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Case No. 269

269-77

Date of filing: 27 Dec '90

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- Date of Award \_\_\_\_\_  
16 pages in English 17 pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
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\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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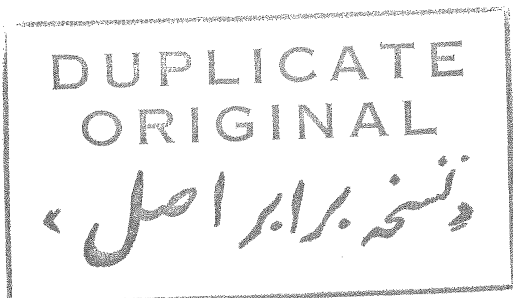
\*\* SEPARATE OPINION of \_\_\_\_\_  
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ



CASE NO. 269

CHAMBER ONE

AWARD NO. 499-269-1

ALBERT BEROOKHIM and  
 THE BEROOKHIM PARTNERSHIP,  
 Claimants,  
 and

THE GOVERNMENT OF THE  
 ISLAMIC REPUBLIC OF IRAN,  
 BANK MARKAZI IRAN,  
 BANK MELLI IRAN,  
 THE INTERNATIONAL BANK OF  
 IRAN AND JAPAN, and  
 THE IRAN AND BRITISH BANK,  
 Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	27 DEC 1990
	تاریخ ۶ / ۱۰ / ۱۳۶۹

AWARD

I. THE PROCEEDINGS

1. On 14 January 1982 the Claimants ALBERT BEROOKHIM and THE BEROOKHIM PARTNERSHIP ("the Claimants") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI IRAN, BANK MELLI IRAN, THE INTERNATIONAL BANK OF IRAN AND JAPAN, and THE IRAN AND BRITISH BANK ("the Respondents"), seeking U.S.\$114,750,000 as compensation for the alleged expropriation of the Royal Gardens Hotel located at 50 Takhte Djamshid Avenue, Tehran, of the Sina Hotel located at 50 Takhte Djamshid Avenue, Tehran, of a four-story building located at 118 Roodsar Avenue, Tehran, of a four-story building at Keyhan District in Shemiran, of the contents, including antiques and objects of art, of these buildings, of cash accounts on deposit with the Respondent Banks, and of cash located in the safes of the hotels and buildings. The Claimants also seek U.S.\$200,000,000 as compensation for the execution of Ebrahim Berookhim, the uncle of Albert Berookhim and the managing partner of the Berookhim partnership. The Claimants state in their Statement of Claim that the Claims arose in about November 1979, when the Claimants' assets and properties were expropriated by the Government of Iran, and in August 1980, when Ebrahim Berookhim was executed by the Government of Iran. In a submission filed on 25 September 1984 the Claimants modified their statement to the effect that the Claims arose at the end of October 1980 or soon thereafter, when Eshagq Berookhim, the head of the Berookhim family, left the country.

2. The Government of the Islamic Republic of Iran and Bank Melli Iran each filed a Statement of Defense on 8 November 1982, and Bank Tejarat filed its Statement of Defense on 25 January 1983, as successor to the Respondents the International Bank of Iran and Japan and the Iran and British Bank. The Claimants had filed no Reply by 6 July 1983, when the Tribunal suspended further proceedings in this Case until after the decision of the Full Tribunal on

the question of the Tribunal's jurisdiction in cases where the claimant was a dual Iran-United States national.

3. In accordance with its practice in similar cases, the Tribunal, citing the decision of the Full Tribunal in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 2 August 1984 that "it has jurisdiction over Claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." The Tribunal requested the Claimants to file by 26 September 1984 all evidence they wished the Tribunal to consider in determining their nationality. Likewise, the Tribunal requested the Respondents to file by 19 November 1984 all evidence they wished the Tribunal to consider on the issue of the Claimants' dominant and effective nationality.

