deadline until 30 November 1990.

22. On 30 November 1990, the Respondent filed its Hearing Memorial ("Respondent's Brief and Evidence on the Remaining Issues Submitted In Compliance with the Tribunal's Order of 9 August 1990"). In its cover letter to this submission, the Respondent explained that certain photographs, attached as an exhibit to the memorial, were only submitted in nine copies rather than in thirty copies as each of the Tribunal's Orders since that of 5 February 1990 had requested. The Respondent requested that the Tribunal issue a specific order mandating it to submit additional copies if it so wished.

23. By Order of 13 December 1990, the Tribunal referred to the pertinent language in its last order (dated 5 November 1990) on the issue of the number of copies required. It also scheduled a hearing for 13 September 1991. The Order further indicated that "[t]he Tribunal does not envisage granting any extension of the two month period for each party . . . that would interfere with the Hearing date scheduled above."

24. By letter filed on 31 January 1991, the Claimants requested a two-week extension until 15 February 1991 to file their rebuttal memorial so as to complete the Persian translation thereof. By Order of 8 February 1991, the Tribunal granted the Claimants' extension request to extend the filing deadline for their rebuttal memorial until 15 February 1991. On 15 February 1991, Claimants filed a joint Rebuttal Memorial.

25. By letter of 12 April 1991, the Respondent requested a three-month extension of time for filing its rebuttal memorial. Respondent based its request on the ground that it had not received the Claimants' rebuttal memorial until 6 March 1991 due to "the post problems in Iran." As a result, the Respondent calculated that it had only 40 days left "to prepare, translate, bind, and file its reply with the Tribunal together with the rebuttal evidence; this was simply impossible to do within that time limit." The Respondent further pointed out that it could not meet the 15 April deadline "because of the Iranian New Year's holidays and the holy month of Ramazan (the month of fasting)."

Finally, the Respondent argued that the extension requested would not affect the hearing scheduled for 13 September 1991. By their letter received by fax on 17 April 1991 and filed on 19 April 1991, the Claimants objected to the Respondent's extension request and argued that the Respondent should be given a 60-day extension at most. By Order of 23 April 1991, the Tribunal extended the Respondent's filing date for its rebuttal memorial until 15 June 1991.

26. By letter filed on 11 June 1991, the Respondent requested that the Tribunal join Cases Nos. 44, 46, and 47 to Case No. 146 (Thomas K. Khosravi and The Government of The Islamic Republic of Iran) on the ground that "there was a complete connection" between the claims on the merits in these Cases. By letter, received by fax on 11 June 1991 and filed on 13 June 1991, the Claimants opposed the Respondent's proposal, arguing that it was "an obvious attempt to slow down this case and avoid its obligation to file a rebuttal case." By letter of 17 June 1991, the Respondent reiterated its request for a consolidation of Case No. 146 with Cases Nos. 44, 46 and 47 and requested the Tribunal "to set a time schedule for filing submissions in the four cases as soon as possible." By their letter, received by fax on 17 June 1991 and filed on 19 June 1991, the Claimants restated their objection to the Respondent's "dilatory tactic." By Order of 24 June 1991, the Tribunal ordered the Respondent to submit its rebuttal memorial "forthwith, but in any event no later than 19 July 1991," and it indicated that it was still considering the request for joinder of the four referenced cases. By letter of 16 July 1991, the claimant in Case No. 146 informed the Tribunal of its opposition to a consolidation of its claim with those of the Claimants. By letter of 19 July 1991, the Respondent informed the Tribunal that, absent any order on the consolidation of the four cases, it "continues to believe that it should not file the Memorial and Evidence in Rebuttal in Cases Nos. 44, 46 and 47 within the time limit set by the Tribunal (19 July 1991)." By their letter, received by fax on 23 July 1991 and filed on 24 July 1991, the Claimants reiterated their objection to a consolidation of the four claims and requested the

Tribunal to order the Respondent to file its rebuttal memorial by 1 August 1991. By Order of 26 July 1991, the Tribunal denied the Respondent's request for joinder of Case No. 146 and Cases Nos. 44, 46 and 47. The Order further directed the Respondent to submit its rebuttal memorial "forthwith, but in any event no later than 5 August 1991," and added that "[i]n view of the date of the Hearing, any submission filed after 5 August 1991 will be considered as untimely filed." On 26 July 1991, the Iranian Member of the Chamber, Mr. Mohsen Aghahosseini, filed a Dissenting Opinion to the Order of 26 July 1991. By letter of 5 August 1991, the Respondent objected to the Tribunal's Order of 26 July 1991 on the ground that it was not properly motivated and it announced that it would not file its rebuttal memorial until the Tribunal had given sufficient grounds for denying the request for joinder.

27. By their letter filed on 12 August 1991, the Claimants communicated their witness list to the Tribunal, in accordance with Article 25, para. 2 of the Tribunal Rules, with a view toward the Hearing scheduled for 13 September 1991.

28. By letter of 13 August 1991, the Respondent reiterated its objection to the Order of 26 July 1991 and it requested that the Tribunal "revise the objected Order." On 14 August 1991, the American Member of the Chamber, Mr. Richard C. Allison, filed a Concurring Opinion to the Order of 26 July 1991.

29. By Order of 21 August 1991, the Tribunal cancelled the Hearing scheduled for 13 September 1991, indicating that the new hearing date is "contemplated to be before the end of 1991."

30. By Order of 7 October 1991, the Tribunal fixed the new Hearing date at 28 January 1992. The Order further stated that "[i]n view of the rescheduling of the Hearing, the Tribunal grants the Respondent a final opportunity to submit its Memorial and evidence in rebuttal." This "final" deadline was fixed at 2 December 1991. On 2 December 1991, Respondent filed its Rebuttal Memorial.

31. Under a letter dated 3 December 1991, the Respondent submitted six copies of a document that was first submitted in a different case, as "exhibits" to its Memorial in Cases Nos. 44, 46 and 47.

32. By letter of 4 December 1991, the Respondent requested that "the duration of the scheduled hearing be increased to at least two days." By their letter received by fax and filed on 9 December 1991, the Claimants informed the Tribunal that they had no objection to a two-day hearing provided that the scheduling of the additional hearing day would not cause the Hearing to be postponed. By Order of 17 December 1991, the Tribunal granted the Respondent's request for a two-day Hearing to be held on 28 and 29 January 1992.

33. By their letters filed on 27 December 1991, the Claimants and the Respondent communicated their witness lists to the Tribunal, in accordance with Article 25, para. 2 of the Tribunal Rules. By letter received on 16 January 1992 and filed on 17 January 1992, the Claimants submitted two corrections to the English translations of two previously filed exhibits.

34. On 28 and 29 January 1992, a Hearing was held at the Tribunal (the "First Hearing").

35. Under letter received by fax on 5 March 1992, the Claimants submitted to the Tribunal six copies of the transcript of the referenced Hearing, which they had caused to be made.

36. By Order of 20 July 1992, the Tribunal decided to appoint an expert in accordance with Article 27 of the Tribunal Rules "to render a report as to certain matters relating to the valuation of Gostaresh Maskan Company as of 13 November 1979." In addition to setting forth the procedure for the appointment of the expert, the Order included a copy of the draft terms of reference for the expert.

37. By letter filed on 5 August 1992, the Claimants informed the Tribunal of their dissatisfaction with the above-mentioned Order which they believed would cause further delay in the proceedings. Accordingly, the Claimants requested that the Tribunal (i) issue an interlocutory award on all non-valuation issues "as promptly as possible," and (ii) accelerate the procedure for the appointment of an expert. On 19 August 1992, the Claimants submitted a sealed envelope containing their list of three proposed experts. On 20 August 1992, the Respondent submitted a sealed envelope containing its list of three proposed experts. In its letter filed on 20 August 1992, the Respondent objected to the Claimants' requests set forth in their 5 August 1992 letter.

38. By Order of 25 August 1992, the Tribunal, noting that the two Parties' lists did not contain any common name, requested that the Parties attempt to agree on an expert by 24 September 1992. The Order further invited the Parties to inform the Tribunal by 24 September 1992 of their objections - if any - to the filing with the Registry of the respective proposed expert lists. By letter received by fax on 24 September 1992 and filed on 30 September 1992, the Claimants informed the Tribunal of their agreement with the appointment of Professor Richard A. Brealey, one of the names that the Respondent had proposed, as the Tribunal expert for the purpose of valuing Gostaresh Maskan.

39. By Order of 5 October 1992, the Tribunal (i) informed the Parties that it had contacted Professor Richard A. Brealey in connection with his proposed appointment as the valuation expert, and (ii) invited Professor Brealey and the Parties to submit their comments on the proposed terms of reference. By letter of 16 October 1992, the Respondent filed its comments to the above-mentioned draft terms of reference. By letter received by fax on 29 October 1992, the Claimants submitted their comments to the same draft terms of reference.

40. By Order of 14 December 1992, the Tribunal appointed Professor Richard A. Brealey as the Tribunal Expert for the

purpose of valuing Gostaresh Maskan. That Order further required the Parties to provide to the Tribunal by 15 January 1993 a deposit of 55,000 pounds sterling towards the cost of retaining the Expert, with half of that amount to be paid by the Claimants and the other half to be paid by the Respondent. By Order of 20 January 1993, the Tribunal acknowledged receipt of the Claimants' share of the deposit and extended the Respondent's time limit to pay its share of the deposit until 15 February 1993.

41. By letter filed on 25 January 1993, the Claimants commented on the revised draft terms of reference set forth in the Tribunal's Order of 14 December 1992. By letter filed on 26 January 1993, the Respondent submitted the English version of its comments to these revised terms of reference. The Persian version of these comments was filed on 1 February 1993.

42. By letter of 3 February 1993, the Respondent informed the Tribunal that it had transferred its half of the deposit in respect of the Expert's fee, in the amount of 27,500 pounds sterling, to "the account of the Secretary General of [the] Iran-U.S. Claims Tribunal."

43. By Order of 4 February 1993, the Tribunal decided, upon review of the Parties' comments to the revised draft terms of reference set forth in its Order of 14 December 1992, that no further revisions were warranted. Accordingly, the Order determined the Expert's Terms of Reference.

44. Under a letter of 10 March 1993, the Expert presented his report to the Chairman of Chamber Three, Mr. Gaetano Arangio-Ruiz, indicating that "[b]efore formally accepting this report, [the Chamber] may wish to check that I have not made inappropriate assumptions on points of law, or whether there are sections of the Report that require elucidation."

45. In their letter received by fax on 24 March 1993 and filed on 26 March 1993, the Claimants requested that the Tribunal inform them of the status of the Expert's report.

46. By letter to the Expert of 2 April 1993, the Chairman of Chamber Three requested that, prior to the distribution of the report to the Parties, the Expert incorporate a comment in his report on the value of Gostaresh Maskan in the case that the claimed price adjustment receivables were due and payable, or alternatively, that they were not due and payable, in accordance with paragraph 2.D(1) of the Terms of Reference. On 14 April 1993, the Expert submitted his response to the above-mentioned letter from the Chairman and a copy of his final report (the "Expert's Report"). On 21 April 1993, the Tribunal issued an Order directing the Registry to distribute the Expert's Report to the Parties and inviting the Parties to submit their comments thereon by 18 June 1993. By their letter received by fax on 18 June 1993, the Claimants informed the Tribunal that they had sent by express delivery three originals and thirty copies of their comments on 17 June 1993. The Claimants' submission, entitled "Claimants' Comments on Report of Professor Brealey" was filed on 21 June 1993. On 18 June 1993, the Respondent filed its "Respondent's Comments in Compliance with Tribunal's Order of 21 April 1993". By their letter filed on 26 July 1993, the Claimants notified the Tribunal of certain alleged errors in the English translation of certain exhibits included in the Respondent's comments on the Expert's Report.

47. By Order of 28 July 1993, the Tribunal granted the Parties' request for a Hearing and scheduled it for 19 and 20 October 1993. By their letter received by fax on 6 August 1993 and filed on 10 August 1993, the Claimants requested that the Hearing be scheduled one week later. By Order of 12 August 1993, the Tribunal rescheduled the above-mentioned Hearing for 26 and 27 October 1993.

48. By letter filed on 24 August 1993, the Claimants submitted to the Tribunal certain portions of the Respondent's comments on the Expert's Report in Persian of which the Respondent had not submitted an English translation.

49. By letter of 23 September 1993, the Respondent submitted its witness list for the referenced Hearing. By their letter received by fax on 24 September 1993 and filed on 27 September 1993, the Claimants submitted their witness list for the Hearing.

50. By letter received by fax on 13 October 1993 and filed on 15 October 1993, the Claimants requested that the Tribunal conduct the Hearing in a manner that would allow one of their expert witnesses, Mr. Fariborz Ghadar, to be absent from the second day of the Hearing.

51. On 26 and 27 October 1993, a second Hearing in these Cases was held at the Tribunal (the "Expert Hearing").

52. On 17 November 1993, the Tribunal received a copy of the Hearing transcript that the court reporter appointed by the Tribunal had prepared (the "Expert Hearing Transcript").

II. JURISDICTION

53. Under the Claims Settlement Declaration, the Tribunal may exercise jurisdiction over "claims of nationals of the United States against Iran." Claims Settlement Declaration ("CSD"), Article II, para. 1. The Tribunal determined in its Interlocutory Award that the Claimants' dominant and effective nationality during the relevant period is that of the United States and, therefore, that they may properly present claims before the Tribunal. Ebrahimi, 22 Iran-U.S. C.T.R. at 144.

54. In its subsequent Hearing Memorial, the Respondent offered an argument to challenge Claimants' standing to present these Cases to the Tribunal. The Respondent contends that Claimants, being minors during the period between the acquisition of Gostaresh Maskan shares and their alleged expropriation, were not the real party in interest. The Respondent asserts that "Claimants [were] only nominal shareholders and the actual owner

who had absolute powers was Mr. Ali Ebrahimi, the Claimants' father." Respondent further asserts that Ali Ebrahimi, as the legal guardian of the Claimants, arranged for the transfer of Gostaresh Maskan shares to Claimants to "achieve his initial objective of making his other properties as inviolable against his commercial liabilities" arising from Gostaresh Maskan's operations. Respondent concludes that the transfer of Gostaresh Maskan shares to Claimants lacked good faith "which is a main condition for correctness of any legal act."

55. The premise of this argument -- that Ali Ebrahimi used his children as nominal shareholders if not to create, then at least to maintain Gostaresh Maskan as a private joint stock company -- is undermined by evidence submitted by Respondent's expert, Noavaran Auditors and Management Consultants ("Noavaran"), on the Company's value. The Tribunal notes first that the Company was formed, according to its Articles of Association, on 6 November 1973, some four years before Claimants acquired their shares in Gostaresh Maskan in August 1977. Moreover, the first report prepared by Noavaran lists the initial shareholders of Gostaresh Maskan as Ali Ebrahimi, Mr. Akbar Lari, and Mr. Khodadad Khosravi, holding 51%, 45%, and 4%, respectively, of the Company's stock. Mr. Ebrahimi's "initial" objective to shield his personal estate from the Company's creditors was therefore achieved as of the date the Company was organized. It thus appears that the operation of Gostaresh Maskan as a duly organized and validly existing company in good standing was neither the result of, nor conditioned on, nor in any other manner affected by, a valid stock transfer to the benefit of the Claimants. By the same token, the Tribunal sees no reason to question that Claimants had full and marketable title to their shares. In the light of the above, Respondent's assertion of an improper motive behind the transfer of Gostaresh Maskan shares to Claimants fails as a matter of fact and as a matter of law.

56. The Government of The Islamic Republic of Iran is properly named as Respondent since these Cases involve a claim

of expropriation of a private company. See FMC Corporation and The Ministry of National Defence, et al., Award No. 292-353-2, para. 74 (12 February 1987), reprinted in 14 Iran-U.S. C.T.R. 111, 131 ("A claim for expropriation is . . . a claim against Iran."). Accordingly, the jurisdictional requirements of Article II, para. 1 of the Claims Settlement Declaration are satisfied in the present Case.

57. The Claims Settlement Declaration also limits the Tribunal's jurisdiction to claims that are "owned continuously, from the date on which the claim arose to [19 January 1981], by nationals [of Iran or the United States]." CSD, Article VII, para. 2. Claimants assert that they each owned shares in Gostaresh Maskan as of 26 August 1977. As evidence of their ownership, Claimants submit the minutes of a meeting of the Gostaresh Maskan Board of Directors, dated 25 August 1977, at which the Board of Directors approved the transfer by Mr. Akbar Lari of his shares in Gostaresh Maskan to "third parties." The minutes of this meeting refer to a letter from Mr. Lari describing the approved transaction. In that letter, which is dated 23 August 1977, Mr. Lari informs the Gostaresh Maskan Board of Directors of his intention to assign his shares in the Company to Claimants, in the following manner: Shahin Ebrahimi, 55 shares; Cecilia Ebrahimi, 20 shares; Christina Ebrahimi, 20 shares. These shares represented 19% of Gostaresh Maskan's outstanding stock. Assertedly, Mr. Lari transferred these shares to Claimants in exchange for 900 shares of Tamin Sakhteman Company, which they had allegedly received as a gift from their mother.

58. Claimants also offer their respective share certificates, issued by Gostaresh Maskan on 12 February 1978 upon the recapitalization of the Company, as evidence that their aggregate interest of 19% was not diluted following the recapitalization.

59. At the time of the transfer of Gostaresh Maskan shares to the Claimants, Shahin Ebrahimi was 15 years old, Cecilia Ebrahimi was 7 years old and Christina Ebrahimi was 6 years old.

Respondent contends that Claimants' status as minors at that time deprives them, under the Iranian Civil Code, of certain privileges normally associated with ownership. According to Respondent, "a minor child absolutely, has not the right of interfering [with] or possessing its property and until the time that such minor child arrives at the legal age, the child's guardian shall have the absolute right to interfere in the property."

