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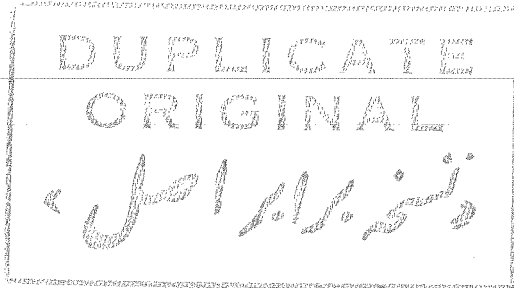
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CASE NO. 457

CHAMBER ONE

AWARD NO. 585-457-1

GEORGE E. DAVIDSON (HOMAYOUNJAH),  
Claimant,  
and  
THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN,  
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	5 MAR 1998
	تاریخ ۱۴ / ۱۲ / ۱۳۷۶

AWARD

Appearances:

For the Claimant: Mr. George E. Davidson,  
Claimant,  
Prof. Arthur T. von Mehren,  
Mr. Sumner J. Chertok,  
Counsels,  
Mr. Edward H. Davidson,  
Mr. Eshagh Nejat Haim,  
Witnesses.

For the Respondent: Mr. M.H. Zahedin Labbaf,  
Agent of the Government of the Islamic  
Republic of Iran,  
Dr. A.A. Riyazi,  
Mr. F. Momeni,  
Legal Advisors to the Agent,  
Mr. M. Tavassoli,  
Legal Assistant to the Agent,  
Mr. A. Fatemi,  
Mr. M. Mullai,  
Legal Advisors from the Bureau of  
International Legal Services, Tehran  
Mr. Gh. H. Sadeghi Ghahareh,  
Mr. H. Safari,  
Witnesses,  
Mr. N. Nobahar,  
Mr. Gh. A. Meshkinfam,  
Mr. A. Mozaffari,  
Observers.

Also Present: Mr. Sean Murphy,  
Agent of the Government of the United  
States of America,  
Mr. Allen Weiner,  
Deputy Agent of the Government of the  
United States of America.

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## I. INTRODUCTION

1. The Claimant in this Case is GEORGE EDWARD DAVIDSON<sup>1</sup> (HOMAYOUNJAH) ("the Claimant"). The Respondent is THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent"). The Claimant alleges that around 1 June 1980 the Respondent had expropriated five properties in which he held interests, namely the Kamran, Manouchehri, Ahar, Jalleh and Caravan Hotel buildings, in Tehran, Iran. The Claimant first claimed the sum of U.S.\$3,850,000 as compensation for the loss of the properties. Later and at the Hearing he modified the sum by deducting outstanding mortgage loans and sought the sum of U.S.\$3,650,000 as the value of the properties. In addition, the Claimant seeks interest on the sum claimed together with arbitration costs.

2. The Respondent states that the Claimant has failed to establish his dominant and effective U.S. nationality at the time the Claim allegedly arose as well as the ownership and expropriation of the properties at issue. The Respondent requests the Tribunal to dismiss the Case for lack of jurisdiction and claims a reasonable amount for the expenses incurred as arbitration costs.

## II. PROCEDURAL HISTORY

3. On 6 January 1982 the Claimant sent for filing a letter including his claim with regard to five properties allegedly expropriated by the Revolutionary Courts of Iran. The Tribunal Registry received this letter on 12 January 1982. On 14 January 1982, the Tribunal informed the Claimant that it could not accept

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<sup>1</sup> The Claimant's name was changed by court decree from George Edward Homayounjah to George Edward Davidson as part of his naturalization in the United States in 1980. The record shows that at the time of the Claimant's birth his surname was, following his father's name, Esraeel, which was changed to Homayounjah in 1964, back to Esraeel in 1973 and, after reaching the age of majority, back to Homayounjah on his own application in 1976.

the letter for filing since it was only in English and no Persian text was presented with it.

4. On 25 January 1982, the Claimant filed a submission dated 16 January 1982, which he titled "Statement of Claim" on his behalf and with power of attorney on behalf of his brothers DAVID E. DAVIDSON, HENRY E. SASSOON and KAMRAN E. SASSOON. On 1 February 1982, the Tribunal Registry refused to accept the submission since it was overdue, but noted that the refusal was, upon the Claimant's objection, subject to review by the Tribunal within 30 days. The Claimant's objection was received on 12 February 1982. The Claimant explained, inter alia, that the letter of 6 January 1982 had been accompanied with a Persian text, but the latter might have been misplaced. Also, the Claimant stated that if the letter of 6 January 1982 is accepted, the filing of 25 January should be considered as "merely a more detailed specification and substantiation" and supplementary to the previously filed Claim. The letter dated 6 January 1981, together with its Persian text, was later accepted as a Statement of Claim and was marked as filed on 18 January 1982.

5. On 22 February 1983, the Deputy Agent of the Islamic Republic of Iran submitted an objection to the Claimant's submissions, arguing that these two submissions should be denied, because the submission of 18 January 1982 did not qualify as a Statement of Claim and the submission of 25 January 1982 was filed after the deadline for filing of claims set out in paragraph 4 of Article III of the Claims Settlement Declaration.

6. In the Order of 15 March 1983, the Tribunal asked the Claimant to address and clarify whether the document filed on 25 January 1982 constituted an amendment to the Statement filed on 18 January 1982. On 2 May 1983, a letter in English was received from the Claimant, stating that the submission of 25 January 1982 was to clarify the Statement of Claim. On 25 January 1984, the Claimant filed another response to the Tribunal's Order and confirmed that the original Statement of Claim is the one drafted

by the Claimant himself, dated on 6 January 1982 and filed on 18 January 1982. The response further requested that the document prepared by the Claimants' counsel and filed on 25 January 1982 be treated as supplemental to the original Statement of Claim.

7. Noting the Full Tribunal's Decision of 6 April 1984 in Case No. A/18,<sup>2</sup> the Tribunal by its Order of 25 June 1985 requested that the Claimant file by 27 September 1985 all evidence he wished to submit in connection with the issue of his nationality, as the Tribunal has to determine whether he was a national of the United States of America or the Islamic Republic of Iran, or both, and, in the latter case, to decide the dominant and effective nationality. The Respondent was asked to file by 27 December 1985 all evidence that it wished to be considered on the issue of nationality.

8. After having been granted one extension, the Claimant and his brothers submitted on 16 December 1985 a document entitled "Claimant's Memorial and Evidence on Nationality." After having granted the Respondent three extensions of the time limit to submit all evidence on the issue of nationality, the Tribunal by the Order of 21 January 1987 informed the Parties that, in view of the procedural history of the Case, no further extensions were to be granted. The Tribunal intended to commence its deliberations regarding its jurisdiction on the basis of the evidence before it, unless the Parties informed the Tribunal of ongoing settlement negotiations calling for a postponement of the proceedings. On 16 August 1988, the Claimant and his brothers informed the Tribunal that no such discussions had been contemplated and asked the Tribunal to consider the issue of jurisdiction at its earliest convenience.

9. By its Order of 10 May 1991, the Tribunal provided the Respondent with the final opportunity to file by 9 August 1991

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<sup>2</sup> Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251.

all evidence it wished the Tribunal to consider on the issue of dominant and effective nationality. After having been granted another extension, the Respondent filed a submission entitled "Respondent's Brief and Evidence on the Claimants' Nationalities" on 30 August 1991.

10. By its Order of 6 September 1991, the Tribunal granted the Claimant and his brothers a further opportunity to file, by 31 October 1991, a response to the Respondent's Brief filed on 30 August 1991. After having been granted one extension, the Claimants filed "Claimants' Reply to Respondent's Brief and Evidence on the Claimants' Dominant and Effective Nationality" on 30 December 1991. In their submission the Claimant and his brothers informed the Tribunal of the withdrawal of the Claim with regard to David E. Davidson and stated that the waiver was made with the reservation that the Claims of the three remaining persons were not prejudiced.

11. The Tribunal by its Order of 15 January 1992, decided to join all jurisdictional issues to the merits of the Case and to set a schedule for the Parties' further submissions. On 28 October 1992, David E. Davidson, Henry E. Sassoon and Kamran E. Sassoon filed a letter informing the Tribunal that they withdrew their claims. The Respondent did not object to the termination of the proceedings as regards these three persons. Pursuant to Article 34 (2) of the Tribunal Rules, the Tribunal, by its Order of 16 December 1992, terminated the proceedings with respect to these persons and noted that in view of this Order, it need not decide whether they can be considered as Claimants in this Case.

12. After having been granted three extensions, the Claimant, George E. Davidson, submitted "Claimant's Hearing Memorial" and "Attachments to Claimant's Hearing Memorial" on 14 January 1993. After having been granted four extensions, the Respondent filed "Respondent's Brief on Jurisdictional Issues and Merits, Volumes I-II" on 12 April 1994. On 31 January 1995, after having been granted four extensions, the Claimant submitted "Claimant's



Memorial Replying to Respondent's Brief on Jurisdictional Issues and Merits as well as Explaining the Evidence, and Summarizing the Issues Presented" and "Attachments to Claimant's Memorial Responding to Respondent's Brief." On 24 March 1995, the Claimant filed a revised "Attachments to Claimant's Memorial Responding to Respondent's Brief."

13. On 16 August 1995, the Claimant filed a letter entitled "Motion for an Order Compelling Respondent to Produce Documents and Other Objects Contained in Safe Deposit Box in Respondent's Possession" stating, inter alia, that on or about 3 October 1991, the Respondent confiscated Edward H. Davidson's safe deposit box No. 416 in Bank Sepah in Tehran, containing documents which, according to the Claimant, would enable him to establish his ownership interest in the properties that are the subject of this claim. In its Order of 24 August 1995, the Tribunal requested the Respondent to submit by 23 October 1995 the documents referred to in the Claimant's request, or to explain why the submission of any of these documents was not possible.

14. In its response to the production request, the Respondent stated that it was complying with the Order of the Tribunal, notwithstanding its belief that the Claimant's request was not motivated by genuine need, because the Claimant's Rebuttal Memorial and Evidence had already been filed prior to that request. In addition, the Respondent pointed out that the Claimant had not fulfilled his evidentiary burden and therefore the Respondent should not have been required to produce rebuttal evidence. As regards the object of the request, the Respondent confirmed that the "deeds" had already partly been filed by the Respondent and that the requested documents, to the extent available to the Respondent, were attached to the submission.