4. The Claimants submitted their evidence on 25 September 1984. The Respondents were granted four extensions until 21 July 1986. The Tribunal in its Order of 25 July 1986 granted one further extension until 21 October 1986, stating that after that date the Tribunal would make a decision on jurisdiction on the basis of the evidence before it. The Tribunal denied the Respondents' request for a further extension in its Order of 21 January 1987, in view of the procedural history of the Case. The Tribunal indicated that it intended to commence deliberations regarding its jurisdiction on the basis of the evidence before it, unless both Parties informed it that ongoing settlement discussions would warrant a postponement of the proceedings. After the Respondents filed their Statement of Defense on 23 December 1987, the Tribunal in its Order of 30 May 1988 invited the Claimants to file by 26 August 1988 any evidence in rebuttal together with a brief, restricted to the issue of the Claimants' dominant and effective nationality. Also, the Respondents were invited to file by 25 November 1988 any

evidence in rebuttal together with a brief on the same issue. The Claimants did not file any further evidence. On 7 December 1989 the Respondents filed a request to render an award on the basis of the evidence before the Tribunal.

5. The Claimants contend that Albert Berookhim's dominant and effective nationality is that of the United States, and that the Berookhim partnership is a United States national. The Respondents assert that because Albert Berookhim was naturalized as a United States citizen on 19 September 1980, he was exclusively an Iranian national when the Claims arose, and that in any case his Iranian nationality was dominant and effective during the relevant period. The Respondents further assert that there is no evidence that the Berookhim partnership was a legal entity organized under the laws of the United States, nor have the Claimants submitted any evidence as to the partners' nationality.

## II. FACTS AND CONTENTIONS

6. Albert Berookhim was born in Iran on 26 June 1953. He grew up in Tehran, where he completed his primary and secondary education. He states that in 1971, at the age of eighteen, he left Iran for Israel, where he lived for approximately two years, and that while in Israel he applied for and obtained the status of a permanent resident of the United States. In 1973, after having received a provisional exemption from compulsory conscription service in Iran, he moved to the United States. From January 1973 to June 1974 he attended Long Island University in the State of New York and worked part-time as a taxi driver. In 1974, the Claimant transferred to the University of California at Los Angeles ("UCLA"), where he states that he received a Bachelor of Science degree in biology in 1977. The Claimant states that in 1974 and 1975 he worked as a part-time salesman for the May Company, and purchased a residence and invested in rental property in West Hollywood, California.

He apparently pursued graduate studies for some time at UCLA.

7. After the Claimant transferred to UCLA, he submitted to the Iranian Consulate in San Francisco a certificate of commencement of his studies, and at the end of the spring term of 1974, a list of his marks and completed course work. In 1975 he was issued a new student passport by the Iranian Consulate in San Francisco, and in the spring of 1975 he visited Iran. In April of 1978 he returned to Iran in order to help run the family business. While in Iran, he participated in the referendum of the Islamic Republic of Iran which was held in April 1979. In May 1979, after he was issued an Iranian student passport, he left Iran for the United States upon the approval of the Ministry of Science and Higher Education and the Department of National Draft Service.

8. The Claimant states that before or since 1979 virtually all members of his family have been citizens or residents of the United States. The Claimant's brother, John, came to the United States in 1973, and is a permanent resident. The Claimant's sister Deborah has lived in the United States since 1976. In 1977 and 1978 the remaining members of the Berookhim family began leaving Iran, allegedly in order to insure their personal safety. The Claimant's parents and his younger sister moved to the United States in 1979.

9. The Claimant states that from May 1979 to May 1980 he was employed in the buying and selling of real estate in California, and that in May 1980 he formed a partnership with his brother for the purpose of designing and producing architectural graphics. On 19 September 1980 the Claimant was naturalized as a United States citizen, and on 25 September 1980 he was issued a United States passport. The Claimant states that he has paid federal and state taxes in the United States every year since 1973, that he is a registered voter in the state of California, and that he has

voted in local, state and national elections since November 1980. The Claimant also states that he has maintained a bank account at Bank of America since 1974.

