

ORIGINAL DOCUMENTS IN SAFECase No. 193Date of filing: 25 Sept '92

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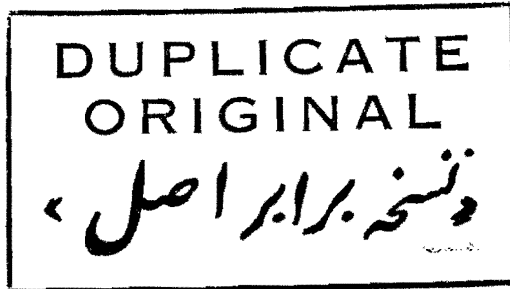
** DISSENTING OPINION of _____
- Date _____
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** OTHER; Nature of document: Correction to Eng Award

- Date 25 Sept '92
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعوى ایران - ایالات متحده



CASE NO. 193

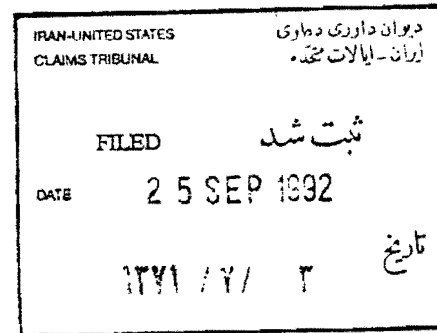
CHAMBER THREE

AWARD NO. 534-193-3

REZA SAID MALEK,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.



CORRECTION TO THE ENGLISH VERSION OF THE FINAL AWARD

A. The following corrections are hereby made to the English version of the Final Award, filed 11 August 1992.

1. The date of the Legal Bill on the Administration of Bank Affairs referred to, inter alia, on page 13, paragraph 30, line 17 should read "29 September 1979."

2. The date of the Legal Bill Concerning the Protection of Iranian Small Shareholders in Nationalized Iranian Banks and Credit Institutions referred to, inter alia, on page 13, paragraph 30, line 22 should read "4 July 1980."

3. Paragraph number 33 appears twice on page 16. The second such paragraph number should therefore be deleted and the text appearing under that number should be joined to the prior paragraph.

4. Footnote 11 on page 25 should read:

The Act to Abrogate Ownership of Never-Utilized Urban Lands and the Manner of Development Thereof ("mawat" lands) and other laws relating to "currently unutilized urban lands" ("bayer" lands) in Tehran and provincial cities.

The reference to "(Dayer lands)" on page 26, paragraph 50, line 6 should read " ("dayer" lands)."

The second sentence of paragraph 52 should read:

The Respondent initially submitted that, to the extent the Claimant relies on the Act to Abrogate Ownership of Never-Utilized Urban Lands and the Manner of Development Thereof ("mawat" lands) and other laws relating to "currently unutilized urban lands" ("bayer" lands) in Tehran and provincial cities, the above jurisdictional requirement is not met since these laws were all enacted in 1979.

The first sentence of paragraph 58 should read:

With regard to the Shemiran Properties the Parties initially exchanged arguments based on the Act to Abrogate Ownership of Never-Utilized Urban Lands and the Manner of Development Thereof ("mawat" lands) and other laws relating to "currently unutilized urban lands" ("bayer" lands) in Tehran and provincial cities analogous to those advanced in connection with the Farmland.

5. The quoted passage in paragraph 56 should read as follows:

If [the owner] does not voluntarily act to carry out this duty, such lands shall be taken from him by order of the magistrate ... and shall be placed in the possession of the needy farmers and the Government will pay him the value of the tilled lands, once his obligations to the Treasury have been deducted.

Accordingly, footnote 14 on page 30 should read:


Particularly the words "such lands shall be taken from [the owners] by order of the magistrate ..."

6. The year of the I.C.J. Reports referred to on page 47, footnote 24, line 3 should read "1986."

7. The Award number appearing on page 57, paragraph 114, line 28 should read "220-37/231-1."

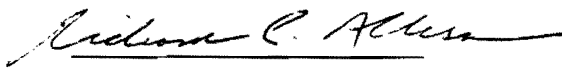
B. Copies of the corrected pages are attached.