60. Nonetheless, Respondent concedes that "in various legal systems, minor children . . . have the right of ownership, and this matter is contained also in the legal system of Iran." Thus, Claimants' legal right to own shares in Gostaresh Maskan, for purposes of the Tribunal's jurisdiction under Article VII, para. 2 of the Claims Settlement Declaration, is not contested. Moreover, evidence submitted by Respondent -- a "List of Shareholders Name and Number of shares of Gostaresh Maskan Private Co." -- confirms Claimants' share ownership in the proportions claimed by them.

61. The claims in these Cases "arise out of . . . expropriation or other measures affecting property rights." CSD, Article II, para. 1. Thus, all of the nationality, standing and subject matter jurisdiction requirements of the Claims Settlement Declaration are satisfied in these Cases.

III. EXPROPRIATION

A. Claimants' Contentions

62. The Claimants trace the alleged expropriation of Gostaresh Maskan to the "Law Concerning the Appointment of Provisional Manager(s) to Supervise Productive, Industrial, Commercial, Agricultural and Services Units in the Private and Public Sectors," approved by the Islamic Revolutionary Council under No.

6738 on 16 June 1979 (26 Khordad 1358) (the "Act").[2] Pursuant to the Act, and the administrative orders implementing it, the Ministeries of the Islamic Republic, acting through the Director of the Plan and Budget Organization, were empowered to appoint directors to manage private corporations if "the managers and/or owners . . . deserted [the corporation], or stopped the work, or [were] not accessible for any reason whatsoever and upon request of [the] owner[s] or directors." Act, Article 1. Government appointment of a director, according to the Act, "stripped [earlier directors] of their competence" and precluded shareholders from "appoint[ing] directors in their stead." Act, Article 2. The Act also provided that directors appointed by the Government "shall in every respect be the legal representatives of the original directors of the [corporation], and they shall have all the authorities [sic] necessary for managing the current and routine affairs [of the corporation]." Act, Article 3.

63. The Claimants assert that, pursuant to the Act, the Advising Minister and Director of the Plan and Budget Organization, Mr. Ezzatollah Sahabi, and the Supervisor for the Bureau of Contractors and Constructors, Mr. Heshmatollah Alaoddini, appointed Mr. Alirreza Shastfouladi as the Director of Gostaresh Maskan on 13 November 1979. The consequence of this appointment, according to the affidavit of Mr. Homayoun Amini -- the then Chief Executive Officer and a Director of Gostaresh Maskan -- was to

> effectively strip me, the other directors, and the other shareholders of Gostaresh Maskan of our authority. As officers and directors, we could no longer act on behalf of the company. As shareholders, we were deprived of the use, control and benefits of our ownership rights, particularly our right to manage the corporation.

---

[2]In their respective Statements of Claim, the Claimants relied on a different law, i.e., the "Law for the Managing and the Taking of Ownership of the Stocks in the Contracting and Consultant Engineering Entities," dated 9 March 1980 (18 Esfand 1358). See, para. 81 and para. 83, infra.

Mr. Amini further states in his affidavit that, following the appointment of Mr. Shastfouladi, the above-mentioned Supervisor for the Bureau of Contractors and Constructors, Mr. Heshmatollah Alaoddini, told him that Mr. Shastfouladi would manage Gostaresh Maskan and that the other officers and directors should act only at Mr. Shastfouladi's direction.

64. According to Mr. Amini, the appointment of Mr. Shastfouladi was superseded by the appointment of Mohammad Javad Dormishian as Managing Director of Gostaresh Maskan later that same month. Shortly thereafter, Mr. Dormishian resigned his position as Managing Director, and the Government appointed Messrs. Dormishian, Hosseingholi Hooshmand, and Sayed Hassan Nouri as Directors of the Company. Finally, on 19 January 1980, Messrs. Dormishian, Hooshmand, and Nouri were removed as directors and Dr. Parviz Shams Towfighi was appointed as Director of Gostaresh Maskan, a position that he held for approximately eighteen months. Mr. Amini asserts that none of these successive appointments was made with the approval of Gostaresh Maskan's shareholders or elected directors. As of 1987, when Mr. Amini left Iran, Gostaresh Maskan remained under Government control.

65. The Claimants seek additional support for their claim of expropriation from the Tribunal's decision in Blount Brothers Corporation and Ministry of Housing and Urban Development and Gostaresh Maskan Co., Award No. 74-62-3 (2 September 1983), reprinted in 3 Iran-U.S. C.T.R. 225 ("Blount Brothers"). In that Award, the Tribunal held that Gostaresh Maskan was a proper respondent because it was "an entity controlled by the Government of Iran so that the Tribunal has jurisdiction over claims against that entity." Id. at 231.

66. The Claimants contend that

> Gostaresh Maskan's shareholders have not been, and will not be, able to exercise the property rights associated with their ownership of stock in Gostaresh Maskan. In particular, they have been permanently deprived of their rights to vote their

> shares, to benefit from the company's profits, and to direct and participate in the sale of the company or the liquidation of its assets.

Accordingly, the Claimants consider that the referenced series of appointments starting from 13 November 1979, and the resulting Government interference with the Claimants' ownership rights thereafter, amounted to an expropriation of their shares within the meaning of Article II, para. 1 of the Claims Settlement Declaration. They seek compensation from the Respondent for the "full equivalent of the property taken," i.e., for the value of their shares in Gostaresh Maskan on the date of the alleged expropriation. The Claimants consider that the date of the expropriation was 13 November 1979, when the first Government-appointed director was assigned to manage Gostaresh Maskan's operations.[3]

B. Respondent's Contentions

67. The Respondent denies that the appointment of directors to manage Gostaresh Maskan constituted an expropriation of Claimants' shares in the Company. It asserts that the appointment of directors was made only "due to excessive insistence of the existing directors and shareholders of the Company and due to [the] departure of Mr. Ali Ebrahimi, the main shareholder and director of the Company." In support of this position, Respondent refers to Article 1 of the Act which, in pertinent part, provides:

> [O]rganizations and companies . . . the managers and/or owners of which have deserted the said units . . . and upon request of [the] owner[s] or directors of the said units . . . one or more individuals may be appointed as director or board of directors or supervising members for

---

[3]The Claimants in their respective Statements of Claim alleged that the expropriation had occurred in early 1980. See note 5, infra.

> managing or supervising over the affairs of the said units . . .

Respondent also submits the affidavit of Mr. Nasser Modaressi, who claims to have served Gostaresh Maskan as an accountant since 1975. According to Mr. Modaressi, the Company was "abandoned by its directors" in 1979 and its affairs fell into turmoil. This prompted Mr. Modaressi, "together with a number of the Company's personnel," to approach the "Plan and Budget Organization in order to have a supervisor appointed for attending to the affairs of the Company, as a result of which Mr. Ali Reza Sast Fooladi [sic] was appointed on 13 November 1979 as supervisor by the Plan and Budget Organization." The affidavit of Mr. Mohammad Hossein Karimi Fard, identified as a technical and executive engineer at Gostaresh Maskan since 1975, presents a substantially similar rendition of events.

68. Respondent contends that the Tribunal's decision in Blount Brothers does not establish the alleged expropriation of Gostaresh Maskan. According to Respondent, this holding should not dictate a finding of expropriation in the present Case because: (i) Blount Brothers is "devoid of the required legal firmness and is weak and shaky," given the content of Article 1 of the Act; and (ii) prior Tribunal awards are not binding in subsequent cases.

C. The Tribunal's Findings

1. Expropriation

69. In Blount Brothers, the Tribunal examined whether, for jurisdictional purposes, Gostaresh Maskan was an "entity controlled by the Government of Iran." Blount Brothers, 3 Iran-U.S. C.T.R. at 231. The evidence before the Tribunal on this question included an affidavit by Mr. Ali Ebrahimi describing the seizure of Gostaresh Maskan and the Government's appointment of successive directors for the Company.

70. Contrary to the Respondent's position, Blount Brothers has significant precedential value in the context of the present expropriation claim. By its terms, Blount Brothers addressed the status of Gostaresh Maskan as a controlled entity rather than the manner in which that control was established, i.e., expropriation, purchase, or otherwise. Nevertheless, the Tribunal's reliance on Mr. Ebrahimi's testimony regarding the appointment of successive directors to Gostaresh Maskan reflects its understanding of the manner in which the Company came under Government control. Thus, while Blount Brothers is not binding in the present Cases, the Tribunal places great weight upon its prior holding in considering the issue currently before it.

71. The present claim does not rest solely on our prior decision, however. The Respondent does not dispute that it appointed successive directors to Gostaresh Maskan, nor that these appointments had an impact on the management of the Company. Rather, it asserts that Gostaresh Maskan's elected directors and shareholders requested Government appointment of directors following Ali Ebrahimi's departure from Iran in July 1979. However, Respondent fails to support this assertion with evidence of an authorized request on behalf of Gostaresh Maskan for Government-appointed directors. Respondent's only evidence on this issue concerns the apparent petitioning by several Gostaresh Maskan employees for appointment of a Government director.

72. The Tribunal considers first that it is doubtful that the referenced requests would have satisfied the terms of the Act since Article 1 appears to refer to a request from company shareholders or directors, not employees.[4] Second, the Claimants

---

[4]The Tribunal notes that, during the drafting of this Award, it was suggested that the English translation of the Act that is set out above (see para. 62 and para. 67, supra), and which is substantially identical to the translations submitted by each of the Parties, was inaccurate. It was suggested that the true meaning of Article 1 was that the Iranian Government was entitled to take temporary measures for the management of certain companies either upon the occurrence of certain events (such as

offered evidence that the absence of Mr. Ebrahimi did not completely disrupt Gostaresh Maskan's work. Following Mr. Ebrahimi's departure from Iran in July 1979, Mr. Amini was authorized to direct the Company's activities and, in fact, continued to conduct monthly Board of Directors' meetings until 22 October 1979, when the last meeting of the Company's elected directors was held. Third, and more importantly, Tribunal precedent makes clear that the key issue is the objective impact of measures affecting shareholder interests, not the subjective intention behind those measures. See Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225-226 ("Tippetts") ("The intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact"). Thus, the Respondent's contention that appointment of Government managers was necessary to stabilize Gostaresh Maskan's operations (and, presumably, to protect Gostaresh Maskan workers and Iranian interests in Gostaresh Maskan projects) does not preclude liability for expropriation. It is immaterial whether or not the alleged expropriation was justified under the Act for the purpose of finding that the Respondent has a duty to pay compensation as a matter of international law and obligations. A State may not avoid liability for compensation by showing that its actions were carried out pursuant to or in accordance with its own laws. See American International Group, Inc., et al. and The Islamic Republic of Iran, et al., Award No. 93-2-3 (19 December 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 105 ("AIG") ("[I]t is a general principle of public international law that even in a case

---

the abandonment of the company by its shareholders and/or directors), or upon a request by that company's shareholders or directors. Under this reading of the Article, the conditions listed above should be read as alternative rather than as cumulative requirements. The Tribunal notes that it need not rule on the definitive translation of the referenced Article as such ruling would not materially affect the Tribunal's conclusions on expropriation set out in paras. 72 through 77, infra.

of lawful nationalization the former owner of the nationalized property is normally entitled to compensation for the value of the property taken."). This was recognized in Phelps Dodge Corp., et al. and The Islamic Republic of Iran, Award No. 217-99-2, para. 22 (19 March 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 130):

> The Tribunal fully understands the reasons why the Respondent felt compelled to protect its interests through this transfer of management, and the Tribunal understands the financial, economic and social concerns that inspired the law pursuant to which it acted, but those reasons and concerns cannot relieve the Respondent of the obligation to compensate Phelps Dodge for its loss.

The Tribunal confirmed its position on this issue in Birnbaum, which involved the very Act under review in the present Cases:

> The Respondent's reasons and concerns for taking control of [the company] cannot relieve it from responsibility to compensate the Claimant for the taking . . . Moreover, a government cannot avoid liability for compensation by showing that its actions were taken legitimately pursuant to its own laws.

Harold Birnbaum and The Islamic Republic of Iran, Award No. 549-967-2, para. 35 (6 July 1993), reprinted in ____ Iran-U.S. C.T.R. ____, ____ ("Birnbaum").

73. The Claimants have presented adequate evidence of the "reality of the impact" of the Respondent's measures affecting their ownership rights. The Claimants present the affidavit of Mr. Homayoun Amini, in which he details the appointment of successive directors to Gostaresh Maskan, commencing on 13 November 1979 with the appointment of Mr. Alirreza Shastfouladi. According to Mr. Amini, the Government's appointment of various directors to Gostaresh Maskan effectively nullified the authority of the Company's elected directors and its shareholders. Following the appointment, no further meetings of the Gostaresh

Maskan shareholders or their elected directors were held. By early December 1979, the Government-appointed Director then in place, Mr. Mohamad Javad Dormishian, froze the Company's accounts and presented himself as the sole authorized representative of the Company.

74. Additional documentary evidence supports the Claimants' contention that they were deprived of their ownership rights in Gostaresh Maskan. For example, Claimants submitted the minutes of a meeting held on 26 December 1979 at the office of Mr. Alaeddini, Supervisor of Contractors Affairs at the Plan and Budget Organization, which was attended by the Government-appointed directors of Gostaresh Maskan and representatives of the Government agencies for which the Company was carrying out construction projects. Also attending the meeting were (i) Mr. Amini, whose status at the meeting, as indicated by the minutes, was that of "Former Managing Director," and (ii) Mr. Dormishian, whom the minutes referred to as the "Government-appointed Director, Gostaresh Maskan Company."

75. The Claimants also offer an English translation of three letters, each dated 31 December 1979, from Mr. Ezzatollah Sahabi, the State Minister and Supervisor of the Plan and Budget Organization, to each of the Company's Government-appointed Directors (at that time, Mr. Dormishian, Mr. Hooshmand, and Mr. Noori) according to which they were authorized, collectively, "to appoint the Boards of Directors" of Gostaresh Maskan and its affiliated companies.

76. The Tribunal has held in previous Awards that a finding of expropriation "is warranted whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral." Tippetts, 6 Iran-U.S. C.T.R. at 225. The Tribunal further held in Tippetts that "[a] deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected." Id. The

appointment of "provisional managers" does not automatically justify a finding of expropriation. However, the Tribunal previously has held that "the appointment of managers often has been regarded as a 'highly significant indication' of a taking and thus of expropriation." Motorola, Inc. and Iran National Airlines Corp., et al., Award No. 373-481-3, para. 58 (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 73, 85 ("Motorola") (citing Sedco, Inc., et al. and National Iranian Oil Co., Interlocutory Award No. ITL 55-129-3 (24 October 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 277-278 ("Sedco") (finding that appointment of managers is "a highly significant indication of expropriation because of the attendant denial of the owner's right to manage the enterprise.")). Indeed, in Payne, the Tribunal considered the consequences of appointing directors pursuant to the Act relied upon in the present Cases and found that:

> The effect [of Legal Act No. 6738] is to strip the original managers of affected companies of all authority and to deny shareholders significant rights attached to their ownership interest . . . [T]he sum effect in this case was the deprivation of any interest of the original owners of the companies once they were made subject to provisional management by the Government.

Thomas Earl Payne and The Government of the Islamic Republic of Iran, Award No. 245-335-2, para. 20 (8 August 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 10 ("Payne"). In Birnbaum, which involved the same Act, the Tribunal found that "[i]t is difficult to deny that once the government appointed a temporary manager under the Law of 16 June 1979 and that manager began to function, the owner was divested of the ability to participate in the management and control of his company." Birnbaum, at para. 29, ____ Iran-U.S. C.T.R. at ____. See also Starrett Housing Corporation, et al. and The Government of The Islamic Republic of Iran, et al., Interlocutory Award No. ITL 32-24-1 (19 December 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 154-156 ("Starrett"), and Faith Lita Khosrowshahi, et al. and The Government of the

Islamic Republic of Iran, et al., Award No. 558-178-2, paras. 23-28 (30 June 1994), reprinted in ____ Iran-U.S. C.T.R. ____, ____.

77. Based on the evidence before it and the decision in Blount Brothers, the Tribunal finds that Respondent effectively took control of Gostaresh Maskan through the appointment of provisional managers, thereby depriving Claimants of their ownership interests in the Company.

78. As to the date of expropriation, Respondent contends that if the Tribunal defers to its prior finding in Blount Brothers, it must also adopt the date to which Mr. Ebrahimi attested in that Case, i.e., 19 January 1980, as the date the Government seized control of Gostaresh Maskan. However, evidence offered by Claimants in the present Cases, which does not appear to have been presented in Blount Brothers, supports an earlier expropriation date.[5] Specifically, Mr. Amini's affidavit states that the first Government-appointed Director of Gostaresh Maskan, Mr. Shastfouladi, was appointed on 13 November 1979.

