

CASE NO. 316
CHAMBER TWO
AWARD NO. 566-316-2

EDGAR PROTIVA
and ERIC PROTIVA,
Claimants,

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	14 JUL 1995
	تاریخ ۱۳۷۴ / ۴ / ۲۳

AWARD

Appearances :

For the Claimants : Mr. Mark Clodfelter,
Attorney,
Mr. Edgar Protiva,
Mr. Eric Protiva,
Claimants,
Ms. Wilma Pennacchio,
Person Appearing for the Claimants,
Mr. Gian Ludovico Pennacchio,
Witness,
Mr. Vram Gorjian,
Expert Witness.

For the Respondent : Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran,
Mr. Jafar Niaki,
Mr. Seifollah Mohammadi,
Legal Advisers to the Agent,
Mr. Hossein-Ali Farzad,
Mr. Mahmoud Tavana,
Attorneys,
Mr. Dariush Ashrafi,
Mr. Moslem Ramazan-Zadeh,
Representatives of the
Respondent.

Also present : Mr. D. Stephen Mathias,
Agent of the Government of the
United States of America,
Ms. Mary Catherine Malin,
Deputy Agent of the Government of
the United States of America.

I. INTRODUCTION

1. The Claimants, ERIC and EDGAR PROTIVA, both United States-Iranian dual nationals, filed a Statement of Claim on 15 January 1982 against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent"). As United States nationals, the Claimants present two claims to the Tribunal. First, they claim for the alleged deprivation by agencies of the Respondent of real property that they inherited from their father in Iran. The Claimants contend that their ownership rights therein were eliminated no later than June 1980, when the Mostazafan Foundation, or Foundation for the Oppressed, allegedly assumed control of the property by authorizing third persons to occupy it. Second, they seek cash deposits their father allegedly maintained with Iranian banks and which, the Claimants assert, were taken by the Respondent. According to their final pleadings, the Claimants jointly seek U.S.\$715,533¹ as compensation for the alleged deprivation of the real property and U.S.\$12,500, allegedly representing the dollar equivalent of their share of the aggregate credit balance of the rial deposits with the Iranian banks. They also seek interest and legal costs.

2. The Respondent denies the jurisdiction of the Tribunal on various grounds and denies any liability to the Claimants for the claims.

¹ In their Statement of Claim, the Claimants sought U.S.\$1,500,000 as compensation for the value of the whole of the real property and U.S.\$25,000 for the total amount of the bank deposits. In their Brief of 21 May 1990, they confined the relief sought to their share in the estate of their late father. Accordingly, they limited the claimed amounts to U.S.\$625,000 and U.S.\$12,500, respectively, U.S.\$625,000 being the equivalent of 50,000,000 rials (half of the alleged 100,000,000 rial value of the whole of the property) when converted into dollars at the rate of exchange of 80 rials/U.S.\$1. At the Hearing, the Claimants contended that the rate of exchange prevailing in June 1980, the date of the alleged deprivation, was, in fact, 69.878 rials/U.S.\$1 and, accordingly, they increased the relief sought as compensation for the real property to the present figure.

3. The Tribunal has already found in an Interlocutory Award in this Case that, during the relevant period, Edgar and Eric Protiva were nationals of both the United States and Iran and that their dominant and effective nationality was that of the United States. Consequently, the Tribunal concluded that the Claimants' claims satisfy the jurisdictional requirements of Article VII, paragraph 1, of the Claims Settlement Declaration. See Edgar Protiva, et al. and Islamic Republic of Iran, Interlocutory Award No. ITL 73-316-2 (12 Oct. 1989), reprinted in 23 Iran-U.S. C.T.R. 259.

4. A Hearing in this Case was held on 25 and 26 May 1994.

II. FACTS AND CONTENTIONS²

5. On 3 November 1976, the Claimants' father, Leopold Protiva, died intestate in New York. The Claimants allege that thereafter, in late 1976, Edgar Protiva traveled to Tehran and there retained an attorney, Mr. Shamseddin Behbahani, to handle both the probate and the inheritance tax proceedings relating to Leopold Protiva's estate. The Claimants contend that on the occasion of this visit to Tehran, Edgar Protiva signed a power of attorney authorizing Mr. Behbahani to apply to the competent Iranian court for a probate decree and to file an inheritance tax declaration before the Iranian tax authorities.

6. In January 1977, Mr. Behbahani submitted an inheritance tax declaration to the Iranian Ministry of Finance on behalf of the late Leopold Protiva's widow, Helen, his daughter, Wilma, and his sons, Edgar and Eric. According to the declaration, which is part of the record, at his death, Leopold Protiva owned certain real property in Tehran and held a current account at

² More detailed consideration of certain facts is given, as appropriate, in connection with the merits of the claim, infra.

Bank Pars. The inheritance tax declaration does not list any debts owed by Leopold Protiva at his death or any encumbrances attaching to his real property at that time. On 29 January 1977, the Ministry of Finance issued a certificate confirming that Mr. Behbahani had submitted the inheritance tax declaration in accordance with the applicable provision of the Iranian Direct Taxation Act.

7. Acting on a petition for probate filed by Mr. Behbahani in early 1977, on 22 September 1977, the competent probate court in Tehran issued a probate decree determining that Leopold Protiva's only heirs were his widow, Helen, his daughter, Wilma, and his sons, Edgar and Eric and, further, that "of the assets of the deceased, after payment of all dues and debts attaching to the estate, one quarter will belong to the wife of the deceased and the remainder will equally belong to the children of the deceased."³

8. The real property that the four heirs inherited from Leopold Protiva was 397.08 square meters in size and located on Enghelab Avenue, formerly Shah Reza Avenue, in Tehran. The property included a four-level building housing three shops on the ground floor and residential apartments on all four levels ("the Protiva building"). The Claimants contend that the heirs were eager to sell this property, and they acknowledge that in order to do so, according to Iranian law, the heirs first needed to obtain a clearance certificate from the tax authorities attesting that the inheritance tax relating to Leopold Protiva's estate had been settled, and then, on the basis of this clearance certificate, have the real property registered in their own names in the books of the land registry. Because the heirs could not sell the property before they had paid the inheritance tax, the Claimants maintain, they wanted to finalize the inheritance tax proceedings as soon as possible.

³ Translation by the Tribunal's Language Services Division.

9. The Claimants allege that on the occasion of Edgar Protiva's visit to Tehran in late 1976, Mr. Behbahani gave him a power of attorney form for all heirs to sign upon Edgar Protiva's return to the United States. The Claimants allege that this power of attorney form was global and, thus, if signed by the heirs, would have authorized Mr. Behbahani to dispose of the inherited real property in any way he wished, including renting, mortgaging, and selling it. However, the Claimants contend, because the heirs were reluctant to grant such extensive powers to Mr. Behbahani prior to the completion of the inheritance tax proceedings, they eventually decided on a more limited power of attorney that authorized Mr. Behbahani only to handle matters relating to the probate and inheritance tax proceedings.

10. In March and April 1977, the four heirs signed a special power of attorney empowering Mr. Behbahani to "commenc[e], conduct[] and conclud[e] any and all necessary probate proceedings as required by the laws of Iran incident to the Estate of" Leopold Protiva. The power of attorney, however, excluded "the power to sell, convey, mortgage or otherwise encumber or dispose of any estate asset, real or personal property." These powers were "retained solely" by the heirs. It is undisputed that this power of attorney was notarized in 1977 before the Iranian Consulate General in San Francisco and subsequently sent to Mr. Behbahani in Iran.

11. The Claimants contend that in October 1977, Edgar Protiva returned to Tehran and met with Mr. Behbahani to discuss, among other things, the status of the inheritance tax proceedings, which were still pending. Edgar Protiva contended at the Hearing that, in that discussion, Mr. Behbahani told Edgar Protiva that he anticipated that the total inheritance tax would amount to approximately two million rials. On 18 February 1978, Leopold Protiva's widow, Mrs. Helen Protiva, sent a check for two million rials to Mr. Behbahani. In the accompanying letter, Mrs. Protiva wrote that the check was "for the purpose of paying the taxes due on the estate of Mr. Leopold Protiva." Mr. Behbahani

acknowledged receipt of that check two years later only, by letter of 5 February 1980 to the Claimants' brother-in-law, Mr. Gian Ludovico Pennacchio, who had written to Mr. Behbahani on 12 November 1979 to inquire, inter alia, about the status of the tax proceedings. In his letter, Mr. Behbahani also confirmed that the amount of the check was "to be used for inheritance taxes" and advised Mr. Pennacchio that "[t]he inheritance formalities had been taken care of, and when they are concluded, you would be duly informed." The Claimants believe that the inheritance tax proceedings were completed sometime thereafter and that Mr. Behbahani paid the tax.

12. The Respondent, in contrast, denies that the inheritance tax proceedings were concluded before the date of the Algiers Declarations and that the tax was ever paid. In its written pleadings, the Respondent contended that the proceedings could not advance because the Claimants failed to submit a copy of the probate decree to the tax authorities. In support, the Respondent produced a letter dated 2 June 1982 from the Iranian Ministry of Finance, stating that the Protiva heirs' tax file "ha[d] not been examined due to non-production of probate by successors." At the Hearing, the Respondent asserted that the tax proceedings were not concluded because the Claimants never submitted to the tax authorities, among other unspecified documents, the title deed to the real property.

13. There is no evidence that any inheritance tax was assessed by the tax authorities prior to the date of the Algiers Declarations. On 1 March 1994, the Respondent submitted to the Tribunal a Certificate of the Iranian Ministry of Economic Affairs and Finance, Division of Taxation on Inheritance and Bayer Lands, dated 24 September 1992, stating that "the inheritance tax liability assessed for each of Messrs. Edgar George Protiva [and Eric] Va[c]lav Protiva, the heirs of 1/4 of the estate of late Leopold Protiva, amounted to and was outstanding on 12.8.1355 (3.11.1976) of . . . (4,070,747) rials." On 11 May 1994, pursuant to a document production Order by the Tribunal,

the Respondent submitted, inter alia, four Inheritance Tax Assessment Sheets issued by the Iranian Ministry of Economic Affairs and Finance on 13 October 1993 for each of the four Protiva heirs. According to these tax assessments, the inheritance tax owed by each heir amounts to 4,070,747 rials.