Dated, The Hague
25 September 1992



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Mohsen Aghahosseini

V. THE ALLEGED TAKING OF THE SHARES

A. The Parties' Contentions

29. The Claimant initially asserted that the expropriation of the Shares occurred when the Revolutionary Guards invaded the compound in Shemiran and confiscated the originals of his share certificates on 28 February 1981. The Respondent denies that this is the case. It argues that the Claimant's filing of photocopies of the certificates proves that he is still in possession of the originals. Furthermore, the Respondent maintains that the seizure of the certificates is immaterial because they do not incorporate any title to the Shares as the latter are in the registered form.

30. The Respondent acknowledges that the Claimant has lost title to the Shares. However, according to the Respondent, this was not due to a confiscation of the share certificates by the Revolutionary Guards but was the result of Act No. 7/2287, entitled Law on Nationalization of Private Banks in Iran, passed by the Revolutionary Council on 11 June 1979 and published in the State Official Gazette No. 10012 on 8 July 1979 (the "Bank Nationalization Law"). The Respondent argues that, according to Tribunal precedent, a claim for compensation resulting from a nationalization arises at the date of approval of the law on nationalization. Since the Bank Nationalization Law was passed on 11 June 1979, the Respondent concludes that the Claim for compensation of the value of the Shares arose prior to 5 November 1980 and therefore is outside the Tribunal's jurisdiction. The Respondent also maintains that legislation further implementing the Bank Nationalization Law such as the Legal Bill on the Administration of Bank Affairs (passed on 29 September 1979), the Legal Bill Authorizing the Provision of Capital for the Purpose of the Continuation of Activities of Nationalized Banks and Credit Institutions (passed on 25 June 1980) and the Legal Bill Concerning the Protection of Iranian Small Shareholders in Nationalized Iranian Banks and Credit Institutions (passed on 4

a United States citizen. Firstly, he points to the fact that the share certificates state on their face that they may be owned only by Iranians. Secondly, he argues that article 989 of Iran's Civil Code should be applied by analogy to these shares.

33. The Respondent denies that there are any laws or regulations which effectively prevented the Claimant from obtaining the value of the Shares. It states that at the time when the 52 U.S. nationals were seized in Tehran, the Claimant had not even become a United States citizen, so as to enable him to receive a United States passport. The Respondent further argues that the Claimant never applied for an authentication of a power of attorney by the Iranian Interests Section in the Embassy of Algeria and that the regulation regarding authentication which he cites "is a photocopy prepared in another case, irrelevant to the Claimant." The Respondent maintains that Article 989 of the Iranian Civil Code is only concerned with real estate and cannot be applied to shares. The Respondent regards as especially important the fact that the Claimant had ample opportunity to request the respective Banks to pay him the amounts which they had credited to his account, but that he had neglected to do so. The Respondent stresses that the Claimant took no action to collect the value of the shares during the period when he held solely Iranian nationality (i.e. between 11 June 1979 and 5 November 1980). The Respondent maintains that this Tribunal has repeatedly found it lacks jurisdiction "in cases where the Claimants have taken no action with regard to claiming the cash deposited in banks or claiming the amounts of bills and drafts and documentary credits after their expiry up to 19 January 1981." In reply, the Claimant states that the Bank Nationalization Law was never served on him and that the Banks should have contacted him and not vice versa. The Respondent does not deny that the certificates of the shares of the Bank of Industry and Mines state that transfer of such shares to non-Iranians is forbidden. It argues, however, that any dispute regarding the possibility of the Claimant owning

ARTICLE 1 - In order to safeguard the national rights and capital, set the wheels of the country's industry in motion and ensure the people's bank deposits and savings, while accepting the principle of qualified legitimate ownership, and also in view of:

- the manner in which banks obtain their revenues, and the illegal transfer of capital abroad;
- the banks' fundamental role in the nation's economy, and the natural relationship between the nation's economy and the banking institutions;
- the banks' indebtedness to the Government, and their need for Government supervision;
- the need to coordinate the banks' activities with the nation's other organizations; and
- the need to steer the banks' activities towards an Islamic administrative and profit-making path,

as from the date of ratification of this Act all banks are declared to be nationalized, and the Government is required to appoint bank directors immediately thereupon.

