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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 385
CHAMBER TWO
AWARD NO. 594-385-2

GULF ASSOCIATES, INC.,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
ZAMZAM BOTTLING COMPANY,
MINA GLASS CO.,
RADIO AND TELEVISION CORPORATION OF IRAN,
IRAN INDUSTRIAL CREDIT BANK (BANK SANAYE),
BANK MELLI, BANK OF TEHRAN, BANK SEPAH,
Respondents.

AWARD

Appearances:

For the Claimant:

Mr. Arthur W. Rovine,
Mr. Hamid Sabi,
Mr. Charles Davidson,
Mr. Farkhondeh Sabi,
Mr. Paul Storm,
Ms Jayne Ressler,
Mr. David Schwartz,
Counsel,
Mr. Reja Sabet,
Mr. Aram Sabet,
Mr. Karim Sabet,
Mr. Hormoz Sabet,
Mr. Iradj Sabet,
Ms Valerie Sabet,
Persons Appearing for the Claimant,
Mr. Victor Barnett,
Mr. Roger Barnett,
Witnesses,
Mr. Richard Friedberg,
Mr. Robert Radley,
Expert Witnesses.

For the Respondents:

Mr. M.H. Zahedin-Labbaf,
Agent of the Government of the Islamic Republic of Iran,
Mr. Seyfollah Mohammadi,
Legal Adviser to the Agent,
Prof. Joe Verhoeven,
Counsel to the Agent,
Mr. Rodman R. Bundy,
Mr. Walter D. Sohier,
Mr. Hossein Ali Farzad,
Mr. Hossein Tabaie,
Mr. Hassan Parham,
Mr. Khayyam Dadash-Zadeh,
Dr. Rahim Davar-Niya,
Mr. Sayyed Majid Rouhani,
Mr. Abol-Fazl Kousheshi,
Attorneys,
Mr. Ahmad Hejazi,
Financial Adviser,
Mr. Abbas Khaje-Piri,
Mr. Mohsen Javaheri Mohammadi,
Representatives of the Foundation for the Oppressed,
Mr. Gholamreza Mahdavi,

Mr. Dariush Ashrafi,
Legal Advisers to the Respondents,
Mr. Mehdi Iranpour,
Legal Assistant to the Respondents,
Dr. Audrey Giles,
Mr. Peter A. Kalat,
Mr. Eric Jackson,
Expert Witnesses.

Also present:

Dr. Sean D. Murphy,
Agent of the Government of the United States of America;
Mr. Allen S. Weiner,
Deputy Agent of the Government of the United States of America.

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I. INTRODUCTION

1. The Claimant in this case is Gulf Associates, Inc. ("Gulf Associates" or "Gulf"), a New York corporation. The Respondents are the Islamic Republic of Iran ("Iran"), Zamzam Bottling Company ("Zamzam")[1], Mina Glass Company ("Mina") and Radio and Television Company of Iran ("RTI").

2. In 1950, Habib Sabet established Gulf Associates in New York where it was formally incorporated in 1960. Gulf Associates was established in the United States primarily to provide various services for several Iranian companies owned by Sabet family members, including the present Respondent companies. As such, Gulf would order goods and services for the Sabet companies and would arrange for loans and other financing from suppliers and banks in the United States and Canada. After paying the resulting bills on behalf of the Sabet companies, Gulf would await the companies' periodic reimbursement. As a result, Gulf was owed a fluctuating amount by each of the three Respondent companies - Zamzam, RTI and Mina - as payments were continually made by Gulf on these companies' behalf.

3. Gulf contends that Zamzam, RTI and Mina are controlled entities of the Islamic Republic of Iran by virtue of having been expropriated by Iran in April 1979. According to Gulf, at the time of the expropriation, each of the three companies owed Gulf reimbursement for sums paid by Gulf on their behalf. Gulf contends that after the expropriation, the three Respondent companies failed to pay to Gulf the debit balances they owed to it, thereby breaching their contracts with Gulf. In the

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[1] For the purpose of this Case, Zamzam Bottling Company refers to the eleven Zamzam companies for whom Gulf maintained only one account. See para. 125 infra.

alternative, Gulf asserts that it may recover on the basis of unjust enrichment.

4. As ultimately pleaded, Gulf seeks $3,693,182 plus interest and costs. It claims U.S.$107,188 against Mina; U.S.$2,647,299 against Zamzam; and U.S.$938,695 against RTI.

5. The Respondents deny liability. They contend that the Tribunal does not have jurisdiction over these claims because during the relevant period, Gulf Associates was not owned by United States nationals. Gulf asserts that during the relevant period, its shares were 100 percent owned by Reja, Arąm and Karim Sabet, three members of the Sabet family who, Gulf contends, are dominant and effective U.S. nationals.[2] Gulf claims that Reja, Aram and Karim Sabet acquired their shares in October 1977, but the Respondents deny that the transfer ever took place or, if it did take place, the Respondents maintain that it was not valid. On the merits, the Respondents deny on various grounds that they owed Gulf the amounts claimed.

II. JURISDICTION

A. Ownership of the Claims

6. Pursuant to Article II, paragraph 1, and Article VII, paragraph 1, of the Claims Settlement Declaration ("CSD"), the Tribunal may exercise jurisdiction over this claim only if during the relevant period 50 percent or more of the capital

[2] Reja, Aram and Karim Sabet are the Claimants in Cases Nos. 815-817 before this Tribunal. The Tribunal held a consolidated Hearing in all four cases from 7 through 28 October 1997. In addition, by Order of 3 March 1989 in the present Case, the pleadings on nationality in Cases Nos. 815-817 were made equally applicable to this Case.

stock of Gulf Associates was owned by United States nationals. Article VII, paragraph 2, of the CSD requires further that the claims be "owned continuously" by United States nationals from the date the claims arose until 19 January 1981, the date of the signing of the Algiers Declarations.