14. The Claimants state that beginning in June 1979, Iranian governmental agencies took a series of measures against the real property they had inherited from their father, measures that effectively deprived them of their ownership rights therein. Specifically, they allege first that the Revolutionary Public Prosecutor ("the Revolutionary Prosecutor") assumed jurisdiction over the property between 16 and 27 June 1979, when two individuals, Messrs. Mohammadzadeh and Riyahi, appeared at the Protiva building and, acting on the strength of a letter of authorization issued by the Revolutionary Prosecutor, broke the locks of the building and took an inventory of its contents. The Claimants contend that in two letters dated 25 and 27 June 1979, respectively, Mr. Behbahani complained to the Revolutionary Prosecutor about these actions. The Claimants have not presented copies of these alleged letters. The Claimants assert that Mr. Behbahani never received any reply from the Revolutionary Prosecutor.

15. Second, the Claimants allege that in May 1980, the Mostazafan Foundation, or Foundation for the Oppressed ("the Foundation"), assumed control over the Claimants' real property and allowed workers' associations to occupy the Protiva building. In addition, the Claimants state, the director of Gardening Affairs for the Foundation authorized one Abolghasem Amiri to occupy the flower shop in which Leopold Protiva formerly conducted his business.

16. According to the Claimants, the cumulative effects of the government agencies' actions rose to the level of expropriation no later than 15 June 1980, after the Foundation had assumed control over the real property and authorized third persons to occupy the Protiva building. The Claimants contend that by that

date, their ownership rights in the inherited real property had been eliminated.

17. In support of their contentions, the Claimants produced copies of three letters that Mr. Behbahani sent to various Iranian entities in 1980. The Claimants primarily rely on a letter dated 21 June 1980 from Mr. Behbahani to the "Board of Inquiry Appointed By Imam Khomeini."⁴ In pertinent part, the English translation of this letter, prepared by the Tribunal's Language Services Division, reads:

. . .

Pursuant to my telegram sent on 29.3.1359 [19 June 1980] requesting that you verify and investigate the reason and cause why property Nos. 3246 and 3250/51 belonging to the deceased Leopold Protiva, who left a bequest to my clients, situated on Enghelab [Revolution] Street next to Lalezar Now Street and Pars Bank, has been occupied by the Foundation for the Oppressed, I have the honor to inform you as follows:

1. The deceased, Leopold Protiva, owner of property Nos. 3246 and 3250/51, which actually comprise one compound, situated on Enghelab (Revolution) Street next to Lalezar Now Street and Pars Bank, sold flowers for his whole life and died on 12.8.1355 [3 November 1976], according to his Death Certificate. According to Probate Certificate No. 2902 dated 31.6.1356 [22 September 1977], the heirs of said person are his wife and four children. According to Tax Declaration Certificate No. 1123, dated 9.11.55 [29 January 1977] which was delivered to the Ministry of Finance and the Economy, Head Auditing Office No. 72 in Tehran, his only property is the building under discussion, which the above-mentioned people have authorized me to sell on their behalf.

2. At the beginning of the Revolution, that is, last year, two people by the name of Mr. Moslem Mohammadzadeh and Ahmad Riyahi, carrying Authorization Letter No. 11725 dated 26.3.58 [16 June 1979] bearing the seal of the Revolutionary Public Prosecutor, opened the door to the building with the help of a locksmith. They entered it and, saying it was necessary to take an inventory of the property within, in

⁴ Translation by the Tribunal's Language Services Division of the Persian original of this name.

execution of the order by the Revolutionary Public Prosecutor, they began checking and surveying the building. On 6.4.1358 [27 June 1979], they submitted a proces verbal. I reported at once thereon by my letters No. 759 dated 4.4.58 [25 June 1979] and No. 761 dated 6.4.1358 [27 June 1979], which were registered with the Secretariat of the Revolutionary Public Prosecutor's Office as Nos. 12988 dated 5.4.58 [26 June 1979] and 13396 dated 7.4.58 [28 June 1979], respectively, addressed to the Revolutionary Public Prosecutor. The aim of these letters was to inquire into the authenticity of the above-mentioned Authorization Letter and to clarify why such an authorization order had been issued to Mr. Moslem Mohammadzadeh and Ahmad Riyahi. Unfortunately, I have not yet received an answer to these inquiries.

3. On 25.3.1359 [15 June 1980], upon inspecting the property inherited by my clients, I saw that:

FIRST: The entirety of the building in question was occupied by different groups under the name of "Labor Associations" and so on. Mr. Moslem Mohammadzadeh, too, who was undertaking certain duties on behalf of these groups, was present [appeared] at the site and said that they were occupying the property after having obtained the approval of the Foundation for the Oppressed.

SECOND: On 25.3.1359 [15 June 1980] a certain person by the name of Mr. Abolghasem Amiri occupied the flower shop of the deceased Leopold Protiva, which is part of the above-mentioned property. He had several flower vases there and was engaging in the flower business. After an inquiry and discussion with him, it became clear that he had been permitted to take such action by the Foundation for the Oppressed, on the basis of Letter No. K1/900820 signed by Mr. Majeed Mashayekhi, Director of Gardening Affairs of the Foundation for the Oppressed. /illegible line/

In the meantime, pursuant to Letter No. 5660 dated 28.3.59 [18 June 1980], registered in the books of the Foundation for the Oppressed, I requested that an investigation and inquiry be conducted.

IN VIEW OF the above information, [and] because Mr. Leopold Protiva, an Iranian national who passed away several years before the Revolution, was never accused or suspected of any wrong-doing and was never prosecuted in any public, special, penal or civil court, and was never indicted by the Revolutionary Public Prosecutor, and spent most of his life in this country running a very simple flower business, and the fruit of his life and the only thing he left to his heirs was the property in question and the flower shop; and

also because none of his heirs has ever been prosecuted in any of the above-mentioned courts, and no order has been issued to condemn them or to confiscate their properties or that of the person who bequeathed the property to them,

I THEREFORE REQUEST, now that you have been appointed to investigate such unjust incidents, that you consider the difficulties and problems of my clients, who have, unjustly and for no reason, been caught in this affair. I request that you issue an order to have the property vacated and delivered to my clients, as an act of justice.

Furthermore, if, in the course of the investigation, the Board ascertains that the letters which have been written in connection with this case are not authentic, I request that the matter be referred to the Revolutionary Public Prosecutor's Office in order to prosecute the occupants, whose actions are [non-(illegible)] revolutionary, according to the regulations of the Revolutionary Council.

18. The Claimants also rely on letters Nos. "862" and "863," which Mr. Behbahani sent to the Foundation and the Revolutionary Prosecutor, respectively, on 16 June 1980, and copies of which were listed as attachments in Mr. Behbahani's 21 June 1980 letter to the Board of Inquiry Appointed By Imam Khomeini. Mr. Behbahani's letter No. 862 to the Foundation, in relevant part, states⁵:

. . .

In view of what follows, I request that you investigate and respond hereto in writing

On 25.3.1359 [15 June 1980], in the course of inspecting the property registered under Nos. 3246 and 3250/51, located on Enghelab [Revolution] Street next to Lalezar Now Street and the Pars Bank, which property belongs to the late Leopold Protiva, the legator of my clients, I saw that a number of persons had taken over the property, under the name of labor associations or as employees and staff of the Foundation for the Oppressed. Among them was a Mr. Abolghasem Amiri, who presented letter No. K1/90020 dated 31.2.1359 [21 May 1980] signed by Mr. Majeed Mashayekhi, Director of Gardening Affairs for the Foundation, who proceeded on

⁵ Translation by the Tribunal's Language Services Division.

25.3.1359 [15 June 1980] to open the door to the flower shop of the late Mr. Protiva. Displaying a number of flower vases in the said shop, and acting as a representative of the Foundation for the Oppressed, he commenced to take possession of the shop, whose good will value is in excess of 5 million rials, and he is presently engaged in doing business there.

Because the property in question is merely the property of a simple flower seller who passed away several years prior to the Revolution, and neither he nor his heirs have ever been under prosecution by the Revolutionary Prosecutor General's Office and no judgment has been issued to confiscate their property, I would be grateful [. . . one line virtually illegible] your informing me [on this matter], so that I can carry out my duty to my clients as their attorney by informing them of the legal reason and grounds for the taking of such an action -- one, at that, by a Revolutionary organ.

It should be added that I have written to the Office of the Revolutionary Prosecutor General of the Islamic Republic of Iran (a photocopy of which letter is attached hereto for your information), in connection with the preceding actions by Messrs. Moslem Mohammadzadeh and Ahmad Riyahi, who introduced themselves as representatives of the Revolutionary Prosecutor General with respect to protecting the property at issue on the basis of letter No. 11725 dated 29.3.1358 [19 June 1979]. I request, if your Foundation is not responsible for the occupation of the property, that you immediately inform the Revolutionary Prosecutor General's Office to that effect, in compliance with the Act Concerning Trespassers against the Property of the Public and the People, ratified on 22.9.1358 [13 December 1979] by the Revolutionary Council, so that the trespassers and the persons who have taken over [the property] can be prosecuted.

19. Further, Mr. Behbahani's letter No. 863 of 16 June 1980 to the Revolutionary Prosecutor, in relevant part, reads⁶:

. . .

Last year two individuals named Messrs. Moslem Mohammadzadeh and Ahmad Riyahi presented a letter from the Office of the Revolutionary Prosecutor General authorizing them to act on its behalf in enforcement

⁶ Translation by the Tribunal's Language Services Division.

of the Office's order to protect the building belonging to the late Leopold Protiva, located in Enghelab [Revolution] Street near Lalezar Now Street next to the Pars Bank, with Registration Nos. 3246 and 3250/51. They proceeded to inspect the said property and made an inventory of the items therein, as reflected in the procès verbal dated 6.4.1358 [27 June 1979]. I immediately reported this matter by my letters Nos. 759 dated 4.4.58 [25 June 1979] and 761 dated 6.4.1358 [27 June 1979], addressed to the Office of the Revolutionary Prosecutor General, which are registered with the Secretariat of your Office under Nos. 12988 dated 5.4.58 [26 June 1979] and 13396 dated 7.4.1358 [28 June 1979], respectively. [In those letters] I requested an investigation into the authenticity of the Authorization [letter], and asked that the decision, if any, taken with respect to the property of this simple flower-seller who passed away years prior to the Revolution and absolutely never held a position in any Government or private organization, be rescinded. Unfortunately, I have not received any response to date. Despite the fact that I brought these facts to the attention [of your office] and expected that your Office would safeguard the property in question from any occupation or trespass, as indicated in the Authorization letter, I learned that contrary to the decision and intent of the responsible authorities, yesterday a number of persons under the name of "Labor Associations" and the like took over control of the entire building. More important yet, ever since 25.3.1359 [15 June 1980] an individual by the name of Mr. Abolghasem Amiri has, apparently on behalf of the Foundation for the Oppressed, taken over the flower shop of the late Mr. Protiva, which had been locked and has a good will value of more than 5 million rials. In doing so, he was relying on letter No. K1/900820 dated 31.2.1359 [21 May 1980] signed by Mr. Majeed Mashayekhi, Director of Gardening Affairs of the Foundation for the Oppressed. Displaying a few flower vases there, he has gone into business. If he has engaged in these acts on his own initiative and in violation of the principles promulgated by the Revolutionary Council, the act is necessarily counter-revolutionary, and the perpetrator(s) is/are subject to prosecution.