ARTICLE 2 - As from the said date, only the signatures of the directors appointed to the banks by the Government have legal validity.

36. It follows from the above Law that all banks established in Iran, including Bank Mellat and the Bank of Industry and Mines, were nationalized on 11 June 1979.* Legislation further implementing the Bank Nationalization Law was enacted on 29 September 1979 (the Legal Bill on the Administration of Bank Affairs), 25 June 1980 (the Legal Bill Authorizing the Provision of Capital for the Purpose of the Continuation of the Activities of Nationalized Banks and Credit Institutions) and 4 July 1980 (the Legal Bill Concerning the Protection of Iranian Small Shareholders in Nationalized Banks and Credit Institutions).

*The Tribunal's finding that the Shares were nationalized as early as 11 June 1979 disposes of the Claimant's argument that they were expropriated when the Revolutionary Guards allegedly confiscated the originals of the share certificates during their intrusion into the compound in Shemiran.

37. In considering when the Claim resulting from the taking of the Shares pursuant to the Bank Nationalization Law arose, the Tribunal is guided by its precedent in American International Group, supra, p. 15, reprinted in 4 Iran-U.S. C.T.R. at 105. In that Case, involving legislation similar to the Bank Nationalization Law (the Law of Nationalization of Insurance Corporations of 25 June 1979), the Tribunal held that the date of action giving rise to the claim is the date of nationalization. Consequently, the Claim based on the Bank Nationalization Law arose on 11 June 1979. Given the jurisdictional requirement that any claim in this Case must have arisen between 5 November 1980 and 19 January 1981, the Tribunal finds that the Claim for compensation of the value of the Shares is outside its jurisdiction in so far as it is based on the Bank Nationalization Law.

38. The Claimant himself seems to recognize that his Claim for expropriation founded purely on the Bank Nationalization Law is not within the Tribunal's jurisdiction. Nonetheless he maintains that the Tribunal should award him compensation for his loss of the Shares. In support of his position he relies on an article published in the Iran Times of 15 June 1979 in which the then Iranian Minister for Planning and Budget, Mr. Ali Akbar Moinefar, is quoted as saying that the shareholders of the nationalized banks would receive compensation for their investments and, more importantly, on the Legal Bill Concerning the Protection of Iranian Small Shareholders in Nationalized Iranian Banks and Credit Institutions (the "Bill of 4 July 1980"). That the Government of Iran established a scheme to compensate such shareholders is denied neither by the Respondent nor by Bank Mellat or the Bank of Industry and Mines. To the contrary, they explain that this precisely was the purpose of the Bill of 4 July 1980. According to the Respondent and both Bank Mellat and the Bank of Industry and Mines, the amounts to which the Claimant was entitled pursuant to this statute were credited to his account on the books of the respective banks (see paragraph 30, supra). The essence of the Claimant's argument is

that any reasonable prospect that the Respondent's "promise of compensation", foreshadowed in the Iran Times and subsequently implemented in the Bill of 4 July 1980, would be fulfilled "ended when Claimant became naturalized a citizen of the United States and that, therefore, it is on that date [5 November 1980] that the "taking" of the [Shares] occurred." The Claimant concludes that the jurisdictional requirement discussed in paragraph 25, supra is met and that he is entitled to an award for the value of the Shares.