7. The threshold issue in the determination of Gulf's nationality is the question of who owned its shares during the relevant period -- that is, from the date the claims allegedly arose until 19 January 1981. Gulf contends that from 31 October 1977 until at least 19 January 1981, 100 percent of its capital stock was owned by three United States nationals, Reja, Aram and Karim Sabet. The Respondents dispute this contention. They maintain that since 5 January 1976 and throughout the relevant period, four Iranian companies, namely Firooz Corporation ("Firooz"), Zamzam, Mina and RTI, owned 100 percent of Gulf's stock. For this reason, the Respondents argue that the Tribunal has no jurisdiction over Gulf Associates' claims. The Tribunal, therefore, turns first to the ownership question.

1. The Claimant's Contentions

8. At the time of its incorporation in 1960, Gulf had 100 shares of outstanding stock. Gulf maintains that it had four original shareholders: Habib Sabet, his wife Bahereh Sabet, and their two sons Iradj and Hormoz Sabet.[3] Each of them owned 25 shares. Gulf has submitted the original share certificates issued in the names of these four members of the Sabet family, which are numbered 1 to 4 and marked as canceled. Gulf next contends that on 20 December 1962 all of its 100 shares were transferred from the four members of the Sabet family to Firooz Corporation, a Sabet-owned company in Iran. This transfer is

[3] Reja, Aram and Karim are Hormoz Sabet's children.

reflected in Gulf Associates' Share Certificate No. 5. The Respondents do not dispute Gulf's assertions as to its original shareholders and the 1962 transfer to Firooz.

9. Gulf maintains that in 1975 and 1976 it renovated its offices and purchased new furniture. In order to finance these improvements, Gulf contends that it decided to increase its share capital to $80,000 from just over $10,000. Rather than look to its sole shareholder at the time, Firooz, for the additional $70,000, Gulf contends that it decided to carry out a reverse-stock split whereby Firooz's 100 shares would be reduced to 32 and the remaining 68 shares would be purchased by Zamzam, RTI and Mina -- other Sabet-owned companies -- with Zamzam and RTI each purchasing 32 shares and Mina purchasing 4 shares. This transfer is reflected in Gulf Associates' Share Certificates 6 to 9, and in the minutes of a Special Joint Meeting of the Sole Shareholder and Board of Directors of Gulf Associates, dated 5 January 1976. However, each of Share Certificates 6 to 9 has hand-written notations across its face "Cancelled, Certificate Refused," and each of those notations is signed by "Andrew Restaino, Secretary."

10. Gulf contends that the Sabet family changed its mind sometime after initiating the transfer, and as a result, the transfer was either never accomplished or was canceled. Gulf asserts that Firooz's original share certificate -- No. 5 -- was not canceled and that the four new share certificates -- Nos. 6 to 9 -- issued in the names of the four Iranian companies were never delivered to them and were canceled.

11. Subsequently, according to Gulf, Firooz -- which allegedly still owned all 100 shares in Gulf as a result of the cancellation of the 5 January 1976 reverse stock split -- transferred its 100 shares to the three Sabet children on 31 October 1977. This transfer allegedly resulted in Reja, Aram

and Karim each becoming the owner of 33 1/3 shares in Gulf. This transfer is reflected in Gulf Associates' Share Certificates 10 to 12 and in the minutes of a Special Meeting of the Board of Directors of Gulf Associates of 31 October 1977.

12. In support of its contentions, Gulf has provided several affidavits as well as documentary evidence. As for the latter, Gulf has submitted the stock certificates, as well as its stock transfer ledger reflecting these transfers. The stock transfer ledger records the original issue of shares to Habib, Bahereh, Iradj and Hormoz Sabet in 1960; the subsequent transfer to Firooz in December 1962; and the transfer from Firooz to Reja, Aram and Karim in October 1977. In addition, Gulf's version of events is supported by affidavits from Andrew Restaino who was an officer and director of Gulf from 1960 until at least 1989 and who was responsible for its day-to-day management; Philip Trager, Gulf's accountant from 1960 to 1981; Massoud Khamsi, Bahereh Sabet's brother, who was a long-time officer of Gulf and its President during the 1960's and from January 1976 to January 1979; Hormoz Sabet, the father of Reja, Aram and Karim and President of Gulf Associates before 1976 and since January 1979; and Iradj Sabet (Hormoz Sabet's brother and the then-President of Zamzam). These affidavits are, where relevant, referred to and excerpted below.

13. With respect to the validity of the transfer to the three Sabet children, Gulf argues that the stock transfers are governed by New York law and are valid in accordance with that law. Gulf acknowledges that in effecting the transfer some formalities may have been overlooked, but it has submitted a legal opinion by the law firm of Baker and MacKenzie which explains that "[t]he most significant aspect of New York law regarding transfer of stock is that the intent of the parties to make the transfer governs, not the formalities of the

transaction." The legal opinion concludes that Hormoz Sabet's intent to transfer 100 percent of the ownership of Gulf to his children cannot be disputed. At the Hearing, Gulf contended that the transfer of the shares to the children was a gift.

2. The Respondents' Contentions

14. The Respondents contend that there was no valid transfer of shares in Gulf Associates to the three Sabet children before Gulf's claims allegedly arose. They maintain that the planned share transfer from Firooz to Zamzam, Mina, RTI and Firooz did in fact take place on 5 January 1976 and that those four Iranian companies remained the owners of Gulf until after the date Gulf's claims allegedly arose. The Respondents challenge the authenticity and contemporaneous nature of the share certificates issued in the names of Reja, Aram and Karim Sabet, as well as of the stock transfer ledger reflecting the transfer to the children.