15. The Respondent further doubted the evidentiary value of the "other things" (gold and jewelry) allegedly contained in the safe deposit box. Even if they existed, they belonged to Edward Davidson, and the Claimant therefore was not entitled to demand

their recovery. As regards the request for documents concerning the "blacklisting" of the Claimant and his family, the Respondent contended that the Claimant was not entitled to ask for production of documents related to every member of his family. Finally, with regard to any other documents or power of attorney, the Respondent denied having them in its possession.

16. On 29 August 1995, the Respondent asked the Tribunal to order the Claimant to put his Iranian passports at the Respondent's disposal to enable the Respondent to prepare certain parts of its Rebuttal Memorial. On 7 September 1995, the Tribunal issued an Order requesting the Claimant to submit by 29 September 1995 a copy of all of the pages of his Iranian passports, should they still be in his possession, and to bring the originals to the Hearing. On 26 September 1995, a letter from the Claimant and a copy of his Iranian passport were received by the Tribunal's Registry and placed in the Master File, as the submission did not comply with the Tribunal's filing requirements. On 28 September 1995, the Respondent filed a letter requesting the Tribunal to instruct the Claimant to make the required filings in full.

17. On 23 October 1995, the Claimant submitted twenty-two copies of his new passport, issued in 1984, and replacing the one that the Claimant maintained had been returned to the Iranian Interest Section in Washington, D.C. Relying on an entry in the passport indicating that a power of attorney had been issued to the Claimant, the Respondent on 16 November 1995 asked the Tribunal to order the Claimant to present the original of that power of attorney. By its Order of 24 November 1995, the Tribunal requested the Claimant to comply with the Respondent's request or to explain why the presenting of the document was not possible. On 20 December 1995, the Claimant submitted a letter in which he asserted, inter alia, that Edward Davidson kept the copy of the power of attorney in the safe deposit box that allegedly had been confiscated by the Respondent. According to the Claimant, the original of this power of attorney was kept at

the Notary Public Office No. 64 in Tehran. The Claimant further requested the Respondent to furnish him with a copy of the power of attorney.

18. On 22 December 1995, the Respondent submitted comments on the Claimant's response, stating, inter alia, that it is not in possession of the power of attorney. The Respondent also stated that as a matter of practice expired passports are returned to their holders, since they contain entries such as visas, which are still needed by the holders. Also, in the Respondent's view, the assertion by the Claimant's father that he had not returned to Iran after 1979 contradicts the statement that the power of attorney was put into the safe deposit box. On 30 May 1996, the Claimant submitted a letter, in which he asserted that the power of attorney relating to the Claim was executed before Edward Davidson left Iran and that Edward Davidson, before departure, put it in the safe deposit box. The Claimant further argued that the power of attorney executed in 1984 has no relevance for the merits of this Claim, but was executed to expedite its resolution. It was further maintained that neither the Claimant nor his father ever returned to Iran.

19. After having been granted five extensions, the Respondent filed on 29 July 1996 documents entitled "Respondent's Rebuttal Memorial, Volumes I-II." On 27 September 1996 the Tribunal issued an Order requesting the Parties to appear before Chamber One of the Tribunal for a Hearing which was scheduled to take place on 24, 25 and if necessary, 26 February 1997.

20. On 23 December 1996, the Claimant filed new evidence, which included a number of passports belonging to the Claimant and his father. The Respondent objected to this filing on 30 December 1996. In view of the circumstances of the Case and the nature of the filing, the Tribunal found by its Order of 14 January 1997 that the Claimant's introduction of new evidence at this stage was justified, and that the Respondent may respond to these documents at the Hearing. The Tribunal also decided to deny the

Claimant's second motion for a production request, contained in the same filing.

21. On 13 January 1997, the Claimant submitted his witness list, which included Mr. Edward H. Davidson, the Claimant's father, as a witness. On 15 January 1997, the Respondent objected to this list. By its Order of 23 January 1997, the Tribunal decided that the status of Mr. Edward H. Davidson would be decided at the Hearing. On 24 January 1997, the Agent of the Islamic Republic of Iran submitted the Respondent's witness list.

22. On 12 February 1997, the Claimant again submitted new evidence. On 14 February 1997, the Respondent submitted an objection to the Claimant's filing. On 20 February 1997, the Respondent presented an additional witness, Mr. Hassan Safari, who was accepted by the Tribunal by its Order of 21 February 1997.

23. The Hearing was held on 24 and 25 February 1997. At the Hearing the following persons were heard: the Claimant and as his witnesses, Mr. Edward Davidson and Mr. Nejat Haim, and, as witnesses for the Respondent, Mr. G.H. Sadeghi Ghahareh and Mr. Hassan Safari. Furthermore, the Respondent submitted an enlarged copy of one of the Claimant's exhibits. Both the Respondent and the Claimant made use of the new documentary evidence that the Claimant had submitted to the Tribunal on 12 February 1997.

### III. JURISDICTION

#### 1. The Dual Nationality of the Claimant

24. On 15 January 1992, the Tribunal issued an Order joining all jurisdictional issues to the consideration of the merits in this Case. See, supra, para. 11. To determine whether the Claimant has standing, the Tribunal must establish whether he was a national of the United States of America or of the Islamic Republic of Iran, or of both countries during the relevant

period, i.e., from the date the Claim arose until 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If the Claimant was a dual national during that time, the Tribunal must determine the Claimant's dominant and effective nationality during that period. See Case No. A18, supra. In this Case the relevant period commences on or about 1 June 1980, i.e., when the Respondent allegedly expropriated the properties for which the Claimant now seeks compensation.

25. George E. Davidson was born on 10 June 1956 in Tehran, Iran, to Iranian parents. The Claimant acknowledges that these facts suffice to establish his Iranian nationality under Iranian law (Article 976 of the Iranian Civil Code). The Respondent confirms that the Claimant was born to Iranian parents in Tehran, that the birth was registered with the competent authorities and that the Claimant was issued an Iranian Identity Card on 26 June 1956. There is no evidence in the record of the Claimant having renounced his Iranian nationality. The Respondent submits that, according to its inquiries, there is no record of legal change of the Claimant's nationality at the Department of Nationality and Refugees Affairs at the Ministry of Foreign Affairs and, therefore, the Claimant is still considered a national of Iran. This conclusion is further supported by the fact that on 9 March 1977 the Claimant, having reached the age of majority, applied for and was granted a duplicate identity card. Moreover, on 14 February 1984 an Iranian passport was issued to the Claimant. In conclusion, there is no dispute as to the Iranian nationality of George E. Davidson.

26. With regard to the Claimant's United States nationality, it is undisputed that he was naturalized as a United States citizen on 5 March 1980. As evidence of his U.S. nationality, the Claimant has submitted a copy of his Certificate of Naturalization No. 10233542 as well as a copy of two pages of his United States passport No. B-1218150, issued on 7 May 1981, which remain unchallenged by the Respondent. Therefore, the Tribunal concludes that the Claimant obtained United States nationality by grant,

commencing from the date of the certificate. Accordingly, the Tribunal concludes that during the relevant period the Claimant was a national of both Iran and the United States.

2. The Dominant and Effective Nationality of the Claimant

2.1 The Parties' Contentions

27. The Claimant states that he attended the Don Bosco School in Tehran from the age of six until he was twelve years old. The Claimant asserts that, before he was born, his parents had decided to emigrate to the United States. This was, according to the Claimant, the reason for selecting the Don Bosco School and that in 1964 the family began spending summers in the United States.

28. The Claimant asserts that he entered the United States with a green card at the age of sixteen on 31 December 1972, subsequent to his elder brother Kamran, who had moved there in 1971, and that he was followed by his younger brothers David in 1973, Henry in 1974, Robert in 1977, and Jack in 1978. The Claimant's parents moved to the United States in 1979. First, the Claimant lived in Worcester, Massachusetts. During the first six months of 1973 he attended high school in Worcester ("North High School") and graduated in June 1973. Subsequently, he attended a local college in Worcester ("Quinsigamond Community College") and received the degree of Associate of Arts in May 1975. The Claimant further contends that during his studies he became active in college sports and was elected class president. Moreover, in May 1975 he registered as available for U.S. military service.

29. Further, the Claimant submits that he has been employed and paid taxes in the United States since 1973. Since 1975, while continuing his studies, the Claimant says that he worked in the computer field and that he subsequently received a B.S. in Computer Science. At the Hearing, the Claimant stated that he

continued to work in this field after his naturalization and because of U.S. Department of Defense regulations, he had to go through a security clearance after his naturalization in 1980. The Claimant further contends that he has participated in many local and federal elections and he did not leave the United States until his honeymoon in 1981.

30. In August 1979, the Claimant and his brother David bought a house in Worcester; shortly thereafter, when the Claimant's parents moved to the United States, the Claimant and his brothers Kamran and David bought a house on Commonwealth Avenue, in West Newton, Massachusetts, where their parents have lived ever since. According to the Claimant, he married Deborah Tehrani in 1981. He states that his wife was born in the United Kingdom to an Iranian father and a British mother and moved to the United States at the age of two. She is a naturalized United States citizen and has never been to Iran. The Claimant also maintains that his social life is exclusively American and that English is spoken at home. The Claimant declares himself "proud to be American and to be part of this generation" and insists on having "no incentive nor any qualification whatsoever to establish any personal or professional ties with Iran or any other country outside the U.S.A." The Claimant emphasizes that since 1972 he has not returned to Iran. The Claimant asserts that the Iranian passport that was issued to him in 1984, was applied for by his father and without the Claimant's knowledge.

31. According to the Claimant the naturalization on 5 March 1980 constituted the last remaining element required to establish his dominant and effective nationality of the United States. The Claimant notes that under Iranian law he could not have renounced his Iranian nationality before 10 June 1981 when he reached the age of twenty-five, and this step would have required the approval of the Iranian Council of Ministers. Such consent, the Claimant contends, evidently occurs rarely in practice.

32. The evidence produced by the Claimant to support his dominant and effective U.S. nationality includes, besides the affidavits submitted by him, his father, his brothers and his uncle, copies of his high school diploma, his Associate of Arts Degree, a letter from the Selective Service System, and his oath of renunciation and allegiance. Furthermore, the Claimant has submitted copies of his wage and tax statements from the years 1977 to 1979 and 1981, a letter and a business card concerning his employment, two letters of character reference, a letter from the Worcester Jewish Community Center confirming his membership from 1973 to 1978, and a letter from the Yeshiva Synagogue-Chabad Worcester certifying that the Claimant has been an active member of the Synagogue since 1972.