39. The Tribunal considers that the Claimant's above line of argument confuses what are in fact two different grounds for the Claim: on the one hand, the "taking" of the Shares pursuant to the Bank Nationalization Law and on the other hand, the Respondent's alleged failure to perform its "promise to compensate" as embodied in the Bill of 4 July 1980. In so far as the Bank Nationalization Law constitutes the basis of the Claim, the Claimant's request for compensation must be dismissed for lack of jurisdiction for the reasons set out in paragraph 37, supra. What remains as an alternative foundation for the Claim is the Bill of 4 July 1980. A claim based on this Bill, however, cannot be argued convincingly to arise out of an expropriation or other measures affecting property rights provided for under Article II, paragraph 1 of the Claims Settlement Declaration. This results directly from the purpose of the Bill which was not to expropriate assets but, to the contrary, to compensate the banks' shareholders whose stock had been nationalized. A jurisdictional basis other than "expropriations or other measures affecting property rights" would need to be found in the Claims Settlement Declaration for the Claim based on the Bill of 4 July 1980 to be arguably within the Tribunal's jurisdiction.

40. Given the limitation of the Tribunal's jurisdiction to "claims arising out of debts, contracts [and] expropriations or other measures affecting property rights" and that neither "contracts" nor "expropriations or other measures affecting property rights" form a suitable jurisdictional basis for a claim

founded on the Bill of 4 July 1980, the Tribunal would need to be satisfied that a claim based on the Bill can be viewed as arising out of "debts" as envisaged under Article II, paragraph 1 of the Declaration.⁹ This raises the general question of whether national legislation of the State Parties to the Claims Settlement Declaration following which a person is entitled to compensation creates a "debt" of the nature contemplated by the Declaration.¹⁰ The Tribunal, however, need not decide this matter here because, as will be explained in paragraphs 44 and following, infra, it is, in any case, not satisfied that the Claim based on the Bill of 4 July 1980 arose during the relevant jurisdictional period.

41. The Bill of 4 July 1980 reads as follows.

⁹The Claim based purely on the Bill of 4 July 1980, if deemed successful, would obviously not entitle the Claimant to the value of the Shares as at the date of nationalization but to the amount of compensation provided for in the Bill.

¹⁰In connection with this issue, it is worthwhile noting that the Tribunal has held that "[w]hile the Tribunal's jurisdiction is limited to claims which 'arise out of debts, contracts ..., expropriations or other measures affecting property rights, 'it nevertheless extends to all acts which give rise to such claims, irrespective of their nature.'" Arthur Young & Company and Islamic Republic of Iran et al., Award No. 338-484-1, para. 43 (1 Dec. 1987), reprinted in 17 Iran - U.S. C.T.R. 245, para. 43; Alfred L.W. Short and Islamic Republic of Iran, Award No. 312-11135-3, para. 11 (14 July 1987), reprinted in 16 Iran - U.S. C.T.R. 76, para. 11. The Tribunal has denied jurisdiction for claims based on a national court judgement of a State Party in Burton Marks and Harry Umann and Islamic Republic of Iran, Award No. ITL 53-458-3, p. 8 et seq. (26 June 1985), reprinted in 8 Iran - U.S. C.T.R. 290, 294 et seq. and on an arbitration award issued by the I.C.C. Court of Arbitration in Bendone-Derossi International and Government of the Islamic Republic of Iran, Award No. 352-375-1, para. 11 et seq. (11 Mar. 1988), reprinted in 18 Iran - U.S. C.T.R. 115, para. 11 et seq.; compare Concurring Opinion of Howard M. Holtzmann in id. (11 Mar. 1988), reprinted in 18 Iran-U.S. C.T.R. 120; and in Bendone-Derossi International and Government of the Islamic Republic of Iran, ITM No. 40-375-1, p. 4 et seq. (7 Jun. 1984), reprinted in 6 Iran - U.S. C.T.R. 130, 132 et seq.; compare Concurring Opinion of Howard M. Holtzmann in id. (8 June 1984), reprinted in 6 Iran - U.S. C.T.R. 133.

Article 1- In order to assist and ameliorate the situation of those Iranian small shareholders who had previously bought shares in nationalized banks and credit institutions and currently possess them, and where according to the audited financial statements of the said banks and institutions as at 7 June 1979 the book value of their shares (the amount of capital and deposits after deduction of annual losses) is less than their nominal value, the general assemblies of banks are hereby authorized, in acting on behalf of the Government, to pay the difference up to a maximum of those shares' nominal value.