15. Gulf submitted its United States income tax returns for the years ending 30 November 1976 through 30 November 1981, and the Respondents rely heavily on these as proving that the four companies, not the Sabet children, owned Gulf Associates during the relevant period. Although Gulf maintains that the intended reverse stock split of 5 January 1976 was never completed, Gulf listed the four companies as its owners in the following three years' tax returns; that is, even though Gulf claims that all of its shares were transferred to Reja, Aram and Karim Sabet on 31 October 1977, the tax returns for the years ending 30 November 1977, 30 November 1978, and 30 November 1979 signed on 30 January 1978, 12 January 1979 and 6 February 1980, respectively, do not reflect the children's ownership, but rather list the four companies as Gulf's owners. They also list the nationality of Gulf's owners as Iranian. Reja, Aram and Karim Sabet finally appear as Gulf's owners on Gulf's tax

return for the year ending 30 November 1980, but this return was not signed until 29 January 1981 -- 10 days after Iran and the United States signed the Algiers Declarations. In response to the Respondents' contentions, Gulf submits an affidavit from its then-accountant Philip Trager, who attests that he erred in listing the four Iranian companies as Gulf's owners on its tax returns for the years ending November 1977, 1978 and 1979. He goes on to attest that he filed "the correct information as to the owners of Gulf" in the tax return for the year ending 30 November 1980.

16. The Respondents conclude that these tax returns, together with other evidence, prove that the transfer of shares to the Sabet children did not take place on the date the Claimant contends -- i.e. 31 October 1977 -- but if it took place at all, it was long after the date of the alleged expropriation of Sabet family assets in 1979. Thus, the Respondents argue, Gulf was not continuously owned by United States nationals from the date the claims arose until the Tribunal's jurisdictional cut-off date, so the Tribunal does not have jurisdiction over the Claim.

17. The Respondents also point to numerous other irregularities in the share certificates Gulf has submitted, and as a result of these they maintain that the share certificates issued in the names of the Sabet children and the corresponding entries in Gulf Associates' stock transfer ledger are forged. In support of this conclusion, they have submitted an expert report by Dr. Audrey Giles, a forensic document expert in the field of questioned documents. Dr. Giles examined the authenticity of the documents showing the transfer of shares in 1977 to the three Sabet children. The Respondent also submitted an expert report by Mr. Eric Jackson, a stamp dealer and member of the American Philatelic Society and the American Revenue Association. Gulf's share certificates

contain certain stamps used to pay United States federal and New York state taxes imposed on corporate transactions; Mr. Jackson examined these and points to a number of "irregularities" relating to several of the stamps on Gulf Associates' stock certificates.

18. The Respondents have also submitted a legal opinion by the New York law firm, Curtis, Mallet-Prevost, Colt & Mosle, which, inter alia, notes that there are "many irregularities in Gulf's corporate books and records that cause concern as to the actual facts on the transfer of the shares" and which concludes that

> based on the evidence we have reviewed, it would appear that [RTI], ZamZam and Mina should still be shareholders of Gulf. There is conflicting evidence concerning the alleged transfer by Firooz Corporation to the Sabet children of which we cannot opine, but it appears that [by 31 October 1977] Firooz Corporation had only 32 shares to transfer even if the Claimants' allegations are accepted by the Tribunal.

In response, Gulf has submitted its own expert reports. These are: a report by Mr. Robert W. Radley, a forensic document expert; a report by Mr. Richard Friedberg, a stamp dealer and member of the American Philatelic Society and of the American Revenue Association; and a legal opinion by Baker & McKenzie, the law firm representing Gulf.

19. In addition to their primary defense, the Respondents contend that the transfer of shares to the Sabet children is invalid because certain formalities were not observed. In particular, they contend that neither Firooz nor any of the other three companies that arguably owned Gulf's shares in 1977 obtained the appropriate authorizations to transfer the shares to the children and that Hormoz Sabet did not have the power to authorize the transfer himself. They also contend that the

records of the four Iranian companies show that no transfer occurred and that there is neither evidence that the Sabet children paid for the shares nor evidence in Gulf's records or elsewhere in support of Gulf's gift theory.

20. Finally, the Respondents argue that even if the Sabet children did acquire ownership of shares in Gulf Associates on 31 October 1977, the requirement of continuous nationality (as stipulated in Article VII, paragraph 2, of the CSD) would not be fulfilled for any of the debts owed to Gulf prior to that date. In particular, the Respondents point out that the last payment Gulf made on Mina's behalf occurred in July 1977; according to the Respondents, then, that is when Gulf's claim against Mina arose, and since Gulf was admittedly owned by Iranian nationals at that time, the Tribunal should dismiss the entire claim against Mina because it was not continuously owned by dominant and effective United States nationals, as required by Article VII, paragraph 2 of the Claims Settlement Declaration.

3. The Tribunal's Findings on Ownership

21. As a preliminary matter, the Tribunal turns to Respondents' contention that portions of Gulf's claims arose before 31 October 1977, the date the Sabet children allegedly became the owners of Gulf Associates.