10. The Claimants state that the Berookhim partnership started its operations in Iran, where its primary business was the running of the hotels it owned in Tehran. Since October 1980 all living owners of the partnership have been residing in the United States. Three of the thirteen partners are said to have been United States citizens since September 1980. Albert Berookhim, who allegedly has been a managing partner since 1978 and the sole managing partner since 1980, owns, together with his father Massoud and his brother John, a one-sixth of the partnership property. He apparently also has an interest in the one-sixth share owned by Ebrahim Berookhim, and which has now passed on to the other family members. The Claimants' statements imply that those partners who are United States nationals own an equivalent of a one-fifth interest in the partnership property.<sup>1</sup>

III. REASONS FOR THE AWARD

A. Albert Berookhim

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<sup>1</sup>The ownership of the partnership allegedly is divided as follows: Eshagq Berookhim owns one-sixth of the property, and the remaining five-sixths are divided among Eshagq's five sons and their sons. Eshagq's eldest son, Saeed, and his two sons, Ebrahim and Eshagq, together own one-sixth; Massoud, Eshagq's second son, and his two sons, Albert and John, together own one-sixth; Yagoub, Eshagq's third son, and his two sons, Mehran and Peynan, together own one-sixth; Ebrahim, who was executed by the Iranian Government, owned a one-sixth share (which has now passed on to the other family members); and Joseph, Eshagq's youngest son, and his two sons, Mark and Michael (both of whom allegedly are United States citizens), together own the remaining one-sixth.

11. The Tribunal must establish, for the purpose of determining whether Albert Berookhim has standing before this Tribunal, whether he was a citizen of Iran, of the United States, or of both Iran and the United States during the relevant period from the date the Claims arose to 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If he was a citizen of both Iran and the United States, the Tribunal must determine his dominant and effective nationality during that period. The Tribunal notes that in the course of the proceedings the Claimants modified the date on which the Claims allegedly arose, to the effect that the date specified in the Statement of Claim was changed to a date subsequent to Albert Berookhim's naturalization as a United States citizen. See supra para. 1. In view of the conclusions reached in para. 18, infra, the Tribunal will assume, for the purpose of determining Albert Berookhim's dominant and effective nationality, that the relevant period commenced on the later date specified by the Claimants, that is, in October 1980.<sup>2</sup>

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<sup>2</sup>While the date on which the claim arose marks the beginning of the relevant period, and therefore must be established by the Tribunal in determining a dual Iran-United States national's dominant and effective nationality, that date is also related to the merits of the case. However, because the Tribunal has preferred to make preliminary determinations on the claimants' dominant and effective nationality, the other issues in the case, and in particular those pertaining to the merits, generally have not been fully briefed by the parties by the time a decision on dominant and effective nationality is made. In view of this, the Tribunal has generally assumed that the claims arose on the dates specified by the claimants. In cases where the Tribunal has determined that the claimant has standing before the Tribunal, but where the claimant has, in the course of the proceedings, modified the date on which the claim arose or where the respondent has specifically disputed that date, the Tribunal has joined the question of the date on which the claim arose to the merits. See Nahid (Danielpour) Hemmat and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 70-170-3, paras. 14-15 (16 June 1989), reprinted in \_\_\_ Iran-U.S. C.T.R. \_\_\_; Reza Said Malek and The Government of the  
(Footnote Continued)



12. The Tribunal notes that there is no dispute as to the Iranian citizenship of Albert Berookhim (hereinafter "the Claimant"). He was born in Iran to Iranian parents, a fact which under Iranian law establishes his Iranian citizenship. The Claimant does not allege that he has relinquished his Iranian citizenship in accordance with the Iranian law, or

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(Footnote Continued)

Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, paras. 18-22 (23 June 1988) reprinted in 19 Iran-U.S. C.T.R. 48, 52-54.

However, while the Tribunal generally assumes that the claimant has fixed the date on which the claim arose in good faith, such assumption does not prevent the Tribunal from determining that the claim is inadmissible before the Tribunal if it turns out, once the remaining issues in the case have been briefed, that the claim in fact arose prior to the claimant's acquisition of Iranian or United States citizenship, as the case may be. In such a case, the claim would fail to meet the requirement of nationality under Article VII, paragraph 2 of the Claims Settlement Declaration, which defines "claims of nationals" of Iran or the United States, as the case may be, as "claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state." Cf. Nahid (Danielpour) Hemmat, para. 15; Reza Said Malek, para. 22, reprinted in 19 Iran-U.S. C.T.R. 54. In these cases the Tribunal noted that, even if it assumed that the claims arose on the dates specified by the claimants, such assumptions were "without prejudice to its future decision on this point."