NOTE 1- It shall be up to the general assembly of the banks to determine who is a small shareholder, and what amount is payable to each shareholder.

NOTE 2- The credit needed for implementing this Act shall be obtained from Bank Markazi Iran. Within the following five years the Government is required to repay claims of Bank Markazi Iran arising from the provision of this credit.

42. The Tribunal notes that Article 1 of the Bill states that the banks "are ... authorized" to pay the compensation to the shareholders. Taken as such this language could be read to mean that whether a shareholder would receive any compensation is a decision within the banks' discretion and that, therefore, Article 1 cannot be construed as imposing an obligation to pay the compensation. However, on the basis of the general posture of the Bill and of the Respondent's own interpretation thereof, according to which each nationalized bank was bound to pay the compensation, the Tribunal believes it is fair to consider that the Bill of 4 July 1980 did incorporate such obligation. That the payment of the compensation to the shareholders was a burden to be borne ultimately by the Respondent is evidenced by Article 1 and Note 2 of the Bill of 4 July 1980. According to Article 1, the payments by the general assemblies of the banks would be made "on behalf of the Government." Note 2 states that "[t]he credit needed for implementing this Act shall be obtained from Bank Markazi Iran [and that] [w]ithin the following five years the Government is required to repay claims of Bank Markazi Iran arising from the provision of this credit." In light of these considerations, the Tribunal views the Bill of 4 July 1980

as a general undertaking by the Respondent to arrange for compensation benefitting the shareholders of the nationalized banks, which arrangement was to be put into effect via the banks.

43. The Tribunal is satisfied that the Claimant qualified as a "small shareholder" under the Bill. The fact that Bank Mellat and the Bank of Industry and Mines maintain that compensation was carried to the Claimant's account implies that the general assemblies of both banks, in accordance with Note 1, regarded him as a "small shareholder."

44. The Tribunal now turns its attention to the issue of whether the Claim arising out of the Bill of 4 July 1980 became "outstanding" within the meaning of Article II, paragraph 1 of the Claims Settlement Declaration between 5 November 1980 and 19 January 1981. The record does not contain any evidence that the Claimant demanded compensation for the taking of the Shares from the Respondent or from Bank Mellat and the Bank of Industry and Mines. The Respondent argues that the Claimant's failure to do so puts his Claim outside of the Tribunal's jurisdiction. In support of its position the Respondent relies, inter alia, on a number of Tribunal precedents regarding claims for the alleged expropriation by the Respondent of account deposits with Iranian banks. These Cases require that a demand for such monies was made prior to 19 January 1981 for the claim to be outstanding on that date. See e.g. Ronald Stuart Koehler and Islamic Republic of Iran, Award No. 223-11713-1, paras. 28-32 (16 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 333, paras. 28-32; Tippets, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran et al., Award No. 141-7-2, p. 7 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 223. The Tribunal does not believe, however, that the above precedents apply to the Case at hand since a claim for compensation for the value of the nationalized Shares based on the Bill of 4 July 1980 cannot be equated to a claim arising out of the expropriation of funds deposited in bank accounts. In this regard it must be noted that the Tribunal has previously held that debts owed and payable prior to 19 January

1981, unlike bank accounts, constitute outstanding claims, even though payment of the debts had not been demanded prior to that date. Sedco, Inc. and Iran Marine Industrial Company et al., Award No. 419-128/129-2, paras. 28-32 (30 Mar. 1989), reprinted in 21 Iran-U.S. C.T.R. 31, paras. 28-32. The lack of any demand on the part of the Claimant for compensation is therefore not necessarily fatal to the Tribunal's jurisdiction over the Claim based on the Bill of 4 July 1980 provided it is established that the compensation envisaged in that Bill became owed and payable between 5 November 1980 and 19 January 1981.