33. The Respondent disputes the value of the evidence presented by the Claimant in support of his dominant and effective U.S. nationality. The Respondent points out that, although reviewing the life of the Claimant from his birth until the end of the relevant period is necessary, the evidence produced by the Claimant mainly relates to the time when he had not yet acquired U.S. nationality. The Respondent asserts that "[the Claimant's] individual and social life never had indications of the characteristics of the life of an American so that one could believe his American nationality was his dominant and effective nationality at the beginning of, during and until the end of the relevant period, and that he has locus standi before this Tribunal."

34. The Respondent points out that the Claimant himself alleges he was naturalized as a U.S. citizen on 5 March 1980. Therefore, from his birth until the beginning of the relevant period, he had been exclusively a national of Iran for 23 years and 9 months while he held the dual nationality of Iran and the United States for only 2 months and 27 days. The Respondent asserts that until 5 March 1980 no ties bound the Claimant to the U.S. Government. To the contrary, all of his political, social, economic and family ties bound him, as a citizen, to his home country, Iran.



35. As far as the Claimant's education is concerned, the Respondent points out that the Andisheh School in Iran, also known as the Don Bosco School, was an Iranian school with an Iranian educational curriculum, although it was privately managed. Thus, the Respondent sees no link between the Claimant's education in that school and the intention of the family to emigrate to the United States. With reference to Arakel Khajetoorians, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 504-350-2 (25 Jan. 1991), para. 20, reprinted in 26 Iran-U.S. C.T.R. 37, 42 and Ardavan Peter Samrad, et al. and The Government of the Islamic Republic of Iran, Award No. 505-461, 462, 463, 464 & 465-2 (4 Feb. 1991), para. 32, reprinted in 26 Iran-U.S. C.T.R. 44, 54, the Respondent also maintains that schooling in the United States does not as such indicate an individual's attachment to the country.

36. According to the Respondent, the Claimant's action to maintain his Iranian nationality and his decision not to renounce it suggest that he considered his Iranian nationality as dominant. In support, the Respondent refers to the Claimant's act of obtaining a duplicate identity card in 1977, an Iranian passport in 1984 and the verification of a power of attorney by the Iranian authorities in September 1982. Only in May 1981 was a United States passport issued to the Claimant.

37. The Respondent also challenges the Claimant's contention that he did not visit Iran after his departure in December 1972. The Claimant's application for a new surname and a duplicate identity card in 1977 is said to prove that he was then present in Iran. Otherwise, he easily could have presented documentary evidence showing that those matters were carried out by virtue of power of attorney or he could have presented his Iranian passport to prove that no visit took place.

38. Furthermore, the Respondent points out that the Claimant was a dual national for less than three months before the relevant period started, which was, according to the Claimant, June 1980.

The Respondent views the short period of 10 ½ months from the Claimant's naturalization until the entering into force of the Algiers Declarations as insufficient to secure the Claimant's integration into U.S. society and to establish and maintain dominant and effective U.S. nationality.

39. The Respondent contends that the Claimant's and his family's substantial financial interests in Iran and the fact that they did not have such interests in the United States support the view that the dominant and effective nationality of the Claimant was Iranian. The Respondent points out that the Claimant was financially dependent on his father, who derived his income from Iran. The Claimant held shares in a number of buildings in Iran. This was possible solely on the basis of Iranian nationality. The Claimant paid taxes to the Government of Iran on the income derived from his joint ownership of those buildings.

40. The Respondent disputes that the Claimant has paid taxes to the United States. The Claimant's Wage and Tax Statements in the United States are, according to the Respondent, merely a declaration of income, which does not necessarily result in the payment of any taxes. Moreover, the Respondent disputes the value of the letter concerning the enrollment for conscription and points out that it does not show that the Claimant ever served in the U.S. military. The decision to marry an Iranian woman also is said to indicate the importance the Claimant attaches to Iranian nationality and culture.

41. In conclusion, the Respondent holds that the Claimant has failed to prove that his effective and dominant nationality during the relevant period was that of the United States. Therefore, the Respondent requests the Tribunal to dismiss the Claim on the basis of lack of jurisdiction.

## 2.2 The Tribunal's Findings

42. Having found that during the relevant period the Claimant was a citizen of both Iran and the United States, the Tribunal must determine the Claimant's dominant and effective nationality during that period. For that purpose the Tribunal must establish the country with which the Claimant had stronger factual ties. If each of the two nationalities is real and effective, the Tribunal has to determine which one is dominant. In establishing the Claimant's dominant and effective nationality, the Tribunal must consider all relevant factors, including the Claimant's habitual residence, center of interests, family ties, participation in public life and other evidence of attachment.<sup>3</sup> While the Tribunal's jurisdiction depends on the Claimant's dominant and effective nationality during the period between the date the Claims arose, allegedly around 1 June 1980, and 19 January 1981, events and facts preceding that period remain relevant to that determination.<sup>4</sup>

43. Looking at the evidence as a whole, in support of the Claimant's dominant and effective Iranian nationality during the relevant period is the fact that he lived his childhood until the age of sixteen in Iran, that he became a United States national only about three months prior to the date his Claim arose and less than eleven months before the entering into force of the Claims Settlement Declaration. He also appears to have some financial interests in Iran. The Respondent asserts that the Claimant was present in Iran when the duplicate of his Identity Card was issued in 1977. However, since the Respondent failed to substantiate the assertion, there is no evidence that the

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<sup>3</sup> See Case No. A/18, supra, p. 265. See also Leila Danesh Arfa Mahmoud and The Islamic Republic of Iran, Award No. 204-237-2 (27 Nov. 1985), para. 15, reprinted in 9 Iran-U.S. C.T.R. 350, 353; Arakel Khajetoorians, et al., supra, para. 14, reprinted in 26 Iran-U.S. C.T.R. 37, 41.

<sup>4</sup> See Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

Claimant returned to Iran after 1972, e.g. to live, to work or to continue his family business there.

44. Turning then to the facts supporting the Claimant's dominant and effective U.S. nationality during the relevant period, the Tribunal finds that even before the Claimant moved to the United States with a green card in 1972, he had spent lengthy periods there during the summers, starting in 1964. His parents, brothers and other close family members have all emigrated to the United States. By obtaining an education, the Claimant laid the basis for an independent life in the United States and this enabled him to start a career in computer technology. During his studies he was elected class president and became active in various extra-curricular activities. The Respondent has made reference to Arakel Khajetoorians, supra, and Ardavan Peter Samrad, supra, in which schooling in the United States did not as such indicate attachment by the individual to the country. It should, however, be kept in mind that in those cases the claimants submitted no further evidence in favor of dominant and effective United States nationality.

45. The Claimant registered with Selective Service for potential conscription into the U.S. military in 1975, long before becoming naturalized, and he applied for U.S. citizenship as soon as he qualified for it. The Claimant has been employed in the United States both during his studies and after his graduation. He also purchased real estate in the United States. The fact that he married a woman with some Iranian roots is only a token of the common human interest in finding a partner with similar background. That he was granted a duplicate of his Iranian identity card in 1977, a new verification of a power of attorney in his Iranian passport in 1982 and a new Iranian passport in 1984, also do not necessarily show that his Iranian nationality was dominant and effective during the relevant period. The record does not show that the Claimant ever used these documents or that he had any intention of moving back to Iran. All these findings support the conclusion that after the Claimant's departure from Iran, his

private, professional and public activities, both prior to and after his naturalization, have been solely and entirely centered in the United States.

46. Therefore, although the period during which the Claimant was a United States national prior to the entering into force of the Algiers Declarations is short, it appears to the Tribunal that during the relevant period the Claimant's ties to the United States outweighed his ties to Iran. Consequently, the Tribunal decides that during the relevant period from the time his Claim arose until 19 January 1981 the Claimant's dominant and effective nationality was that of the United States.

IV. MERITS: FACTS AND CONTENTIONS1. Ownership1.1 The Claimant's Contentions

47. The Claimant specifies the five properties forming the subject matter of his claim as follows:

- 1) The Kamran Building, constructed on approximately 300 square meters of land, with six and a half stories and two basements, comprising 1,825 square meters of space, including five large stores and thirteen office or apartment suites at Avenue Karimkhan-Zand, Kheradmand Jennubi No. 20, corner of Naghavi, Tehran;
- 2) The Manouchehri Building, constructed on approximately 195 square meters of land, with a three-story commercial building located at Manouchehri Street Nos. 162 and 164, Tehran, containing three office or apartment suites of 5 to 6 rooms each, a basement commercial apartment and space for two large stores on the first floor with an approximate area of 585 square meters;
- 3) The Ahar Building, a residential villa of the Davidson family, erected on approximately 248 square meters of land, consisting of a two-story building with two family residences with a total area of 304 square meters, at Old Shemiran Road, Avenue Ahar, No. 5, Tehran;
- 4) The Jalleh Building, constructed on a plot of approximately 150 square meters, a three-and-a-half-story commercial building at Avenue Jalleh No. 127, Behnam Station, Tehran, containing three large and one small apartment suites and three retail stores. At the rear of the building is a 500 square meter lot with a large villa; and

- 5) The Caravan Hotel, constructed on approximately 1,400 square meters of land, a four-story building with forty furnished rooms with a total area of approximately 2,500 square meters, at Avenue Koushk No. 11, Tehran.

48. In his original Statement of Claim, filed on 18 January 1982, the Claimant asserts that the five properties, which he claims were taken by the Respondent, "are titled in the name of Homayounjah." In the Supplemental Statement of Claim, filed on 25 January 1982, the Claimant refers to himself and his brothers David E. Davidson, Henry E. Sassoon and Kamran E. Sassoon as the owners of the properties, without distinguishing between their respective ownership interests. In his Hearing Memorial the Claimant specifies in more detail the ownership interests he claims in the properties. He maintains that he has no access to the records of the Notary Public Office in Tehran and that the documentary evidence put in the safe deposit box of the Claimant's father, Edward Davidson, was subsequently confiscated by the Respondent.

49. According to the Claimant, in 1973 Edward Davidson arranged the purchase of the land on which the Kamran Building was built and the construction work commenced in 1974. The Claimant argues that shortly after the purchase the title to the property was conveyed to George (now Davidson) and Kamran (now Sassoon) Homayounjah, who remained the owners until the expropriation of the property in 1980. Thus, the Claimant asserts an ownership interest amounting to one-half of the Kamran Building. The Claimant asserts that the costs for the land and construction of the building amounted to approximately U.S.\$2,350,000. The Claimant's father, Edward Davidson, states that there was a mortgage on the property originally in the amount of U.S.\$210,000 upon which payments were promptly made until the Revolutionary Government prevented the Claimant from making payments, ultimately causing Bank Melli to foreclose on the property. The Claimant contends that the monthly rentals generated from the building amounted to approximately U.S.\$12,000.