In view of the foregoing, I hereby bring this matter to your attention so that the extent of the authority of Messrs. Moslem Mohammadzadeh and Ahmad Riyahi can be investigated, and also [request], in reliance on the Act Concerning Trespassers against the Property of the Public and the People, that a decision be taken to eject and prosecute the persons who took over [the building], and that a judgment be rendered punishing those persons. I would appreciate your informing me in writing of any decision taken by you with respect

to the property at issue, whether prior to or on the basis of this request, so that I can carry out my duty to my clients as their attorney by informing them of the outcome, particularly inasmuch as your Office has certainly not issued any order for the punishment of my clients or their legator, or to expropriate their property.

I wait in anticipation that justice will be rendered and a legal decision taken. A photocopy of letters Nos. 759 and 761, and of the proces verbal dated 6.4.1358 [27 June 1979], are attached hereto in order to facilitate the inquiry and your reference to the records.

20. On 9 August 1980, Mr. Behbahani wrote a letter to Mr. Gian Ludovico Pennacchio, the Claimants' brother-in-law, informing him that "[u]nfortunately some time ago the late Mr. Leopold Protiva's house and shop were seized by the 'Mostazafan Foundation.'" Mr. Behbahani enclosed the three letters he had written in June 1980 to the Foundation, the Revolutionary Prosecutor, and the Board of Inquiry Appointed By Imam Khomeini (to which he referred as Imam Khomeini's "Select Committee"), respectively, and remarked that "[s]o far there has been no response."

21. At the Hearing, the Claimants presented an enlarged photograph, allegedly taken in 1987,⁷ showing the front of the Protiva building. The Claimants noted that the photograph shows that the insignia of the Islamic Republic of Iran appears on a sign over the two front doors to the building. The Claimants contended that only government entities may use or display this insignia, indicating that the building must have been occupied by such entities. The Respondent denied this and argued that the insignia used is a religious symbol and that its use was not exclusive to governmental entities during the relevant period. The Respondent further stated that, because at the time there was no legal prohibition on its use by private persons, the insignia was widely used by non-governmental entities.

⁷ The Claimants had produced the same photograph, in normal size, with their Brief of 21 May 1990.

22. The Respondent denies that there has been any expropriation of the real property at issue. A finding of expropriation, the Respondent contends, would require a specific decree of judgment, neither of which is present in this case. Respondent asserts that it made inquiries of the agencies the Claimants allege were involved in carrying out the deprivation and that these agencies were all unaware of any deprivation. In support, the Respondent produced two inquiries which, it maintains, were written in response to those inquiries.

a. A letter of 18 February 1990 from the Revolutionary Prosecutor's Office at the Islamic Revolutionary Court in Tehran to the Foundation, informing the Foundation that "there is not any record of Edgar and Eric Protiva Leopold in this court."

b. A letter of 11 May 1987 from the Iranian State Organization for the Registration of Deeds and Real Estate ("the Organization") to the Foundation, stating, *inter alia*, that in the Organization's books, the real property at issue was registered in the name of Leopold Protiva. In the Respondent's view, any judgment or decree of expropriation or confiscation of the property would have been reflected in the Organization's books.

23. The Respondent also denies that the Respondent authorized the occupation of the shops located in the Protiva building. The Respondent has shown that two of these shops had been leased by the late Leopold Protiva to two tenants prior to the Islamic Revolution. It argues that the shops were subsequently occupied by the same tenants and/or their successors. In support, the Respondent produced two notarized lease agreements between the deceased and third parties concerning two of the shops, dated 10 October 1972 and 16 September 1973. There seems to be no dispute that at least two of the shops in the Protiva building are currently occupied by the Respondent. Furthermore, with respect to the third shop, the Respondent

22. The Respondent denies that there has been any expropriation of the real property at issue. A finding of expropriation, the Respondent contends, would require a specific decree or judgment, neither of which is present in this Case. The Respondent asserts that it made inquiries of the agencies which the Claimants allege were involved in carrying out the deprivation and that these agencies were all unaware of any such deprivation. In support, the Respondent produced two letters which, it maintains, were written in response to those inquiries:

- a. A letter of 18 February 1990 from the Revolutionary Prosecutor's Office at the Islamic Revolutionary Court in Tehran to the Foundation, informing the Foundation that "there is not any record of Edgar and Eric Protiva sons of Leopold in this court."
- b. A letter of 11 May 1987 from the Iranian State Organization for the Registration of Deeds and Real Estate ("the Organization") to the Foundation, stating, *inter alia*, that in the Organization's books, the real property at issue is registered in the name of Leopold Protiva. In the Respondent's view, any judgment or decree of expropriation or confiscation of the property would have been reflected in the Organization's books.

23. The Respondent also denies that the Foundation authorized the occupation of the shops located in the Protiva building. The Respondent has shown that two of these three shops had been leased by the late Leopold Protiva to two tenants prior to the Islamic Revolution. It argues that the shops are still occupied by the same tenants and/or their sublessees. In support, the Respondent produced two notarized lease agreements between the deceased and third parties concerning the lease of two of the shops, dated 10 October 1972 and 16 September 1974. There seems to be no dispute that at least two of the three shops in the Protiva building are currently occupied by shopkeepers. Furthermore, with respect to the third shop, the flower shop in

which Leopold Protiva conducted his business, the Respondent contends that it was unable to find either Mr. Mashayekhi or the alleged authorization letter he signed. Whatever the basis of Mr. Amiri's occupation, the Respondent asserts, he vacated the flower shop about two months later in September 1980, and therefore there should be no question of occupation of the flower shop after that date.

24. The Respondent contends that the Claimants misinterpreted the letters Mr. Behbahani wrote to the Board of Inquiry Appointed By Imam Khomeini, the Revolutionary Prosecutor, and the Foundation. The Respondent maintains that it is clear from the text of these letters that Mr. Behbahani was not attributing to the Revolutionary Prosecutor or to the Foundation the actions of the individuals who occupied the property. Rather, the Respondent asserts, these letters indicate that in June 1979 and again in June 1980, Mr. Behbahani, in fact, requested the Revolutionary Prosecutor to evict those trespassers. The Respondent goes on to say that because Mr. Behbahani did not present the Revolutionary Prosecutor with a specific power of attorney signed by all the heirs, the Revolutionary Prosecutor could not or would not act on Mr. Behbahani's requests. In this connection, the Respondent points to letters that Mr. Behbahani wrote to Mr. Pennacchio on 1 October 1979 and 5 February 1980, in which Mr. Behbahani, inter alia, indicated that he needed a specific power of attorney from the heirs in order to take action at the offices of the various government authorities. See infra, paras. 27 and 28.

25. The Respondent denies that the Claimants and the other heirs had any intention of selling the inherited real property or that they took any step towards that end. In this connection, the Respondent asserts that the heirs never provided Mr. Behbahani either with a power of attorney that would have empowered him to take care of the sale on the heirs' behalf, or with the original deed to the real property. While the Claimants admit that they never provided Mr. Behbahani with a global power

of attorney that would have enabled him to sell the property, they contend that Edgar Protiva gave the original title deed to Mr. Behbahani on the occasion of his visit to Tehran in late 1977.

26. In addition, the Respondent contends that the Claimants failed to take any measures to protect their alleged property against trespassers, thereby effectively abandoning it. In particular, the Respondent asserts that the Claimants never gave Mr. Behbahani a power of attorney that would have enabled him to file a suit against trespassers before the competent Iranian authorities.

27. In support of its contentions, the Respondent proffered a copy of a letter Mr. Behbahani had sent to Mr. Gian Ludovico Pennacchio on 1 October 1979. In relevant part, the letter reads:

. . . .

Unfortunately during the last 18 months, I have not been able to achieve very much. We could not sell or rent the property as there are not many buyers these days in Iran. Even if a buyer was found, I could not sell the property because I do not have a power of attorney to do so [;] the heirs have not given me their decisions as to what to do with the property. Also I do not have at my disposal the title deed.

You may like to know that during all these months

1. Different groups of people have tried to enter the premises through the south alley. Necessary measures were taken and they were driven away.

2. Thieves entered the premises through the south alley, made a hole into the wall of a shop occupied by a tenant through the corridor, and stole goods.

3. I made arrangements with the office of the revolutionary public prosecutor that a document be prepared listing all items and goods in the premises. The document was prepared in the presence of the representatives from the office of the revolution public prosecutor along with my clerk, but as Mr Edgar G. Protiva [] had already removed all the goods in the presence of the late Mr Protiva's driver, only the premises are being guarded. . . .

Taking any action at the office of the revolution public prosecutor or at any government department [] requires power of attorney to be given by all the heirs.

So I am sending you copies of the form of power of attorney each copy to be signed by each heir . . .

Also, all the heirs should come to a final decision and convey to me in writing their decision about the way they would like their property to be managed or sold, and introduce to me a reliable person in whom they have confidence so that he may guard the premises in the meantime. The title deed to the property should also be sent to me.

. . . in future I can implement the wishes of the heirs when I have certified powers of attorney and explicit, clear and specific directives from all the heirs. . . .

28. The Respondent also relies on Mr. Behbahani's 5 February 1980 letter to Mr. Pennacchio, see supra, para. 11, stating:

The deed of the property was not in the file to which you refer I am sending you a photocopy of the deed so that you can easily know what I mean by the deed

. . . The limited Power of Attorney, given to me by the heirs, has and can only be used for inheritance formalities. It can not be used to rent or sell the property. . . .