45. Three dates come to mind when considering at which time the compensation referred to in the Bill may have become owed and payable: the date of the entry into force of the Bill, the date on which the general assemblies of the Banks determined the exact amount due to the Claimant or the date on which such amount was credited to his account. Since the Bill entered into force as early as 4 July 1980 and nothing in the record suggests that these further steps were taken during the period from 5 November 1980 to 19 January 1981, the Tribunal is not satisfied that the compensation envisaged in the Bill became owed and payable during that period. The Tribunal therefore determines that it is not established that the Claim based on the Bill of 4 July 1980 became outstanding between 5 November 1980 and 19 January 1981.

46. In the light of its finding that the Claim, based either on the Bank Nationalization Law or on the Bill of 4 July 1980, did not arise between 5 November 1980 and 19 January 1981, the Tribunal determines that the Claim for compensation for the expropriation of the Shares must be dismissed for lack of jurisdiction.

VI. THE ALLEGED TAKING OF THE FARMLAND

A. The Parties' Contentions

47. The Claimant initially maintained that the Farmland was expropriated on 28 February 1981 as a result of the confiscation of the original deeds pertaining thereto at the time the Respondent allegedly seized his parental home. Although the Claimant has amended his Claim on this issue (see paragraph 26 and 27, supra), the Respondent maintains that this should be regarded as an admission on the part of the Claimant that the Claim did not arise between 5 November 1980 and 19 January 1981 and that, consequently, the Tribunal should declare that it has no jurisdiction over this Claim.

48. The Statement of Claim asserts that "the Government of the Islamic Republic of Iran effectively stopped transactions of land within city limits." The Respondent submits that, even if these limitations on the transactions of land alluded to by the Claimant¹¹ were regarded as "other measures affecting property rights" under Article II, paragraph 1 of the Claims Settlement Declaration the Tribunal would lack jurisdiction over this Claim since these laws were all enacted prior to 5 November 1980, in the course of 1979. The Claimant denies that any of the above laws ever applied to the Farmland because "[it was] utilized by locally resident peasants, with permission of the owner, and therefore not "never utilized" and it was also located not in an urban center, but in Anjirak, a farming area in the vicinity of Arak."

49. To prove the alleged expropriation the Claimant relies on Article 989 of the Civil Code of Iran with regard to which he writes the following.

¹¹The Act to Abrogate Ownership of Never-Utilized Urban Lands and the Manner of Development Thereof ("mawat" lands) and other laws relating to "currently unutilized urban lands" ("bayer" lands) in Tehran and provincial cities.

The Claimant does not have direct evidence of the physical seizure of [the Farmland]. [It was] simply taken into the domains of the Government, in effect confiscated by operation of Article 989 of the Civil Code of Iran ... when Claimant naturalized [sic] a United States citizen November 5, 1980, without having observed the provisions of Iranian Law.

Article 989 of the Civil Code of Iran provides, in pertinent part, as follows.

In case any Iranian subject acquired foreign nationality after the solar year 1280 (1901-1902) without the observance of the provisions of the 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 maintains that a forced sale of property, as contemplated under the above Article, amounts to a confiscation.

50. The Claimant additionally invokes the Amendment of 15 April 1980 to the Islamic Land Reform Act of 16 September 1979 in support of the contention that his Claim for expropriation of the Farmland arose between 5 November 1980 and 19 January 1981. According to the Claimant, this Amendment provides that non-urban utilized lands ("dayer" lands) which are not personally worked by an owner who has other sources of income "will belong to the government" and that "the government will pay the value of such lands as compensation." The Claimant asserts that this legislation applied to the Farmland because he had other sources of income, the land was located outside the local boundaries of a city and was worked on by local farmers and not himself. The Claimant argues that he consequently lost title to the Farmland due to the enactment of the Amendment of 15 April 1980. The Claimant further argues that his Claim to compensation arose only on 5 November 1980 when he became a United States citizen because at that date Iranian law and regulations prevented him from acquiring the values to which he claims to be entitled. The Claimant relies on the same arguments as in connection with the

alleged expropriation of the Shares (see paragraph 31, supra) to explain how he was prevented from receiving compensation.