50. The Claimant states that the Manouchehri Building was purchased by Edward Davidson in 1965 for about U.S.\$200,000. At the time of the taking the title to the property was in the names of George and David Homayounjah (now Davidson). Therefore, the Claimant concludes that his ownership interest in the Manouchehri Building amounted to one-half. According to the Claimant, the monthly rental income from the building amounted to U.S.\$2,000. The Manouchehri and Ahar Buildings were both subject to a single mortgage, totaling U.S.\$260,000.

51. The Claimant asserts that the Ahar Building, the residential villa of the Davidson family, was purchased in 1959 by Edward Davidson for about U.S.\$120,000. The title was conveyed to Edward Davidson's sons George, David and Henry, who were the owners of the property at the time of the expropriation. Thus, the Claimant contends that his ownership interest in the Ahar Building was one-third. The Claimant further contends that the building was subject to the same mortgage as the Manouchehri Building and that the monthly rental income from the building amounted to U.S.\$2,000.

52. According to the Claimant, his father originally received the land upon which the Jalleh Building was constructed as a gift from his parents. The Claimant submits that, at the time of the taking, the property was registered in the name of Edward Davidson's three sons George, David and Kamran. Thus, the Claimant asserts an ownership interest amounting to one-third of the property. At the time of the taking there was no mortgage on the Jalleh Building and the Claimant contends that it generated U.S.\$3,000 in monthly rental income.

53. The Claimant contends that Edward Davidson purchased a one-third interest in the Caravan Hotel and submits that persons outside the Davidson family at that time owned the rest of the hotel. At the time of the alleged taking, the Claimant asserts he owned a one-third interest in the hotel and the title to the



property was in his name.<sup>5</sup> There were no mortgages on the property and, according to the Claimant, the monthly rental income amounted to about U.S.\$5,000.

54. In his Rebuttal Memorial and at the Hearing, the Claimant introduced a new argument regarding the ownership of the buildings. The Claimant bases his argument on the notion of beneficial ownership, relying on the Tribunal's findings in James M. Saghi, et al. and The Islamic Republic of Iran, Award No. 544-298-2 (22 Jan. 1993), reprinted in \_\_ Iran-U.S. C.T.R.\_\_. The Claimant argues that the Tribunal has favored beneficial ownership over merely nominal ownership of property and has awarded compensation to beneficial owners for expropriation and other measures affecting property rights. The Claimant states: "[o]ne who has paid fair value to the holder of record not knowing that the recorded title was only nominal prevails over the beneficial owner; against all others, the beneficial owner prevails. Conversely, compensation claims based on mere nominal ownership are not entitled to protection under the [Algiers] Accords."

55. The Claimant bases his argument in favor of beneficial ownership on transactions allegedly carried out by his father. The Claimant argues that in 1978 and early 1979 his father redistributed, on the basis of documents giving him power of attorney to act on behalf of his sons and his wife, the family's ownership interests in the properties at issue, to adapt to a possibly altering situation in Iran. The redistribution increased the Claimant's ownership interests in certain properties and decreased it in others. At the Hearing, Edward Davidson maintained that he left the documents giving him power of attorney and other documents related to the deeds in question in the safe deposit box No. 416 at Bank Sepah and that the Respondent later confiscated the contents of the box. Therefore, he was allegedly pre-

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<sup>5</sup> In the Claimant's Hearing Memorial the Claimant's alleged ownership interest in the Caravan Hotel is corrected from the 20 per cent presented in his earlier submission to one-third.

vented from carrying out the necessary formalities at the Notary Public Office in Tehran to effectuate the transfers. Edward Davidson also asserted at the Hearing that after being arrested twice, he tried to register the documents effecting the redistribution, but these efforts were frustrated by the authorities. Therefore, he attempted to execute the transfers himself and deposited the documents in the safe deposit box.

### 1.2. The Respondent's Contentions

56. The Respondent points out that in the course of the proceedings the Claimant has a number of times and without justification altered the relief he is seeking. Also, at an advanced stage of the proceedings the Claimant modified the amount of his ownership interests in the properties at issue. Thus, the Respondent contends that the Claimant's conduct goes beyond a mere amendment to the relief sought and is tantamount to the filing of a new claim.

57. The Respondent argues that, apart from the Kamran Building, the Claimant has failed to produce registration particulars to substantiate his ownership interests and contends that the indisputable documentary evidence it submitted establishes that the Claimant fails to show ownership interests in some properties for which he claims relief and that he owns fewer shares than claimed in some of his submissions.

58. With regard to the Kamran Building, the Respondent points out that the title deed of property No. 6933/372 bearing registration No. 18099 located in District 2, Tehran, indicates that seven individuals, Edward, George, David, Henry, Robert and Jack Homyounjah and Rosalin Sassoon purchased the property for 5,600,000 Rls. The record further shows that the property was mortgaged to Bank Melli for fifteen years in 1973. Thus, the Respondent concludes that the ownership interest of the Claimant amounted to one-seventh of the property. The Respondent refers to the Executive Transfer Deed dated 5/2/1364 (25 April 1985),

produced as evidence. It explains that the bank had an executive writ issued in its favor, because the owners failed to pay their debt within the prescribed time limit and that the property was transferred to the bank on 1 May 1985. The Respondent maintains that Bank Melli has acted in accordance with Iranian laws and regulations as well as terms and conditions included in the mortgage agreement, and that as a result, the Claimant no longer has any ownership interests in the Kamran Building.

59. As to the Manouchehri Building, the Respondent has submitted a copy of a title deed of property No. 328 bearing registration No. 5598, located at District 2, Dowlat in Tehran. According to this document eight members of the Homayounjah family purchased the property in 1976, including Edward, Kamran, George, Henry, David, Robert and Jack Homayounjah and Rosalin Sassoon. Each transferee acquired one-eighth of the property. The record shows that the property was mortgaged to Bank Melli for fifteen years in 1976. The Respondent contends that Bank Melli lawfully foreclosed on the property because of the owners' failure to perform their contractual obligations. The writs of execution were notified to the debtors on 10/4/1360 (1 July 1981). As the debtors failed to apply within the prescribed time limit for the auction of the mortgaged property, failed to object to the execution process and failed to pay the creditor, the property was assigned to the creditor. An execution transfer deed was registered at the office of Notary Public No. 285 on 21/5/1363 (12 August 1984).

60. According to the Respondent, the Ahar Building, property No. 6933/4666, bearing registration No. 27325, located in Tehran, District 2, was purchased by Rosalin Sassoon in 1959 and was mortgaged to Bank Melli in 1976 by Edward Homayounjah, acting on her behalf. This property was assigned to the mortgagee bank, Bank Melli, by virtue of an Execution Transfer Deed on 10/12/1362 (1 February 1984), after the owner failed to comply with the mortgage agreement. The Respondent emphasizes that the Claimant

never owned the property and thus cannot claim compensation for it.

61. The Jalleh Building has been assigned property No. 18/6, registration No. 11077, and is located in District 7 of Tehran. The Respondent does not dispute that the Claimant had an ownership interest in the property. The Respondent maintains, however, that in 1978 the property was subject to a transaction in which Rosalin Sassoon sold five of six undivided shares of the property to David, Kamran, Henry, George, Robert and Jack Homayounjah, so that each of the children acquired ownership of one-sixth of the five undivided shares and she retained the remaining one share. Therefore, according to the Respondent, the Claimant's ownership interest amounts to one-sixth of five-sixths of the Jalleh Building.

62. With regard to the Caravan Hotel Building, the Respondent contends that the documentary evidence concerning the property, numbered 1176 and 1177 under Registration No. 4680 situated in District 2, Dowlat, Tehran, demonstrates that the Claimant never held any ownership interests in the property. The record shows that the Claimant's brother, Jack Homayounjah, held for a period of time two out of ten undivided shares on the basis of a conditional sale deed in 1978 for which an executive writ was issued. Nevertheless, the Tehran Public Civil Court subsequently annulled the sale deeds and the executive transfer deed, and the two shares returned to their prior owner, Ms. Maki.

63. The Respondent disputes the Claimant's contention of beneficial ownership as unsupported and inadmissible. The Claimant has repeatedly changed the percentage of his holding in the alleged property without supporting his contention by evidence, while the Respondent has presented the title deeds of the alleged five buildings to identify the actual percentage of the Claimant's share. The Respondent contends that beneficial ownership was asserted after the deadline set by the Algiers Declaration,

and therefore is inadmissible and must be dismissed without entering into its merits.

64. The Respondent disputes that the evidence corroborating the Claim is in the Respondent's possession. The Respondent argues that the Claimant has produced no evidence to show that the documents effecting the redistribution of property actually exist. The Respondent does not accept the account of the Claimant's father, Edward Davidson, that he was not permitted to register the transactions at Notary Public Office No. 64 or any other Notary Public Office. The Respondent's rejection of the account is based on a number of documents and an affidavit by Notary Public Nasser Behbahani. The affidavit by Mr. Behbahani, who has been a notary at the Notary Public Office No. 64 since 1948, and the annexed documents show that Edward Davidson registered twenty-three transactions for himself and on behalf of his wife and children at the Notary Public Office in 1978 and 1979. Only four of these transactions were signed by Edward Davidson's attorney. Mr. Behbahani adds that Mr. Edward Davidson was not forbidden to carry out transactions during the years 1978 to 1981, and that it was not until 1991 that a prohibition was issued.

65. The Respondent brings to the Tribunal's attention the Claimant's statement suggesting that Power of Attorney No. 2450, dated 16/7/1361 (8 October 1982), was kept by the Claimant's father in safe deposit box No. 416 at Bank Sepah. The verification of the said power of attorney by the Iranian Interests Section in Washington is mentioned in the Claimant's passport which was issued on 14 February 1984. Thus, the Respondent argues that the only copy of that power of attorney must have been deposited in the safe deposit box at a date after 14 February 1984, *i.e.*, about two years after the filing of this claim with the Tribunal. According to the Respondent, this amounts to an admission by the Claimant that the safe deposit box and its contents must have been accessible to the Claimant for at least some period after 8 October 1982. The Respondent con-

cludes that, if the documents regarding the redistribution exist, there is no reason why they would have been left in the safe deposit box when the power of attorney was put there.