22. In Reja Sabet, et al. and The Government of the Islamic Republic of Iran, et al., Partial Award No. 593-815/816/817-2 (30 June 1999) (hereinafter "Sabet"), the Tribunal found that the Iranian assets and shareholdings of the entire Sabet family -- which included their shareholdings in Zamzam, RTI and Mina -- were confiscated on 11 April 1979 and 7 May 1979. See *id.* at paras. 102 to 106. Zamzam, RTI and Mina were confiscated on 7 May 1979, and the Tribunal holds that Gulf's claims in this

Case arose on that date. Prior to the expropriation of Zamzam, RTI and Mina, Gulf enjoyed an on-going commercial relationship with those three companies; at different times, the companies would have either a credit or a debit balance with Gulf.[4] In light of that practice, the fact that a company might have had an ongoing debit balance with Gulf does not, without more, mean that claims based on those debts had arisen, particularly, since the Sabet family owned and controlled both Gulf and the Iranian companies with whom it did business. In view of the specific circumstances of this Case, the Tribunal finds that the claims for the amounts at issue arose only when it became clear through the expropriation of the companies themselves and other Sabet family assets that the amounts that Zamzam, RTI and Mina owed to Gulf would not be paid. In this connection, the Tribunal notes that on 7 August 1979 Gulf received a telex from the personnel of the Sabet companies in Iran warning members of the Sabet family "not to have any contact with any member of the group directly or indirectly under any circumstances" and stating that the personnel of the group would "have no relations whatsoever with the Sabets anymore." The Tribunal takes this as further indication that Gulf's claims arose when the Iranian companies were expropriated because it was upon that event that Gulf lost any reasonable expectation of reimbursement.

23. In accordance with this conclusion, the key issue before the Tribunal is whether the three Sabet children owned the shares in Gulf Associates from 7 May 1979, the date the claims in this Case arose, until 19 January 1981, the date of the signing of the Algiers Declarations.

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[4] The Tribunal's holdings regarding the relationship between Gulf and its Iranian principals is explained further in paragraph 82, infra.

24. The appropriate starting point for this determination is whether Gulf has provided prima facie evidence of the Sabet children's ownership of its shares from 31 October 1977. If not, that is the end of the matter. If, on the other hand, Gulf has provided that proof, the question becomes whether the Respondents, in turn, have carried their burden of proving that the documents Gulf submitted relating to the children's ownership were forged.

25. In this regard, the Tribunal has held previously that allegations of forgery, because of their implications of fraudulent conduct and intent to deceive, must be proven with a higher degree of probability than other allegations. This enhanced standard of proof has been expressed as "clear and convincing evidence." See Dadras International, et al. and The Islamic Republic of Iran, et al., Award No. 567-213/215-3, paras. 123-24 (7 November 1995) (hereinafter "Dadras International");[5] Vera-Jo Miller Aryeh, et al. and The Islamic Republic of Iran, Award No. 581-842/843/844-1, para. 159 (22 May 1997).

26. The Tribunal now turns to Gulf's evidence in support of its contentions on ownership and the Respondents' evidence challenging Gulf's contentions.

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[5] In Dadras International, the Tribunal held:

> Consistent with its past practice, the Tribunal therefore holds that the allegation of forgery must be proved with a higher degree of probability than other allegations in these Cases . . . The minimum quantum of evidence that will be required to satisfy the Tribunal may be described as "clear and convincing evidence," although the Tribunal deems that precise terminology less important than the enhanced proof requirement that it expresses. Dadras International, para. 124.

a. The Share Certificates and Stock Transfer Ledger

27. As noted, see para. 12 supra, Gulf has provided the Tribunal with its Share Certificates 1 to 12 and the share registers corresponding to each certificate. For the present purposes, the most significant of these are Share Certificates 10 to 12, which show a transfer of ownership of Gulf's shares to the three Sabet children on 31 October 1977. Gulf has also submitted its stock transfer ledger, which reflects these transfers. On their face, these documents show that Reja, Aram and Karim Sabet became the owners of all the capital stock in Gulf Associates on 31 October 1977 and continued to own those shares beyond the end of the relevant period. The Tribunal finds that share certificates, where available, constitute the strongest evidence of share ownership. The Tribunal notes in this connection that under New York law "a stock certificate . . . is a continuing affirmation of the ownership of a specified amount of stock by the person designated therein." See Holbrook v. New Jersey Zinc Co., 57 N.Y. 616 (1847); Miller v. Silverman, 224 N.Y.S. 609 (1927). Thus, if these documents are authentic, they would prove that the Sabet children owned Gulf Associates' shares during the relevant period. Consequently, since the share certificates clearly constitute prima facie evidence of the Sabet children's ownership of Gulf, the Tribunal's inquiry becomes whether the Respondents have provided "clear and convincing" evidence that the documents submitted by Gulf are forged. The Tribunal now turns to this inquiry.

The Share Certificates

28. The originally issued Share Certificates 1 to 4 (in the names of Habib, Bahereh, Hormoz and Iradj Sabet) are all endorsed for transfer and appear to have been correctly transferred. Share Certificate 5 (to Firooz), however, was not

endorsed on the back; on the front, the word "Cancelled" has been handwritten, and the notation is signed by "Andrew Restaino, Secretary." The register attached to Certificate No. 5 notes both that it was cancelled due to a reverse stock split and further that it was transferred to the three Sabet children.

29. Share Certificates 6 to 9 (in the names of Firooz, Zamzam, RTI and Mina) are also not endorsed, but on the front of each certificate is hand-written "Cancelled, certificate refused," and these notations are again signed by "Andrew Restaino, Secretary." The registers of Share Certificates 6 to 9 record that they were issued on 5 January 1976 and that they were "received" on 31 October 1977; there is also a section that has been crossed out and replaced by the phrase "Original Issue." Share Certificates 10 to 12 (in the names of the three Sabet children) state in their registers that they were issued on 31 October 1977 and transferred from Firooz.

Expert evidence by forensic document examiners

30. As noted above, the Respondents have submitted a forensic examination report by Dr. Audrey Giles (the "Giles Report"). Her report discusses the Share Certificates, the registers attached to those Certificates and the stock transfer ledger. Dr. Giles also testified at the Hearing. The Giles Report begins by noting that all of the Share Certificates bear revenue stamps on the reverse, but because Dr. Giles was informed that there was no longer any legal requirement to fix such stamps on share certificates after 1966, she opines that the revenue stamps on Share Certificates 10 to 12, which were allegedly issued in October 1977, "would only be obtainable from collectors or by removal from another document." Dr. Giles stated in her report that she found superfluous adhesive on and around the stamps appearing on all twelve share

certificates, with Certificates 10 to 12 having a bit more adhesive than the others. However, Dr. Giles indicated in her report and stated at the Hearing that she found nothing that "would indicate removal or refixing or anything unusual about the fixing of the stamps to the certificates."