As I have written to you before, in order to be able to file a suit, answer any charges at the court, and be able to take action against trespassing or occupation, I need a full power of attorney. . . And also if you decide to rent or sell the property, you should send me the original deed along with the specific agreement of all the heirs.

29. At the Hearing, the Respondent stated that, because no deprivation of the real property at issue had occurred, the Claimants were free to take possession of that property at any time. The Respondent added that the Claimants were free to sell the property, provided that the related inheritance taxes were paid and that their representative in Iran was granted the necessary power of attorney.

III. PROCEDURELate-filed Document

30. By Order of 10 December 1992, the Tribunal informed the Parties that "[n]o new documents may be introduced prior to the Hearing unless the Tribunal so permits and unless the request for the introduction of new documents is filed at least three months before the Hearing." On 23 May 1994, two days before the Hearing, the Respondent made an unauthorized submission of an affidavit by Mr. Shamseddin Behbahani and requested the Tribunal to admit it into evidence. At the Hearing, the Claimants objected to its admission.

31. Clearly, the Respondent's unauthorized submission of 23 May 1994 represents new evidence presented after the deadline established by the Tribunal in its 10 December 1992 Order. Under Tribunal precedent, in deciding whether to admit such a late submission, the Tribunal considers "fundamental requirements of equality between, and fairness to, the Parties, and the possible prejudice to either Party." Harris International Telecommunications, Inc. and Islamic Republic of Iran, et al., Partial Award No. 323-409-1, para.61 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 46-47. Further, "the orderly conduct of the proceedings also requires that time limits be established and enforced." Id. In applying these principles to the facts of a Case, "the Tribunal considers the character and contents of late-filed documents and the length and cause of the delay." Id. para. 62, 17 Iran-U.S. C.T.R. at 47. In this connection, "[e]ven when no or little prejudice would result, the orderly conduct of the arbitral proceedings requires that deadlines be enforced, absent some explanation for the delay." Id. para. 66, 17 Iran-U.S. C.T.R. at 49.

32. The Tribunal finds that the Respondent has offered no acceptable justification for the late filing of Mr. Behbahani's affidavit. It is beyond dispute, and the Respondent does not

deny, that the Respondent had knowledge of Mr. Behbahani's whereabouts throughout these proceedings. The address of Mr. Behbahani's law offices in Tehran is even identified in several of the contemporaneous letters in evidence. Mr. Behbahani, therefore, could have been approached during the twelve years this arbitration has been pending.

33. In its 23 May 1994 request for the admission of Mr. Behbahani's affidavit, the Respondent merely stated that Mr. Behbahani had "recently come forward to provide some information which would help clarify certain details of the facts of the 1979-80 situation." At the Hearing, the Respondent argued that it had not been in a position to approach Mr. Behbahani earlier to secure an affidavit or his testimony at the Hearing because the attorney-client privilege created by the relation between Mr. Behbahani and the Claimants somehow represented a bar preventing the Respondent from contacting him. The Tribunal disagrees.

34. First, a duty of confidentiality would bind Mr. Behbahani, not the Respondent. In the Tribunal's view, therefore, the Respondent may not invoke this circumstance as an excuse for its delay in presenting the affidavit from Mr. Behbahani. The Respondent cannot presume that information is covered by privilege. It is the Claimants or the Claimants' attorney who carry the duty to assert the alleged privilege in response to a timely request for information from the Respondent.

35. Second, in any event, because the attorney-client privilege protects only information an attorney has gained from his client in confidence, under no rule of law known to the Tribunal could mere events witnessed by Mr. Behbahani in 1979 and 1980 in Iran represent protected information which he was under the obligation, as the Claimants' attorney, not to reveal.

36. In short, the Tribunal finds that, under the circumstances of this Case, the Respondent's delay in submitting Mr. Behbahani's affidavit is inexcusable. The fair and orderly

conduct of these arbitral proceedings as well as the likely prejudice to the Claimants require that the Tribunal reject this submission as untimely, and the Tribunal so decides.

Admissibility of Other Documents

37. On 25 April 1994, one month before the Hearing, the Claimants submitted a copy of the title deed to plot No. 3247, located in Tehran. This deed is one of the two titles deeds to the real property at issue in this Case. Absent any prejudice to the Respondent, the Tribunal admits this document.

38. At the Hearing, the Respondent submitted a letter dated 1 October 1979 from Mr. Gian Ludovico Pennacchio to Mr. Behbahani. Recognizing that the Claimants had been in possession of this letter at all times, the Tribunal accepted it into evidence.

IV. JURISDICTION

The Property Claim

39. This claim is for the alleged deprivation of the Claimants' rights in the real property at issue and therefore falls within the Tribunal's subject matter jurisdiction of claims arising "out of . . . expropriations or other measures affecting property rights." Article II, paragraph 1, of the Claims Settlement Declaration.

40. The Respondent argues that the claim was not outstanding on 19 January 1981, as jurisdictionally required by Article II, paragraph 1, of the Claims Settlement Declaration, because no expropriation of the Claimants' property has ever taken place. Whether the Claimants were able to prove to the Tribunal's satisfaction that prior to 19 January 1981 a compensable deprivation of their property occurred forms part of the merits

of the claim. "The Tribunal cannot base its jurisdiction on the presumption that the Claimant will eventually prevail on the merits." Albert Berookim, et al. and Islamic Republic of Iran, et al., Award No. 499-269-1, para. 17 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 278, 286. To deny the Tribunal's jurisdiction on the ground put forward here by the Respondent "would amount to endorsing a fin de non-recevoir, that is . . . a 'ground [] of defence based on the Merits of the case and calculated to cause the judge to refuse to entertain the application.'" Vernie Rodney Pointon, et al. and Islamic Republic of Iran, Award No. 516-322-1, para. 28 (23 July 1991), reprinted in 27 Iran-U.S. C.T.R. 49, 58. See also Alfred W. Short and Islamic Republic of Iran, Award No. 312-11135-3, para. 12 (14 July 1987), reprinted in 16 Iran-U.S. C.T.R. 76, 79. Consequently, the Tribunal rejects this jurisdictional objection by the Respondent.

41. The Respondent further argues that the claim was not outstanding on 19 January 1981 because at that date the Claimants had no "outstanding" ownership rights in Leopold Protiva's estate. The Respondent asserts that pursuant to Article 868 of the Iranian Civil Code ("CC"), the heirs of a deceased do not acquire any such rights until all debts and dues relating to the estate, including inheritance taxes, have been settled. The Respondent contends that, even if the Tribunal were to find that a right existed prior to the settlement of these dues and debts, this right would merely be a "conditional," or contingent, right to the estate. Because Leopold Protiva's heirs never paid the Iranian inheritance taxes related to his estate, the Respondent concludes, the Claimants never acquired an "outstanding" property right capable of being asserted before the Tribunal. Consequently, the Respondent requests the Tribunal to reject the Claimants' property claim for want of jurisdiction.

42. The jurisdictional issue here is whether, during the relevant period, the Claimants held ownership rights in the real property allegedly taken, rights that entitle them to assert a

claim before this Tribunal. Thus, the issue to be decided at this stage is not whether the claim was outstanding on 19 January 1981, but rather whether the Claimants have standing to claim compensation before the Tribunal. There is no dispute that the Claimants are two of the only four heirs of Leopold Protiva and that, pursuant to the probate decree of 22 September 1977, see supra, para. 7, each was entitled to inherit one-fourth of his father's estate.

43. As an initial matter, the Tribunal holds that the Claimants have failed to prove that the inheritance tax due on Leopold Protiva's estate has been paid. While the evidence presented shows that in February 1978, Mrs. Helen Protiva sent a check for two million rials to Mr. Behbahani in Iran for the purpose of paying that tax and that Mr. Behbahani received the check, see supra, para. 11, this evidence is not adequate to establish that subsequently Mr. Behbahani did in fact pay the inheritance tax. The Tribunal must now determine whether the outstanding inheritance tax liability somehow barred the Claimants from acquiring rights in the estate and, thus, in the real property allegedly taken.

44. While the Tribunal does not find it necessary to determine the position, under Iranian law, of persons who inherit property, the Tribunal notes that under this law, these persons are not able to have the property partitioned and to take possession of, or to sell, the property until the dues and debts attaching to the estate of the deceased have been paid. It is unclear whether inheritance taxes are debts attaching to the estate (see Articles 867 and 868 CC). In any event, the parties do not disagree that the inheritance taxes would have to be paid before the heirs could take possession of, or sell, any part of the estate. Whatever the precise nature, under Iranian law, of the rights of persons who inherit property and who still have to make all the payments required by Iranian law, the Tribunal is satisfied that they are property rights that may properly be the subject of a deprivation claim. The value of such rights, of

course, must take into account amounts that would have to be paid in order to perfect, in the sense indicated above, the ownership rights. These rights, however, are clearly entitled to protection under international law. The right to property is rarely, if ever, a single right, but rather is a bundle of distinct rights, some of which may be temporarily unenforceable or may be temporarily relinquished without loss of the others.

45. In determining the meaning of "property rights" as used in Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal should also refer to the construction that has been given to the notions of "property" and "interests in property" in its earlier Awards. There is some explanation relating to the latter notion in the Tribunal's Awards in Saghi and International Technical Products.⁸ In Zaman Azar Nourafchan, et al. and Islamic Republic of Iran, Award No. 550-412/415-3, para. 50 (19 Oct. 1993), the Tribunal stated that "[i]nstead of title, it appeared that [the claimant] merely acquired a claim to the land [at issue in that Case]." The Tribunal went on to note that "interference with such a claim [might] constitute a proper cause of action before this Tribunal" Id.

46. Applied to the facts of this Case, all this means that the property rights that the Claimants inherited from their father fall within the meaning of "property rights" as used in Article II, paragraph 1, of the Claims Settlement Declaration.

47. For the foregoing reasons, the Tribunal determines that during the relevant period, the Claimants held ownership rights in the real property they inherited, rights which are capable of being asserted before the Tribunal. Hence, the Claimants have standing to bring the present claim for the alleged deprivation

⁸ James M. Saghi, et al. and Islamic Republic of Iran, Award No. 544-298-2, paras. 24-26 (22 Jan. 1993); International Technical Products Corp., et al. and Islamic Republic of Iran, et al., Award No. 196-302-3, at 39 (No. 19) (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 233 (No. 32).

of that property. Consequently, the Respondent's argument to the contrary is dismissed.