79. The Tribunal previously has held that, when "the seizure of control by appointment of 'temporary' managers clearly ripens into an outright taking of title, the date of appointment presumptively should be regarded as the date of taking." Sedco, 9 Iran-U.S. C.T.R. at 278. If at "the date of the government appointment of 'temporary' managers there is no reasonable prospect of return of control, a taking should conclusively be found to have occurred as of that date." Id. at 278-279. The Tribunal

---

[5]In Claimants' Hearing Memorial, the expropriation is asserted to have occurred on 13 November 1979, the date of the Government's initial appointment of a director to Gostaresh Maskan rather than "in early 1980" as they had contended in their respective Statements of Claims (see note 3, supra). This change does not alter the essence of the claim or cause delay or prejudice in the proceedings. See Tribunal Rule 20; Order of 15 September 1987, in Fereydoon Ghaffari and The Islamic Republic of Iran, Case No. 10792, Chamber Two, reprinted in 18 Iran-U.S. C.T.R. 64. Accordingly, Claimants' revised pleading of the date of the alleged expropriation, i.e., 13 November 1979, is accepted for the purpose of assessing their claims.

also refers to its above-mentioned finding in Birnbaum to the effect that the expropriation occurred on the date that the designation of the first Government-appointed director took effect. See para. 76, supra. The record shows that the Government-appointed directors took firm control of Gostaresh Maskan as of 13 November 1979. Moreover, given the circumstances in which Mr. Shastfouladi was appointed and the rapid succession of Government-appointed directors following him, relinquishment of Government control was not a reasonable prospect when Mr. Shastfouladi was appointed. See Sedco, 9 Iran-U.S. C.T.R. at 279 ("[t]he Tribunal notes that Legal Bill No. 6738 does not prescribe the length of government control and does not detail 'provisions calling for judicial or administrative determination of whether the property should be returned to its original owners'."). Thus, the expropriation of the Claimants' shares in Gostaresh Maskan is deemed to have taken effect on 13 November 1979. Respondent is therefore liable to Claimants for the taking of their shares in Gostaresh Maskan as of that date.

2. The A18 Caveat

80. The Respondent argues that the Claims should be dismissed by application of the Caveat in Case No. A18.[6] Respondent states that

> if ever a claim arose it would be characterized as an Iranian claim because the transfer of the alleged shares to the Claimants was made not directly but indirectly on the grounds of their being minor by their father Mr. Ali Ebrahimi who

---

[6]The Tribunal held in Case No. A18 that in determining a claimant's dominant and effective nationality, the Tribunal is to "consider all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment. To this conclusion the Tribunal adds an important caveat. In cases where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim." Case No. A18, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265.

> is a national of Iran and does not deny this fact.

Respondent further points out, with regard to Mr. Ali Ebrahimi, that

> [t]he only thing that never hit his imagination or that of other shareholders was the fact that his children were foreign nationals because otherwise [he] would never have taken the risk of transferring the alleged shares to his children, or indeed endangering his own property, for fear of any likely changes in the regulations concerning the ownership of shares by foreign nationals or the promulgation of laws limiting such ownership.

Moreover, Respondent asserts that the Claimants had deliberately concealed their U.S. nationality so as not to jeopardize the position of Gostaresh Maskan in public procurement procedures. In this regard, Respondent points out that "as far as the Plan and Budget Organization was concerned, its budget and the type of contracts that would have been delegated to [a company with foreign shareholders], would have been negatively affected." Accordingly, Respondent concludes that the Claimants "filed a claim against their sovereign government before this Tribunal by using their U.S. nationality for vindication of rights acquired solely under their Iranian nationality. This is a clear case of fraudulent use of nationality and abuse of right."

81. In addition, the suggestion was made that the Claimants deliberately concealed their U.S. citizenship even after the expropriation of their shares. Such non-disclosure is purportedly evidenced by the Claimants' failure to seek compensation from the local Iranian authorities under the "Law for the Managing and the Taking of Ownership of the Stocks in the Contracting and Consultant Engineering Entities," dated 9 March 1980,[7] and their decision to instead seek compensation from the

---

[7]The Proviso to Article II(B) of this Law provides:

Government of the Islamic Republic of Iran pursuant to an award from the Tribunal.

82. The Tribunal rejects the Respondent's contention that the Claimants' conduct implicates the A18 Caveat. The Tribunal has developed the A18 Caveat test in a number of Awards following the Full Tribunal Decision in Case No. A18. For instance, in Protiva the Tribunal, having found that the claimants' dominant and effective nationality was that of the U.S., described the A18 Caveat test as follows: "The Tribunal . . . 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." Edgar Protiva, et al. and The Government of The Islamic Republic of Iran, Interlocutory Award No. ITL 73-316-2, para. 18 (12 October 1989), reprinted in 23 Iran-U.S. C.T.R. 259, 263. Applying this test to the present Case, the Tribunal finds that the Respondent has not provided any evidence of any benefits that only would have been available to sole Iranian nationals. The Tribunal notes, in particular, that no evidence was submitted that Gostaresh Maskan was subject to any act, rule or regulation that in any manner proscribed the issuance or transfer of stock in the Company to foreign or dual nationals. Accordingly, the Tribunal finds that the Claimants did not obtain and secure ownership of their shares in Gostaresh Maskan in a manner that would be covered by the A18 Caveat referred to above.[8]

> The value of the shares of foreign shareholders in the entities taken by the Government shall, upon the auditing and evaluation of each entity, be paid by the Government.

[8]See also Ataollah Golpira and The Government of The Islamic Republic of Iran, Award No. 32-211-2 (29 March 1983), reprinted in 2 Iran-U.S. C.T.R. 171. In that case the Tribunal held, in regard to shares in an Iranian company held by a dual national (Mr. Golpira), that "[s]ince shares in the [Iranian company] were available for purchase by non-Iranians, the mere fact that Golpira's Iranian ID number appears on his share certificates does not mean that he concealed his American nationality in order

83. The Tribunal notes that in Saghi it applied a broader definition of the A18 Caveat, stating that whereas

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

James M. Saghi, et al. and The Islamic Republic of Iran, Award No. 544-298-2, para. 54 (22 January 1993), reprinted in ____ Iran-U.S. C.T.R. ____, ____. The Tribunal finds that there is no evidence in the present Cases that would compel such a conclusion. In particular, there are no grounds for believing that the Claimants' alleged decision not to claim compensation from the Government under the referenced "Law for the Managing and the Taking of Ownership of the Stocks in the Contracting and Consultant Engineering Entities," at a time when they could not reasonably have foreseen the creation of this Tribunal, amounts to an abuse of their dual nationality. Furthermore, based on the evidence before it, the Tribunal is satisfied that the relevant legislative act in these Cases is the Act pursuant to which the Claimants' property was expropriated (see para. 62, supra), rather than the above-mentioned law. The Tribunal therefore concludes that the record does not support the conclusion that the Claimants in any manner relied upon or used their Iranian nationality to obtain or secure certain benefits that they could not have enjoyed as U.S. citizens.

---

to obtain benefits available only to Iranians." Id. at 174.

IV. STANDARD OF COMPENSATION AND VALUATION METHOD

A. Claimants' Contentions

84. The Claimants claim "prompt, adequate and effective compensation" as the remedy for the taking of their property rights. They point out that pursuant to Article IV, Para. 2 of the Treaty of Amity between the United States and Iran, signed on 15 August 1955,[9] the amount of the compensation must be equal to "the full equivalent of the property taken."

85. The Claimants further argue that such an amount must be equal to the fair market value of the Company as a going concern. The Claimants seek support for this position in the Tribunal's Award in AIG, which held that "[t]he appropriate method is to value the company as a going concern, taking into account not only the net book value of its assets but also such elements as good will and likely future profitability, had the company been allowed to continue its business under its former management." AIG, 4 Iran-U.S. C.T.R. at 109; see also Motorola, 19 Iran-U.S. C.T.R. at 88 ("Net book value is not an appropriate standard of compensation."). Accordingly, Claimants contend that the Tribunal must determine "the amount which a willing buyer would have paid a willing seller" for the shares of Gostaresh Maskan. INA Corporation and The Government of the Islamic Republic of Iran, Award No. 184-161-1 (12 August 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 380 ("INA"). This determination is to be made without regard to "any diminution of value due to the nationali[z]ation itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares." Id.

86. Claimants calculated the fair market value of Gostaresh Maskan using an asset approach. Such a valuation method yields

---

[9]Treaty 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.

a company value that is composed of the replacement cost of the company's tangible assets plus an amount attributable to its intangible values. In their Hearing Memorial for the Expert Hearing, Claimants also submitted a valuation of Gostaresh Maskan based on a discounted cash flow approach to provide additional support for their asset-based valuation. This method consists of discounting the cash flows which a company is expected to generate in the future at the rate of return that a reasonable investor requires from investments of comparable risk.

B. Respondent's Contentions

87. Respondent argues that the full compensation-provision of Article IV, para. 2 of the above-mentioned Treaty of Amity is of no avail to dual nationals like the Claimants who "take possession of a company's shares as Iranians, and then ask for compensation." Furthermore, while the Respondent appears to agree on the appropriateness of a fair market valuation of Gostaresh Maskan using an asset approach, it maintains that the Company was no longer a going concern at the valuation date. Respondent notes in support of its position that "[c]hanges of the government policy concerning construction works and its focusing on works related to rural areas as well as cheap housing construction works for low income classes, were greatly affecting the conditions of companies like Gostaresh Maskan Company." This, in addition to "the Company directors' negligence, failures and mismanagement before the Revolution until the date of the alleged expropriation", allegedly resulted in a situation such that by the time the first Government-appointed director arrived at Gostaresh Maskan, the Company's operations had come to a virtual standstill and its financial condition was "critical and quite negative."

C. Tribunal's Findings

88. The Tribunal believes that, while international law undoubtedly sets forth an obligation to provide compensation for property taken, international law theory and practice do not

support the conclusion that the "prompt, adequate and effective" standard represents the prevailing standard of compensation. As Professor O. Schachter has pointed out, "[t]he leading European scholars -De Visscher, Lauterpacht, Rousseau-" have concluded in that sense. See Oscar Schachter, International Law in Theory and Practice, Academy of International Law, 178 Collected Courses 295 (1982) at 323. Professor Schachter has further noted, accurately, that "no international judicial or arbitral decision on compensation has adopted the "prompt, adequate and effective" rule" as a matter of international obligation. See Oscar Schachter, Compensation for Expropriation, 78 A.J.I.L. 121, 123-127 (1984); see also Ian Brownlie, Principles of Public International Law 543-544 (Clarendon Press-Oxford 1990). Rather, customary international law favors an "appropriate" compensation standard.[10] See Eduardo Jimenéz de Aréchaga, International Law in the Past Third of a Century, 159 Recueil des Cours 1, 302 (1978); Oscar Schachter, The Question of Expropriation/ Compensation in the United Nations Code in the Light of Recent State Policy and Practice, Paper Presented at the Symposium on the Outstanding Issues in the United Nations Code of Conduct on Trans'l Corporations, The Hague, 15-16 September 1989, at 3; Malcolm N. Shaw, International Law 521-522 (Grotius Publications Limited-Cambridge 1991); John A. Westberg, Compensation in Cases of Expropriation and Nationalization: Awards of the Iran-United

---

[10]In this respect, reference is made, in particular, to Article 4 of Resolution No. 1803 (XVII) of 14 December 1962, on Permanent Sovereignty over Natural Resources (G.A. Res. 1803, 17 U.N. GAOR Supp. (No. 17) at 15, U.N. Doc. A./5217 (1962), reprinted in 57 Am.J.Int'l L. 710 (1963)). Article 4 states as follows:

> Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.

States Claims Tribunal, 5 ICSID Review - Foreign Investment Law Journal 256, 258, 265 (1990); Pamela B. Gann, Compensation Standard for Expropriation, 23 Colum J. Transnat'l L. 615, 617 (1985). The gradual emergence of this rule aims at ensuring that the amount of compensation is determined in a flexible manner, that is, taking into account the specific circumstances of each case. The prevalence of the "appropriate" compensation standard does not imply, however, that the compensation quantum should be always "less than full" or always "partial."

89. The Tribunal notes that the above-mentioned principles have been tested in a number of important arbitrations involving the nationalization of the oil industries of Libya and Kuwait.

90. In TOPCO, the sole arbitrator, Professor Dupuy, stated that "[t]he consensus by a majority of States belonging to the various representative groups indicates without the slightest doubt universal recognition of the rules . . . incorporated [in Resolution No. 1803 (XVII)], *i.e.*, with respect to nationalization and compensation the use of the rules in force in the nationalizing State, but all this in conformity with international law." Texaco Overseas Petroleum Company and California Asiatic Oil Company v. The Government of The Libyan Arab Republic, Award of 19 January 1977 (Dupuy, sole arb.), reprinted in 53 I.L.R. 389, 492 (1979) ("TOPCO").[11] The arbitrator went on to conclude that, given the specific circumstances of the case and, in particular, the unlawful nature of the taking, the appropriate compensation under international law consisted of

---

[11]Professor Dupuy also considered certain later U.N. Resolutions, particularly that instrumenting the "Charter of Economic Rights and Duties of States" (Resolution 3281 (XXIX)), adopted by the U.N. General Assembly on 12 December 1974). Like Resolution No. 1803 (XVII), the Charter states that "appropriate" compensation is due. Unlike Resolution No. 1803 (XVII), however, the Charter makes no reference to "international law," as a result of which the Charter was not accepted by most Western countries. On that ground, the arbitrator concluded in TOPCO that the "appropriate" compensation standard stated in the Charter could not be held to express a general principle of international law. See id. at 488, 491-93.

restitutio in integrum. Id. at 495-508. The arbitrator thus confirmed the view that an appropriate compensation may well be a full one.

91. In AMINOIL, it was held that the term "appropriate" compensation used in Resolution No. 1803 (XVII) called for a concrete interpretation, very much like related terms such as "fair," "just," "equitable," "adequate," "effective," and "prompt." The tribunal further stated that such interpretation required an inquiry "into all the circumstances relevant to the particular concrete case." Government of Kuwait v. American Independent Oil Company (AMINOIL), Award of 24 March 1982 (Reuter, Hamed Sultan and Sir Gerald Fitzmaurice, Members), reprinted in 66 I.L.R. 518, 601-02 (1986), ("AMINOIL"). The tribunal concluded that such inquiry "does not in any way exclude a substantial indemnity." Id. at 602; see also Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F.2d 875 (2d Cir. 1981).

92. In LIAMCO, the sole arbitrator, Professor Mahmassani, perceived a trend that "the rule of 'full and prior' compensation is no more imperative, and that only 'convenient and equitable' compensation is required in cases of nationalization." Libyan American Oil Company (LIAMCO) v. Government of The Libyan Arab Republic, Award of 12 April 1977 (Mahmassani, sole arb.), reprinted in 62 I.L.R. 140, 207 (1982) ("LIAMCO"). The arbitrator concluded that it is "just and reasonable to adopt the formula of 'equitable compensation' as a measure for the assessment of damages in the present dispute, with the classical formula of 'prior, adequate and effective compensation' remaining as a maximum and a practical guide for such assessment." Id. at 218.

93. These three awards show that the terms of the "appropriate compensation" standard or "fair compensation" standard must not be construed either to always require partial compensation or to always exclude full compensation. Regardless of the formulation of the standard, these awards reflect a consistent concern not to determine the amount of compensation

rigidly, i.e., without taking into account the specific circumstances of each concrete case.

94. Turning to the practice of the Tribunal, it appears that in past Awards the Tribunal has typically awarded compensation representing the full value of the expropriated property as determined by the Tribunal. In AIG, a case involving a lawful nationalization, the Tribunal stated explicitly that the compensation must be determined in a flexible manner in each concrete case, i.e., "taking into account all relevant circumstances of the case." AIG, 4 Iran-U.S. C.T.R. at 109. Also, the Tribunal rejected the respondent's argument that "modern developments in international law" required that only a "partial" compensation standard be applied. AIG, Id. at 105-106. In Tippetts, the Tribunal held that the claimant was entitled "under international law and general principles of law to compensation for the full value of the property of which it was deprived." Tippetts 6 Iran-U.S. C.T.R. at 225. In INA, which like AIG involved a formal and systematic nationali[z]ation of the Iranian insurance sector, the Tribunal held that, at least as far as "large-scale nationalizations of a lawful character [are concerned], international law has undergone a gradual reappraisal, the effect of which may be to undermine the doctrinal value of any 'full' or 'adequate' (when used as identical to 'full') compensation standard." INA, 8 Iran-U.S. C.T.R. at 378. The Award then determined that "international law admits compensation in an amount equal to the fair market value of the investment." Id. The Tribunal thus determined that the appropriate compensation in the case at issue would be the "full equivalent of the property taken." Id., at 379. In his Separate Opinion to the Award in INA (filed 15 August 1985), Judge Lagergren considered that "'appropriate', 'equitable', 'fair' and 'just' are virtually interchangeable notions so far as standards of compensation are concerned," and that "[t]he basic thesis of 'appropriate compensation' . . . is one of inherent elasticity." Separate Opinion of Judge Lagergren in INA Corporation and The Government of the Islamic Republic of Iran, Award No. 184-161-1 (15 August 1985), reprinted in 8 Iran-U.S. C.T.R. 385, 387, 389.

In Sedco, which like the present case involved the appointment of temporary Government managers to an Iranian company resulting in a finding that the claimant's equity interest therein had been expropriated, the Tribunal found "overwhelming [ ] support" for the conclusion that in the case of a discrete expropriation (as opposed to a large-scale nationalization) of alien property, customary international law required that full compensation should be awarded for the property taken, regardless of whether the expropriation was lawful. Sedco, Inc. and National Iranian Oil Company, et al., Interlocutory Award No. ITL 59-129-3 (27 March 1986), reprinted in 10 Iran-U.S. C.T.R. 180, at 187. See also Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3, paras. 30-31 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 34. In Sola Tiles, the Tribunal examined the specific nature of the "appropriate" or "fair" or "just" compensation standard which it acknowledged to be emerging in customary international law, and concluded that attempts "to invest these terms with a concrete meaning" revealed that "the distance between rhetoric and reality is narrower than might at first appear." Sola Tiles, Inc. and The Government of The Islamic Republic of Iran, Award No. 298-317-1, para. 43 (22 April 1987), reprinted in 14 Iran-U.S. C.T.R. 223, 235. Taking into account "the facts of the particular case," the Tribunal awarded full compensation for the expropriated assets as valued by the Tribunal. Id. at 237. Finally, the Tribunal notes that in AMOCO it was held that, while customary international law acknowledged that a state's sovereign right to nationalize included a general duty to compensate, "[t]he rules of customary international law relating to the determination of the nature and amount of the compensation to be paid, as well as of the conditions of its payment are less well settled". Amoco International Finance Corporation and The Government of The Islamic Republic of Iran, et al., Partial Award No. 310-56-3, para. 117 (14 July 1987), reprinted in 15 Iran-U.S. C.T.R. 189, 223 ("Amoco"). In that Award, the Tribunal further held that the notion of just compensation "has generally been understood as a compensation equal to the full value of the expropriated assets." Id. at 252.