31. Dr. Giles also looked at the entries on the front of the certificates and the impressions on the certificates. In addition, she inspected the paper, handwriting, ink and impressions on the stock transfer ledger, pointing out several apparent oddities in this regard. These are: the inner sheet of the ledger was probably fixed to the outer sheet at a later date; the entries detailing the transfer to Firooz in 1962 were entered by different people; and some details of the Firooz entry were made by the same person who completed the details of the 1977 transfer to the children, suggesting that those details of the Firooz entry may not have been made until 1977. At the Hearing, Dr. Giles reiterated the views expressed in her report.

32. In response to the Giles Report, Gulf submitted an expert report by Mr. Robert W. Radley. Mr. Radley, too, was asked to examine Gulf's twelve Share Certificates, the registers attached to those certificates, and the stock transfer ledger. His report takes the form of a close commentary on the expert report submitted by Dr. Giles, and he also testified at the Hearing.

33. Mr. Radley takes issue with Dr. Giles's comments on Gulf's use of outdated stamps on its Certificates, stating that there is another possible source for such stamps, namely that Gulf may have retained an old stock of stamps in its office available to whoever drew up the certificates. Mr. Radley also questions the significance of Dr. Giles's observation that Share Certificates 10 to 12 bear outdated stamps. He points out

that Share Certificates 6 to 9, which the Respondents contend to be genuine, also bear outdated and unnecessary stamps.

34. Mr. Radley generally agrees with Dr. Giles's findings on the adhesive attached to the share certificates, and like Dr. Giles, he also found no evidence that the stamps on the reverse of any of the certificates had been removed from any other document, stating at the Hearing: "had the stamp been removed from another document, there may be traces of a second adhesive."

35. As to the authors of the entries appearing in Gulf's share transfer ledger, Mr. Radley generally agrees with Dr. Giles's classifications, although he believes that three people, not two, might have taken part in recording the sale of Firooz's shares. He states: "My findings suggest that, in fact, there are three different pens involved and clearly the recording of the transfer has been made in a piecemeal fashion." Mr. Radley also notes that certain date entries are in different ink from the entries for the amounts paid. However, he challenges Dr. Giles's suggestion that the entry for transfer of shares to Firooz in 1962 may not have been made until 1977, by pointing out that "regrettably, there is no existing technology which can accurately date inks, nor, unless considerable volumes of comparison handwritings of known date covering a particular time period are available, is there any possibility of dating handwriting." At the Hearing, Dr. Giles endorsed this comment.

36. The Tribunal notes that only two facts of arguable relevance emerge from both Claimant's and Respondents' forensic document expert reports, and on these two points, both experts agree. The first fact is that the outer sheet of the stock transfer ledger, which is composed of two sheets of A3 paper folded over to form a booklet, is more worn than the inner sheet. The second fact is that the two sheets of the stock

transfer ledger are slightly different in that the page lengths and alignment of lines of the inside page and outside page are different. Dr. Giles noted in her report that "[t]he pages comprising the Stock Transfer Ledger are not consistent. These have clearly been drawn from different sources and have different histories." At the Hearing, Mr. Radley agreed that "[t]hey have come from two different sources because they are two different printings."

37. The Tribunal notes, however, that at the Hearing, Mr. Radley offered several plausible explanations for the fact that the outer sheet of the stock transfer ledger was slightly more worn than the inner sheet, such as its being subject to greater wear and tear precisely because it is the outer sheet, while the inner sheet remained more protected. As to the inner sheet differing slightly from the outer sheet, the Tribunal notes that both experts agreed that there were no indentations on the outer sheet from entries that might have been made on a previous inner sheet, although Dr. Giles noted, too, that no scientific conclusions could be drawn from the absence of impressions. The Tribunal notes the limited nature of the observations made in this regard by the forensic document examiners and does not attach any decisive importance to them.

38. The Tribunal notes further that the Giles Report is highly inconclusive regarding the question of the authenticity of the Share Certificates and the stock transfer ledger. Although it sets out to determine whether the questioned documents are "genuine documents showing transfer of shares in 1977 to the three Sabet children," the Giles Report does not state or even suggest any answer to this question. Moreover, Mr. Radley's conclusions neither differ significantly from those of Dr. Giles nor add information that sheds light on the questions before the Tribunal. For these reasons, the Tribunal concludes that neither the Giles Report and testimony nor the Radley

Report and testimony advances the Tribunal's inquiry in any significant way.

Expert evidence on stamps

39. The Tribunal now turns to the Respondents' expert report by a stamp dealer with expertise in U.S. revenue stamps, Mr. Eric Jackson, who is, inter alia, a member of the expert committee of the American Philatelic Society. Mr. Jackson explains that there were two relevant United States federal taxes in effect when Gulf Associates was incorporated in 1960. The first was a tax on the original issue of shares, which required that federal documentary stamps be affixed to corporate stock registers. The second tax was on the transfer of existing stock. Originally, stock transfer stamps, affixed to the share certificates, were used to signify payment of the transfer tax, but their use was discontinued in 1952 and replaced by the use of documentary stamps. Both federal taxes were repealed in 1966; consequently, the use of documentary stamps was not required after 31 December 1967. The State of New York also taxed stock transfers, and this tax was also paid by means of stamps affixed to the share certificates. The New York State transfer tax was not repealed until the early 1980s.