48. There is no dispute that this claim was owned continuously by nationals of the United States, as required by Article VII, paragraph 2, of the Claims Settlement Declaration. See supra, para. 3.

49. Taking into consideration all that was said in paras. 39-48 above, the Tribunal determines that it has jurisdiction over the property claim.

Bank Accounts Claim

50. The Claimants seek U.S.\$12,500, alleged to be the dollar equivalent of their aggregate 50 percent share of the total rial deposits on accounts allegedly held by their father with Bank Pars and Bank Saderat.⁹ The Claimants concede that they have never attempted to withdraw any funds from these bank accounts and have presented no evidence that anyone acting on behalf of their father's estate made such an attempt. The Claimants allege, but do not prove, that any such attempt would have been futile. As the Tribunal has previously held, the mere entitlement to payment from a bank account is not a "claim" within the meaning of the Claims Settlement Declaration. See Harza Engineering Co. and Islamic Republic of Iran, Award No. 19-98-2, at 8-9 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 504. This claim was therefore not outstanding on 19 January 1981 and must be dismissed for lack of jurisdiction.

⁹ With their Statement of Claim, the Claimants had also asserted a claim relating to an account allegedly held by Leopold Protiva with Bank Melli. At the Hearing, the Claimants withdrew this claim.

V. MERITSA. Liability

51. The Tribunal next turns to the alleged deprivation of the Claimants' share in the real property in question. The issue here is whether the Claimants, through actions and/or omissions attributable to the Respondent, have been deprived of their ownership rights in that property and thus, whether they have been subjected to "expropriation or other measures affecting property rights" for which the Respondent bears responsibility. Article II, paragraph 1, of the Claims Settlement Declaration.

52. As an initial matter, the Tribunal cannot agree with the Respondent's contention that the Claimants somehow abandoned their rights. First, it is uncontested that subsequent to Leopold Protiva's death, his heirs sought and obtained a probate decree confining the heirs. Second, the evidence shows that the heirs were concerned about the payment of the inheritance taxes relating to Leopold Protiva's estate. In 1978, Mrs. Helen Protiva sent to Mr. Behbahani a check for two million rials to be used to pay that tax. Further, the heirs corresponded at length, through Mr. Gian Ludovico Pennacchio, with Mr. Behbahani to inquire about the progress of the inheritance tax proceedings. All these actions disprove the assertion that the Claimants abandoned their rights to the property in question.

53. It is undisputed that the deprivation alleged here has not occurred through a formal act of expropriation. This, however, does not exclude the possibility of a deprivation having taken place. It is well settled in this Tribunal's practice "that a taking of property may occur under international law even in the absence of a formal nationalization or expropriation, if a government has interfered unreasonably with the use of property." Harza Engineering Co., supra, at 9, 1 Iran-U.S. C.T.R. at 504. See also Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA, et al., Award No. 141-7-2, at 10-11 (29 June 1984),

reprinted in 6 Iran-U.S. C.T.R. at 219, 225; Harold Birnbaum and Islamic Republic of Iran, Award No. 549-967-2, para. 28 (6 July 1993). A basic condition for a finding of deprivation through "unreasonable interference" is that this interference be attributable to the government.

54. The Claimants argue that the deprivation of their rights in the property occurred gradually, through a series of measures taken by Iranian government agencies, beginning in June 1979 when the Revolutionary Public Prosecutor assumed jurisdiction over the property and culminating in June 1980, when the Mostazafan Foundation authorized workers' associations and others to occupy the Protiva building. In support of these contentions, the Claimants rely on the letters Mr. Behbahani sent, in June 1980, to the "Board of Inquiry Appointed By Imam Khomeini," to the Foundation, and to the Revolutionary Prosecutor, see supra, paras. 17-19. The Tribunal turns first to the events of June 1979, which were described in these letters.

55. In his 21 June 1980 letter to the "Board of Inquiry Appointed By Imam Khomeini" (the "Board"), Mr. Behbahani wrote that the previous year, "two people by the name of Mr. Moslem Mohammadzadeh and Ahmad Riyahi, carrying Authorization Letter No. 11725 dated 26.3.58 [16 June 1979] bearing the seal of the Revolutionary Public Prosecutor, opened the door to the building with the help of a locksmith." Mr. Behbahani went on to say that after entering the Protiva building, these persons, stating that they had to take an inventory of the property within in execution of the Revolutionary Prosecutor's order, began surveying and checking the building and, on 27 June 1979, submitted a procès verbal. Mr. Behbahani recounted that in letters dated 25 and 27 June 1979, he reported the matter to the Revolutionary Prosecutor and requested that the Prosecutor verify the authenticity of the consignment letter and clarify why Messrs. Mohammadzadeh and Riyahi had been authorized to take those actions. See supra, para. 17. In his letter No. 863 of 16 June 1980 to the Revolutionary Prosecutor, Mr. Behbahani referred to Mohammadzadeh and

Protiva building, he had seen how the entire building had been occupied by different groups "under the name of 'Labor Associations.'" Mr. Behbahani stated that Moslem Mohammadzadeh, see supra, para. 17, was present, said he was carrying out certain duties on behalf of those groups and told Mr. Behbahani that they were occupying the building with the approval of the Foundation.

59. Mr. Behbahani went on to tell the Board that on 15 June 1980, one Abolghasem Amiri occupied the shop located on the ground floor of the Protiva building, where Leopold Protiva used to have his flower business. Mr. Behbahani stated that "[a]fter an inquiry and discussion with him, it became clear that [Amiri] had been permitted to take such action by the Foundation for the Oppressed, on the basis of Letter No. K1/900820 signed by Mr. Majeed Mashayekhi, Director of Gardening Affairs of the Foundation for the Oppressed." Mr. Behbahani concluded by requesting that the Board, "[n]ow that [it had] been appointed to investigate such unjust incidents," issue an order to have the property vacated and delivered to Leopold Protiva's heirs.

60. As noted, on 16 June 1980 Mr. Behbahani had also written similar letters to the Foundation and the Revolutionary Prosecutor, see supra, paras. 18 and 19. In particular, in his letter No. 862 to the Foundation, Mr. Behbahani complained, inter alia, that "a number of persons had taken over the [real property in question], under the name of labor associations or as employees and staff of the Foundation for the Oppressed," and he requested that the Foundation inform him about the matter. He also requested that the Foundation bring the matter to the attention of the Revolutionary Prosecutor "[i]f your Foundation is not responsible for the occupation of the property."

61. The Tribunal finds that Mr. Behbahani's June 1980 letters to the Board, the Foundation, and the Revolutionary Prosecutor represent contemporaneous documentation of interference in June 1980 with the Claimants' ownership rights by the Foundation. The letters also represent contemporaneous document-

Riyahi and requested that the Revolutionary Prosecutor eject them from the Protiva building. See supra, para. 19.

56. However, in his letter of 1 October 1979 to Mr. Gian Ludovico Pennacchio, see supra, para. 27, Mr. Behbahani gave a different version of the June 1979 events. Mr. Behbahani advised Mr. Pennacchio that he himself had made arrangements with the Office of the Revolutionary Prosecutor to have "a document prepared listing all items and goods" located in the Protiva building and that the document was in fact "prepared in the presence of the representatives from the office of the revolution public prosecutor along with my clerk. . . ." Thus, according to Mr. Behbahani's 1 October 1979 letter, the representatives of the Revolutionary Prosecutor's office appeared at the Protiva building and made an inventory of the items within not pursuant to a confiscation order issued by the Revolutionary Prosecutor, but rather at the express request of Mr. Behbahani.

57. The Tribunal is unable to reconcile the statements Mr. Behbahani made in his June 1980 letters with those he made in his 1 October 1979 letter. The Claimants offered no explanation for Mr. Behbahani's apparently conflicting statements. In these circumstances the Tribunal finds that the record is inadequate to establish that the Revolutionary Prosecutor interfered with the Claimants' property rights in June 1979.

58. The Tribunal now addresses the Claimants' contention that in May 1980 the Mostazafan Foundation authorized third persons to occupy the Protiva building. In support of their position the Claimants primarily rely on Mr. Behbahani's 21 June 1980 letter to the Board, see supra, para. 17. In the letter, Mr. Behbahani began by referring to a telegram he had previously sent to the Board on 19 June 1980 requesting that it "verify and investigate the reason and cause why property Nos. 3246 and 3250/51 belonging to the deceased Leopold Protiva . . . has been occupied by the Foundation for the Oppressed." In his letter, Mr. Behbahani recounted that on 15 June 1980, upon inspecting the

ation showing that the Claimants requested the Respondent, in the person of the Revolutionary Prosecutor, to terminate this interference. This evidence is sufficient to shift the burden of proof to the Respondent. The Tribunal must determine, therefore, whether the Respondent has produced evidence adequate to rebut the Claimants' evidence of the interference by the Foundation. The Tribunal must further determine whether the Respondent has produced evidence showing that it took measures, through the Revolutionary Prosecutor, to terminate the interference, as had been requested by Mr. Behbahani. The Respondent's evidence consists of a letter dated 11 May 1987 from the Iranian State Organization of Deeds and Real Estate, a letter dated 18 February 1990 from the Revolutionary Prosecutor's Office at the Islamic Revolutionary Court in Tehran, and two notarized lease agreements, dated October 1972 and September 1974, between Leopold Protiva and third parties concerning the lease of two of the three shops located in the Protiva building. The Tribunal reviews this evidence below.

62. The Tribunal has already pointed out that it is uncontested that the alleged deprivation of the Claimants' property rights has not occurred through a formal act of expropriation, see supra, para. 53. Consequently, the 11 May 1987 letter from the Iranian State Organization for the Registration of Deeds and Real Estate, stating that the real property allegedly expropriated is registered in the name of Leopold Protiva, see supra, para. 22, is not conclusive. The letter of 18 February 1990 from the Revolutionary Prosecutor's Office at the Islamic Revolutionary Court in Tehran, declaring that it has no record of Eric and Edgar Protiva, see id., suffers from a similar infirmity.

63. As noted earlier in this Award, there seems to be no dispute that at least two of the three shops located in the Protiva building are currently occupied by shopkeepers. The Tribunal finds that the Respondent was in the best position to clarify the important question of to whom, if anyone, the

shopkeepers actually pay or have paid rent. The Respondent could reasonably have been expected to present the shopkeepers as witnesses at the Hearing or to secure affidavits from them. This the Respondent has not done. In reply to a question from the Chairman, the Respondent contended at the Hearing that at some unspecified time it had approached the shopkeepers to that end but that they refused to cooperate with the Respondent. The Tribunal does not find this belated explanation to be persuasive. The Respondent did not explain when and by whom the shopkeepers had been approached, did not present copies of any correspondence with the shopkeepers on the matter, and did not explain why the shopkeepers refused to assist the Government of Iran in this arbitration.