95. Considering the scholarly opinions, arbitral practice and Tribunal precedents noted above, the Tribunal finds that once the full value of the property has been properly evaluated, the compensation to be awarded must be appropriate to reflect the pertinent facts and circumstances of each case.

96. Despite the importance of the distinction, the Tribunal need not examine here the effect of the characterization of the taking as lawful or unlawful on the available compensation. The Claimants seek compensation for damnum emergens only (including compensation for tangible and intangible assets and future prospects). The Claimants do not seek additional compensation for lucrum cessans (that is, lost profits), which claim is typically conditioned on a prior characterization of the taking as unlawful. The appropriate amount to be awarded shall therefore be determined in such a manner as to include damnum emergens but not lucrum cessans.

97. Turning to the appropriate method for valuing the property concerned, the Tribunal cannot agree with the Respondent that Gostaresh Maskan had ceased to be a going concern at the valuation date. While the record clearly shows that the Company laid-off a substantial number of employees in the months leading up to the expropriation, it also shows that at the time the first Government-appointed Director took control the Company still employed about 1,000 workers who were assigned to the Company's various construction projects, which would have produced gross revenues of approximately U.S.$190 million.[12] This allowed Mr.

---

[12]The record includes an affidavit by Mr. Ali Ebrahimi, which was not contested by the Respondent and according to which Gostaresh Maskan was, at the time of the expropriation, involved in the following outstanding projects:

(a) Construction of 513 residential units at SarCheshmeh for National Copper Industries;
(b) Construction of 1,706 residential units at Bandar Shahpour for the Khuzestan Urban Development Organization ("KUDO");
(c) Construction of 48 residential units at Tavanir for the Ministry of Water and Power;

Parviz Shams Towfighi, one of the Company's Government-appointed Directors, to state in a report to the supervising Ministry dated 12 May 1980 that Gostaresh Maskan had a "bright and promising future," provided that certain obstacles -- such as the non-payment by the responsible Government agencies of the Company's price adjustment receivables -- were removed. See para. 112 and para. 122, infra.

98. In regard to the valuation method, the Tribunal sees no reason to disagree with the Parties that a fair market valuation based on an asset approach is appropriate. Accordingly, the Company's value is equal to the price on which a hypothetical willing seller and a hypothetical willing buyer would agree, and that price is calculated as the sum of the replacement cost of the Company's tangible assets plus an amount reflecting its intangible values, including its goodwill, if any. This valuation model is further specified through the Terms of Reference governing the assignment of the Expert who was appointed by the Tribunal for the specific purpose of valuing Gostaresh Maskan as of 13 November 1979. See para. 104, infra.

(d) Construction of 900 residential units at Ahwaz for the Ministry of Housing and Urban Development, Khuzestan Bureau;
(e) Construction of 208 residential units at Ahwaz for KUDO;
(f) Construction of 359 residential units at various locations in Ahwaz, Abadan and Andimeshk for the National Iranian Oil Company ("NIOC");
(g) Construction of two office buildings for NIOC at Ahwaz and Abadan;
(h) Construction of 1,262 residential units for NIOC at Isfahan;
(i) Construction of 879 residential units for NIOC at a location to be designated in 1980; and
(j) Construction of 2,300 residential units at Parandak for the Ministry of Housing and Urban Development and the Ministry of National Defense.

V. Valuation

99. The Parties' positions on the value of Gostaresh Maskan on 13 November 1979 are wide-ranging and largely contradictory.

A. Claimants' Contentions

100. The Claimants assert that Gostaresh Maskan was "a major construction company with significant assets and operations and with prospects for further profits and growth." They submit (i) several affidavits of their father, Mr. Ali Ebrahimi, who was the chairman of the Company's Board of Directors and one of its founders, as to the value of Gostaresh Maskan on 13 November 1979, and (ii) three valuation reports prepared by separate valuers. The information for these valuations was drawn from several sources, including Gostaresh Maskan's annual financial statements for the five years preceding the expropriation, several reports prepared by Government-appointed directors following the expropriation, a brochure which was distributed by the Company in 1980, and information included in the valuation report prepared by Noavaran, the valuation firm retained by Respondent.

101. In the opinion of Mr. Ebrahimi, who also relies on his personal knowledge of Gostaresh Maskan in valuing the Company, the Company's value on 13 November 1979 was Rls 7,486,098,680[13] (that is, approximately, U.S.$106,412,215 million,[14] calculated

---

[13]This amount is composed of Rls 5,548,326,510 (representing the Company's adjusted net asset value) plus Rls 1,849,442,170 (representing the Company's goodwill corresponding with one-third of its net worth).

[14]The aggregate claim which the Claimants indicated in their Statements of Claim was in the amount of U.S.$11,660,571.30, based on a valuation of Gostaresh Maskan at U.S.$61,371,426. In their Hearing Memorial Claimants increased their estimate of Gostaresh Maskan's value to U.S.$116,806,444, and they increased their claim accordingly. Finally, in their Rebuttal Memorial Claimants reduced the estimated value of Gostaresh Maskan to U.S.$106.4 million, and they reduced their revised claim accordingly to approximately U.S.$20,000,000.

on the basis of an exchange rate of Rials 70.35 per U.S. dollar). According to Mr. Mussa Siamak, whom the Claimants identify as an accountant and the former Chief Financial Officer of the Hadish Construction Company, a large Iranian construction firm, the fair market value of Gostaresh Maskan as of 13 November 1979 was Rls 5,194,339,000, or U.S.$73,835,664.[15] In the Opinion of Mr. Robert F. Reilly of Willamette Management Associates, a valuation firm retained by Claimants to comment on the Expert's valuation report, the Company's fair market value was Rls 3,984,100,000.[16] Finally, according to Mr. Fariborz Ghadar, an independent valuer who was also retained by Claimants to comment on the Expert's valuation report, the Company's value, calculated using the discounted cash flow method, ranged between Rls 3,942 million and Rls 8,322 million.

B. Respondent's Contentions

102. The Respondent argues that the Tribunal must reject the Claimants' valuation on the ground that it exceeds the aggregate amount requested in the Statements of Claim, thereby violating Article 18(g) and Article 20 of the Tribunal Rules.[17]

---

[15]This amount is composed of Rls 3,662,593,000 (Gostaresh Maskan's net asset value) plus Rls 1,404,092,000 (goodwill).

[16]This amount includes the Company's goodwill estimated at Rls 294.9 million.

[17]Article 18 of the Tribunal Rules reads as follows, in pertinent part:

1. A party initiating recourse to arbitration before the Tribunal (the "claimant") shall do so by filing a Statement of Claim. Each Statement of Claim shall contain the following particulars: . . .
(g) The relief or remedy sought . . . .

Article 20 of the Tribunal Rules reads as follows:

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the

Furthermore, based on its assessment of the general political, social and economic conditions prevailing in Iran at the valuation date, as well as the financial condition of Gostaresh Maskan, in particular, the Respondent has submitted its own valuation of the Company. This consists of the valuation prepared by Noavaran (the "Noavaran Report"), as expanded at the Hearing by Mr. Antony G.P. Tracey, an independent valuation expert retained by the Respondent. The Noavaran Report concludes that the value of Gostaresh Maskan, as of 13 November 1979, was negative Rls 726,104,388, or negative U.S.$10,325.34.

C. Tribunal's Findings

103. In regard to the Respondent's request for the rejection of the Claimants' valuation, the Tribunal refers to its Award in Rockwell International Systems, in which the Tribunal held:

> In exercizing its discretion under Article 20 to permit amendments to claims, the Tribunal must consider whether the other party would be prejudiced by the proposed amendment, whether the other party has had an opportunity to respond to the newly-added or amended claim, and whether the proposed amendment would needlessly disrupt or delay the arbitral process. Subject to these considerations, an amendment is generally admissible if the underlying facts of a dispute, as presented in the Statement of Claim, essentially remain the basis of the dispute, and if the amendment is so closely interrelated to the initial claim that it would be contrary to judicial economy to separate the issues and litigate them separately, or possibly, in different fora.

Rockwell International Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 438-430-1, para. 73 (5 September 1989), reprinted in 23 Iran-U.S. C.T.R. 150, 166 ("Rockwell"). The Tribunal is satisfied that the Claimants'

---

jurisdiction of the arbitral tribunal.

revised valuation of the Company meets the criteria laid down in Rockwell. Accordingly, the Respondent's request for dismissal of the valuation, and indeed of the claim, is rejected.

104. As indicated above (see para. 40, supra), by Order of 14 December 1992 the Tribunal appointed Professor Richard A. Brealey as the Tribunal Expert for the purpose of valuing Gostaresh Maskan as of 13 November 1979.[18] On 14 April 1993, the

---

[18]The Expert's Terms of Reference are as follows, in pertinent part:

1. The Tribunal requires the assistance of the expert in determining the fair market value, as of 13 November 1979, of Gostaresh Maskan Company ("GMC"). The expert's valuation shall be made on the basis of fair market value, taking into account the tangible physical and financial assets of the undertaking and other elements, if any, including but not limited to, contractual and intellectual property rights, commercial prospects, goodwill, and likely future profitability. The effects of the very act of nationalization or effects of events that occurred subsequent to nationalization shall be excluded; however, prior changes in the general political, social, and economic conditions which might have affected GMC's business prospects as of the date it was taken shall be taken into account. See American International Group, Inc., et al. and Islamic Republic of Iran, et al., Award No. 93-2-3, pp. 16-21 (19 December 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 106-08; Amoco International Finance Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 310-56-3, para. 264 (14 July 1987), reprinted in 15 Iran-U.S. C.T.R. 189, 270.
2. For the purpose set forth above, the expert, after familiarizing itself with the documents filed by the Parties which the Tribunal, in consultation with the expert, has selected as necessary to the performance of its task, shall give its opinion as to such fair market value including:
   A. Value of fixed assets applying the appropriate index[es] and deducting actual depreciation, making such adjustments, if any, as may be appropriate in respect of (i) project expenses (vs. plant and equipment account) and (ii) allegedly fictitious transactions;
   B. Value of current assets, including but not limited to those set out below;
   C. Value of GMC's letters of credit;
   D. Value of:

Expert submitted his valuation report (the "Original Report") in which he estimated the Company's fair market value at almost Rls 1,580 million. At the Expert Hearing, and upon review of the Parties' comments to his Report, the Expert substantially confirmed his conclusions with respect to those items on which no new information had been provided since he prepared his Report. The Expert did acknowledge, however, that his initial findings concerning those items where new or additional information was provided might have to be revisited, leading to a valuation increase or decrease as the case may be. This was the case, inter alia, with the valuation of the Company's interest in its subsidiary, Gostaresh Blount, as will hereafter be explained.

---

(1) accounts receivable, assuming (i) that price adjustments are applicable and, alternatively, (ii) that price adjustments are not applicable
(2) progress payments not yet posted, including inter alia progress payments with respect to (i) New Town and (ii) NIOC;

E. Value of other assets including, inter alia:
(1) GE license
(2) rights to Gypsum Mine
(3) shares in Palayeshgar
(4) shares in Gostaresh Blount;

F. Value of GMC's contract backlog, taking into consideration inter alia:
(1) assumptions regarding contract performance (GMC's capability, government payments)
(2) applicability of price adjustments
(3) status of contracts, i.e., were they cancelled by 13 November 1979 or not?

G. Value, if any, of GMC's goodwill;

H. Effects, if any, of
(1) doubtful debt provision
(2) whether purchases of equipment and supplies by GMC pursuant to letters of credit were properly debited to its account by issuing banks
(3) whether NIOC (employer supplied) materials were properly credited to NIOC
(4) taxes applicable under Iranian law to GMC's income.

I. Possible effect, if any such effect were deemed relevant by the Tribunal, of the Claimants' shares representing a minority interest in GMC, or the Respondent's acquisition of a controlling interest in GMC.

105. What follows are the Tribunal's findings on the critical contested issues in the valuation of Gostaresh Maskan, preceded by a brief outline of the positions of each of the Parties and the Expert.

1. GENERAL POLITICAL, SOCIAL AND ECONOMIC CONDITIONS

106. The Respondent argued that in determining Gostaresh Maskan's net asset value the Expert failed to consider the prevailing social and economic conditions in Iran at the valuation date, thereby violating paragraph 1 of the Terms of Reference. The Respondent's reasoning seems to be that because of the general climate of hostility against wealthy individuals during 1979, no reasonable private purchaser would come forward and invest in a company such as Gostaresh Maskan and therefore the state of the Iranian market was such that the Company did not, and could not, have any market value.

107. The Tribunal cannot agree with this argument for the following reasons. Fair market analysis is a valuation method incorporating well-established principles of accounting and corporate finance. Its usefulness rests on the premise that like companies will be valued alike. That is, in any number of comparable cases the interaction between a hypothetical willing seller and a hypothetical willing buyer will yield a comparable result. Fair market valuation thus carries with it an inherent degree of abstract analysis. This is not to say that the "fair market" valuation of a company is conducted in vacuo. The Expert's Terms of Reference adequately reflected this concern as they required the Expert to perform the valuation in a manner that factored in the "prior changes in the general political, social, and economic conditions which might have affected [the Company's] business prospects as of the date it was taken." Upon review of the Expert's Report, the Tribunal is satisfied that the Expert complied with the instructions in the Terms of

Reference.[19] The Tribunal further concludes that fair market valuation does not require the valuer to identify any concrete candidate buyer to substantiate his conclusions on the company's market value. To hold otherwise would mean that a company has as many fair market values as there would be more or less seriously interested buyers.[20] Moreover, it is clear that a government cannot justify non-payment (or inadequate payment) for valuable property on the ground that prospective buyers would have been lacking because of the expropriation itself or the threat thereof. Also, fair market valuation of a company is not concerned with a determination of the net worth of that company's shareholders' (acting in their capacity as hypothetical sellers).[21] This concern was reflected in the Terms of Reference's explicit requirement that the Expert value the Company itself.[22] The Tribunal finds that in this regard too the Expert complied with the Terms of Reference.

---

[19]In this respect, the Tribunal notes, in particular, the Expert's analysis of the Company's goodwill and the value of its outstanding contracts. See para. 155 and para. 159, infra.

[20]It also means that the contention that there was no interested buyer for the assets concerned in a particular jurisdiction -- e.g., for the sole reason that the disclosure of such interest would expose such a buyer to the sweeping forces of a revolutionary movement -- would be sufficient to justify the conclusion that the "fair market value" of those assets was nil.

[21]The Tribunal takes note of the Respondent's position that it was hazardous for any individual investor to enter into a large stock transaction due to the prevailing climate of hostility against any signs of affluence in Iran during at least the first months following the Islamic Revolution. The Tribunal understands that such non-business considerations on the part of potential buyers might have made it more difficult for the shareholders in Gostaresh Maskan to sell their shares, assuming they had wanted to do so, thereby affecting their net worth. Such difficulties for the hypothetical seller are not determinative for the value of the company itself, however.

[22]See Terms of Reference, para. 1 ("The Tribunal requires the assistance of the expert in determining the fair market value, as of 13 November 1979, of Gostaresh Maskan Company ("GMC").") (emphasis added); The same paragraph also refers to "prior changes . . . which might have affected GMC's business prospects." Id. (emphasis added).

2. PRICE ADJUSTMENT RECEIVABLES

108. The Claimants argued that at the time of the taking, Gostaresh Maskan had outstanding claims against a number of its employers for the indexation of the nominal contract prices. These so-called price adjustment receivables ("PARs") were claimed with respect to seven construction contracts, which are referred to as: (i) New Town; (ii) Ahwaz 900; (iii) Palayeshgar; (iv) Parandak; (v) Akhgar-Gostaresh; (vi) Sarcheshmeh; and (vii) NIOC.

109. The Claimants calculated the net value of these PARs as Rls 2,342 million, whereas the Respondent valued them at Rls 824 million. Each of these valuations included an amount of almost Rls 1,554 million, net of taxes, in respect of Sarcheshmeh and NIOC, on which the Parties agreed. The Claimants sought to increase this amount by Rls 788 million (i.e., Rls [2,342 - 1,554] million), whereas the Respondent sought to reduce it by Rls 730 million (i.e., Rls [1,554 - 824] million). Much of the debate concerned the PARs in respect of the New Town contract, which did not contain a price adjustment clause. Of the Rls 788 million identified by the Claimants, Rls 454 million relates to the New Town contract. Relying on the same contract, the Respondent sought to reduce the aggregate value of the PARs by Rls 673 million.

110. The discussion over Gostaresh Maskan's PARs concerns three issues: (i) the legal basis for these PARs; (ii) the effect on these PARs of a possible cancellation of the underlying contracts and of any defective work claims with respect thereto; and (iii) the application of a discount, if any, to the face value of these PARs.

111. (1) Expert's Report. In his Report, the Expert valued these PARS at Rls 1,885 million.[23] That is, he added Rls 331 million to the value of the non-contested PARs (which were equal

---

[23] Report paras. 12, 38, and 62.

to Rls 1,554 million). This was his estimated value of the disputed PARs (as opposed to Rls 788 million proposed by the Claimants, or Rls -730 million proposed by the Respondent).