Moreover, even if the Tribunal generally assumes that the claim arose on the date specified by the claimant, such an assumption cannot prejudice the Tribunal's decision, when considering the merits, as to whether the claim in fact arose before or after 19 January 1981, in which case it would not fall within the Tribunal's jurisdiction. Nor can such assumption prejudice any of the remaining jurisdictional issues, let alone issues pertaining to the merits. See Hooshang and Catherine Etezadi and The Government of the Islamic Republic of Iran, Partial Award No. 497-319-1, paras. 12, 19 (15 Nov. 1990), reprinted in \_\_\_ Iran-U.S. C.T.R. \_\_\_. In view of the conclusions reached in para. 18, infra, there is no need for such a caveat in this Case. For the same reason, the Tribunal does not have to make any finding as to whether the Claimants' modification of the date on which the Claim arose constitutes an amendment to the Claim within the meaning of Article 20 of the Tribunal Rules. Cf. Reza Said Malek, para. 19, reprinted in 19 Iran-U.S. C.T.R. 53.

that he has otherwise lost his Iranian citizenship. The Tribunal further notes that the Claimant held an Iranian passport which was valid until mid-1980. The Claimant's United States citizenship is subject to dispute. The Respondents assert that the Claimant's United States naturalization was not valid because it was obtained in breach of the United States immigration and naturalization laws, which require a period of continuous residence in the United States as a condition for naturalization. However, the Tribunal notes that the evidence produced by the Claimant, a United States passport issued on 25 September 1980, supports his statement that he was naturalized as a United States citizen on 19 September 1980. The Tribunal also notes that there is no evidence that the Claimant's United States citizenship was ever set aside by a United States court or other authority competent under United States law.<sup>3</sup> Consequently, the Tribunal is satisfied that during the relevant period the Claimant was a citizen of both Iran and the United States.

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

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<sup>3</sup>Cf. Reza Nemazee and Luz Belen Nemazee and The Islamic Republic of Iran, Partial Award No. 487-4-3, para. 21, fn. 3 (10 July 1990), reprinted in \_\_\_ Iran-U.S. C.T.R. \_\_\_.

remain relevant to the determination of the Claimant's dominant and effective nationality during the period. See Reza Said Malek, supra note 2, para. 14, 19 Iran-U.S. C.T.R. 51.

14. The Tribunal notes that the Claimant lived in Iran until the age of eighteen, that is, from 1953 to 1971. He resided in the United States for five years, from 1973 to 1978, whereafter he returned to Iran for approximately one year.<sup>4</sup> He left Iran for the United States again in May of 1979. Consequently, between 1953 and 1981 the Claimant spent at least nineteen years in Iran and seven years in the United States. The Tribunal notes that although the seven years the Claimant spent in the United States were immediately previous to the date the Claims arose, that period was discontinuous. Also, the Claimant returned to Iran on several occasions, once for as long as thirteen months. Moreover, although the Claimant spent a lengthy period of his life in the United States, he spent his entire childhood in Iran, which is where he also completed his primary and secondary education.

15. The Tribunal further notes that the Claimant's family, including the Claimant himself, relocated to the United States between 1973 and 1979.<sup>5</sup> However, even though the Claimant obtained the status of a permanent resident in the United States in 1973, which indicates that upon his arrival in the United States he intended to remain there, he postponed the acquisition of United States citizenship until

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<sup>4</sup>The Respondents assert that the Claimant returned to Iran in 1977. However, the evidence before the Tribunal indicates that the date was April 1978.

<sup>5</sup>It should be noted, however, that the Claimants acknowledge that those male members of the family who left Iran immediately prior to or during the Islamic Revolution intended to return when the situation in Iran was normalized.

September 1980. Also, there is further evidence which indicates that until the late 1970's the Claimant's center of interests remained in Iran. In this respect, the Tribunal notes that the Claimant left Iran on various occasions on a student visa, that he spent the years between 1973 and 1978 in the United States primarily for the purpose of pursuing his studies, and that he returned to Iran as late as April 1978, not long before the Claims in this Case allegedly arose, in order to help Eshagq Berookhim and his son Ebrahim to run the family business for an indefinite period and until the other family members could return.<sup>6</sup> The Claimant remained in Iran for thirteen months, even though the instructions in his permanent resident's card, or "green card," stated that the card would not guarantee reentry into the United States if the holder was absent for more than one year. This suggests that he was willing to lose his right to entry to the United States in order to pursue activities in Iran. Moreover, although the Claimant has stated that he and his brother established a business in California in May 1980, that fact alone, even if fully documented, does not constitute sufficient evidence to demonstrate that the Claimant had become integrated into United States society during the period from May 1979, when he returned to the United States, and 19 January 1981.