66. The Respondent submits that the law applicable to the property is that of Iran, locus rei sitae. According to Articles 22, 46 and 48 of the Registration Act, transactions related to immoveable property must be carried out through a notarized deed at the office of the Notary Public; non-notarized transactions are not valid. Moreover, the Respondent states that the assertion of beneficial interest in property registered in the name of another person is inconsistent with applicable law.

67. The Kamran, Manouchehri and Ahar Buildings were mortgaged to Bank Melli. The Respondent points out that, according to Article 6 of the mortgage agreements, the mortgagor is not authorized to transfer any rights without the permission of the mortgagee (the bank). Also, Article 793 of the Civil Code of Iran nullifies transactions made by the mortgagor without the creditor's permission. Thus, as Bank Melli has not given such permission, the alleged transactions involving the Kamran, Manouchehri and Ahar Buildings are, according to the Respondent, null and void.

68. In making his claim of beneficial ownership, the Claimant refers to Saghi, supra, paras. 18-26. The Respondent contends that this Award does not create a precedent for this issue as the Claimant erroneously confuses the right to bring an indirect claim with the theory of beneficial ownership, failing to note the findings of the Tribunal on the same issue in Ian L. McHarg et al., claims for less than U.S.\$250,000 presented by the United States and The Islamic Republic of Iran, Award No. 282-10853/10854/10855/10856-1, para. 58 (17 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 286 at 302, and Roy P.M. Carlson and The Government of the Islamic Republic of Iran, et al., Award No. 509-248-1, para. 40 (1 May 1991), reprinted in 26 Iran-U.S. C.T.R. 193 at 210-211. The Respondent also calls attention to

Catherine Etezadi and The Government of the Islamic Republic of Iran, Award No. 554-319-1, para. 66 (23 Mar. 1994), reprinted in Iran-U.S. C.T.R. In that case, although it was agreed under the sale contract that the authorized title deed of the apartment, after its completion, would be issued in the name of Mrs. Etezadi, the Tribunal held: "However, that title deed was never made out, and the right of the Claimant to the apartment itself was not established." Based on that argument the Tribunal dismissed the Claimant's claim. In the Respondent's view, the Claimant's arguments for beneficial ownership must similarly fail.

### 1.3. The Tribunal's Findings

69. The Tribunal notes that in order to meet his burden of proof the Claimant must establish the following elements: that he had ownership interests or other property rights at issue, and that an expropriation or other measures amounting to an expropriation affecting his ownership interests or other property rights, attributable to Iran, took place.<sup>6</sup>

70. The Tribunal notes that the Claimant has not provided any official title deeds or other authorized documents showing title to the alleged property. Instead, the Claimant tries to carry his initial burden of proving his ownership through a number of inconsistent statements by himself and his closest relatives. As a general rule, contradictory statements of an interested party should be construed against that party.<sup>7</sup>

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<sup>6</sup> See, e.g. Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, Award No. 559-221-1 (24 Aug. 1994), para. 109, reprinted in Iran-U.S. C.T.R. and Leonard and Mavis Daley, a claim of less than U.S.\$250,000 presented by the United States of America and The Islamic Republic of Iran, Award No. 360-10514-1 (20 Apr. 1988), paras. 17-22, reprinted in 18 Iran-U.S. C.T.R. 237-238.

<sup>7</sup> See, e.g., Woodward-Clyde Consultants and The Government of the Islamic Republic of Iran, et al., Award No 73-67-3 (2 Sept. 1983), p. 16, reprinted in 3 Iran-U.S. C.T.R. 239, 249.

71. Moreover, the ownership asserted by the Claimant has changed throughout the proceedings, and at a very late stage the Claimant claims that he has a beneficial ownership in the property because his father had redistributed ownership interests. However, the Claimant provides no official documents of transfer related to the alleged redistribution of ownership. The Tribunal holds that the Respondent has provided sufficient rebuttal evidence on the applicable provisions of Iranian laws and the Tribunal's practice concerning the transactions of properties such as the five buildings in this case. The documentary evidence submitted by the Respondent shows that such properties must be registered to give the transfer of ownership legal validity.

72. The Claimant has asserted that his father could not register the redistribution of ownership because his father was prevented from carrying out the necessary formalities at Notary Public Office No. 64. However, the Claimant is unsuccessful in corroborating his father's account. The Respondent, on the other hand, has provided evidence in rebuttal, showing that during 1978 and 1979 the Claimant's father carried out a large number of other registration formalities at the same Notary Public Office and at other administrative or judicial offices. The Tribunal concludes that, even if Edward Davidson intended to transfer or redistribute ownership interests in the five properties, it has been proven neither that he gave effect to his intention nor that he did it in the manner required by Iranian law and according to the approved practice of the Tribunal. A mere intent, even if it existed, cannot effectuate a legally valid transfer of real property.

73. Additionally, the Respondent has presented the title deeds to the five properties. An official title deed is prima facie strong evidence indicating that the title to real property has been officially conferred on the person whose name appears on the deed as the owner or transferee. See Rouhollah Karubian and The Government of the Islamic Republic of Iran, Award No. 569-419-2 (6 Mar. 1996), para. 114, reprinted in \_\_\_ Iran-U.S. C.T.R. \_\_\_.



Consequently, the Tribunal concludes that, as reflected in the deeds, the Claimant's ownership interests were one-seventh in the Kamran Building, one-eighth in the Manouchehri Building, none in the Ahar Building, five thirty-sixths in the Jalleh Building and none in the Caravan Hotel. The Tribunal notes that the Kamran and Manouchehri Buildings were later, in 1985 and 1984, transferred to Bank Melli due to the owners' failure to fulfil their contractual obligations under their mortgage agreements. These transactions were based on executive writs and accordingly registered. The significance of these transfers will be dealt with in the discussion of the alleged expropriation by the Respondent.

## 2. The Caveat

### 2.1 The Parties' Contentions

74. The Respondent argues that the caveat of the Full Tribunal Decision of 6 April 1984 in Case No. A18, supra, bars the Claimant's claim on the merits, since he acquired and maintained his ownership interests by violating the laws of Iran. According to the Respondent the Claimant violated the laws of Iran by failing to renounce his Iranian nationality "before or after his naturalization as a United States citizen" and by continuing to maintain real property after his naturalization in breach of Article 989 of the Iranian Civil Code.<sup>8</sup> The Respondent considers the Claimant's continued ownership of immovable property in Iran after his naturalization to be "a clear example of abuse of rights."

75. The Claimant disputes the Respondent's conclusion and maintains that the Respondent offers no evidence to establish that

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<sup>8</sup> According to Article 989 "[i]n case any Iranian subject acquired foreign nationality after the solar year 1280 (1901-1902) without the observance of the provisions of law, his foreign nationality will be considered null and void and he will be regarded as an Iranian subject. Nevertheless, all his landed properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale..."

the Claimant misrepresented or concealed his U.S. nationality. Furthermore, the Claimant contends that the property in question was acquired long before he became a U.S. national. Referring to Article 988 of the Civil Code,<sup>9</sup> the Claimant points out that according to Iranian law, he could not have renounced his Iranian nationality before reaching the age of twenty-five, which occurred on 10 June 1981. The Claimant contends, relying on note 6 of Article 989 of the Civil Code and the conclusions in Saghi, supra, para. 52, that Iranian law permits those Iranians who have obtained foreign nationality to hold their Iranian real property for up to a year before being obliged to sell it. The one year time limit in the present Case had not expired before 19 January 1981.

## 2.2 The Tribunal's Findings

76. In this case the Tribunal has already decided that the Claimant was a dual national of Iran and the United States from his naturalization in the United States in March 1980 and that during the relevant period the Claimant's dominant and effective nationality was that of the United States. See, supra, para. 46. The Full Tribunal has stated about the caveat in Case No. A18 that, "the other nationality may remain relevant to the merits of the Claim." See Case No. A18, supra, at 265-266. The Tribunal also discussed the substance of the caveat in Saghi, supra, paras. 45-64. The caveat has been applied by the Tribunal as an instrument of equity intended to prevent abuses of right. There-

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<sup>9</sup> Article 988, in relevant part, reads as follows:  
Iranian nationals cannot abandon their nationality except on the following conditions:

1. That they have reached the full age of 25;
2. That the Council of Ministers has allowed their renunciation of their Iranian nationality;
3. That they have previously undertaken to transfer, by some means or other, to Iranian nationals, within one year from the date of the renunciation of their Iranian nationality, all the rights that they possess on landed properties in Iran or which they may acquire by inheritance even if Iranian laws permit their ownership by foreign nationals...;
4. That they have completed their military service.

fore, claims by dual nationals for benefits generally limited by relevant Iranian laws to persons who are nationals solely of Iran have been considered barred. Consequently, these persons have been refused an award in their favor.

77. The Tribunal notes that the Claimant acquired the property in question before he became a national of the United States on 5 March 1980 and possessed this property as a dual national until the alleged expropriation around 1 June 1980. The Tribunal concludes that the ownership of the property remained legal at the time of the alleged expropriation, since Iranian law permitted those Iranians who obtained foreign nationality to hold their Iranian real property up to a year before being obliged to sell it. See Civil Code of Iran, Articles 988 and 989. As it has been shown neither that the Claimant enjoyed his property rights by violating municipal law, nor that he would have enjoyed them by abusing his Iranian nationality, the Tribunal holds that the Caveat expressed by the Full Tribunal in Case No. A18 is not applicable to this Case.

### 3. Expropriation

#### 3.1 The Claimant's Contentions

78. The Claimant asserts that the properties at issue were expropriated in June 1980, when the Government of Iran interfered with his property rights to an extent that rendered them valueless. Until 1979, when he left Iran, the Claimant's father managed the five properties at issue here. When leaving Iran in the summer of 1979, the Claimant's father made arrangements with Mr. Nejat Haim to manage the properties and to collect the rents, to make mortgage payments, to pay taxes and other expenses, and to remit the balance to the members of the Davidson family in accordance with their respective ownership interests.