64. In his June 1980 letters to the Board, the Foundation, and the Revolutionary Prosecutor, Mr. Behbahani referred to the following documents, which are not part of the record of this Case and of which the Claimants assert they do not have copies:

- a. "Authorization Letter No. 11725 dated 26.3.58 [16 June 1979] bearing the seal of the Revolutionary Public Prosecutor," see supra, para. 17.
- b. A procès verbal dated 27 June 1979, allegedly prepared by Messrs. Mohammadzadeh and Riyahi, see supra, para. 17.¹⁰
- c. Letters Nos. 759 and 761 from Mr. Behbahani to the Revolutionary Prosecutor, dated 25 and 27 June 1979, respectively, and registered with the Secretariat of the Revolutionary Prosecutor's Office under Nos. 12988 and 13396, dated 26 and 28 June 1979, respectively, inquiring about the Revolutionary Prosecutor's 16 June 1979 authorization letter, see supra, para. 17.

¹⁰ Based on Mr. Behbahani's letter of 1 October 1979, it appears that the June 1979 inspection and preparation of a procès verbal had been made on the basis of a mutual arrangement between Mr. Behbahani and the Office of the Revolutionary Public Prosecutor.

- d. A letter No. K1/900820 dated 21 May 1980, signed by Mr. Majeed Mashayekhi, Director of Gardening Affairs of the Foundation, authorizing Abolghasem Amiri to occupy the late Leopold Protiva's flower shop, see supra, para. 17.
- e. A telegram sent by Mr. Behbahani to the "Board of Inquiry Appointed By Imam Khomeini" on 19 June 1980, requesting an investigation into the "reason and cause why property Nos. 3246 and 3250/51 belonging to the deceased Leopold Protiva . . . has been occupied by the Foundation for the Oppressed." See supra, para. 17.

65. Mr. Behbahani's June 1980 letters state that the above-mentioned documents had either been sent by Mr. Behbahani to government or government-controlled agencies or had been generated by such agencies. Therefore, evidence as to whether these documents existed and the documents themselves should have been within the Respondent's control. At the Hearing, in response to a question from the Chairman, the Respondent's counsel said that the Respondent had been unable to trace them. Such an assertion is not evidence. The Respondent failed to submit any evidence of the efforts it undertook to locate the documents, such as affidavits or copies of specific written inquiries of the agencies involved and copies of any responses it received from such agencies. It is worth noting that most of the documents referred to in Mr. Behbahani's June 1980 letters are identified not only by date, but also by reference number. As it has done in other cases before the Tribunal, see Norman Gabay and Islamic Republic of Iran, Award No. 515-771-2, paras. 10, 12 (10 July 1991), reprinted in 27 Iran-U.S. C.T.R. 40, 44-45, the Respondent could have produced copies of the relevant pages of the logbooks in which the Foundation and the Revolutionary Prosecutor's Office register chronologically, and assign a number to, all incoming and outgoing mail. This would have enabled the Tribunal to determine whether and when the documents in question had been sent or received. In this connection, it is noteworthy that in his June 1980 letters, Mr. Behbahani even

identified the numbers under which his June 1979 letters to the Revolutionary Prosecutor had been registered in the logbooks of the Revolutionary Prosecutor's Office, as well as the number assigned to the 21 May 1980 letter from Majeed Mashayekhi, the Director of Gardening Affairs of the Foundation, see foregoing paragraph. In view of the detail contained in Mr. Behbahani's letters, these evidentiary failures by the Respondent have not been explained to the satisfaction of the Tribunal.

66. Further, the Respondent has submitted no evidence as to the efforts it made, if any, to locate Messrs. Moslem Mohammadzadeh, Ahmad Riyahi, Majeed Mashayekhi, and Abolghasem Amiri, the individuals referred to by Mr. Behbahani in his June 1980 letters, see supra, para. 64. Because all of these persons arguably have first hand knowledge of the events at issue here, their testimony, either at the Hearing or in affidavits, could have assisted the Tribunal's effort to determine precisely what happened to the Claimants' property in 1979 and 1980. At the Hearing, the Respondent's counsel simply stated that it had not been able to locate any of these individuals. In this connection, the Respondent also contended that because Abolghasem Amiri evacuated Leopold Protiva's flower shop two months after June 1980 and because, according to the Respondent, the shop has remained vacant ever since, locating Messrs. Amiri and Mashayekhi, as well as tracing letter No. K1/900820 signed by the latter, had become "moot" issues. The Tribunal disagrees.

67. First, the Respondent presented no proof that Leopold Protiva's flower shop has remained closed since mid-1980. At the Hearing, to support this contention, the Respondent pointed out that in the photograph of the Protiva building produced by the Claimants, apparently taken in 1987, see supra, para. 21, one of the shops -- the one Leopold Protiva had occupied prior to his death, according to the Respondent -- appeared to be closed. In the Tribunal's view, the fact that on the day the photograph was taken the shop was closed can hardly prove that it had been closed since mid-1980. Second, even assuming that this were the

case, Messrs. Amiri's and Mashayekhi's testimony and the contents of Mr. Mashayekhi's letter No. K1/900820 would have remained relevant because such evidence would have allowed the Tribunal to clarify the basis on which Mr. Mashayekhi acted when he authorized Mr. Amiri to occupy the shop; whether the occupation was intended to be temporary or permanent; and whether there existed any relationship between the occupation of the flower shop by Mr. Amiri and the occupation of other parts of the building by workers' associations. Third, the Respondent failed to provide written or oral testimony of Mr. Amiri to clarify when the occupation of the flower shop actually ended, if at all. Alternatively, the Respondent could have provided testimony by the tenants of the other two adjacent shops, persons who arguably have first hand knowledge of the facts.

68. The Tribunal acknowledges that in this Case, some evidentiary gaps remain. However, after reviewing the evidence as a whole, the Tribunal finds that it is justified in concluding that the Respondent has not introduced any evidence adequate to rebut the substance of Mr. Behbahani's letters. Thus, the Respondent has not rebutted the Claimants' evidence of serious interference with, and, as a result of that, the deprivation of, their ownership rights in the real property at issue in this Case. Moreover, in the circumstances of this Case, the failure of the Respondent to produce evidence available to it justifies the Tribunal's drawing inferences from that failure.¹¹ See Harold Birnbaum, supra, paras. 80, 106, 115, 124, 139; Raygo Wagner Equipment Company and Star Line Iran Company, Award No. 20-17-3, at 6 (15 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413; Benjamin R. Isaiah and Bank Mellat, Award No. 35-219-2, at 12-13

¹¹ See Durward V. Sandifer, Evidence Before International Tribunals 108, 115-18, 149-54, 172-74 (1975); Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals 323-25 (1987) ("The inference in every case must, however, be one which can reasonably be drawn. [footnote omitted] The situation, as established by prima facie evidence, coupled with the adverse presumption arising from the non-production of available counter-evidence, is thus sufficient to create a moral conviction of the truth of an allegation." Id. at 325.)

(30 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 232, 238. See also INA Corporation and Islamic Republic of Iran, Award No. 184-161-1, at 14 (13 Aug. 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 382. Therefore, in view of these considerations and on the basis of the evidence presented, the Tribunal determines that on or about 15 June 1980, the Mostazafan Foundation authorized third persons to occupy the Protiva building and that by that date this occupation had affected the rights of the Claimants in such a way and to such a degree that it had resulted in a deprivation of the Claimants' ownership rights therein. What is important is "the reality of [the] impact" of the measures of interference on the Claimants. See Tippetts, Abbett, McCarthy, Stratton, supra, at 11, 6 Iran-U.S. C.T.R. at 225-26. This deprivation was not merely ephemeral, but has continued for many years. In this connection, it is significant that the workers' associations were still occupying the Protiva building as late as 1987, as the enlarged photograph of the building presented by the Claimants at the Hearing indicates, see supra, para. 21, and there is no evidence in the record that such occupation has since ended.

69. For these reasons, the Tribunal concludes that the Foundation by its actions deprived the Claimants of their property rights in the real property at issue.

70. The question now arises whether the Foundation's actions directed against the Claimants' property rights can be attributed to the Government of Iran, the Respondent named in this Case, in the sense of making it liable. In Hyatt International Corporation, et al. and Islamic Republic of Iran, et al., Interlocutory Award No. ITL 54-134-1, at 31 (17 Sept. 1985), reprinted in 9 Iran-U.S. C.T.R. 72, 94, the Tribunal found, inter alia, that in the relevant period, the Foundation had been "an instrumentality controlled by the Government of the Islamic Republic of Iran." See also Endo Laboratories, Inc. and Islamic Republic of Iran, et al., Award No. 325-366-3, para. 8 (3 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 114, 116. Other Tribunal Awards also refer to the links between the Foundation and the

Government. See, e.g., Foremost Tehran, Inc., et al. and Islamic Republic of Iran, et al., Award No. 220-37/231-1, at 18 (11 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 240; Flexi-Van Leasing, Inc. and Islamic Republic of Iran, Award No. 259-36-1, at 19 (13 Oct. 1986), reprinted in 12 Iran-U.S. C.T.R. 335, 348; CBS, Inc. and Islamic Republic of Iran, et al., Award No. 486-197-2, para. 24 (28 June 1990), reprinted in 25 Iran-U.S. C.T.R. 131, 138. It is not necessary to repeat here the provisions of Iranian law and the relevant facts regarding the Foundation which have been adduced in the Awards cited in this paragraph. In the present Case, no evidence was presented to show that during the period of interference with the Protiva building, the relationship between the Foundation and the Government was not one of control of the former by the latter.

71. Consequently, the Tribunal is of the opinion that the Respondent, through the Revolutionary Prosecutor, which is a state organ, was in a position to stop the Foundation from interfering with the Protiva building or, once such interference occurred, to reconstitute the property. There is no evidence, however, that the Revolutionary Prosecutor did anything.