112. The Expert based this valuation on the following considerations:

(a) Legal basis for PARs. The Expert concluded that the issue of eligibility of PARs only concerned the New Town contract.[24] Absent any price adjustment clause in that contract, the Expert concluded that it was "likely that there was authority"[25] for PARs in respect of the New Town contract on the following grounds: (i) past practice (the Respondent did not contest that Gostaresh Maskan had been paid Rls 673 million for PARs prior to the taking); (ii) the absence of any Circulars that unequivocally denied Gostaresh Maskan's PARs; (iii) the testimony at the First Hearing of Mr. Meshki, Gostaresh Maskan's counsel prior to the taking; and (iv) a May 1980 report by Mr. Towfighi, one of the Government-appointed managers running Gostaresh Maskan after the taking (see para. 64, supra), suggesting that Gostaresh Maskan was entitled to these PARs.

113. (b) Effect on PARs of contract cancellations and "defective work"-claims. The contract cancellation-issue was raised in connection with the New Town, Ahwaz 900, and Palayesh-gar contracts.[26] The Respondent argued that (i) these contracts had been cancelled, albeit subsequent to the taking, pursuant to Article 46 of the Plan & Budget Organization's General Conditions of the Contract,[27] and that (ii) this cancellation had retroac-

---

[24]Id. para. 42.

[25]Id. para. 45.

[26]Id. para. 47.

[27]Article 46 reads as follows, in pertinent part:

The employer may terminate the contract in the following cases:

tive effect within the meaning of the Plan & Budget Organization's Circular of 16 October 1976.[28] Consequently, the Respondent argued that any PARs that the Claimants could have claimed in respect of these underlying contracts had been cancelled. Furthermore, the Respondent claimed a refund of approximately Rls 730 million in PARs payments which had already been made under the New Town and Ahwaz 900 (but not the Palayeshgar) contracts.[29] The Claimants argued that the New Town contract had

---

(A) Where the contractor has caused the following cases of delay:
  (1) Delay in equipping and getting the work site ready for work in excess of half the period set forth under Paragraph (1) of Article 4 of the Contract;
  (2) Delay in beginning the implemental operations in excess of one-tenth the period set forth under Paragraph (2) of Article 6 of the Contract;
  (3) Delay in completing any of the works envisaged in the detailed implementation schedule in excess of half the period set forth under that schedule for the completion of that work in the light of the provisions of Article 31; and,

(B) Letting the work site remain unsupervised or closing down the work for over 15 days without the employer's permission or in the absence of any force majeure as provided under Article 43;

* * *

(D) Contractor's financial or technical incapacity to complete the works according to schedule as evaluated by the supervisory body;

* * *

(G) Non-performance of any of the provisions of the contract or non-compliance with the instructions of the supervisory body as regards correcting flaws or revising or amending flawed work within the time frame determined for the contractor. In such a case, the employer shall personally make good the flaws and defects on one occasion in any manner he deems expedient and shall withhold from the contractor's dues the total costs such [as are] incurred along with fifteen percent of the first payment to the contractor. In case of repetition of the case set forth here, the contract shall be terminated.

[28]The Circular of 16 October 1976 states in pertinent part that "[t]he Contracts which are cancelled in [the] course of execution by the employer on the basis of Article 46 of the General Condition[s] of the Contract shall not be covered by the adjustment regulations."

[29]Report para. 49.

never been terminated.[30] They further argued that, at any rate, the termination of any of Gostaresh Maskan's contracts subsequent to the taking was irrelevant for the purpose of valuing the Company as of 13 November 1979. The Expert noted that these three contracts appeared to have been terminated between August 1980 and April 1982 (as claimed by the Respondent) but concluded that such post-taking termination of the contracts would not operate retroactively so as to affect the PARs in respect thereof. Furthermore, the Expert found that "the documentary evidence does not indicate an accumulation of serious complaints which would have led a prospective purchaser in November 1979 to believe that cancellation of the contracts under Article 46 was likely, let alone certain."[31]

114. The "defective work" issue was raised, in particular, in connection with the Akhgar-Gostaresh and Parandak contracts, neither of which was formally cancelled. The Respondent argued that Gostaresh Maskan's inadequate performance of these contracts excluded any PARs in respect thereof. The Expert saw no conclusive evidence of any default by Gostaresh Maskan under any of these contracts that, in his judgment, could justify the non-payment of PARs in respect thereof.

115. (c) Expert's conclusion. In his Report, the Expert concluded that there was a legal basis for all PARs and he rejected any suggestion that these PARs would have been invalidated through the cancellation or the inadequate performance of the underlying contracts. He further concluded that the above-mentioned contract cancellations and the "defective work" claims were not foreseeable as of the valuation date. He also pointed out, however, that (i) there was a "non-zero probability of subsequent cancellation" of the contracts, and (ii) the PARs "were liable to be paid only with delay."[32] Accordingly, the

---

[30] Id. para. 52.

[31] Id. para. 61.

[32] Id. para. 62.

Expert concluded that these PARs should be discounted on the ground that (i) they might have been a subject of further disputes, and (ii) their payment might have been delayed. He indicated that he had applied a discount of 35% to the PARs in respect of the New Town contract,[33] and a discount of 25% to the other disputed PARs. Thus, the Expert arrived at a total value for all the disputed PARs of Rls 363.7 million before tax.[34] This amount includes: (i) PARs in respect of the New Town contract, valued at Rls 88.2 million,[35] and (ii) the other disputed PARs, valued at Rls 275.5 million.[36] Adding the after tax amount of Rls 331.3 million to that of the non-disputed PARs (in the net amount of Rls 1,554 million), he concluded that the aggregate net value of Gostaresh Maskan's PARs was, approximately, Rls 1,885 million.

116. (2) Expert Hearing. Upon review of the Parties' comments on his Report, the Expert acknowledged that the Parandak PARs had to be considered in the context of the valuation of Gostaresh Blount. Accordingly, these PARs were no longer included in the aggregate amount of Gostaresh Maskan's PARs. On the other hand, the Expert recognized additional PARs in respect of the Ahwaz 900 and NIOC contracts in the amount of Rls 128

---

[33]Id. The Tribunal notes that in his calculation of the value of the New Town PARs the Expert actually applied a larger discount. See note 35, para. 120 and note 58, infra.

[34]Id. This amount corresponds with an amount of Rls 331.3 million after deduction of 8.9% tax. The Tribunal understands this tax rate to reflect the cumulative effect of a 5.5% contractor's tax, a 3.2% social security contribution, and a 0.2% training fund contribution.

[35]This amount was calculated as follows: The Expert assumed that there was a 2/3 probability that the claimed New Town PARs would be paid and a 1/3 probability that the amounts already received would have to be repaid. He thus estimated the Company's expected cash flow at [Rls 498 million x 2/3] + [Rls - 673 million x 1/3] = + Rls 108 million. He then determined the net present value of this cash flow expected during the following year (applying a 20% discount rate) at Rls 88.2 million. See Report, para. 62; Expert Hearing Transcript, at 18-19.

[36]The amount of Rls 275.5 million still included the PARs in respect of the Parandak project. See para. 138, infra.

million.[37] Furthermore, the Expert revisited his original estimate as follows.

117. (a) Legal basis for PARs. The Expert addressed three issues that were not discussed in his Report. First, he considered the Circulars of 24 June 1979 and 29 August 1977 which the Respondent had attached to its Comments on the Expert's Report. Second, he considered the statement made by Mr. Ali Ebrahimi during the Expert Hearing that the legal basis for Gostaresh Maskan's PARs in respect of the New Town contract was a "supplemental agreement" between the "contractors' association" (representing, inter alia, Gostaresh Maskan) and Khuzestan Urban Development Organization ("KUDO", Gostaresh Maskan's employer under the New Town contract), and that the only relevant Circular was that of 28 August 1979 (but only in that it contained the inflation indices used for the calculation of the adjustments).[38] Third, the Expert considered the meaning of the Persian word "maghtoo" which had been handwritten on the New Town contract at the time of signing and which was discussed by the Respondent in its Comments to the Expert's Report.[39]

118. The Expert found that neither the June 1979 Circular nor the August 1977 Circular (as commented upon by the Parties during the Expert Hearing), nor Mr. Ebrahimi's testimony,[40] nor the discussion on the "maghtoo" addition required him to modify his earlier conclusions. The Expert concluded, in particular with respect to the New Town PARs, that he would "continue to place a fairly heavy emphasis on the regularity with which those

---

[37]Expert Hearing Transcript at 434.

[38]Id. at 210-213.

[39]At the Expert Hearing, the Respondent reiterated its position that the word "maghtoo" should be construed to mean that the contract price was "fixed" in absolute terms.

[40]Expert Hearing Transcript at 346-348.

payments have been made."[41] He also reiterated his opinion that some discount had to be applied to the Company's PARs.

119. (b) Cancellation and "defective work"-claims. The Expert confirmed his view that "an important issue concerns the extent to which cancellation could have been foreseen", given his finding that "[c]ancellation, when or if it occurred, was clearly after the date of taking."[42] The Expert stated that whereas "there does not appear to have been an accumulation of complaints leading up to the date of taking that would suggest that cancellation would have been regarded as certain or even probable at that date," the extent to which cancellations could have been foreseen "clearly remains an open issue."[43]

120. (c) Discount. The Expert appeared to acknowledge that the discounts that he had applied in his original Report (aimed at reflecting possible disputes and delays in payment and equal to at least 35% for PARs in respect of the New Town contract[44] and 25% for PARs in respect of the other contracts) might not be appropriate in an expropriation context such as that under review, in which the acquiror of the Company was also the debtor on the Company's receivables.

121. (3) Tribunal's Findings. The Tribunal's findings are as follows.

122. (a) Legal basis for PARs. Throughout the proceedings the Tribunal was provided with various data on Gostaresh Maskan's claimed entitlement to PARs. Reference is made, in particular, to (i) the past payments that Gostaresh Maskan had received before the taking (amounting to almost Rls 673 million in the case of the New Town contract), (ii) a protocol between KUDO and

---

[41] Id. at 347.

[42] Id. at 13.

[43] Id.

[44] See note 33 and note 35, supra.

the constructors' syndicate (representing, inter alia, Gostaresh Maskan) which, at the Expert Hearing, Mr. Ali Ebrahimi contended to have been executed after the signature of the New Town contract,[45] (iii) the handwritten addition of the Persian word "maghtoo" to the text of the New Town contract at the time of its signature, (iv) the Circular of 28 August 1979,[46] (v) the Circular of 24 June 1979,[47] (vi) the Circular of 29 August 1977,[48] (vii) a legal opinion in support of Gostaresh Maskan's claims to PARs rendered before the taking by Mr. Meshki, Gostaresh Maskan's legal counsel, (viii) the Report to the Plan & Budget Organization of 12 May 1980 that was prepared by Mr. Towfighi, the Government-appointed managing director of Gostaresh Maskan as of 19 January 1980,[49] and (ix) the reported understanding of Mr. Boroomand, managing director of KUDO, that payments should be made on Gostaresh Maskan's PARs claims, albeit through a joint account.

---

[45]The Tribunal was not provided with a copy of this document. Nevertheless, at the Expert Hearing, Mr. Ali Ebrahimi insisted that this understanding was the sole legal basis for GM's PARs claims in respect of the New Town contract.

[46]This Circular, which like the other cited Circulars was issued by the Plan & Budget Organization, allowed for the retroactive indexation of all contracts without an explicit indexation clause which were executed before 27 January 1974. It was silent as to contracts signed after this date, such as the New Town contract, which was signed on 4 December 1974.

[47]This Circular did not contain any explicit provisions in regard to post-1974 contracts without indexation clauses either. Its relevance is limited to the fact that it abrogated the Circular of August 1977.

[48]This is the only Circular that explicitly provided for a price adjustment in respect of post-1974 contracts without indexation clauses (in particular, Article 2 thereof). This Circular was "annulled and abrogated" by the Circular of June 1979 to the extent that it related to post-1974 contracts.

[49]In his description of the "Company's Resources", Mr. Towfighi states that "the receivables of this company to be collected from government organizations, particularly in the case of adjustment, would run up to 2,596 million Rials." The report concludes with an appeal to the Plan & Budget Organization "[t]o take urgent measures for paying the adjusted value of the contracts of this Company."

123. The Tribunal finds, in agreement with the Expert, that the available information suggests that Gostaresh Maskan was indeed entitled to the payment of these PARs. In reaching its conclusions, the Tribunal has given particular weight to the uncontested fact that Gostaresh Maskan received Rls 673 million (i.e., almost U.S.$10 million) in PARs payments before the taking, i.e., in tempore non suspecto. This practice, in addition to Mr. Towfighi's explicit request to the Plan & Budget Organization to pay Gostaresh Maskan's PARs without further delay, would seem to corroborate Mr. Ali Ebrahimi's testimony on the existence of an understanding (possibly instrumented by the type of protocol which he described) entitling Gostaresh Maskan to price adjustments from its employer under the New Town contract. On the other hand, the Tribunal is not persuaded by the Respondent's argument that the term "maghtoo" (which it first construed to mean that "the contract value is final" and later in the proceedings explained to mean that such value was "fixed") offers conclusive evidence that the signatory parties to the New Town contract explicitly agreed to exclude any indexation of the contract price. The Tribunal understands that the price for the New Town project quoted by Gostaresh Maskan (and subsequently accepted by KUDO) was an "all-in" price for the whole project. Accordingly, in the Tribunal's view, the term "maghtoo" is more likely to have been added to emphasize the parties' mutual agreement that any changes in labor costs, material costs, etc. would not affect the "all-in" price for this project. The Tribunal believes that such a price arrangement does not in and of itself exclude any adjustment for inflation of the nominal amount of the all-in price. In view of the above, the Tribunal shares the view of the Expert that it was likely that there was authority for the payment of the PARs.

124. (b) Cancellation and "defective work"-claims. It is well-established Tribunal precedent that while general political, social, and economic conditions that may affect a company's business prospects as of the date of taking are to be taken into account in valuing the expropriated entity, the effects of the very act of expropriation or events that occurred subsequent to

expropriation shall be excluded. See AIG, 4 Iran-U.S. C.T.R. at 106. Upon proof of authority for Gostaresh Maskan's PARs, they could only be directly impaired by a (i) timely, (ii) valid, and (iii) retroactive termination of the underlying contracts. The Tribunal does not believe that any of these conditions were met in the present Case. The Tribunal notes, in respect of each of these conditions that: (i) the termination notices were sent between August 1980 and April 1982 (i.e., well after the taking); for this reason alone, the Tribunal concludes that none of these terminations had a direct impact on Gostaresh Maskan's PARs as of 13 November 1979; (ii) as regards the valid termination-requirement, assuming that the Circular of 16 October 1976 was still in effect at the relevant time, it conditioned its applicability on a finding that the contractor (i.e., Gostaresh Maskan) caused delay in the performance of its contractual obligations within the meaning of Article 46 of the Plan & Budget Organization's General Conditions of the Contract; there is no convincing evidence in the record that Gostaresh Maskan defaulted on the New Town contract by causing delay or any other obstacle to the completion of the project; and (iii) as regards the retro-activity requirement, it is difficult to conceive that a service agreement such as the New Town construction contract and the PARs in respect thereof could be cancelled retroactively. Accordingly, the Tribunal agrees with the Expert in this respect and holds that the Company's contracts were not timely, validly and retroactively terminated so as to have any effect on the value of the Company's PARs or the Company's eligibility thereto. Considering whether cancellations could reasonably have been anticipated by a hypothetical prospective buyer (i.e., whether cancellations were foreseeable as of 13 November 1979), the Tribunal finds that the record does not contain any conclusive evidence that the post-taking cancellation of, and the related disputes over, any of the referenced contracts were foreseeable as of the date of the taking.[50]

---

[50]Report para. 61.

125. (c) Discount. Having established that Gostaresh Maskan could validly record the claimed PARs in its pro forma balance sheet as of 13 November 1979, the Tribunal must determine whether it should carry them at face value or apply a discount. The Expert proposed to discount the disputed receivables to reflect the concerns of a prospective buyer in regard to (i) the legal basis for these PARs, and (ii) possible delays in their payment (which he estimated at about one year). The Tribunal does not believe that it is appropriate in a valuation such as the present one to discount the face value of the PARs to reflect the late payment risk. The Tribunal believes that a strict application of the hypothetical seller/buyer model clearly shows that the case in which the buyer is himself indebted to the seller raises special issues. It is difficult to imagine that the hypothetical seller would be willing to accept a discounted price for his receivables merely because the buyer (who is also the debtor under those receivables) had a poor payment record or because he would announce to the seller that he would not honor the purchased receivables.[51] The logical implication would seem to be that if such a prospective buyer had systematically defaulted on all of its debts vis-à-vis the prospective seller in the past, the seller would have to agree to receive nothing for his receivables.[52]

---

[51]Such refusal to pay could also result from the prospective purchaser's refusal to recognize the existence of any debt vis-à-vis the prospective seller. It bears stressing, however, that this issue arises at a juncture in the analysis at which the valuer, e.g., the Tribunal, has identified the prospective purchaser as a debtor of the prospective seller on the basis of a prior inquiry into the existence of a legal basis for the receivables concerned. "Genuine" as the prospective purchaser's denial of the existence of the receivables may be, his arguments have been considered by the valuer in his inquiry into their legal basis.