79. The Claimant further asserts that on or about 21 June 1980, Mr. Haim ceased to remit the balances since the Revolutionary

Prosecutor General's Office notified him that the Davidson family no longer owned the properties; the Revolutionary Court had assumed supervision and ownership of the properties in question. Mr. Haim was further requested to transfer to the Revolutionary Prosecutor General's Office whatever remained from the collected rents after paying the mortgage, taxes and expenses. He emphasizes that all instructions he received from that Office were oral. When he asked for written instructions, one of the officials, Mr. Safari, responded that no written instructions were needed. It is stated by the Claimant that Mr. Haim had to report to and visit the Revolutionary Prosecutor General's Office once a month. Around 25 June 1980, Mr. Haim was told by the Revolutionary Prosecutor General's Office not to make any mortgage payments to Bank Melli. The Claimant asserts that in accordance with that request, Mr. Haim discontinued the mortgage payments to Bank Melli concerning the Ahar, Kamran and Manouchehri Buildings. He remitted the remaining balance to the Revolutionary Prosecutor General's Office.

80. The Claimant argues that governmental interference with the collection of rents and the management of the five properties rendered his ownership interests worthless. The Claimant also points out that under international law a deprivation or taking of property may occur even where legal title to the property is not affected.

81. As far as the exact date of the alleged taking is concerned, the Claimant argues that where a taking occurs through a chain of events, the date of the expropriation is not necessarily the first or the last of such events, but rather when the Claimant has been permanently deprived of fundamental rights of ownership. The Claimant also asserts that such a date of taking is unaffected by a subsequent taking of title to the property. The Claimant points out that by the end of 1980, when he wrote a letter to Senator Edward Kennedy, stating that his properties had been confiscated, he understood himself to have been deprived of enjoyment of economic benefits and control over the properties

and he was convinced that this was not merely temporary. At the hearing the Claimant explained that his father originally drafted the letter, but he later signed it.

82. The Claimant maintains that, even if title was taken long after January 1981, he is entitled to relief because, since the latter part of 1980, he has been deprived of the fundamental rights of ownership. The Claimant asserts that the interference was not only limited to his enjoyment of the income from the property, but he also was prevented from making mortgage payments on certain properties. As a result, the mortgagee, Bank Melli, foreclosed on some of the properties.

83. The Claimant emphasizes that a formal confiscation eventually took place in the spring of 1982. To support this assertion, the Claimant refers to the letter from the Islamic Republic of Iran, Office of Restored Properties, to a tenant named Sion Okhovat concerning a ruling of the Revolutionary Court of 24 April 1982. The Claimant also provides three letters from the authorities to tenants in the Kamran Building after the relevant date of 19 January 1981. In these letters the tenants are advised to pay the monthly rent to the bank account of the Revolutionary Prosecutor General's Office. It is the view of the Claimant that the Prosecutor's Office had already notified the tenants in the summer of 1980 that the Davidsons no longer owned the buildings and that no further rental payments were to be made to them. To support the conclusion the Claimant has submitted the following five affidavits.

84. In the first two affidavits, Fredi Muslavi and the Claimant's aunt Josephin Israel assert that they were contacted by Edward Davidson in the summer of 1980 and asked to speak to the tenants of the five buildings and to Iranian officials to find out the status of the Claimant's properties. Both of them assert that, at that time, the Revolutionary Prosecutor General's Office had advised the tenants not to make any rental payments to the Davidson family as they no longer owned the

properties, which the Revolutionary Government had taken. The Revolutionary Prosecutor's Office also told them that nothing could be done to change the situation. Mr. Muslavi and Ms. Israel informed Edward Davidson of the results of the inquiries later in the summer or early fall of 1980.

85. In his affidavit, Mr. Faraj Jahanbani, explains that he made on Edward Davidson's request inquiries concerning two of the five properties, namely the Kamran and Manouchehri Buildings. He met with some tenants of both buildings, whom he mentions by name. The officials of the Revolutionary Prosecutor General's Office had informed these tenants not to pay rent to the Claimant's family or representatives. Mr. Jahanbani adds that governmental officials personally informed him that the Claimant's properties had been confiscated. He informed Edward Davidson of all this in October 1980.

86. The Claimant's cousin Ziba Foroozan states in her affidavit that, pursuant to the request by Edward Davidson in the late summer of 1980, she made inquiries about two of the five properties at issue in this Case. Ms. Foroozan met with five tenants from the Jalleh Building and one from the Ahar Building, whom she refers to by name. All of these tenants informed her that governmental officials had told them not to pay the rent to Homayounjah or his representatives, because all of the properties had been confiscated by the Revolutionary Government. Inquiries carried out at the Office of the Revolutionary Prosecutor General produced the same result. Ms. Foroozan also asked a friend, Ms. Fateme Shahrouki, whether her father, who was a local official, could do anything to rectify the situation. After a week, Ms. Shahrouki called Ms. Foroozan back to tell that her father had been informed by the Revolutionary Prosecutor General's Office that the Homayounjah family no longer owned these properties and that they had been taken over by the Iranian Government. Ms. Foroozan concludes that she informed Edward Davidson of the outcome of her investigations in the summer or early fall of 1980.

87. Mr. Roushan Khalil Kalimi Isfahani has submitted an affidavit explaining that he was a tenant for many years in the Kheradmand (Kamran) Building. Until about June 1980 he paid the rent to Mr. Haim. He claims that Mr. Safari from the Revolutionary Prosecutor General's Office then informed him that the property no longer belonged to the Davidsons, but had been taken over by the Revolutionary Government. He was advised to pay the rent to Mr. Haim, who then was collecting the rents on behalf of the Revolutionary Government.

88. At the Hearing, the Claimant's witnesses Edward Davidson and Nejat Haim testified that before Edward Davidson left Iran in the summer of 1979 he made arrangements with Mr. Haim to collect rents from the tenants in the five buildings. Mr. Haim said he had an official power of attorney for the Kamran Building and that he acted upon oral instructions from the Davidsons as regards the other buildings. From the rent he collected, Mr. Haim was to pay the mortgage payments, taxes and other expenses relating to the properties, and he was to send the balance to Edward Davidson for distribution to his sons. This arrangement worked until about 20 June 1980 when payments stopped coming from Mr. Haim to Edward Davidson. On or about 20 June 1980, the Revolutionary Prosecutor General's Office told Mr. Haim that the Homayounjah (Davidson) family no longer owned the five properties and that the Revolutionary Court now supervised and owned these properties. Mr. Haim said he was told to send the money that remained from the collected rentals after paying the mortgage, taxes and expenses to the Revolutionary Prosecutor General's Office, and he followed instructions. On or about 25 June 1980 that office told Mr. Haim not to make any mortgage payments to Bank Melli, and he again obeyed orders. Later, after the relevant period, some tenants received letters from the authorities regarding these matters and Mr. Haim informed Edward Davidson that the Prosecutor General's Office had instructed some tenants of these five properties to pay the rents directly to the Revolutionary Government.

### 3.2 The Respondent's Contentions

89. The Respondent disputes the value of the evidence produced by the Claimant. Also, according to the Respondent, no weight can be given to the statements of the Claimant or his father since they are both interested parties. Moreover, both statements are mere reiterations of the Claim. The significance of the statements of the Claimant and his father is considered reduced even further by the fact that at the time of the alleged expropriation they were staying in the United States. The affidavits submitted by the Claimant regarding the inquiries made about the status of the Claimant's properties are also said to be of secondary nature and based on hearsay.

90. Commenting on the affidavits introduced as evidence by the Claimant, the Respondent states that most of the affiants are relatives of the Claimant and their statements are not corroborated by any other independent sources or contemporary evidence. The Respondent points out that the affiants fail to name the person in the Revolutionary Prosecutor General's Office who allegedly told them of the taking of the properties. The Respondent also notes that these affidavits were prepared in English, and further asserts that the majority of the affiants only knew Persian and thus lacked proper knowledge of the language in which they were prepared.

91. Comparing the affidavits of Mr. Muslavi and Ms. Israel, the Respondent furthermore notes that they are identical, with the exception of the names, and that both share similar drafting errors. The same applies to the affidavits of Mr. Jahanbani and Ms. Foroozan. In connection with Ms. Israel's statement concerning the events in the summer or fall of 1980, the Respondent points out that the Claimant had first asserted that his aunt, Ms. Israel, had left Iran in 1975 and therefore could not have possibly witnessed these events. Later the Claimant amended this statement to the effect that Ms. Israel had returned to Iran and lived there during 1979 and 1980 and later left Iran again.



92. As for the phone number to which Mr. Jahanbani allegedly placed a call to contact the authorities, the Respondent has produced an affidavit from Ms. Marvasti, stating that this phone number has been registered since 1963 in the name of her father. Also, Ms. Marvasti states that the phone line was installed in a building rented by the Department of Education and that the building has never been at the disposal of the Revolutionary Public Prosecutor's Office or its subordinates.

93. The Respondent also challenges the statement of Mr. Kalimi Isfahani, regarding the instruction received by Mr. Safari from the Prosecutor's Office to pay the rent to Mr. Haim. The Respondent points out that the tenants of the Kamran Building had already been asked to pay their rent to Mr. Haim since 1979, according to the arrangement between them and the Claimant's father.

94. The Respondent expresses doubts about the correctness of Mr. Haim's assertion concerning the oral instructions allegedly given to him by the Prosecutor's Office, arguing that such oral instructions would have been contrary to administrative practice and usage. Therefore, the Respondent considers it unproven that an oral order was issued. As rebuttal evidence the Respondent has submitted affidavits from persons with knowledge of the procedures of the revolutionary courts and prosecutor's offices. These affidavits are written by Mr. Gholam Hussain Sadeghi Ghahareh, Mr. Abolfazl Mazinianian and Mr. Hussain Dadgar; they maintain that oral orders were never used to administer punishment or to expropriate property. At the Hearing Mr. Sadeghi Ghahareh confirmed that all expropriation orders were in writing.

95. The Respondent has submitted a copy of an agreement concluded on 28 June 1981 altering a previous tenancy agreement between Mr. Haim, the lessor's attorney, and Mr. Khoshkou, as evidence of Mr. Haim acting for the Claimant's family as late as June 1981, i.e., after the entering into force of the Claims

Settlement Declaration. The Respondent points out that the agreement contained no reference to the involvement of the Revolutionary Prosecutor General's Office or to that of other judicial authorities. Furthermore, the Respondent maintains that the correspondence between Mr. Haim and the Revolutionary Prosecutor General's Office concerning the Kamran Building also indicates that he was still, in late 1981, acting for the Claimant and that the Revolutionary Prosecutor General's Office had given no expropriation order regarding the properties in question. In addition, the Respondent points out that in his 10 December 1981 letter to Bank Melli, Mr. Haim referred to a statement by the Revolutionary Prosecutor General according to which "...the said property has been taken for supervision..." Therefore, the Respondent argues that Mr. Haim never indicated anything that would support the Claimant's assertion that expropriation had taken place.