40. Mr. Jackson's Report notes that Gulf Associates paid the correct tax for the original issue of its shares in 1960; it also paid the correct transfer tax when these shares were transferred to Firooz in 1962. However, he points to a number of "irregularities" in several of the revenue stamps on subsequent share certificates. First, Certificates 10 to 12 allegedly issued in 1977 to the three Sabet children, as well as Certificate 5 issued to Firooz, contain United States federal internal revenue stock transfer stamps even though the stock transfer tax had been repealed in 1966. Further, the actual stock transfer stamps appearing on the certificates had

been issued for use in 1946, 1947, 1948, 1949, 1950 and 1952 and had been discontinued in 1952. Third, even if the stamps had still been in use in 1977, they would not have been required on Certificates 10 to 12, because such stamps were only used when stock was transferred, and Certificates 10 to 12 have never been transferred. Finally, even assuming their use had been required, the denominations used are inconsistent with one another and would have been incorrect.

41. In contrast, Mr. Jackson notes that the certificates issued in 1960 bear the correct stamps; similarly, Share Certificates 6 to 9 issued in January 1976 do not bear the unnecessary United States federal internal revenue stamps but only New York State stamps, which were still required at that time. Indeed, the New York State stamps were only required upon transfer of stock. Therefore, if Share Certificates 6 to 9 had been canceled (as Gulf contends), there would have been no need for any stamps at all. Mr. Jackson concludes:

> it is my opinion that the shares of Gulf were owned by the four Iranian corporations from 1976 onwards as evidenced by certificate[s] numbers 6 through 9. The certificates numbers 6 through 9 have not been cancelled but the notations to this [e]ffect are fraudulent. These notations and certificate[s] numbers 10 through 12 and the corporate stock book for stock certificate number 5 were prepared with an intent to deceive an observer.

42. In response to Mr. Jackson's report, Gulf has submitted a report by Mr. Richard Friedberg, also a stamp dealer with expertise in U.S. revenue stamps.

43. Mr. Friedberg's explanation of the legal requirements for use of revenue stamps accords with that of Mr. Jackson. The conclusions Mr. Friedberg reaches in his Report and in his

testimony at the Hearing are, however, significantly different from those of Mr. Jackson.

44. First, in his report, Mr. Friedberg states that he has "encountered many examples of stamps used beyond their expiration date," opining that "they are examples of stamps used by those who complied with the spirit, if not the letter, of the law." At the Hearing, however, he acknowledged that he had never seen anyone use a stamp that was 25 years out of date for stock transfers. He states, too, that combined use of stock transfer and documentary stamps is "not uncommon." Indeed, at the Hearing, Mr. Jackson, too, conceded that there were sources for the acquisition of outdated stamps other than from other documents or collectors.

45. Turning to the particular stamps used on these share certificates, Mr. Friedberg's Report notes that the formalities for Share Certificates 1 to 4 have in general been observed, but that "[b]etween the issuance of Certificates 5 and 6, a new corporate secretary of Gulf and a new president of Gulf were appointed, and with this change, Gulf's record keeping became much more unsystematic." Examples of this carelessness, Mr. Friedberg states, are to be found in Certificate 5 -- a Certificate that is not challenged by the Respondents -- which contains a federal documentary stamp, even though the federal tax had been repealed, but no New York State stamp. In his report, Mr. Friedberg states that "the certificate is neither dated nor signed on the back, nor is the stamp cancelled by initials or with a date. In short, it is readily apparent that Gulf's officers were not knowledgeable about the proper use of stock transfer stamps." Mr. Friedberg also notes some irregularities in Share Certificates 6 to 9, the certificates relied on by the Respondents.

46. Most significantly, Mr. Friedberg emphasized at the Hearing that irregularities in stamp usage were not limited to Share Certificates 10 to 12: "In general terms I observed someone putting [stamps] on the certificates who was not entirely familiar with the laws governing such use. There was a lot of sloppiness and erratic usage in the stamps. . . . There are irregularities to varying extents with all the stock certificates." He concluded:

> I would say the stamp evidence supports the general conclusion that recordkeeping, at least in regard to the stock certificates that were issued by Gulf, was unsystematic and erratic and more or less lacking in knowledge and competence throughout the 12 stock certificates. Most of the stock certificates comply with the spirit, if not the letter, of the law. I think that is the only conclusion one can draw on the stamp evidence.

47. Finally, Mr. Friedberg maintains that Mr. Jackson's conclusion that Gulf's shares are owned by the four Iranian companies is not based upon stamp evidence alone. In the conclusion of his report, Mr. Friedberg states:

> I agree with the conclusion reached by Mr. Jackson . . . that "the appearance of these stamps on stock certificate numbers 5, 6, 7, 8, 9, 10, 11 and 12 is inconsistent with the laws of the United States in that the taxes represented by these stamps were repealed as of January 1, 1966," although with respect to the tax and other stamps on Certificates 1 through 12, it appears that Gulf attempted to comply in good faith with all relevant laws. However, the leap that Mr. Jackson makes is wholly inconsistent with the evidence. The evidence supports the conclusion that record keeping at Gulf was unsystematic and erratic, and that the person or persons in charge of such record keeping was or were inexperienced and not well versed in the formalities concomitant with corporate stock transfers.

48. The Tribunal notes that both Mr. Jackson's and Mr. Friedberg's evidence on the use of revenue stamps indicates that the use of stamps for the October 1977 transfer to the Sabet children was irregular. However, both experts' evidence further indicates that the use of stamps was also irregular, to various degrees, for Share Certificates 5 to 9, i.e., share certificates relied on by the Respondents in support of their contentions. In addition, Mr. Jackson's conclusions seem to be based more on non-philatelic evidence, such as Minutes of Gulf Associates' Board Meetings and tax returns, than on the use of revenue stamps on the share certificates. As he himself said at the Hearing: "The stamps don't tell you all the story." The Tribunal finds, in short, that Mr. Jackson's conclusions reach far beyond his area of expertise.