[52]It is critical, as a matter of valuation theory, that regard be had to the possible interrelationship between the prospective seller and the prospective buyer. This determination of the correct premises on which the valuation will be based is not a departure from valuation orthodoxy. It is a matter of applying the fair market valuation theory correctly. Reference is made to the following example. Assume, for instance, that the prospective seller of RevCo is willing to sell the company to a

126. The Tribunal further concludes that when discussing the expectations of the hypothetical buyer in an expropriation context, one has reached the outer limits of the hypothetical sale fiction. The Tribunal notes that these Cases do not feature a buyer who faces uncertainty over the quality of the receivables portfolio that he intends to buy. Moreover, regard should be had to the fact that Gostaresh Maskan was expropriated. That is, the valuation of Gostaresh Maskan is made following its expropriation and not in the context of a due diligence exercise in preparation for its possible acquisition by an interested buyer.[53]

---

prospective buyer. RevCo's assets include a receivable for 100 currency units on a third party. Before the prospective buyer will agree to pay that receivable's face value, he will want to know what the payment record is of RevCo's debtors on that type of receivable. Thus, the prospective buyer may find out that in the past these debtors typically paid one year late. Assuming that the discount rate (including inflation) is determined at, e.g., 20%, the present value of the receivable will be only 80. This is what the receivable is worth at the valuation date. This value represents the maximum price that the reasonable buyer will want to pay and the minimum that the reasonable seller will accept for RevCo's receivable.

Assuming that RevCo's receivable of 100 is not on a third party but on the prospective buyer himself, and assuming, further, that the prospective buyer was on record for paying his debts to RevCo one year late, the question is whether the prospective buyer can still demand that the face value of the receivable be reduced from 100 to 80? Under the fair market valuation theory, he cannot. For, at the relevant point in time (that is, at the time of the negotiations between the two prospective parties), the real value of the receivable, from the viewpoint of both prospective parties, is 100. This 100 is at stake during the negotiations between the parties. At that point in time, the receivable was clearly worth 100 (and not 80) to the prospective buyer. Similarly, at that given point in time, it was worth 100 to the prospective seller and he would not be willing to accept anything less than 100 from his debtor. It should be noted that fair market valuation is only concerned with "reasonable" (that is, "rational") economic actors. It is not concerned with any motives (philanthropic or otherwise) that could inspire a seller to accept anything less than the best price for his assets.

[53] See Amoco International Finance Corporation and The Government of The Islamic Republic of Iran, et al., Award No. 310-56-3 (14 July 1987), reprinted in 15 Iran-U.S. C.T.R. 189. In that case, the Tribunal held:

> [A] nationalization cannot be equated to a normal business investment or to a

127. In view of the above, the Tribunal does not believe that a discount should be applied to reflect substantiated concerns of a purchaser who is determined to hedge the risk of default. In this respect, the Tribunal does not accept the 20% discount applied by the Expert to Gostaresh Maskan's PARs owing by the expropriating debtor.[54]

128. While the Tribunal does believe that the preponderance of the evidence supports the conclusion that the PARs claims were valid and enforceable, it also believes that the degree of vagueness that has persistently marked this issue deserves to be quantified. In this respect, the Tribunal notes that the Claimants' position as to the relevance of the three Circulars mentioned above as a legal basis for Gostaresh Maskan's PARs claims remains less than crystal clear. In spite of Mr. Ali Ebrahimi's testimony at the Expert Hearing that only the indexes to the Circular of 28 August 1979 were relevant and then only for the purpose of calculating the PARs, the Claimants themselves seemed to give more weight to this Circular and relied on it for the purpose of establishing a legal basis for the claims. As indicated above, however (See note 46, supra), the explicit indexation authorization indicated in this Circular only relates to contracts executed before 27 January 1974. On the other hand, the Claimants never fully explained to the Tribunal to what

---

> transaction in a free market . . . It goes without saying that the Tribunal is not in the position of a prospective investor. Rather, the Tribunal must determine ex post facto, the most equitable compensation required by the applicable law for a compulsory taking, excluding any speculative factor. Its first duty is to avoid any unjust enrichment or deprivation of either Party.

Id. at 257; see also id. at 265.

[54]At the Second Hearing, the Expert acknowledged that the propriety of discounting a debt owed by the expropriating debtor due to the risk of non-payment was "a legal issue" on which he had "no expertise." Expert Hearing Transcript at 344; see also para. 120, supra.

extent the Circular of 29 August 1977 could have been relevant as a possible legal basis for Gostaresh Maskan's PARs claims, at least with respect to work performed before the issuance of the Circular of 24 June 1979.[55] Furthermore, the Tribunal cannot but wonder about the timing of the Claimants' reference to a "supplemental agreement" as the conclusive piece of evidence in the search for legal basis for the PARs.[56] Accordingly, the Tribunal agrees with the Expert that "on the evidence presented to the Tribunal any purchaser would have had some degree of unease about these payments."[57] For these reasons, the Tribunal considers that the value of Gostaresh Maskan's PARs should be discounted.

---

[55]In this respect, the Tribunal notes that (i) the Circular of 29 August 1977 was the only Circular that explicitly envisaged the possibility of the inflation adjustment of the nominal contract value of post-27 January 1974 contracts, and (ii) the temporary status reports in connection with the New Town project (which were offered in evidence by the Respondent) show that most, if not all, of the work in respect of which PARs are claimed was performed before the relevant part of the August 1977 Circular was "annulled and abrogated" by the Circular of 24 June 1979. It is unclear to the Tribunal, assuming that the June 1979 Circular did not operate retroactively, why the August 1977 Circular was not presented by the Claimants as a less peripheral piece of evidence in support of the Company's PARs claims. The Tribunal can only speculate that this was due to the fact that an argument centered on the August 1977 Circular would have revealed an inconsistency, in each of the status reports in connection with the work performed during the relevant period, with the reference therein to the Circular of 28 August 1979.

[56]Arguably, Mr. Ali Ebrahimi had indicated that this protocol was of relevance in his testimony at the First Hearing. At the Expert Hearing, however, the same witness insisted that this protocol had always been the sole legal basis for the Company's PARs claims. The Tribunal cannot but note that Mr. Ebrahimi's firm testimony on one of the Cases' most controversial issues, in addition to and in contrast with the variety of arguments which the Claimants had developed on the same issue throughout the proceedings, also appeared to have some news value to the Claimants' counsel at the Expert Hearing. The Tribunal further notes that the record does not contain any information on any efforts that the Claimants may have undertaken to provide the Tribunal with any evidence on the existence and precise content of the referenced protocol.

[57]Report para. 46.

129. The Tribunal understands that the component in the Expert's discount that reflects the "unease-factor" (as opposed to the "delay-factor," i.e., the time value of money) is about 20% in the case of New Town PARs,[58] and 10% in the case of other disputed PARs.[59] The Tribunal concludes that 10% represents a reasonable discount in regard to the disputed contracts other than the New Town contract. In regard to the New Town contract, however, the Tribunal considers that the degree of unease over the solidity of the legal basis for those PARs warrants the application of a higher discount. For these PARs, the Tribunal considers it reasonable to apply a 40% discount to the amount claimed by Gostaresh Maskan and a 66% discount to the refund claimed by KUDO against the Company.[60] The discounted values of the Company's PARs are calculated as follows:

(i) New Town PARs: [Rls 498 million x 60%] - [Rls 673 million x 33%] = Rls 76.7 million before tax.[61]

---

[58]The Expert did not specify this figure. However, it can be derived using two pieces of information that are known: (i) in the Expert's opinion, the appropriate inflation adjustor during 1979 was 20%; and (ii) the Expert indicated to have applied a total discount of 35% to the New Town PARs. It follows from these two figures that the percentage discount for the "unease-factor" which the Expert suggested to have applied is equal to 1 - (.65 x (1 + 0.20)) = approximately .2 (or 20%). As indicated above, however, (see note 33 and note 35, supra), the "unease-factor" actually applied by the Expert in his calculation of the discounted value of the New Town PARs was in the range of 35%.

[59]Expert Hearing Transcript at 17-18.

[60]Based on the evidence before it, the Tribunal is inclined to believe that as of the valuation date a genuine dispute existed between the Company and KUDO over the refund of Rls 673 million.

[61]This amount corresponds with Rls 69.9 million after deduction of 8.9% tax.

(ii) Other disputed contracts:[62] Rls 233.7 million x 90% = Rls 210.3 million before tax.[63]

(iii) The Tribunal considers that no discount should be applied to the value of the non-disputed PARs. The value of the PARs in respect of the NIOC and Sarcheshmeh projects is therefore Rls [1,553.5 + 106.1[64]] million = Rls 1,659.6 million after tax.

130. On the basis of the above, the Tribunal determines that Gostaresh Maskan's disputed PARs could reasonably be valued at Rls (76.7 + 210.3) million = Rls 287.0 million before tax. After deduction of 8.9% tax, Gostaresh Maskan's disputed PARs are valued at Rls 261.5 million. The aggregate after tax value of Gostaresh Maskan's PARs could thus be determined at Rls (261.5 + 1,659.6) million = Rls 1,921.1 million.

---

[62]These PARs relate to the following contracts: (i) Palayeshgar (Rls 0.4 million); (ii) Akhgar-Gostaresh (Rls 85 million); (iii) Ahwaz 900 (Rls 136.8 million); and (iv) an additional Rls 11.5 million in respect of Ahwaz 900. The latter amount is the portion related solely to the Ahwaz 900 project of the amount of Rls 128 million in respect of work that Gostaresh Maskan performed on both the Ahwaz 900 and the NIOC projects between the close of its last full fiscal year of 1358 beginning on 20 March 1979 and its expropriation on 13 November 1979 and which the Expert at the Expert Hearing acknowledged should have been added to the Company's PARs in his original Report. Absent any precise information in the record, the Tribunal has determined the referenced portion by multiplying Rls 128 million by a factor of 0.09, which is calculated as a fraction, the numerator of which is equal to the outstanding Ahwaz 900 PARs claims as of 20 March 1979 (Rls 136.8 million), and the denominator of which is equal to the NIOC PARs claims outstanding at the same date (Rls 1,594.1 million).

These PARs do not include PARs in respect of the Parandak project, which are assessed in the context of GB's valuation (see para. 138, infra).

[63]This amount corresponds with Rls 191.6 million after deduction of 8.9% tax.

[64]The amount of Rls 106.1 million represents the portion of the amount of Rls 128 million that was determined, in the manner indicated in note 62 above, to relate to the NIOC project, with a deduction of 8.9% tax.

3. GOSTARESH BLOUNT

131. Gostaresh Blount ("GB"), a company organized as a private joint stock company under the laws of Iran in May 1977, was a joint venture between Gostaresh Maskan and Blount Brothers Corporation (a Delaware corporation).[65] In June 1977, Gostaresh Maskan increased its 50% participation in GB to 90%. From its formation, GB was conceived by its shareholders as a special purpose vehicle that was to contribute to the completion of the Parandak project, which its shareholders had procured two months earlier.[66] According to the Claimants, one of GB's main corporate purposes was to manage the incoming and outgoing cash flows connected with this project.

132. The Tribunal notes that the information on GB submitted to it by the Parties has been fragmentary and of only an approximative degree of precision.[67] As a result, the valuation of GB's assets and liabilities evolved significantly throughout the proceedings.

133. (1) Expert's Report. In his Report, the Expert did not make an independent valuation of GB on the ground that he had not been provided with any reliable information that would have allowed him to determine a reasonably substantiated net asset value of GB. Instead, the Expert considered GB's impact on Gostaresh Maskan's valuation in two ways: (i) he valued Gostaresh Maskan's 90% investment in GB at cost, i.e., at Rls 18

---

[65]See Blount Brothers Corporation, 3 Iran-U.S. C.T.R. at 227.

[66]This project was initiated following the award to Gostaresh Maskan and Blount Brothers by the Ministry of Housing and Urban Development of a contract for the construction of 122 residential buildings at Parandak.

[67]Reference is made, e.g., to the fact that no balance sheet for GB was produced until the Parties submitted their comments on the Expert's Report. At that time, the Respondent provided a reconstructed balance sheet for the company for the fiscal year ended 20 March 1980, and the Claimants made certain adjustments based on that balance sheet.

million;[68] and (ii) he added GB's PARs in regard to the Parandak contract (i.e., Rls 161.258 million) to the aggregate amount of Gostaresh Maskan's PARs at 90% (i.e., Rls 145.132 million). Applying a discount of 25% to the face value of the PARs in regard to the Parandak project, he valued these PARs at, approximately, Rls 99 million after tax.[69] Thus, the inclusion of these two elements increased the after tax value of Gostaresh Maskan's assets by approximately Rls 117 million. The Expert rejected the inclusion of the future income generated by the outstanding Parandak contract (calculated at, approximately, Rls 355 million), on the same ground as that discussed infra in connection with Gostaresh Maskan's outstanding contracts.[70]

134. (2) Claimants' position as of the Expert Hearing. At the Expert Hearing, the Claimants emphasized that a fair market valuation on a consolidated basis of a company and its subsidiary is not tantamount to double counting of the subsidiary's assets.[71] The Claimants then presented an adjusted balance sheet for GB based on the company's balance sheet for the fiscal year ending 20 March 1980 (as reconstructed and submitted by the Respondent in its Comments to the Expert's Report). The Claimants argued that the global assessment of all of GB's assets and liabilities (as the Respondent had demanded) showed that GB's net assets should have been valued at almost Rls 962 million. Accordingly, the Claimants argued that the net value of Gostaresh Maskan's 90% interest in GB was approximately Rls 866 million (as opposed to Rls 117 million indicated in the Expert's Report). Interestingly, the Claimants proposed to increase Gostaresh Maskan's net asset value by, approximately, Rls 251 million, rather than by Rls 749 million (i.e., the excess of Rls 866

---

[68]The book value of 90% of GB's registered capital of Rls 20 million equals Rls 18 million. See Report paras. 107-108.

[69]This Rls 99 million corresponds with Rls 109 million before tax. See Report para. 38 and para. 62.

[70]Report paras. 116-117; See also para. 159, infra.

[71]Expert Hearing Transcript at 57.

million over Rls 117 million). The Tribunal understands this position to result from the Claimants' belief (contrary to the Expert's earlier conclusions in his Report) that Gostaresh Maskan's value should also be increased by 90% of (i) the value of the outstanding Parandak contract (i.e., Rls. 355 million), (ii) GB's PARs in respect of the same Parandak contract, without applying a 25% discount (i.e., Rls 132 million), and (iii) the annulled debt of Gostaresh Maskan vis-à-vis GB (in conjunction with the simultaneous annullment of GB's receivable on Gostaresh Maskan in the corresponding amount) (i.e., Rls 109 million).

135. (3) Respondent's position as of the Expert Hearing. The Respondent indicated that, although it considered GB's liabilities to exceed its assets, it would not object to the Expert's valuation of Gostaresh Maskan's 90% interest in GB's equity at Rls 18 million.

136. (4) Expert's amended Report as of the Expert Hearing. At the Expert Hearing, the Expert acknowledged that the better approach to assess the impact of GB's value on Gostaresh Maskan's valuation was to start out with a valuation of GB and then to determine the share of Gostaresh Maskan in GB's net asset value. Upon review of the revised balance sheet prepared by the Claimants, the Expert determined (i) GB's equity value at, approximately, Rls 20 million, and (ii) the discounted value of GB's PARs in respect of the Parandak project at approximately Rls 110 million.[72] The only two substantive adjustments proposed by the Claimants that he was prepared to consider were (i) the inflation adjustment of GB's fixed assets (in the amount of, approximately, Rls 251 million),[73] and (ii) the annullment of the severance pay provision (in the amount of Rls 120 million).

---

[72]This amount was calculated as follows: Rls 161.258 million, minus 8.9% tax, equals Rls 146.906 million, minus 25% discount, equals Rls 110.180 million (Expert Hearing Transcript at 345).

[73]90% of the adjustment of Rls 278.925 million is equal to Rls 251.033 million.

137. (5) Tribunal's Findings. What follows are the Tribunal's findings on the critical items of GB's balance sheet.

138. (a) Parandak PARs. This issue concerns the proposed inclusion in GB's asset base of approximately Rls 161 million for PARs in connection with the Parandak project.

139. As indicated above (see para. 133, supra), the Expert determined GB's PARs in respect of the Parandak contract, after tax and discounted at 25%, at approximately Rls 110 million.

140. The Tribunal considers that the Claimants have come a long way towards demonstrating GB's entitlement to PARs in respect of the Parandak project. As indicated above, however, the Tribunal considers that these PARs must not be valued at face value. See paras. 128-129, supra. The Tribunal is not convinced that the applicable discount should be so important as to reduce the value of these receivables by one-fourth as the Expert suggested. The Tribunal determines that a discount of 10% would be more appropriate. Accordingly, the value of these PARs is determined at Rls 145.1 million before tax.

141. (b) Value of the Outstanding Parandak Contract. On this issue, the Expert reiterated his position that the inclusion of any value attributable to this outstanding contract over and above the value of the fixed assets necessary to complete it involved double counting, absent any evidence of an extraordinary yield.

142. As explained below in regard to the value of Gostaresh Maskan's contracts, the Tribunal agrees with the Expert on this point. See para. 160, infra. Accordingly, the Tribunal does not recognize any value for the outstanding Parandak contract.

143. (c) Revaluation of Fixed Assets. The Claimants proposed to adjust the book value of GB's fixed assets by analogy to the adjustment of the book value of Gostaresh Maskan's fixed assets. Thus, using the depreciation tables and price indices

that the Expert used for Gostaresh Maskan's valuation, the Claimants proposed to write up GB's fixed assets by almost Rls 280 million, from Rls 154.3 million to Rls 433.2 million. At the Expert Hearing, the Respondent argued that such an adjustment grossly overstated the fixed assets' "current" value as of 13 November 1979.

144. The Expert acknowledged that the Claimants' adjustment of the fixed assets was appropriate as a matter of principle. He did not take a position on the accuracy of the calculations performed by the Claimants.