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<sup>6</sup>Cf. Abbas Ghaffari and National Iranian Oil Company et al., Award No. 489-309-3, para. 23 (10 Sept. 1990), reprinted in Iran-U.S. C.T.R., where the Tribunal determined that, notwithstanding the fact that the Claimant resided in the United States, his center of interests remained in Iran, due to his work as the head of the New York office of National Iranian Oil Company, a capacity in which he was issued a diplomatic passport. Unlike the situation in Abbas Ghaffari, there is no indication in this Case that the Claimant resided in Iran from 1978 to 1979 for the purpose of representing United States business interests, let alone public interests; rather, the Claimant has stated that he stayed in Iran for the purpose of assisting in the running of the family's Iranian business.

16. The Tribunal also notes, based on the evidence before it, that the Claimant did not have greater participation in public life in the United States as compared to Iran. While the Claimant is a registered voter in the state of California and allegedly has voted in local, state and national elections in the United States, the Tribunal notes that there could not have been many such elections during the period, from 19 September 1980, when the Claimant was naturalized as a United States citizen, to 19 January 1981. Moreover, the Claimant also participated in public life in Iran as late as April 1979, when he voted in the referendum of the Islamic Republic of Iran.

17. The Tribunal finally notes the Claimant's statement that due to the expropriation of his property in Iran and the execution of his uncle by the Iranian Government, his ties to Iran have been irreparably severed. However, the Tribunal finds that while claimants remain free to submit any evidence they wish in order to show that they have standing before this Tribunal, in this Case the Claimant's statements, to the extent they rely on the subject matter of the Claim, remain immaterial as evidence of his dominant and effective nationality.<sup>7</sup> The Tribunal cannot base its jurisdiction on the presumption that the Claimant will eventually prevail on the merits.<sup>8</sup>

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<sup>7</sup>Even though in this Case Iran has not denied the execution of Ebrahim Berookhim, and even if it had admitted the expropriation of the Claimant's property in Iran, which it has not, such admissions do not yet prove that the Claimant has in fact suffered any losses or that the Tribunal has subject matter jurisdiction to award compensation for those losses, if any.

<sup>8</sup>Cf. Lilly Mythra Fallah Lawrence and The Islamic Republic of Iran, Interlocutory Award No. ITL 77-390/391/392-1, para. 12 (5 Oct. 1990), reprinted in Iran-U.S. C.T.R. \_\_\_; Wintershall A.G. et al. v. The Government of Qatar, 28 I.L.M. 795, 812 (1989) (where an ad hoc tribunal noted that it was "not of the opinion that it  
(Footnote Continued)

18. In these circumstances, the Tribunal concludes, based on the evidence before it, that during the relevant period the Claimant's ties to Iran outweighed his ties to the United States. Consequently, the Tribunal determines that the Claims of Albert Berookhim do not fall within the Tribunal's jurisdiction.

B. The Berookhim Partnership

19. Article VII, paragraph 1 of the Claims Settlement Declaration provides that, for the purposes of that agreement, a "national" of Iran or the United States, as the case may be, means, inter alia,

a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories ... if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty percent or more of its capital stock.

The Tribunal has recognized the right of a partnership to file claims before it, provided that the partnership at issue was a legal entity organized under the laws of the United States and that over fifty percent of the interests in the partnership were owned by United States citizens.<sup>9</sup>

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(Footnote Continued)

is essential for the Claimants to prevail on the merits for the Tribunal to have jurisdiction.")