49. In light of the foregoing, the Tribunal finds that the Respondents' expert evidence on forgery is inconclusive. Irregularities in the corporate documentation of closely held corporations do not amount to proof of forgery. The Tribunal concludes that the Respondents' expert evidence relating to the share certificates and the stock transfer ledger is not sufficient to dislodge the presumption that Gulf Associates' company records are as they appear on their face.

50. The Tribunal therefore turns to the contemporaneous and other documentary evidence provided by the Parties.

b. The Census of Claims forms

51. In May 1980, the United States Treasury Department promulgated a regulation requiring persons subject to the jurisdiction of the United States who had a claim against Iran to file a Census of Claims form. See 31 C.F.R. §535.616

(1980).[6] The Sabet family submitted such forms for various members of the family as well as for Gulf Associates. The Census of Claim form filed on behalf of Gulf Associates lists its capital stock as being 100 percent owned by United States nationals on the date the form was filled out, i.e., 14 May 1980. The Tribunal notes that these documents and the information contained therein are significant for a number of reasons.

52. First, the Census of Claim forms are documents that were filed with a United States government agency before the Algiers Declarations were signed (unlike the 1980 tax return, which was signed only on 29 January 1981). The Census of Claim forms therefore could not have been backdated in order to support a claim before this Tribunal, as the Respondents suggest with respect to Share Certificates 10 to 12. Second, the Census of Claim forms filed by various members of the Sabet family (Hormoz Sabet, his wife Valerie, and Iradj Sabet's children, Sina and Tina) -- unlike that filed by Gulf -- acknowledge their non-American nationality. The Tribunal has no reason to doubt the veracity of the statement in the Census of Claims that on the date the form was filled out, 14 May 1980, Gulf was wholly owned by United States nationals. The Tribunal notes in this connection that neither party has suggested that any United States national other than Reja, Aram and Karim Sabet owned shares in Gulf Associates between 31 October 1977 and 19 January 1981.

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[6] These Census of Claims forms were submitted by Reja, Aram and Karim Sabet in Cases 815-817, which cases have been coordinated with the present Case.

c. The Tax Returns

53. The Tribunal will now address the strongest piece of evidence in support of the Respondents' contention that Gulf's ownership records were forged, namely the United States federal tax forms filed by Gulf Associates during the period under examination. As noted, see para. 15 supra, the tax return for the year during which the transfer to the Sabet children allegedly occurred, as well as those for the following two years, do not reflect the Sabet children's ownership. The Respondents point out that it is odd, to say the least, that the officers of Gulf Associates would have submitted incorrect information as to the ownership of the company to the United States tax authorities for three years running.

54. The Tribunal shares the Respondents' suspicions regarding Gulf's tax returns. While it is not unusual for a person lacking an accounting background to prepare tax returns by copying the previous year's information, the Tribunal would not expect the same practice to be followed, or the same kinds of errors to be overlooked, by a certified public accountant, such as Mr. Trager, the person responsible for preparing Gulf's tax returns. In this connection, the Tribunal notes that the tax returns were prepared under penalties of perjury.

55. On the other hand, the Tribunal recognizes that Gulf was a small, family-owned corporation that operated in a very informal way. This is evident from Gulf's record keeping, including its share certificates, stock transfer ledger and balance sheets dating long before the validity of the 31 October 1977 share transfer was called into question. The Tribunal notes also that this informality was understandable given the nature of Gulf's business.

56. Gulf Associates operated as a liaison company for several Sabet-owned companies in Iran. Gulf sought only reimbursement from the Iranian companies for the payments Gulf made on their behalf; Gulf was not itself intended to be a profit-making company. Indeed, the tax forms submitted to the Tribunal show that it did not make a taxable profit during any of the years in question. Any change in the ownership of Gulf Associates would, therefore, not have affected its tax liability, and because Gulf had no tax liability, it is likely that the federal income tax returns were considered to be significantly less important than would have been the case had Gulf Associates been a profit-bearing company with a taxable income.

57. While the Tribunal is very troubled by the fact that Gulf's tax returns for the fiscal years December 1977 to November 1979 do not reflect the Sabet children's ownership, it concludes, in light of the factors discussed above, that the tax returns alone cannot establish that Gulf forged its ownership records to reflect ownership by the three Sabet children. Accordingly, the Tribunal turns to other documentary evidence relied on by the Respondents to see whether the combined weight of all the evidence is sufficient to carry the Respondents' burden of proof, as set out in paragraph 25 supra.

d. Circumstantial evidence

58. In further support of their allegations of forgery, the Respondents point to certain Gulf Associates' company records that reflect the transfer to the four Iranian companies. First, they rely on the Minutes of a Joint Meeting of the Sole Stockholder (Firooz) and Board of Directors of Gulf Associates held on 5 January 1976. See para. 9 supra. These Minutes state that Gulf's remodeling and improvements had cost $69,340.43, all of which had already been paid by Firooz, Zamzam, RTI and Mina. In light of these expenditures, the

Board of Directors decided to raise Gulf's capital from just over $10,000 to $80,000 by conducting the reverse stock split. In doing so, the minutes state that Firooz's 100 shares were reduced to 32 shares and the remaining 68 shares were issued to Zamzam, RTI and Mina. Because the four companies had already contributed the $69,340.43 necessary for the improvements, they were required to pay only small additional sums to reach the requisite $70,000 increase in capital. According to the minutes, Zamzam and RTI were each to pay an additional $208.50 and Mina an additional $26.54. The Minutes conclude that Gulf would thereafter continue to function as a liaison office for the convenience of its four stockholders.