145. The Tribunal agrees with the Parties and the Expert that the book value of GB's fixed assets must be adjusted. Unlike the Respondent, the Claimants provided the Tribunal with a specific estimate of this adjustment. The Tribunal notes, however, that the Claimants' explanation of this estimate and the supporting documentation is minimal. The record does not include accurate information either on the types of assets that GB purchased, or on the date and cost of any of these purchases. The most pertinent information available in this regard is set forth in (i) a balance sheet for GB for the fiscal year ended 20 March 1978 (a document that was submitted in Blount Brothers, but not in these Cases), and (ii) the above-mentioned balance sheet for GB for the fiscal year ended 20 March 1980. What is certain, however, is that GB was organized four years after Gostaresh Maskan. This fact alone strongly suggests that the Claimants' calculation of GB's assets adjustment by analogy to that of Gostaresh Maskan is unlikely to justify a proportional adjustment.[74] It also suggests that the discrepancy between the

---

[74]The Tribunal notes that the Claimants' reasoning by analogy is flawed at least in the following respects:

(i) GB's asset acquisition was not implemented in parallel with that of Gostaresh Maskan. It appears, based on the Expert's Report, that by 1978, Gostaresh Maskan (which was organized in 1973) had purchased 75% of its fixed assets (recorded as of 13 November 1979) whereas GB (which was organized in 1977) was only about to start acquiring its first fixed assets. Thus, unlike Gostaresh

book value and the adjusted value of GB's fixed assets is unlikely to be as significant as in the case of Gostaresh Maskan.[75] In the Tribunal's view, the fact that all of GB's fixed asset purchases were effected much closer to the valuation date than Gostaresh Maskan's has two consequences: (i) depreciation is unlikely to be an important factor in the calculation of the appropriate adjustment of the assets;[76] accordingly, the impact of depreciation on the value of GB's fixed assets may be ignored without creating any material distortions; and (ii) the inflation adjustment is likely to be significantly smaller than that proposed by the Claimants.

146. For these reasons, a more appropriate manner to calculate a realistic adjustment, based on the best information available, is as follows:

(i) Balance sheet for the fiscal year ended 20 March 1978. This balance sheet shows (i) under "Properties," an amount of Rls 66,611,052 (including almost Rls 65 million of equipment), and (ii) under "Initial pre-use costs" (i.e., capitalized

---

Maskan's fixed assets, GB's fixed assets appear to have been only one year old on average as of 13 November 1979;

(ii) GB appears to have started writing off its fixed assets as of fiscal year 1979, whereas Gostaresh Maskan had been writing off its fixed assets since 1975. Consequently, GB's fixed assets were much less depreciated than those of Gostaresh Maskan as of the valuation date, regardless of the applicable depreciation rate; and

(iii) the relevant depreciation rates for GB's fixed assets cannot simply be copied from Gostaresh Maskan's valuation model since no accurate information appears to be available regarding the type of assets involved.

[75]See Report para. 90.

[76]As indicated above, the Tribunal does not believe that, given its limited information on the nature of GB's asset base, it can reconstruct the relevant depreciation schedules with a sufficient degree of comfort as to their accuracy.

expenditures), an amount of Rls 59,457,390.[77] The total amount of these assets is thus Rls 126,068,442. Assuming that GB's fixed assets consisted mainly of equipment, reference can be made to the specific price index ratio that was applied by the Expert in his Report for the purpose of adjusting the book value of Gostaresh Maskan's machinery and equipment.[78] The specific price index ratio corresponds with an adjustment factor of 1.351 for assets acquired during the 1977 calendar year and of 1.210 for assets acquired during the 1978 calendar year. Assuming that GB acquired two-thirds of its fixed assets during calendar year 1977, and the remaining one-third during calendar year 1978,[79] the inflation adjustment would be calculated as follows:

(a) In regard to 1977: Rls 126 million x 2/3 = Rls 84 million; Rls 84 million x 1.351 = Rls 113.5 million (representing an adjustment of Rls 29.5 million); and

(b) In regard to 1978: Rls 126 million x 1/3 = Rls 42 million; Rls 42 million x 1.210 = Rls 50.8 million (representing an adjustment of Rls 8.8 million).

(ii) Balance sheet for the fiscal year ended 20 March 1980.[80] This balance sheet shows fixed assets (net of cumulative

---

[77]To the best of the Tribunal's knowledge, no further information is available on the treatment of the capitalized expenditures item during the subsequent fiscal years.

[78]Report para. 90.

[79]This assumption reflects the statistical probability that there was a two-to-one chance that GB acquired all of the assets concerned during calendar year 1977 rather than during calendar year 1978 (taking into account that GB could use the last six months of 1977 and only the first three months of 1978 to purchase the referenced assets during its fiscal year 1978).

[80]The record does not include a balance sheet for the fiscal year ended 20 March 1979. As a result, it is unclear when and whether assets were acquired between 21 March 1978 and 20 March 1980.

depreciation)[81] of Rls 154,359,358. The Tribunal has assumed that the additional assets purchased during fiscal year 1979 and the relevant part of fiscal year 1980 amounted to approximately Rls 154.4 million - Rls 126.1 million = Rls 28.3 million. Assuming further a weighted specific index ratio of 1.131,[82] this Rls 28.3 million corresponds with an adjusted amount of Rls 32 million (representing an adjustment of Rls 3.7 million).

147. In view of the above, the Tribunal considers that the aggregate adjustment to the book value of GB's fixed assets can reasonably be estimated at Rls (29.5 + 8.8 + 3.7) million = Rls 42 million, rather than at almost Rls 280 million as the Claimants proposed.

148. (d) Severance Pay Provision. This item concerns the aggregate cost of termination indemnities in connection with anticipated lay offs that the Respondent argued should be maintained on the liabilities side of GB's pro forma balance sheet. The Expert did not take a firm position in regard to this issue. However, he did note that rejection of the Respondent's proposed severance pay provision was "something that one may well wish to consider" depending on the conclusions of a legal review of the issue.[83]

149. The Tribunal notes as a preliminary matter that an inquiry into the appropriateness of this provision assumes that

---

[81]As indicated above, the Tribunal does not have sufficient information either to factor in depreciation (in instances where it has not been factored in) or to reconstruct the pre-depreciation values (in instances where depreciation was factored in). Therefore, the Tribunal has not attempted to add in any depreciation that was apparently recorded. As a result, the following calculations are likely to somewhat underestimate the value of the assets concerned.

[82]This index ratio, referring to the 24 month-period covering the fiscal years 1979 and 1980, represents a weighted average of the specific index ratios for the following calendar years: (i) 1978 (1.210 x 9/24); (ii) 1979, until 13 November 1979 (1.113 x 11/24); and (iii) 1979, as of 13 November 1979 (1.000 x 4/24).

[83]Expert Hearing Transcript at 346.

GB could not have terminated the employment agreements simply by giving the employees concerned a notice period. Clearly, the question of the appropriateness of this provision is one of law.

150. Absent a balance sheet of GB for the fiscal year ended 20 March 1979, the Tribunal has to reconstruct a pro forma balance sheet for GB as of 13 November 1979. In conformity with generally accepted accounting principles, the Tribunal concludes that it is appropriate to charge a severance pay provision against GB only if there was a substantial likelihood, as of 13 November 1979, that the company would lay off employees after that date and would have to pay termination indemnities. The Tribunal notes that it does not follow that because GB's balance sheet as of 20 March 1980 shows a provision, suggesting that there was a substantial likelihood that GB would have to pay termination indemnities at some point beyond 20 March 1980, the required substantial likelihood also existed on 13 November 1979. The record suggests that GB's situation (like that of Gostaresh Maskan) rapidly deteriorated after the taking of Gostaresh Maskan so that it could be argued that it was only as of 20 March 1980 that the Company would have expected to lay off many of its workers. The relevant date (13 November 1979) is more than four months before the closing date of the 1980 fiscal year. No accurate information was provided as to what happened to GB between 13 November 1979 and 20 March 1980. The Tribunal notes, in addition, that it is unclear when exactly the balance sheet that purports to show GB's assets and liabilities as of March 1980 was prepared. Given that Gostaresh Maskan was expropriated on 13 November 1979, the uncontested fact is that it was prepared after the taking, when GB's board of directors and shareholders had been ousted. For these reasons, the provision in the March 1980 balance sheet deserves to be viewed with a critical eye.

151. On the other hand, given the Tribunal's information on the problems that Gostaresh Maskan had been facing throughout 1979, it seems very implausible that GB's operations were flourishing in November 1979 such that it was not anticipating any lay-offs at all. For these reasons, the Tribunal believes

that there was a substantial likelihood on 13 November 1979 that GB would have to lay-off some of its employees during the following months. In view also of the general accounting principle that a company's balance sheet should at all times reflect that company's financial condition in an accurate manner, the Tribunal believes that it is appropriate to record a severance pay provision in GB's pro forma balance sheet as of 13 November 1979.

152. The issue then becomes one of assessing the appropriate size of the provision. It is uncontested by the Parties that Iranian labor law provided for the payment of a termination indemnity corresponding to one month of salary (of the last year worked) for each year of service with the employer. In order to make a reasonable estimate of GB's aggregate cost, one would thus have to know (i) how many employees GB had on 13 November 1979,[84] and (ii) what the relevant salary and seniority was of each of these employees. The Tribunal notes that it was not provided with precise information on any of these questions. What was made available to the Tribunal is the outcome of a calculation made by the Claimants to show that the provision of Rls 120 million, reflecting GB's obligations as of 20 March 1980, corresponded with a termination indemnity of 16 months per year of service rather than only one month per year of service. The Tribunal considers that it was not provided with sufficient information to assess the reasonableness, let alone the accuracy, of the Claimants' calculation. In view of the above, the Tribunal deems it reasonable to retain one-half of the contested provision. Accordingly, the Tribunal concludes that the liabilities side of GB's pro forma balance sheet should reflect

---

[84]The Tribunal notes that it has been asserted throughout the proceedings that GB was merely a "book company" that was only to "receive and pay monies." Report para. 105 and para. 107; see also Blount Brothers, 3 Iran-U.S. C.T.R. at 227. It is unclear, therefore, whether GB had executed any employment agreements itself, or whether it had on its payroll employees who strictly speaking had an employment agreement with the parent company, Gostaresh Maskan. In the latter case, the termination indemnity for laid off employees would appear to have been due by Gostaresh Maskan.

a severance pay provision of Rls 60 million, rather than the Rls 120 million provision proposed by the Respondent or the elimination of such a provision proposed by the Claimants.

(e) Taxes, non-marketability discount, discount for unaudited accounts. The Tribunal concludes that GB's net asset value should not be reduced by any capital gains tax or by a non-marketability discount, or a discount for unaudited accounts. The Tribunal refers to its considerations and conclusions on each of these issues as indicated hereinafter in respect of Gostaresh Maskan. See paras. 164, 170, 173, infra.

153. Conclusion on Gostaresh Blount. Based on the balance sheet items discussed above, the Tribunal concludes that GB's assets can reasonably be estimated at Rls 982 million and its liabilities at Rls 726 million, yielding a net asset value of Rls 256 million. Accordingly, the value of Gostaresh Maskan's 90% interest in GB may reasonably be valued at Rls 230 million.

4. GOODWILL

154. The Claimants argued that Gostaresh Maskan's balance sheet should show goodwill in the amount of Rls 1,404 million. In support of this estimate, the Claimants rely, inter alia, on several reports prepared under the supervision of the Company's Government-appointed directors following its expropriation. The Claimants further maintain that goodwill should be awarded to recognize the value created when a company has in place a management team, a trained staff, administrative and financial systems, and an established performance record. According to the Respondent, no value should be placed on Gostaresh Maskan's goodwill because, in its view, the Company was financially unstable and lacked any prospects for future profitability.

155. The Expert concluded that "'goodwill' does not arise from the fact that a firm's assets are expected to generate positive cash flows" and that "[e]quipment is likely to be worth more than its replacement cost if (and only if) the firm can use

it to earn an abnormal rate of return -- that is, a rate of return in excess of the cost of capital." Based upon his judgment of Gostaresh Maskan's business prospects as of 13 November 1979, the Expert concluded that Gostaresh Maskan was not in a position to expect such a return[85] and that it was therefore "likely that [Gostaresh Maskan's] equipment was worth less than its replacement cost and that the market value of [Gostaresh Maskan's] equity would therefore stand at a discount to its current cost book value."[86] The Expert determined this discount at 13% of the estimated replacement value of Gostaresh Maskan's tangible assets (corresponding with an amount of Rls 240 million).[87]

156. Tribunal's Findings. The Tribunal shares the Expert's view that a goodwill analysis in respect of Gostaresh Maskan rests on a review of the Company's business prospects. At the Expert Hearing, the Parties went to great lengths to apprise the Tribunal of their respective assessments of the state of the Iranian economy by late 1979, in general, and of Gostaresh Maskan's likely business opportunities in that context, in particular. In this respect, the Tribunal notes the widely divergent "official" data that were provided to it regarding the inflation rate and the prevailing interest rates. As a result, the discount factors (reflecting the Company's cost of capital) proposed by the Parties to calculate the net present value of Gostaresh Maskan's expected future cash flows ranged between 12%

---

[85]The Expert relied, in particular, on (i) labor unrest among GM's workforce (including the stoppage of activities on certain Khuzestan sites), (ii) the Company's liquidity shortage due to the non-payment of certain invoices, (iii) the departure of certain management staff (including Mr. Ali Ebrahimi, who left Iran in July 1979), (iv) the Company's pre-tax operating loss during the eight-month period ending on 13 November 1979, which was estimated at between Rls 10.1 million (by the Claimants) and Rls 918.2 million (by the Respondent), and (v) the general political and inflation-ridden economic climate in Iran as of November 1979.

[86]Report para. 10.

[87]Id. para. 136.

and 45%. Depending on the source, the Tribunal was informed that Gostaresh Maskan had a bright future and that it was on the verge of bankruptcy.

157. Given the changes that accompanied the Islamic Revolution, the Tribunal considers it inappropriate to base its conclusions on goodwill on an extrapolation of the Company's past profitability record. The Tribunal is not convinced by the Claimants' valuation of Gostaresh Maskan's goodwill at Rls 1,404 million, which relied on such descriptions of Gostaresh Maskan as a "phenomenally profitable" company or as a company in which "all the ingredients for future success were in place" and which was "poised to capitalize on business opportunities." Rather, the Tribunal is satisfied that the Expert made an accurate assessment of the relevant information available. The Tribunal therefore considers that the Expert could reasonably find that Gostaresh Maskan's business prospects as of 13 November 1979 were such as to conclude that the market value of the Company was less than the replacement cost of its tangible assets, i.e., that the Company had negative goodwill. The Tribunal further considers that the 13% discount for negative goodwill proposed by the Expert is reasonable. Accordingly, the net asset value of Gostaresh Maskan as determined hereafter (See para. 174, infra), is to be reduced by 13%.

5. VALUE OF OUTSTANDING CONTRACTS

158. The Claimants valued Gostaresh Maskan's outstanding contracts at Rls 1,109 million, based on a 10% profit margin. This amount includes Rls 738 million for Gostaresh Maskan's contracts, Rls 355 million for Gostaresh Maskan's 90% share in Gostaresh Blount's Parandak project, and Rls 16 million for Gostaresh Maskan's 50% share in the Palayeshgar project. The Claimants relied, in particular, on Gostaresh Maskan's historical earnings, its staff of 1,000 employees, contract backlog of over Rls 10 billion, shrinking competition and the government policy

favoring the construction of residential housing. The Respondent placed no value on these contracts.[88]

159. The Expert was adamant that it was inappropriate to add the net present value of a company's profit margin on its outstanding contracts to the value of its tangible assets. The Expert indicated that "[t]o include in the valuation of [Gostaresh Maskan] both the value of the equipment *and* the cash flows that this equipment is likely to produce involves double counting."[89] The Expert further pointed out that "this does not imply that the existence of these contracts is irrelevant to the value of [Gostaresh Maskan], but only that the value of the contracts cannot be regarded as additional to that of the assets."[90] At the Expert Hearing, the Expert made it clear that he would not want to change "one iota" to this analysis.[91] The Expert reiterated his position that "we should add to the cost of the assets only the value of the abnormal cash flows (be they positive or negative) and not the value of the cash flows themselves."[92] And also, "[h]aving a backlog in itself ... I do not believe is an indication of abnormal profits."[93] The Expert thus concluded that these intangibles should not be listed as an asset on the Company's balance sheet unless they represented abnormal expected cash flows (i.e., expected cash flows in excess of the competitive level which is determined as the opportunity cost of capital). In view of the above, the Expert concluded that no value could be attributed to Gostaresh Maskan's contract backlog.

---

[88]Report paras. 9, 12, 116.

[89]Id. para. 9.

[90]Id. para. 117.

[91]Expert Hearing Transcript at 359 and 361.

[92]Id. at 21.

[93]Id. at 363-64.

160. Tribunal's Findings. The Tribunal notes that the Expert, rather than valuing the aggregate outstanding contracts as an intangible asset in their own right (to be quantified by discounting the expected cash flows under those contracts), subsumed the valuation of these contracts under the valuation of goodwill.[94] The Tribunal agrees with the Expert that outstanding contracts can only affect a company's value (positively or negatively) to the extent that they reflect an extraordinary (positive or negative) return. That is, such an intangible only has a recognizeable value if the Company was found to outperform the market. The Tribunal is aware that previous Awards have considered the likely future profitability of an expropriated owner's property as an asset, the value of which was included straight into the company's net asset value.[95] As indicated above, however, the Tribunal believes the better approach to be that the net present value of the future cash flows to be generated by Gostaresh Maskan's outstanding contracts should only be added to its asset value to the extent that it exceeds the "normal" level of profits that a prudent investor would require

---

[94]The Expert explained that "[g]oodwill is composed of both the present value of any abnormal profits expected from the assets already in place and the present value of growth opportunities (i.e. the abnormal profits expected from investments to be made in the future)." Report para. 23.