51. In reply to these contentions the Respondent asserts that the Farmland has remained untouched and registered in the name of the Claimant. The Respondent submits a letter No. 10496 dated 31 August 1988 from the State Organization for the Registration of Deeds and Real Estates of Arak stating that "no record of expropriation, attachment or confiscation of his real estates was found in the registration file and the real estate registry." The Respondent alleges that this is also confirmed by letter No. J/43927 dated 10 March 1990 from the Director of Legal Affairs of the Urban Land Organization, letter No. 23308 dated 28 December 1989 from the Director of the State Organization for the Registration of Deeds and Real Estates in Arak and letter No. 13347 dated 31 January 1990 from the Director General, Natural Resources Department, Central Province. The Respondent finally argues that, in any case, the Tribunal cannot have jurisdiction over this Claim because any claim based on the Amendment would have arisen on the day of its enactment, 15 April 1980.

B. The Tribunal's Findings

52. The Tribunal's jurisdiction over the Claim based on the alleged taking of the Farmland depends upon it being established that the land was expropriated between 5 November 1980 and 19 January 1981. The Respondent initially submitted that, to the extent the Claimant relies on the Act to Abrogate Ownership of Never-Utilized Urban Lands and the Manner of Development Thereof ("mawat" lands) and other laws relating to "currently unutilized urban lands" ("bayer" lands) in Tehran and provincial cities, the above jurisdictional requirement is not met since these laws were all enacted in 1979. The Claimant denied that these statutes applied to the Farmland and that the expropriation had occurred as early as 1979. In the later course of the proceedings the Respondent agreed that the cited enactments were not applicable to the Farmland. Since that is the case, the

Islamic Land Reform Act of 16 September 1979 which he describes as follows.

Article 4 provides that owners of utilized dayer lands may continue to own a portion of their land equal to three times the land which was required to meet the living costs of a farmer and his family, provided, however, that such owners have been personally working on their lands. If, however, the owners of such lands did not personally work on their lands, the law authorized them to keep a portion of their land equal to twice the land which was required to meet the living expenses of a farmer and his family, provided, however, that such owner did not have any other source of income. The owners of these lands must transfer the remaining portion of their lands to the farmers of the same area, if the said farmers did not have agricultural lands and could not acquire any agricultural land unless by acquiring the excess land of such owners; otherwise, such lands were taken from owners thereof and distributed among such farmers who were in need of such lands. The government will pay for the value of the utilized (dayer) lands.

(Emphasis added) According to the Claimant, this provision means that "dayer lands which are not personally worked by an owner and that owner has other sources of income will belong to the Government ... [and that] the government will pay the value of such lands as compensation." The Claimant argues that, as a result of the Amendment of 15 April 1980, "[n]o longer did he have title [to the Farmland]." At the same time, however, he maintains that his Claim for the compensation envisaged in the same Act arose on 5 November 1980 because only on that date Iranian regulations "effectively prevented him ... from acquiring those values."

56. The Tribunal finds that the underscored portion of the Claimant's description of the Article at issue does not accurately reflect the original Persian text stating the following.

If [the owner] does not voluntarily act to carry out this duty, such lands shall be taken from him by order of the magistrate ... and shall be placed in the possession of the needy farmers and the Government will pay him the value of

Government will pay him the value of the tilled lands, once his obligations to the Treasury have been deducted.

(Emphasis added) Whereas the words "were taken" appearing in the description offered by the Claimant suggest that the properties falling under the application of the Amendment had effectively been expropriated, the original Persian text conveys a different picture. According to that text¹⁴, the expropriation of such properties is dependent upon an "order of the magistrate." For the Claim to be within the Tribunal's jurisdiction it would need to be established that such order was issued in relation to the Farmland between 5 November 1980 and 19 January 1981. However, there is no evidence in the record that this occurred during that period.

57. Considering the above, the Tribunal finds that neither Article 989 of the Iranian Civil Code nor Article 4 of the Amendment of 15 April 1980 warrants the conclusion that the Claim for expropriation of the Farmland arose between 5 November 1980 and 19 January 1981. Since the Claimant does not rely on any other legal basis to prove the expropriation of the Farmland by the Respondent during the relevant period, the Tribunal dismisses also this Claim for lack of jurisdiction.