96. With regard to the evidence the Claimant submitted to prove that rental payments were made to the account of the Revolutionary Prosecutor General's Office, the Respondent explains that Mr. Haim presented no convincing evidence to demonstrate that the rental payments collected by him from June 1980 until 19 January 1981 were paid into the account of the that Office. The Respondent points out that all these orders were issued long after the jurisdictional cutoff date of the Tribunal, 19 January 1981, and that the orders show that rental payments for late 1981 and 1982 had to be made to a special bank account opened by the Revolutionary Prosecutor General's Office, acting as a trustee for the owner, pending investigations regarding the status of the properties.

97. The Respondent notes that even the Claimant admits that prior to the date the Algiers Declarations became effective no formal order of expropriation of his property was issued. As regards the letter from the Islamic Revolutionary Court to Mr. Sion Okhovat that the Claimant has submitted as evidence of expropriation, the Respondent asserts that the original letter

in Persian has been manipulated to refer to the Homayounjah family. In reality, the letter was to a person named Ebrahim Lavian, who, according to the Respondent, has no connection at all to the Davidson family. To support this, the Respondent has produced a letter from the Revolutionary Prosecutor General's Office confirming that the expropriation order was issued against Mr. Ebrahim Lavian.

98. Further, the Respondent claims to have no knowledge of whether or not Mr. Haim was remitting money to the Claimant or stopped remitting it in June 1980. The Respondent also asserts that the Revolutionary Prosecutor General's Office never received the two letters, now submitted by the Claimant, dated 4/9/1360 (25.11.1981) and 19/9/1360 (10.12.1981). The earlier letter states that Mr. Haim stopped paying loan instalments to Bank Melli on the Kamran Building as of 15/5/1360 (6 August 1981),<sup>10</sup> pursuant to the oral instruction given by Mr. Safari. The Respondent asserts that Mr. Haim only had a power of attorney to act on behalf of the Claimant's family with respect to the Kamran Building and that the Claimant cannot prove that the Respondent caused nonpayment of the mortgaged debt in respect of this property.

99. At the Hearing, the Respondent's witness Mr. Safari explained that he worked in the Prime Minister's Office from 1979 until he was appointed to the Revolutionary Prosecutor General's Office on 5 October 1980. Mr. Safari met Mr. Haim when Ms. Maki made a complaint about the Caravan Hotel, whose owner was abroad. The Office sent an invitation to the owners' representative, Mr. Haim, and he came to the Office, showing a power of attorney relating to the Kamran Building. Mr. Safari asserts that Mr. Haim asked him to help make the tenants pay their rents. Later Mr. Safari invited some of these tenants to the

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<sup>10</sup> Because of the Claimant's initially erroneous conversion of the Iranian date to 6 August 1980, the Respondent believes that the Claimant also based the alleged date of interference with his ownership on that error.

Office and told them to pay their rents. Mr. Safari denies collecting rents from Mr. Haim or from the tenants of the Kamran Building. Mr. Safari also denied having received or seen the two letters that Mr. Haim allegedly wrote to the Revolutionary Prosecutor General's Office.

100. Also, the Respondent reiterates that the Kamran, Ahar and Manouchehri Buildings were foreclosed by the mortgagee bank and title to these properties was therefore transferred to the bank by virtue of the execution deed. Should it be assumed that the Iranian Government took over the buildings mortgaged to Bank Melli, this would in the Respondent's view call into question the fact that it was later possible for Bank Melli to have a writ of execution issued against the Claimant as the owner of the mortgaged property. The executive writ proves that the mortgagor still owned the mortgaged property on the execution date.

101. According to the Respondent, the letter which the Claimant addressed to Senator Edward Kennedy, assuming it is authentic, does not prove in any way the taking of the Claimant's property between 5 March 1980 and 19 January 1981. Moreover, the letter contains untrue matters, e.g., that the Claimant had children who had inherited property in Iran from their grandparents. As of the date of the letter, on 22 December 1980, the Claimant was single and childless and both his parents were alive.

102. The Respondent concludes that during the relevant periods it neither interfered in the properties, nor exercised supervision over them. Therefore, the Respondent requests the Tribunal to dismiss the Case for want of jurisdiction.

### 3.3 The Tribunal's Findings

103. The Tribunal notes that the Parties disagree as to whether the Government of Iran ever formally expropriated the Claimant's ownership interests, e.g., by rendering a judgment. The

Claimant asserts that this did not happen until 24 April 1982, when the Islamic Revolutionary Court passed a ruling to this effect. If the Tribunal were to base its findings on that date only, it would have to dismiss the claim for want of jurisdiction, since that date is beyond the jurisdictional cutoff date of the Tribunal. But the Claimant has based its claim not on a formal taking, but rather on the alleged interference with his property rights prior to the jurisdictional cutoff date.

104. Measures taken by a State can interfere with property rights to such an extent that these rights must be deemed to have been expropriated. Such an expropriation occurs, for example, when the owner is deprived of the effective use, control, and benefits of his property. Thus, an expropriation may take place even though the State does not admit having expropriated and the legal title to the property remains with the original owner.<sup>11</sup>

105. According to Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal has jurisdiction over claims that were outstanding on 19 January 1981, whether or not filed with any court. Hence, for the Tribunal to have jurisdiction in the present Case, the Claimant must establish that the claims had arisen prior to that date. In the Tribunal's practice it has been established that a claim for the taking of property is outstanding on the day of the taking. Should the alleged expropriation have been carried out by way of a series of interferences in the enjoyment of property, the cause of action is deemed to have arisen on the day when the interference ripened into an irreversible deprivation of property rather than

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<sup>11</sup> See Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 32-24-1 (19 Dec. 1983), pp. 51-53, reprinted in 4 Iran-U.S. C.T.R. 122, 154-157. See also United Painting Company Inc. and The Islamic Republic of Iran, Award No. 458-11286-3 (20 Dec. 1989), para. 58, reprinted in 23 Iran-U.S. C.T.R. 351, 368; Faith Litha Khosrowshahi, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 558-178-2 (30 Jun. 1994), para. 23, reprinted in \_\_\_ Iran-U.S. C.T.R. \_\_\_.

on the date these events began. The point at which interference ripens into a taking depends on the circumstances of the case and does not require the transfer of legal title.<sup>12</sup>

106. While a government's assumption of control over property does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law, such a conclusion is warranted whenever events demonstrate that the owner has been deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral. In establishing expropriation, less significance is to be attached to the intent of the government and to the form of these measures of control or interference than to the reality of their impact on the owner.<sup>13</sup> This does not, however, relieve a claimant asserting expropriation from the obligation to demonstrate the requisite government interference. See United Painting Company Inc., supra.

107. In this Case the title deeds provided by the Respondent establish that the Claimant had ownership interests in three of the five buildings in question, namely one-seventh in the Kamran Building, one-eighth in the Manouchehri Building and five thirty-sixths in the Jalleh Building. These title deeds do not mention any measures amounting to an expropriation. However, the Tribunal notes that the lack of any official written documentary evidence of an expropriation within the relevant period does not exclude the possibility of a taking.

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<sup>12</sup> See International Technical Products Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 196-302-3 (28 Oct. 1985), pp. 240-241, reprinted in 9 Iran-U.S. C.T.R. 206.

<sup>13</sup> See Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 (29 June 1984), pp. 10-11, reprinted in 6 Iran U.S. C.T.R. 219, 225-226. See also Seaco Inc. and The Islamic Republic of Iran, et al., Award No. 531-260-2 (25 Jun. 1992), para. 38, reprinted in Iran-U.S. C.T.R. \_\_\_ ; Nazari, supra, para. 121.

108. The Tribunal refers to the testimony at the Hearing of Edward Davidson and Nejat Haim as regards their arrangements for managing the family properties. The Tribunal also refers to the testimony of Mr. Haim concerning events of the summer of 1980 (See, supra, para. 88). The Tribunal finds the testimony of Mr. Haim persuasive and his statement corroborates that of the Claimant's father. The evidence provided by Mr. Muslavi, Ms. Israel, Mr. Jahanbani, Ms. Foroozan and Mr. Kalimi Isfahani also corroborates the key statements made by Edward Davidson and Mr. Haim. Moreover, Mr. Kalimi Isfahani states that in June 1980 Mr. Safari of the Revolutionary Prosecutor General's Office personally told him that the Davidsons no longer owned the property and that it had been taken over by the Revolutionary Government. Mr. Kalimi Isfahani paid the rent to Mr. Haim, who confirmed that he was collecting the rent for the Revolutionary Government.

109. In conclusion, all oral statements and affidavits of Edward Davidson, Nejat Haim, Fredi Muslavi, his aunt Josephine Israel, Faraj Jahanbani, his cousin Ziba Foroozan and Roushan Khalil Kalimi Isfahani are consistent, and that consistency strengthens their probative value. Even if the Tribunal evaluates the probative value of this evidence with caution to protect the Respondent against claims not properly founded, it demonstrates that in the summer of 1980 the Iranian Revolutionary authorities ordered the tenants to cease paying their rent to the Davidson family, as the properties in question were under the effective supervision of the Revolutionary Government. As a result, the Claimant did not receive any rents. Mr. Safari's testimony does not convince the Tribunal of the opposite. First, the Respondent has not submitted contemporaneous evidence to support his assertion that Mr. Haim had asked him to force the tenants to pay their rent. For this reason Mr. Safari's statement fails to convince the Tribunal that he played only a passive role in the collection of rent for the Davidson properties. Second, the Respondent presented Mr. Safari as a witness at the last possible moment, which unfairly prevented the

Claimant from doing much more than confirming Mr. Safari's identity.

110. The actual transfer of the properties to Bank Melli occurred after the alleged taking and subsequent to the relevant period. Thus, their only relevance to this Case is to demonstrate the result of the Respondent's action not to permit mortgage payments.

111. Therefore, The Tribunal holds that the Respondent permanently deprived the Claimant of his fundamental rights of ownership, because he could not control, use or enjoy the benefits of these properties. Even if legal title was not transferred, the Tribunal concludes that the Respondent's interference with the Claimant's property rights ripened into a taking at the latest on 1 July 1980.