72. The Tribunal takes into consideration that the Revolutionary Prosecutor apparently never responded to Mr. Behbahani's June 1980 letter. In the Tribunal's view, this silence is significant and suggests that the Revolutionary Prosecutor supported and sanctioned the occupation of the Protiva building and, thus, the deprivation of the Claimants' ownership rights therein. The Tribunal notes that Mr. Behbahani also approached the "Board of Inquiry Appointed By Imam Khomeini."

73. In this context, the Respondent contended at the Hearing that the individuals occupying the Protiva building were mere trespassers and squatters who had no link whatsoever with the government. The Respondent went on to say that in his June 1980 letters, therefore, Mr. Behbahani was not attributing to the Foundation the actions of those individuals, but rather was

requesting the Board, the Revolutionary Prosecutor, and the Foundation to evict them from the Claimants' property. The Respondent asserted that because Mr. Behbahani did not submit a specific power of attorney signed by all the heirs of Leopold Protiva empowering him to file a suit, however, those entities would not act or even reply to Mr. Behbahani. In addition, the Respondent appeared to contend that because only Iranian civil courts are competent to deal with cases of trespassing, and not the entities Mr. Behbahani wrote to, it is obvious that these entities would not reply to him. The Tribunal finds all these contentions unpersuasive.

74. It is clear from the plain language of Mr. Behbahani's June 1980 letters that he was attributing the occupation of the Protiva building not to ordinary squatters or trespassers, but rather to organizations and individuals acting on the strength of an authorization by the Foundation, see supra, paras. 17-19. In view of this, it seems only logical to the Tribunal that Mr. Behbahani submitted his complaints to the Foundation itself, to the Revolutionary Prosecutor, and to the "Board of Inquiry Appointed By Imam Khomeini" (concerning the latter, see supra, para. 17).

75. To sum up, Mr. Behbahani, the Claimants' attorney, drew the attention of the Revolutionary Prosecutor, which is a state organ, to the interference with the Claimants' property rights. Mr. Behbahani requested that steps be taken by the Revolutionary Prosecutor to restore the status quo ante. Also, Mr. Behbahani's approaching the "Board of Inquiry Appointed By Imam Khomeini" is relevant as a demonstration of his efforts to end the said interference. The existing evidence shows that there was no action in reply to Mr. Behbahani's requests. It must, therefore, be concluded that there was no willingness or effort on the part of the Respondent to restrain the Foundation. Consequently, the Respondent must compensate the Claimants for the deprivation of their property rights.

B. A18 Caveat

76. The Respondent argues that because the Claimants' property claim relates to benefits limited by Iranian law to Iranian nationals, it is barred by the A18 caveat. The Respondent states that Iranian law prohibits foreigners from owning real estate in Iran, except, inter alia, for residential purposes and subject to specific conditions, as well as to the prior approval of the competent Iranian authorities. Further, the Respondent appears to contend that the Claimants concealed their United States nationality and used their Iranian nationality in their dealings with the Iranian authorities. In particular, the Respondent argues that, during the course of the probate proceedings, the Claimants identified themselves as Iranians in order to circumvent Articles 988 and 989 of the Civil Code of Iran, which required the Claimants, as Iranian nationals who had acquired a second nationality, to divest themselves of their real property in Iran.

77. The Claimants contend that ownership of real property and, in particular, the right to inherit real property are not benefits reserved by Iranian law to Iranian nationals, and they deny that they concealed their United States nationality in order to continue to hold their real property. The Claimants conclude that the caveat does not apply to their claim.

78. In its Decision in Case No. A18, the Tribunal held that "where the Tribunal finds jurisdiction based upon the dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim." Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT, at 26 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265-66. In its Interlocutory Award in this Case, the Tribunal held:

This jurisdictional determination of the Claimants' dominant and effective nationality remains subject to the caveat added by the Full Tribunal in its decision

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

Edgar Protiva, et al., supra, para. 18, 23 Iran-U.S. C.T.R. at 263.

79. In James M. Saghi, et al. and Islamic Republic of Iran, Award No. 544-298-2, para. 54 (22 Jan. 1993), the Tribunal held:

The caveat is evidently intended to apply to claims by dual nationals for benefits limited by relevant and applicable Iranian law to persons who were nationals solely of Iran. However . . . [e]ven when a dual national's claim relates to benefits not limited by law to Iranian nationals, the Tribunal may still apply the caveat when the evidence compels the conclusion that the dual national has abused his dual nationality in such a way that he should not be allowed to recover.

80. The Tribunal first addresses the question whether the specific right at issue in this Case, i.e., the right to inherit real property, is a benefit limited by Iranian law to sole Iranian nationals and, consequently, whether the Claimants, as nationals of the United States, could inherit a fifty percent ownership interest in the real property at issue in this Case.

81. The Iranian Civil Code sets forth the Conditions and Certain Impediments to Inheritance in Articles 875 through 885. None of these provisions -- nor, for that matter, any provision of Iranian law of which the Respondent has notified the Tribunal -- either explicitly reserves the right to inherit real property

to Iranians or explicitly denies this right to foreign nationals.¹²

82. Article 988 CC enumerates the conditions under which Iranian nationals can renounce their Iranian nationality. Subparagraph 3 provides that those who wish to do so must undertake to transfer to Iranian nationals within one year from the renunciation all the rights they possess in landed properties in Iran "or which they may acquire by inheritance even though Iranian law may authorize the possession of same properties in the case of foreign nationals." Thus, Article 988 CC recognizes that Iranian law allows non-Iranians to inherit real property, a fact which has also been acknowledged by the Respondent. In its written pleadings, the Respondent stated that "[e]ven if an alien becomes owner of immovable property through inheritance, he is required to sell it in accordance with the Civil Code of Iran." Hence, the Claimants, by merely inheriting their shares in the real property in question, were not enjoying benefits reserved by Iranian law for persons who are solely Iranian.

83. As noted, the Respondent contends that pursuant to the relevant provisions of Iranian law, the Claimants were required, as Iranian nationals who had acquired a second nationality, to divest themselves of their real property in Iran. The heirs of Leopold Protiva, however, were never able to sell the property because it was taken before the inheritance tax procedures were completed. According to Article 194 of the Iranian Direct Taxation Act ("DTA"), the heirs could not have sold the property

¹² Article 961 CC, in relevant part, provides as follows:

Foreign nationals are also entitled to the enjoyment of civil rights with the following exceptions:

1. In respect of rights which are recognized by law as being explicitly and exclusively for Iranian subjects or explicitly denied to foreign nationals.

. . .

until the completion of the inheritance tax proceedings. This Article provides:

The Estates Documents Registration Offices, when registering the transfer of an immovable property belonging to the deceased [] in the name of heirs . . . as well as all Notary [] Public Offices, when registering . . . any transactions by the heirs in respect of estates, shall demand a certificate from the competent Finance Office to the effect that the applicable tax has been totally paid or arrangement has been made for payment thereof, and shall not register such transfers . . . before the said certificate has been presented to them.

84. The Respondent seems to contend that the tax proceedings were not concluded due to the Claimants' failure to submit certain documents to the tax authorities and, generally, to the Claimants' failure to pursue the tax matter, see supra, para. 12. In particular, the Respondent argues that the Claimants failed to provide the tax authorities with the deed to the real property inherited and with the probate decree confining the heirs. The Tribunal finds that the evidence presented does not support the Respondent's contention. This evidence shows that the heirs, acting through Mr. Behbahani, filed a tax declaration in January 1977, thus within three months of Leopold Protiva's death, as required by Article 184 DTA. The evidence further shows that, thereafter, the heirs remained concerned about the conclusion of the tax proceedings, see supra, para. 11. As late as 12 November 1979, Mr. Pennacchio wrote a letter to Mr. Behbahani inquiring about the payment of the inheritance tax. In his 5 February 1980 reply to Mr. Pennacchio, see supra, para. 11, Mr. Behbahani acknowledged receipt of Mrs. Helen Protiva's check for two million rials "to be used for inheritance taxes" and stated that "[t]he inheritance formalities have been taken care of, and when they are concluded, you will be duly informed."

85. The Tribunal assumes that the tax authorities had all the required documents when they issued, on 13 October 1993, an "Inheritance Tax Assessment Form" for each of the Protiva heirs. See supra, para. 13.

86. Concerning the allegedly missing probate decree, it should be noted that probate decrees are not listed among the documents which, according to Article 184 DTA, must accompany an inheritance tax declaration. However, a reference to probate decrees in connection with inheritance tax proceedings is found in Article 193 DTA, under the Section "Duties of Government Offices, Institutions and Third Parties." After making clear that the submission of an inheritance tax declaration is a prerequisite for the issuance of a probate decree,¹³ that Article provides: "Clerks issuing probate decrees shall send a certified copy of the probate to the local Finance Office within fifteen days [] from the date of its issue." Nothing suggests that the court clerk failed to send the Protiva probate decree to the Finance Office, as required by the DTA. In any event, it is clear that presentation of the probate decree was not a duty of the heirs.

87. Concerning the allegedly missing deed to the real property, the Iranian Direct Taxation Act does not require that the inheritance tax declaration be accompanied by the original documents attesting the deceased's title to the property inherited. Rather, Article 184 (2) DTA only requires the submission of "[c]ertified copies" thereof. The evidence shows that Mr. Behbahani had at least photocopies of the deed in his possession, see supra, para. 28. His statement, in his 5 February 1980 letter to Mr. Pennacchio, that "the inheritance formalities had been taken care of" suggests that these copies satisfied the requirements of the inheritance tax proceedings. In this connection, it is noteworthy that nowhere in his letters to Mr. Pennacchio did Mr. Behbahani complain that he needed the

¹³ In relevant part, Article 193 provides as follows:

Hearing in courts concerning applications filed for issuance of probates shall be held pending the presentation of a certificate from the Finance Department to the effect that the tax declaration referred to under Article 184 has been submitted.

original deed or any other document in order to complete the inheritance tax proceedings.

88. In light of the foregoing considerations, the Respondent's contention that the inheritance tax proceedings did not progress in a timely fashion because the Claimants had failed to provide the probate decree and the deed to the real property is not convincing and must therefore be dismissed.