VII. THE ALLEGED TAKING OF THE SHEMIRAN PROPERTIES

A. The Parties' Contentions in General

58. With regard to the Shemiran Properties the Parties initially exchanged arguments based on the Act to Abrogate Ownership of Never-Utilized Urban Lands and the Manner of Development Thereof ("mawat" lands) and other laws relating to "currently unutilized urban lands" ("bayer" lands) in Tehran and

¹⁴Particularly the words "such lands shall be taken from [the owners] by order of the magistrate ..."

91. A common feature of these affidavits is that they do not relate the personal experience of the affiants regarding the events which allegedly took place between 5 November 1980 and 19 January 1981 but recount what others have witnessed. Since the affiants only have second-hand knowledge of the alleged events, the Tribunal can give little, if any, evidentiary weight to these affidavits.²⁴

92. In his affidavit signed 28 July 1983 Mr. Boini²⁵ writes that he "witnessed in the first week of December 1980 the seizure of [the Parental Home] ... by the representatives of the Revolutionary Government ... [and] that this house later in the month of December was turned into offices for [the tribunal established in Issa Malek's house]." He further declares that "in [sic] first days of December of 1980, these authorities seized and began utilizing [the Wooded Land] as a parking area for their official use." In assessing the credibility of this affidavit one may wonder whether an acquaintance of the Claimant would remember 2 years and 8 months after the facts that certain events not involving his own or his family's property occurred precisely during "the first week" or "in the first days" of December 1980. Mr. Boini also declared in his affidavit that "[i]n October 1980 the newspapers in Tehran announced the expropriation and confiscation of Mr. Issa Malek's (Dr. Reza Malek's older brother) property." The Tribunal notes that this statement does not accurately reflect what was reported in the

²⁴See Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgments, I.C.J. Reports 1986, p. 14, at para. 67; Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v. People's Republic of Albania), Merits, Judgments, I.C.J. Reports 1949, p. 4, at pp. 16-17; McCurdy Case, Opinions of Commissioners Under the Convention concluded September 8, 1923, as extended by the Convention signed August 16, 1927 between the United States and Mexico, September 26, 1928, to May 17, 1929, Washington, 1929, p. 137, at p. 141.

²⁵Mr. Boini left Iran in November 1981 and, according to the information in the file, now lives in the State of California. He did not testify at the Hearing.

Republic of Iran, Award No. 19-98-2, p. 9 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 504; see also Ataollah Golpira and Government of the Islamic Republic of Iran, Award No. 32-211-2, p. 10 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 171, 176-178. Such is deemed to be the case when the events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral. Tippets, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran et al., Award No. 141-7-2, p.11 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225; see also International Systems and Controls Corporation and Industrial Development and Renovation Organization of Iran et al., Award No. 256-439-2, para. 97 (26 Sept. 1986), reprinted in 12 Iran-U.S. C.T.R. 239, para. 97. Furthermore, the Tribunal has held that, where the alleged expropriation is carried out by way of a series of interferences in the enjoyment of the property, the breach forming the cause of action is deemed to take place on the day when the interference has ripened into a more or less irreversible deprivation of the property rather than on the beginning date of the events. International Technical Products Corporation et al. and Government of the Islamic Republic of Iran et al., Award No. 196-302-3, p.49 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 240-241; see also Foremost Tehran Inc. et al., and Government of the Islamic Republic of Iran et al., Award No. 220-37/231-1, p.29-30 (11 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 249.

115. In her first affidavit, Mrs. Malek wrote as follows.

At the same time my home was seized about two or three weeks after Ashura (first days of December 1980 A.D.), I also personally saw these same authorities seize Reza's section of the compound which was adjacent to my home, and convert it into a parking lot for their official vehicles. Issa's house had been turned into a tribunal and detention center and my home was then apparently made into offices to support these governmental activities. When I left Iran, these same authorities were still in total control of these properties and were continuing to use them for their own