#### 4. Valuation

##### 4.1 The Parties' Contentions

112. The Claimant's father, Edward Davidson, estimates that the fair market value of the five properties in the late summer of 1980 was as follows (in U.S. dollars):

Kamran Building	. . . . .	\$2,700,000
(less \$200,000 for loans)		
Manouchehri Building	. . . . .	\$400,000
(less $\frac{1}{2}$ of \$260,000, <u>i.e.</u> , \$130,000 for loans)		
Ahar Building	. . . . .	\$400,000
(less $\frac{1}{2}$ of \$260,000, <u>i.e.</u> , \$130,000 for loans)		
Jalleh Building	. . . . .	\$350,000
Caravan Hotel	. . . . .	\$3,000,000

Loans secured by mortgages were outstanding on the first three properties. The Kamran Building had a loan of \$200,000, while the Manouchehri and Ahar Buildings had a combined loan of \$260,000.



113. The Claimant's second estimate is presented by Engineer Mohammad Taghi Mazhari Abbasi, who evaluated the properties in late May 1983, when he was an official appraiser of the Iranian Ministry of Justice. Mr. Abbasi evaluates the properties as follows: (exchange rate calculated at a rate of 72 rials per U.S.\$1.00):

Kamran Building	. . .	211,950,000 rials	(\$2,943,750)
Manouchehri Building	. . .	21,000,000 rials	(\$291,667)
Ahar Building	. . .	32,700,000 rials	(\$454,167)
Jalleh Building <sup>14</sup>	. . .	18,500,000 rials	(\$256,944)
Caravan Hotel	. . .	210,000,000 rials	(\$2,916,667)

The Claimant urges that this estimate of the fair market value in May 1983 should be accepted and not be reduced on the ground that Tehran real estate values rose between 1980 and May 1983, unless there is persuasive evidence that the rise was in excess of 20 percent. According to the Claimant, estimates given by the official Ministry of Justice appraisers such as Mr. Abbasi are some 20 percent below what is thought to be the fair market value. Later the Claimant pointed out that Mr. Abbasi was advised of the purpose for which the appraisal was sought and the relevant dates. Consequently, he had no reason to give 1983, rather than 1980, values.

114. The Claimant's third appraisal was made by Morteza Banayan, an Iranian realtor for more than forty years, who claims to have tried to sell the Davidson family's property before the taking. Mr. Banayan's opinion of the fair market value in 1980 is as follows:

Kamran Building	. . .	191,950,000 rials
Manouchehri Building	. . .	19,000,000 rials
Ahar Building	. . .	22,000,000 rials
Jalleh Building	. . .	15,000,000 rials
Caravan Hotel	. . .	215,000,000 rials

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<sup>14</sup> The existence of a separate villa in connection with the Jalleh Building has been confirmed neither by Mr. Abbasi nor by the official title deed related to that building.

Mr. Banayan asserts that real estate values in Iran actually decreased from January 1980 through June 1983. In early 1979 Mr. Banayan obtained a bid from one of his customers for the Kamran Building at about 175,000,000 rials and for the Caravan Hotel at 190,000,000 rials, but no deals were made. Edward Davidson also said that he received bids in 1978 and 1979, but four of them were refused as too low and the fifth, for the Ahar Building, was declined because Mrs. Davidson opposed the sale. The bids were:

Kamran Building	. . .	175,000,000 rials
Manouchehri Building	. . .	20,000,000 rials
Ahar Building	. . .	23,000,000 rials
Jalleh Building	. . .	22,000,000 rials
Caravan Hotel	. . .	190,000,000 rials

115. The Respondent provides an appraisal of the properties as of June 1980 by two independent licensed experts, Engineers Mohammad Reza Yazdi and Ebrahim Azad Harf. The appraisal was conducted in 1994. They evaluate the properties, including the superstructure and the land, without calculating the "key-money", which they maintain should be deducted from the value of each property, as follows:

Kamran Building	. . .	60,000,000 rials
Manouchehri Building	. . .	10,000,000 rials
Ahar Building	. . .	10,000,000 rials
Jalleh Building	. . .	4,000,000 rials
Caravan Hotel	. . .	80,000,000 rials

116. The Respondent argues that the Claimant has given contradictory statements regarding Mr. Abbasi's evaluation, since it does not clearly state whether the prices of 1980 or 1983 have been applied. Furthermore, the Respondent does not approve of Mr. Abbasi's opinion, because the prices of property had substantially increased from 1980 to 1983. Moreover, the Respondent believes that the issue of the "key-money" belonging to the lessees has not been adequately taken into account. Doubting the expertise of Mr. Banayan, the Respondent provides a letter from the guild of real estate consultants according to which no license as real estate agent or consultant has been

issued for him. Furthermore, the Respondent's experts, Mr. Yazdi and Mr. Azad Harf, do not share Mr. Banyan's opinion about the excellent quality and good location of the properties and they rate them below average. Finally, the Respondent presents a letter dated 20/2/1375 (10 May 1996) from Bank Melli in which the mortgage debts in May-June 1979 are said to have been 11,537,254 rials (Kamran Building), 8,897,484 rials (Manouchehri Building) and 10,076,543 rials (Ahar Building), totaling 30,511,281 rials. This amount is almost the same as the Claimant's estimate (U.S.\$460,000). The Respondent asserts that these debts should be deducted from the value of the property.

#### 4.2 The Tribunal's Findings

117. The Tribunal notes that the Parties have presented quite similar figures regarding the mortgages and they have agreed that these mortgage debts should be deducted from the value of the properties. Apart from this, the Parties disagree on their value. The Parties have referred to three valuation reports by experts and the Claimant has also referred to a valuation made by his father. The Tribunal must attempt to determine the properties' fair market value, which has been described by the Expert in Starrett as "the price that a willing buyer would buy given goods at and the price at which a willing seller would sell it at on condition that none of the two parties are under any kind of duress and that both parties have good information about the relevant circumstances involved in the purchase." See Starrett Housing Corporation et al. and The Government of the Islamic Republic of Iran et al., Award No. 314-24-1 (14 Aug. 1987), para. 18, reprinted in 16 Iran-U.S. C.T.R 112.

118. The difficulty is, however, in determining a fair market value at the time of the alleged taking in the summer of 1980, because at that time no real estate market existed in Iran in an ordinary sense. Due to the revolution the general economic, political and social conditions were exceptional and no fixed price level existed in the real estate market. The Tribunal

notes that the two valuations by Mr. Banyan and Mr. Abbasi state similar values for the properties. Mr. Abbasi's report, dated May 1983, does not, however, indicate whether it uses 1980 or 1983 values. The Claimant has been unsuccessful in showing that Abbasi's valuation has used other than 1983 prices. Therefore, the Tribunal is bound to treat Mr. Abbasi's report as reflecting 1983 prices. The appraisal jointly made by Mr. Yazdi and Mr. Azad Harf diverges considerably from the two other reports. It states much lower values for the properties; for the Jalleh Building the estimate is more than 75 % lower than that of Mr. Abbasi, who generally has expressed the highest values, but in 1983 prices. The Tribunal notes also that the experts disagree as to whether the "key money" received from the tenants has any impact on the commercial value of the properties. Therefore, the Tribunal is bound to make reasonable approximations within the limits of the given appraisals by the experts. After deducting appreciated mortgage debts, the Tribunal finds that the values of the properties at the time of the expropriation were as follows:

Kamran Building	. .	120,000,000 rials
Manouchehri Building	. .	7,000,000 rials
Jalleh Building	. .	10,000,000 rials

Consequently, as the Claimant's ownership interest is one-seventh in the Kamran Building, one-eighth in the Manouchehri Building and five thirty-sixths in the Jalleh Building, the compensation to the Claimant is as follows:<sup>15</sup>

Kamran Building	. . .	17,142,857 rials	(\$245,178)
Manouchehri Building	. . . .	875,000 rials	(\$12,514)
Jalleh Building	. . .	<u>1,388,889 rials</u>	<u>(\$19,864)</u>
Total	. . .	19,406,746 rials	(\$277,556)

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<sup>15</sup> The exchange rate applied is the average exchange rate for June 1980 (69.920 rials to one U.S. dollar) as listed by the International Monetary Fund. See International Financial Statistics, Supplement on Exchange Rates, Suppl. Ser. No. 9 (1985).

As a result, the Tribunal decides that the Respondent should pay the Claimant U.S.\$277,556 with interest, calculated at a rate the Tribunal considers appropriate, from the date on which the Claimant's property is deemed to have been taken, i.e., on 1 July 1980.

V. INTEREST

119. The Tribunal considers it appropriate to award interest to the Claimant at the rate of 7.789 % in accordance with the principles outlined 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, 320-322, from the date of interference with the property rights.

VI. COSTS

120. The Claimant claims all costs incurred during the proceedings, including lawyer's fees, witness fees, and travel expenses. The Respondent requests the Tribunal to compel Claimant to pay a reasonable amount for the expenses incurred by the Respondent for defending against the Claimant's unfounded Claim.

VII. AWARD

121. For the foregoing reasons,

## THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The Claim for the expropriation of the Claimant's ownership interest in the Ahar Building is dismissed for failure to prove any ownership interest;
- (b) The Claim for the expropriation of the Claimant's ownership interest in the Caravan Hotel is dismissed for failure to prove any ownership interest;
- (c) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, is ordered to pay the Claimant, GEORGE E. DAVIDSON, the amount of Two Hundred Seventy-Seven Thousand Five Hundred Fifty-Six United States Dollars and No Cents (U.S.\$ 277,556), plus simple interest at the rate of 7.789 % per annum (365 day basis) from 1 July 1980 up to and including the day on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account, for its interference with the Claimant's property rights in respect of the Kamran, Manouchehri and Jalleh Buildings in Tehran, Iran.
- (d) The Respondent is ordered to pay the Claimant costs of arbitration in the amount of Twenty Thousand United States Dollars (U.S.\$20,000).
- (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 of 19 January 1981.

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

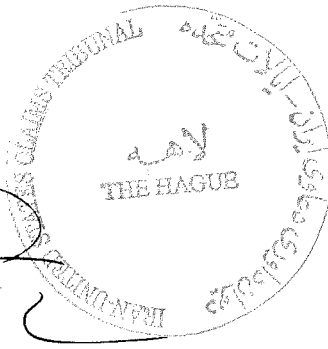
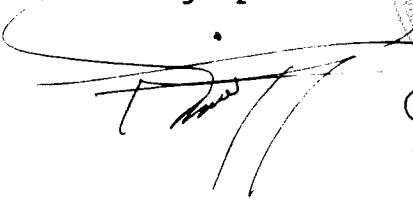
Dated, The Hague  
5 March 1998



Bengt Broms  
Chairman  
Chamber One

In the name of God

Assadollah Noori  
Dissenting Opinion



Charles T. Duncan  
Charles T. Duncan