[95]In AIG, the Tribunal held that a fair market valuation of an expropriated company required the Tribunal also to consider that company's goodwill and "likely future profitability." The Tribunal indicated that these assets had to be valued taking into account such considerations as (i) the general political, social and economic climate in Iran prior to the taking, and (ii) the solidity of the past profits record that was used to project the estimated future cash flows (AIG, 4 Iran-U.S. C.T.R. at 107-109). The Tribunal followed the same line of reasoning in, inter alia, Phillips Petroleum Company Iran and The Islamic Republic of Iran, et al., Award No. 425-39-2, paras. 159-164 (29 June 1989), reprinted in 21 Iran-U.S. C.T.R. 79, 143-145; Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 314-24-1, paras. 337-338 (14 August 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 220-221; Payne, 12 Iran-U.S. C.T.R. at 15-16. In none of these awards did the Tribunal condition a positive valuation of the outstanding contracts on a finding that the expected cash flows should be "abnormal" (that is, above the competitive level, as the Expert proposed).

given the opportunity cost of capital. The Tribunal remains unconvinced by the evidence proffered by the Claimants that Gostaresh Maskan's outstanding contracts would yield such an extraordinary return. For these reasons, the Tribunal concludes that Gostaresh Maskan's net asset value should not be increased with any value of the Company's outstanding contracts.

6. OTHER BALANCE SHEET ITEMS

161. These items include: (i) undisputed current assets (Rls 1,071.2 million); (ii) other accounts receivable (Rls 153.7 million); (iii) miscellaneous working capital (Rls -118.5 million); (iv) Gostaresh Maskan's 50% interest in Palayeshgar (Rls 0); (v) fixed assets (Rls 997.7 million); (vi) Gypsum mine lease arrangement, franchise and license rights (Rls 0); and (vii) undisputed liabilities (Rls 2,010.2 million). The Tribunal thus determines the aggregate net value of these items at Rls 93.9 million.

7. TAXES

162. The Respondent argued that Gostaresh Maskan's appreciated assets would be subject to a capital gains tax of up to Rls 2,650 million pursuant to Articles 46, 80, 116, 125 and 134 of the Direct Taxation Act of Iran of Esfand 1345 (the "DTA"). In addition, the Respondent asserted that a similar tax in the amount of Rls 152.5 million was due on the capital gains that allegedly accrued on the Claimants' participation in Gostaresh Maskan pursuant to the DTA's provisions on the taxation of gains arising from the disposal of shares (in particular, Articles 46, 57, 80, 116, 134 and 166 thereof). The Claimants denied that any of these taxes could validly be factored into the valuation of Gostaresh Maskan and the Claimants' interest therein.

163. The Terms of Reference instructed the Expert to consider the "[e]ffects, if any, of . . . taxes applicable under

Iranian law to GMC's income."[96] In his Report, the Expert duly considered the effect of Gostaresh Maskan's estimated income taxes on the Company's net asset value. At the Expert Hearing, the Expert confirmed that he considered it inappropriate to factor in any additional tax such as a capital gains tax on any of Gostaresh Maskan's appreciated properties.

164. Tribunal's Findings. The assessment of a capital gains tax on Gostaresh Maskan's appreciated properties as of the valuation date assumes that one could equate the hypothetical sale of the Company with an actual transaction set in a tax jurisdiction that provides for such a tax. Regardless of whether fair market valuation theory in general, or the valuer's terms of reference in any particular case, allow for such an equation, the Tribunal notes that, as a matter of Iranian law, the mere recording of the appreciated value of an asset in the Company's pro forma balance sheet would not appear to trigger any sort of capital gains tax on the incremental value. Absent any taxable event within the meaning of Iranian tax law, the assessment of a capital gains tax would constitute a violation of fundamental principles of Iranian tax law. The Tribunal further understands that Iran, like most -if not all- of the world's jurisdictions honors the maxim that taxes (i.e., the definition of the taxable persons, the taxable mass, the taxable event, the amount of the tax, and tax procedures) are the product of rules and regulations rather than of equity considerations. For that reason alone, the Tribunal considers that any exercize to develop a theory offering an alternative (i.e., extra-statutory) basis for the tax is bound to be unsuccessful. The Tribunal further notes that it is not called upon to issue rulings on the tax implications for the contracting parties to a transaction (hypothetical or otherwise). In this respect, the Tribunal refers to its Award in Birnbaum. In that Award, the Tribunal held that it "has never reduced the value of assets or the compensation due [to] a Claimant for an expropriation of such assets on the ground that it caused the

---

[96]Paragraph H(4) of the Terms of Reference (see para. 104, supra).

Claimant to realize taxable income." Birnbaum, at para. 128, ____ Iran-U.S. C.T.R. at ____. In the same Award, the Tribunal further pointed out that it "must not consider as an element of value the taking itself" and that the Tribunal's "consistent practice precludes any plausible argument that the taking itself somehow triggers a tax liability." Id. at para. 129. In view of the above, the Tribunal rejects the Respondent's argument that the valuation of an expropriated Iranian company for the purpose of determining its former shareholders' compensation must factor in a capital gains tax on the appreciated assets. These considerations equally apply to the proposed assessment of a similar tax on the net value of the Claimants' 19% interest in Gostaresh Maskan.

8. MINORITY DISCOUNT

165. The Respondent argued that the value of the Claimants' interests in Gostaresh Maskan should be reduced applying a so-called "minority discount" of 25%. This discount, according to the Respondent, reflects the fact that the Claimants' participation in Gostaresh Maskan represented only 19% of the Company's outstanding stock. The Claimants rejected the application of any minority discount.

166. In his Report, the Expert indicated that (i) if one were to analyze this question in terms of "how much would a buyer have needed to pay to induce the minority shareholders to sell?," and (ii) if the buyer "is regarded as wishing to acquire a minority holding," then it would be proper "to make some deduction for the fact that minority shareholders are in a relatively weak position, but in my judgement a discount of about 5% would be appropriate."[97] The Expert also stated that "[i]f the purchaser is regarded as buying all the shares of [Gostaresh Maskan] (which is of course what happened), then it is not clear that the minority shareholders would not be able to extract the

[97]Report para. 13.

same price as the majority shareholder."[98] At the Expert Hearing, the Expert restated that it is a critical difference whether one intended to value "a portion or the whole company."[99] The Expert did not factor in any minority discount into his calculation of Gostaresh Maskan's net asset value.[100]

167. Tribunal's Findings. The Terms of Reference clearly instructed the Expert to determine the net asset value of Gostaresh Maskan as a company. They did not instruct him to inquire into the value of the Claimants' 19% interest in Gostaresh Maskan on the free market. The Tribunal therefore agrees with the views of the Expert on this issue. The Tribunal also notes that it held explicitly in Birnbaum that a minority discount cannot properly be applied to the value of a minority participation of shareholders in an expropriated company. In that Award, the Tribunal pointed out in response to the respondent's claim for a minority discount that "Tribunal precedent does not support the Respondent's position. Just as the Tribunal has never awarded surplus value for a controlling interest, it has never discounted the value of a minority interest." Birnbaum, at para. 147, ____ Iran-U.S. C.T.R. at

---

[98]Report para. 13. The Expert further pointed out that

> Mr Trac[e]y [one of the Respondent's witnesses] clearly views the prospective purchaser as acquiring only a minority interest in GM. In practice of course the government of Iran acquired all the shares of the claimants. If the Tribunal regarded the purchaser as acquiring the claimants[']shares as part of the purchase of the entire company rather than as an isolated purchase, Mr. Trac[e]y's argument would not apply and I would see no reason to apply any discount. Report para. 143.

[99]Expert Hearing Transcript at 436; see also Report, para. 12. The Expert further stated that "the problem in recognising the possible difference between a minority and majority interest is in large measure a question of what one is trying to measure, and that is a legal rather than an economic issue." Expert Hearing Transcript at 32.

[100]Id. at 436.

____. In the same Award, the Tribunal held that while there could be reasons "to justify the discount of the Claimant's share . . . in the context of a valuation in view of an actual sale of shares on the open market," these reasons were "not applicable in the context of a deprivation valuation, especially in a case like this one, where the expropriating entity not only expropriated the minority share, but the whole company." Id. at 146. In view of the above, the Tribunal concludes that the net value of the Claimants' participation in Gostaresh Maskan must not be reduced by application of a minority discount.

9. NON-MARKETABILITY DISCOUNT

168. The Respondent argued that the value of the Claimants' interest in Gostaresh Maskan's net asset value should be reduced by application of a so-called "non-marketability discount" to reflect the fact that Gostaresh Maskan was a "private" or "closed" company -- i.e., a corporation the shares of which were not regularly traded in the market place. Thus, a non-marketability discount was advanced to reflect the absence of a liquid market for those shares. The Claimants disputed the applicability of such a discount to the value of their shares.

169. In his Report, the Expert concluded that "the fact that the shares of [Gostaresh Maskan] were not marketable . . . does not justify applying a discount to the values estimated by either party in the case."[101] He pointed out that his valuation rested on an asset replacement cost approach rather than on a discounted cash flow approach. The Expert further stated that there was no evidence that the liquidity of a stock affected the replacement value of a company's assets. The Expert indicated that "[w]hen valuing assets, it would be foolish to suggest that every dollar of equipment acquired by a private firm is immediately worth only 80 cents."[102] At the Expert Hearing, the Expert confirmed his

---

[101]Report para. 13.

[102]Report para. 142.

position that "[i]f we were to discount [Gostaresh Maskan's] expected cash flows, we would indeed wish to allow for the apparent extra return that investors required from non-marketable stocks,"[103] but that in an asset valuation model no discount should be applied.

170. Tribunal's Findings. The Tribunal agrees with the Expert on this issue. In addition to the Expert's reasons for rejecting a non-marketability discount, it must be borne in mind that in an expropriation context such as the present, there is no prospective buyer investing in a closed company who must be offered a discount on the offered shares' face value to reflect the illiquidity of the shares. This position has been explicitly adopted by the Tribunal in Birnbaum. As indicated above in regard to the minority discount, the Tribunal decided in Birnbaum that, while there could be reasons "to justify the discount of the Claimant's share . . . in the context of a valuation, in view of an actual sale of shares on the open market," these reasons were "not applicable in the context of a deprivation valuation." Birnbaum, at para. 146, ____ Iran-U.S. C.T.R. at ____. For these reasons, the Tribunal considers that no non-marketability discount should be applied to the net value of the Claimants' participation in Gostaresh Maskan.

10. DISCOUNT FOR UNAUDITED ACCOUNTS

171. An argument also was raised that Gostaresh Maskan's net asset value should be reduced by a so-called "discount for unaudited accounts" to reflect the absence, as of the expropriation date, of any audit of Gostaresh Maskan's financial statements that could have detected recording errors therein. The Claimants took issue with this argument, asserting that the lack of audited financial statements in the record resulted solely from the Respondent's decision not to submit the financial statements in their possession. The Claimants further argued that under these circumstances the application of a discount to

---

[103] Expert Hearing Transcript at 29; see also id. at 435-436.

Gostaresh Maskan's estimated net value would operate as a penalty on them for a course of action that was completely beyond their control. The Claimants concluded that, at any rate, a 15% discount was wholly arbitrary.

172. In his Report, the Expert stated that "any purchaser would have been likely to require that the accounts should be audited and would have had some qualms buying a firm whose accounts had not been audited."[104] The Expert also pointed out that (i) "there is no presumption that [Gostaresh Maskan's] unaudited accounts would overstate the value of the company," and (ii) the "onus of proof is on Noavaran," since "it is difficult for the claimants to bring counter-evidence" on this matter.[105] Nevertheless, the Expert proposed to apply a discount to the value of Gostaresh Maskan's net assets "to reflect the lack of protection that would be associated with the purchase of a company with unaudited accounts."[106] The Expert determined this discount at 15%.[107] At the Expert Hearing, the Expert stated that even if it is true that errors in a company's financial statements are "equally likely to be positive as negative," "auditors have the tendency to uncover extra liabilities, rather than extra assets."[108] The Expert concluded that "if I had to do it again I would be more likely to pick a lower figure than a higher figure, but I don't think it would be substantially different and I think it would be totally wrong not to apply any discount."[109]

173. Tribunal's Findings. The Tribunal considers it inappropriate to apply such a discount in an expropriation

---

[104]Report para. 11.

[105]Id. para. 11.

[106]Id. para. 11.

[107]Id. para. 139.

[108]Expert Hearing Transcript, at 356.

[109]Id. at 356.

context on the following grounds. First, in as much as the discount is argued to accomodate the concerns of a prospective purchaser (or of the valuer for that matter), the Tribunal believes that its rationale is lacking. That is, one must not equate an expropriating Government with a prudent purchaser demanding protection from hidden liabilities as a condition precedent for closing an asset or stock purchase transaction. Second, in as much as the discount, or any portion thereof, aims at quantifying any remaining uncertainties over certain specific recording errors in Gostaresh Maskan's financial statements (which the Respondent alleged to have been made), the Tribunal considers that the Respondent had ample opportunity throughout the proceedings that followed the taking of the assets concerned to substantiate its claims in regard to these alleged recording errors. Clearly, the Respondent failed to produce adequate evidence that these alleged errors had in fact been committed. For these reasons, no discount should be applied to Gostaresh Maskan's net asset value to reflect the absence of audited accounts.

11. CONCLUSION ON VALUATION

174. In view of the above, the Tribunal concludes, having fully and thoroughly considered all of the evidence and arguments submitted by both Parties as well as the views of the Expert, that the net value of Gostaresh Maskan's tangible assets can reasonably be estimated at Rls 2,245.0 million. From this figure, 13% or Rls 291.9 million must be deducted for negative goodwill. The fair market value of Gostaresh Maskan is thus estimated at Rls 1,953.1 million.

VI. CONCLUSION

A. Compensation

175. Based on the foregoing, the Tribunal determines that the Claimants are entitled to the aggregate amount of Rls 371.1 million as compensation for the expropriation by the Respondent of their 19% ownership interest in Gostaresh Maskan. This amount is equivalent to U.S.$5,265,697.00 converted at the exchange rate of 70.475 Rials/U.S.$1. This was the exchange rate prevailing during all of 1979. See Petrolane, Inc., et al. and The Government of the Islamic Republic of Iran, et al., Award No. 518-131-2, para. 147 (14 August 1991), reprinted in 27 Iran-U.S. C.T.R. 64, 115.

B. Interest

176. In order to compensate the Claimants for the damages they have suffered due to delayed payment, the Tribunal considers it fair to award interest at the rate of 8.60% from the date of the expropriation, 13 November 1979.

C. Costs

177. In their Rebuttal Memorial, filed on 15 February 1991 (see para. 24, supra), Claimants' Counsel stated that, through 31 December 1990, Claimants had incurred (i) legal fees of U.S.$117,247 and expenses of U.S.$33,656 in connection with these proceedings, and (ii) costs of U.S.$57,000 for retaining Mr. Siamak. Claimants also estimated that an additional U.S.$50,000 in legal fees plus U.S.$20,000 in expenses would be incurred.

178. Article 38 of the Tribunal Rules defines the "costs of arbitration" as including legal fees and expenses, as well as the costs of expert advice required by the Tribunal for a particular case. In view of Article 40 of the Tribunal Rules and the criteria for the award of legal fees and expenses established by the Tribunal in Sylvania Technical Systems, Inc. and The

Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 323-324, the Tribunal finds it reasonable to award to the Claimants legal fees and expenses in the amount of U.S.$50,000. With respect to the costs of expert advice, the Tribunal notes that the Claimants and the Respondent each paid to the Tribunal a deposit of 27,500 pounds sterling towards the Expert's fee, for a total deposit of 54,908.04 pounds sterling (after deduction of bank charges). The Expert's fees and related expenses totalled 42,951.16 pounds sterling, leaving a balance of 11,956.88 pounds sterling on deposit with the Tribunal. The Claimants had put forward valuations of Rls 7,486,098,680, Rls 5,194,339,000, Rls 3,984,100,000 and an amount between Rls 3,942 million and Rls 8,322 million (see para. 101, supra). The Respondent had valued the Company at Rls -726,104,388 (see para. 102, supra). In light of these claims, it is apparent that the Expert's Report performed a service for both Parties, and the Tribunal therefore considers it reasonable that each Party bear one-half of the cost of the Expert's fees and related expenses. Accordingly, the remainder of the deposit still with the Tribunal shall be divided equally between the Parties.

VII. AWARD

179. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. The Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to SHAHIN SHAINE EBRAHIMI the sum of Three Million Forty-Eight Thousand Five Hundred and Sixty-One United States dollars (U.S.$3,048,561), plus simple interest at the rate of 8.60% per annum (365-day basis) from 13 November 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

b. The Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to CECILIA RADENE EBRAHIMI the sum of One Million One Hundred and Eight Thousand Five Hundred and Sixty-Eight United States dollars (U.S.$1,108,568), plus simple interest at the rate of 8.60% per annum (365-day basis) from 13 November 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

c. The Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to CHRISTINA TANDIS EBRAHIMI the sum of One Million One Hundred and Eight Thousand Five Hundred and Sixty-Eight United States dollars (U.S.$1,108,568), plus simple interest at the rate of 8.60% per annum (365-day basis) from 13 November 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

d. The Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to SHAHIN SHAINE EBRAHIMI, CECILIA RADENE EBRAHIMI and CHRISTINA TANDIS EBRAHIMI, jointly, the aggregate sum of Fifty Thousand United States dollars (U.S.$50,000) in respect of their costs of arbitration.

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

f. The Secretary-General of the Tribunal shall dispose as follows of the balance of the amounts advanced by the Parties for the fees of the Expert and presently held in a special account of the Tribunal: (i) one-half jointly to the Claimants SHAHIN SHAINE EBRAHIMI,

CECILIA RADENE EBRAHIMI and CHRISTINA TANDIS EBRAHIMI, and (ii) one-half to the Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN.

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

Dated, The Hague,
12 October 1994

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the name of God

Richard C. Allison
(Separate Opinion)

Mohsen Aghahosseini
Dissenting with respect to certain parts to be dealt with in a Separate Opinion