<sup>9</sup> See Ali Asghar and The Islamic Republic of Iran, Award No. 475-11491-1, paras. 21-23 (14 Mar. 1990), reprinted in Iran-U.S. C.T.R. \_\_\_; Ammann & Whitney and Ministry of Housing and Urban Development, Award No. 248-198-1, p. 9 (25 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 94, 100; Howard Needles Tammen & Bergendoff and The Government of The Islamic Republic of Iran et al., Award No. 244-68-2, para. 36 (8 Aug. 1986), reprinted in 11 Iran-U.S. C.T.R. 302, 311; Walter W. Arensberg et al. and The Ministry of Housing and Urban Development of The Islamic Republic of Iran, Award No. 213-61-1, pp. 10-11 (27 Feb. 1986), reprinted in 10

(Footnote Continued)

The Tribunal has also held that a partner in a partnership which has no separate legal personality is entitled to bring an individual claim for his pro rata share of the partnership's claim, if independent and readily distinguishable from a claim by the partnership.<sup>10</sup>

20. The Claimants assert that the Berookhim partnership is a United States national. However, the Tribunal notes that there is no evidence in the record, apart from the Claimants' contentions, that the partnership even existed. Moreover, even assuming that the Claimants' statements are sufficient evidence of a partnership agreement, there is no evidence in the record that the Berookhim partnership was organized under the laws of the United States or any of its states or territories. On the contrary, the Claimants' statements suggest that the partnership was formed and began its operations in Iran. Moreover, while the Claimants' statements imply that no more than three of the thirteen partners were United States citizens, there is no documentary proof to support the contention that even those three were, in fact, United States citizens, with the exception of Albert Berookhim. In any case, the evidence indicates that those partners who were allegedly United States citizens owned no more than an equivalent of a one-fifth interest in the partnership property, thus failing to meet the required 50% of the interests in the partnership.

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(Footnote Continued)

Iran-U.S. C.T.R. 37, 43-44; Touche Ross & Company and The Islamic Republic of Iran, Award No. 197-480-1, pp. 10-12 (30 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 284, 291-293; Queens Office Tower Associates and Iran National Airlines Corp., Award No. 37-172-1, p. 2 (15 Apr. 1983), reprinted in 2 Iran-U.S. C.T.R. 247, 248.

<sup>10</sup> See Ali Asghar, supra note 9, paras. 23-24; Housing and Urban Services International, Inc. and The Government of the Islamic Republic of Iran et al., Award No. 201-174-1, pp. 26-28 (22 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 313, 329-333.

21. Consequently, the Tribunal holds that the Claim of the Berookhim partnership does not fall within the Tribunal's jurisdiction under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration. Also, given that Albert Berookhim has failed to prove that his dominant and effective nationality was that of the United States, he lacks standing to bring a claim for his pro rata share of the partnership claim. See para. 18, supra.

IV. AWARD

22. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

(a) The Claim of the Claimants ALBERT BEROOKHIM and THE BEROOKHIM PARTNERSHIP is dismissed for lack of jurisdiction under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.

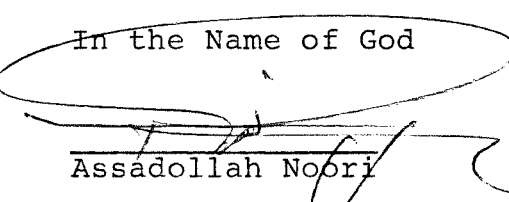
(b) Each Party shall bear its own costs of arbitration.

Dated, The Hague  
27 December 1990



Bengt Broms  
Chairman  
Chamber One

In the Name of God



Assadollah Noori

I concur in the results of the present Award, but believe that in principle, the Tribunal does not have jurisdiction over the claims of Iranians with alleged dual United



Howard M. Holtzmann



States nationality, either according to the Claims Settlement Declaration or pursuant to the well-established principles of international law, particularly the principle of sovereign equality, which is rightfully the applicable principle with regard to the claims of dual nationals. The action taken by the majority of the members of the Full Tribunal in Case A18, in resorting to the principle of dominant and effective nationality, constitutes, so far as the Algiers Declarations are concerned a disregard for both the letter and the spirit of those Declarations. And insofar as the principles of international law are concerned, especially the principle of the sovereign equality of States, that action is tantamount to a disregard for the fundamental principles of international law. In my opinion, just as the Iranian arbitrators have stated in their Dissenting Opinion in Case A18, reprinted in 5 Iran-U.S. C.T.R. 275-337, the Tribunal should rule that it lacks jurisdiction, and discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.