89. Moreover, the Tribunal finds that the Claimants did not conceal or otherwise abuse their Iranian nationality in their passive inheritance of a share of real property. As noted, the Claimants inherited their shares automatically, by virtue of Iranian law. The Respondent argues that because the Claimants are listed as Iranian nationals and because their Iranian I.D. card numbers are noted on the inheritance tax declaration filed in January 1977, they abused their nationality in a manner that causes their claim to be barred by the caveat. In considering similar situations, the Tribunal has found that "the mere fact that [the Claimant's] Iranian ID card number appears on [a document of ownership] does not mean that he concealed his American nationality in order to obtain benefits available only to Iranians." Faith Lita Khosrowshahi, et al. and Islamic Republic of Iran, et al., Award No. 558-178-2, para. 33 (30 Jun. 1994). (Quoting Attaollah Golpira and Islamic Republic of Iran, Award No. 32-211-2, at 6 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 171, 174.) Where, as in this Case, the property right in question, i.e., the right to inherit real property, is not restricted by Iranian law to Iranian nationals, the use of one's Iranian identity is not an abuse. The Case presents no "exceptional circumstances," Saghi, supra, para. 59, that would justify a refusal of an award in favor of the Claimants.

90. In sum, the Claimants neither obtained any benefits reserved exclusively to Iranian nationals, nor did they abuse their Iranian nationality in such a way that they should not be allowed to recover. Nothing in their conduct would justify the

refusal of an Award in their favor. Consequently, the Tribunal holds that the A18 caveat does not bar the Claimants' property claim.

C. Valuation

91. In the present Case the Tribunal applies the compensation rule as understood and implemented in its practice. That rule has found expression, inter alia, in treaties of various states, including the Treaty of Amity.¹⁴

92. In this Case, as in Case No. 298, James M. Saghi, et al. and Islamic Republic of Iran, Case No. 178, Faith Lita Khosrowshahi, et al. and Islamic Republic of Iran, and Case No. 968, Fereydoon Ghaffari and Islamic Republic of Iran, the Tribunal has used the Treaty of Amity standard of compensation without deciding whether the Treaty itself is applicable to claims of dual nationals whose dominant and effective nationality during the relevant period under Case A18 was that of the United States or Iran, as the case may be.¹⁵

93. As noted earlier in this Award, the present Case is one of ownership rights in inherited real property where the estate has not yet been partitioned among the heirs and where, therefore, the rights of the Claimants still have to be perfected and remain temporarily unenforceable. See supra, para. 44. Nonetheless, the rights of the Claimants are actually existing; these rights are not merely apparent or potential.

¹⁴ Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900.

¹⁵ See Saghi, supra, para. 79; Faith Lita Khosrowshahi, et al., supra, para. 34; and Fereydoon Ghaffari and Islamic Republic of Iran, Award No. 565-968-2, para. 100 (7 Jul. 1995).

94. The Claimants have been deprived of their ownership rights in the real property. Consequently, according to the standard referred to supra, at paras. 92 and 93, they are entitled to the "full equivalent" of the deprived interests.¹⁶ Thus, the Tribunal must determine what is the full equivalent of each Claimant's 25 percent share of the real property in question. Before doing so, however, the Tribunal must determine the value of the whole of the real property.

95. The Tribunal has found that the deprivation took place on or about 15 June 1980. See supra, para. 68. The parties have offered arguments but little factual evidence to assist the Tribunal in valuing this real property as of that date. The Tribunal must therefore make its approximation of that value based on the best possible use of the limited evidence in the record. See Harold Birnbaum, supra, paras. 49, 62.

96. The Claimants rely on a sworn statement by Mr. Abbas Naraghi, dated 28 February 1990. Mr. Naraghi states that he was the President of the Board of Directors and of the Executive Committee of the former Bank of Tehran until 1980. He claims to have had direct supervision of numerous real estate transactions of the Bank. Having given the location and a brief description of the real property in question, he provides the following opinion:

The Protiva property is situated in one of the city's major down-town trade centers and has considerable commercial value. I was aware of several properties close to the Protiva property which sold in 1978-79 for approximately Rials 250,000 per square meter. Therefore, in 1979-80 we should have a realizable value for the subject property of Rials 100,000,000. (400 meters times Rls 250,000)

¹⁶ See Phelps Dodge Corp., et al., supra, para. 28, 10 Iran-U.S. C.T.R. 132; Petrolane, Inc., et al. and Islamic Republic of Iran, et al., Award No. 518-131-2, para. 105 (14 August 1991), reprinted in 27 Iran-U.S. C.T.R. 64, 99; and Harold Birnbaum, supra, para. 37.

97. The Claimants assert that Mr. Naraghi's valuation is corroborated by an unsolicited offer made to the late Leopold Protiva in September 1976, just prior to his departure for New York. The offer was, allegedly, one for the purchase the real property for 80 million rials. In his affidavit, Edgar Protiva asserted that the late Leopold Protiva's "sources" advised him that the alleged offer was extremely low. Edgar Protiva goes on to say that his father rejected the offer. The alleged offer and its rejection were confirmed by the oral statements of Mr. and Mrs. Pennacchio at the Hearing, but it remains hearsay evidence.

98. The Claimants submit that if the amount of the 1976 offer, 80 million rials, is adjusted upward to account for inflationary factors and then discounted due to the decrease attributable to the effects of the Revolution in 1979, see Harold Birnbaum, supra, paras. 63-64, it would support Mr. Naraghi's assessment that the real property was worth 100 million rials.

99. At the Hearing, the Claimants' tax expert, Mr. Vram Gorjian, described the Protiva building situated on the land as a "pick-axe" type of building, thus suggesting that the physical structure constructed on the land had little or no market value. In his letter of 5 February 1980, Mr. Behbahani, too, referred to the poor condition of the building and the need for restorations. What was of value, therefore, was the land itself.

100. In support of its valuation of the real property, the Respondent obtained an expert opinion, dated 30 March 1992, from Mr. Abdorrahman Darbani, a civil engineer, and Dr. Hadi Vafai'e, an architect. Mr. Darbani has been working as an expert in Iran since 1970 and Dr. Vafai'e since 1984. Both are chartered experts certified by the Iranian Justice Ministry. They conducted an on site inspection of the property. In their valuation, consideration is given to the type of building, its "ancient nature," its location, and the total area of both its

site and superstructure. They conclude that the 1980 value of the real property was 50 million rials.

101. The Respondent submitted inheritance tax assessments, dated 13 October 1993, for each the Protiva heirs. These assessments indicate that the estate of Leopold Protiva was worth 51,367,365 rials before the deduction of burial expenses and inheritance tax. The Tribunal understands from the inheritance tax declaration filed by Mr. Behbahani in January 1977 that, aside from the real property, the only other asset belonging to the estate of Leopold Protiva was a bank account. The Respondent alleges that the only bank account in Leopold Protiva's name that it has been able to trace is an account at Bank Saderat. As of November 1976, the account had a balance of 14,900 rials.

102. The Tribunal notes the relative paucity of reliable evidence of the value of the whole of the property at issue. The valuation report submitted by the Respondent is the only valuation based upon an actual inspection of the property. In the circumstances, therefore, it must be regarded as the most reliable evidence of the value of the property. Consequently, after reviewing all the evidence, the Tribunal determines that that property was worth 50 million rials at the date of the deprivation.

103. Edgar and Eric Protiva are each entitled to a one-quarter share in the real property at issue. See supra, para. 42. Thus, the starting point for the Tribunal's determination of the amount of compensation due to each Claimant for the deprivation of his share is 12,500,000 rials, one-quarter of the value of the real property at the date of the deprivation. The Tribunal must further consider the inheritance tax, the payment of which was a precondition to the registration of the transfer of the real property in the Claimants' names under Article 194 DTA, as a necessary element for the purpose of valuing the Claimants' ownership interests. Consequently, the Protiva heirs could not have sold or otherwise transferred the property until

these inheritance taxes were paid. Because the heirs could have enjoyed the full bundle of rights in the property only by paying these taxes, it is appropriate to take into account the amount of these taxes in valuing the property right that the Claimants held at the time of the deprivation.

104. The Tribunal determines that each Claimant's tax liability is 3,425,000 rials, based on the Iranian Direct Taxation Act in force at the date of Leopold Protiva's death.¹⁷ After deducting each Claimant's inheritance tax liability, the Tribunal determines that the full equivalent value of each Claimant's share in the real property in question is 9,075,000 rials.

105. Based on the foregoing, the Tribunal finds that each Claimant is entitled to a total of 9,075,000 rials as compensation for the deprivation by the Respondent of his ownership interest in the inherited real property. This amount is equivalent to U.S.\$129,869.25 when converted at the exchange rate of 69.878 rials/U.S.\$1. This was the rate of exchange prevailing in June 1980. See International Monetary Fund, International Financial Statistics, Supplement on Exchange Rates 64 (1985). The Tribunal therefore awards Edgar Protiva and Eric Protiva the sum of U.S.\$129,869.25 each.

VI. INTEREST

106. The Tribunal awards to the Claimants interest at the rate of 8 percent from the date of the deprivation, 15 June 1980.

¹⁷ The tax payable on an inherited property worth 50,000,000 rials under Article 174(a) DTA in force on 3 November 1976 is 4,500,000 rials. Thus, each of the four heirs must share in this liability to the amount of 1,125,000 rials. In addition, each of the Claimants, as a child of the deceased under Articles 177 and 178 DTA, is individually liable for 2,300,000 rials. Each Claimant's tax liability, therefore, is 3,425,000 rials.

VII. COSTS

107. Each Party shall bear its own costs of arbitrating this claim.

VIII. AWARD

108. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the following amounts to each of the Claimants:

- to EDGAR PROTIVA, One Hundred Twenty-Nine Thousand Eight Hundred Sixty-Nine United States Dollars and Twenty-Five Cents (U.S.\$129,869.25), plus simple interest at the rate of 8 percent per annum (365-day basis) from 15 June 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

- to ERIC PROTIVA, One Hundred Twenty-Nine Thousand Eight Hundred Sixty-Nine United States Dollars and Twenty-Five Cents (U.S.\$129,869.25), plus simple interest at the rate of 8 percent per annum (365-day basis) from 15 June 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

- (b) This obligation shall be satisfied by payment out of the Security Account established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

- (c) Each Party shall bear its own costs of arbitrating this claim.

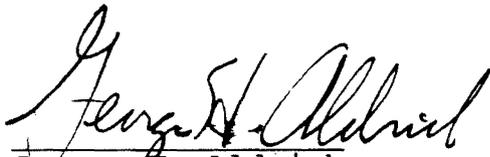
(d) This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
14 July 1995



Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God



George H. Aldrich



Koorosh H. Ameli
Dissenting, except
Concurring as to
the awarded sum in rials.
See Separate Opinion.