59. Second, the Respondents point to a one-page document entitled "Gulf Associates Inc./ Supplementary Information/ November 30, 1976" attached to Gulf's 30 November 1976 financial statement prepared by its accountant, Mr. Philip Trager. This document describes the allegedly canceled reverse stock split, stating that Firooz retained 32 of its previous 100 shares; that the additional stock was issued to Zamzam, RTI and Mina; and that the shares had been issued at $800 per share, which resulted in an increase of capital from just over $10,000 to $80,000. It notes further that the cost of Gulf's new office had been paid by the new shareholders.

60. Third, Gulf's account books show both debit and credit entries for contributions to the capital of Gulf in November 1976 by Zamzam of $25,600 and by Mina of $3,200. Gulf did not submit its account book for RTI, but an alleged reproduction of that book made by Gulf's expert, the accounting firm of Coopers & Lybrand, shows both a debit and a credit entry for $25,600 dated 15 November 1976. The size of these contributions is proportional to their respective share interests in the January 1976 transfer. In addition, Gulf's tax returns also show that its capital was increased to $80,000 in the year following the

reverse stock split, and its financial statement for the period ending 30 November 1976 shows its capital to be $80,000 as of that date. However, Gulf's books have no entries for the additional small sums that were owed by Zamzam, RTI and Mina to complete their stock purchase.

61. The Tribunal notes that the foregoing evidence is not inconsistent with Gulf's contention that the Sabet family had planned -- and subsequently canceled -- a transfer to the four Iranian companies in January 1976. First of all, in his affidavit, Mr. Trager states that "he became aware sometime in 1977 that the issuance of shares to [Zamzam, RTI, Mina and Firooz] had been cancelled and never completed because they were not interested in holding shares in Gulf." Mr. Trager's statement that he did not become aware of the transaction's cancellation until "sometime in 1977" is consistent with his preparation of the Supplementary Information dated 30 November 1976, described in paragraph 59, and with the debits and credits for contributions to capital that he entered into Gulf's books also in November 1976. It is also notable that Gulf's financial statements make clear that the financial contributions made by the four companies to the expenses of Gulf correspond to the value of their respective transactions with Gulf, not to their ostensible ownership interests. Finally, whether or not the reverse stock split was canceled is not precisely relevant to whether the Sabet children owned Gulf's shares during the relevant period; that is, it makes no difference to the Tribunal's jurisdictional inquiry whether the Sabet children obtained their shares from Firooz or from Firooz, Zamzam, RTI and Mina, so long as the children did in fact obtain their shares from someone prior to the start of the relevant period.

62. Next, the Respondents point to various discrepancies involving the Minutes of Gulf Associates' 31 October 1977 Board

Meeting which reflect the transfer of shares to the Sabet children. For one thing, the Minutes state that shares were transferred to the three children by the four Iranian companies, rather than by Firooz alone. The Respondents also note that while the Minutes refer to the transfer of the shares as a "sale," there is no evidence that the four Iranian companies - who were not represented at the meeting - ever received compensation for such a sale or that the Sabet children paid for their shares. Again, the Tribunal notes that this evidence is inconclusive and is not fully consistent with the version of events presented by either Party; indeed, on the Respondents' theory, Gulf also created this document after Gulf's claims arose in order to make the claim subject to the Tribunal's jurisdiction, yet the Tribunal fails to see why Gulf would fraudulently create a document that was inconsistent with the allegations it wished to make before the Tribunal. Most credibly, the Minutes appear to constitute another instance of the careless administration of Gulf Associates and the mis-communication between Gulf's officers in New York and members of the Sabet family in Tehran.

63. The Respondent has also submitted a 28 November 1980 legal brief submitted by American Express International Banking Corporation ("American Express") in a New York lawsuit against Habib, Iradj and Hormoz Sabet and Firooz Corporation, in which American Express was attempting to prove that Hormoz Sabet had been served with a complaint at Gulf's offices. In this brief, American Express alleges that "[Hormoz] Sabet has admitted on cross-examination that Firooz Corporation, a company owned by the Sabet family of which Sabet himself was president and a director, was (along with other companies in the Sabet group) a major stockholder in Gulf Associates." The Tribunal does not attribute much weight to this statement because it is merely an allegation in a lawsuit made by a party opposing Hormoz Sabet. The Respondents have not submitted a transcript or any other

independent evidence to show that Hormoz Sabet in fact made the statement.

64. In addition, the Respondents have produced the 6 May 1986 divorce decree between Iradj Sabet and his wife, Nika, in which Nika Sabet is awarded, among other things, "[o]ne half of the stock held by the parties [Iradj and Nika Sabet] in Gulf Associates, Inc., a New York corporation, with offices at 30 Rockefeller Plaza, New York, NY." This divorce decree was finalized in 1986 -- i.e., almost 9 years after the alleged transfer of Gulf's shares to the Sabet children, and the Respondents argue that it suggests that even in 1986 Gulf was not owned by the three Sabet children. The Tribunal notes, however, that Nika Sabet had claimed in the divorce action for "an interest in any asset now or ever owned, directly or indirectly, by any member of the family of Mr. and Mrs. Habib Sabet" and that the divorce decree was a default judgment. In addition, the Tribunal observes that that decree is not consistent with the Census of Claims forms, which the Tribunal regards as convincing contemporaneous evidence that ownership of Gulf Associates had passed to the three Sabet children at least by May of 1980.

65. The Tribunal also notes Gulf's explanations for the cancellation of the intended transfer of Gulf's shares to the four Iranian companies and the decision by the Sabet family to transfer the shares instead to the three Sabet children. Gulf submitted an affidavit from Hormoz Sabet, in which he explains that while the Sabets had "proposed to fund Gulf's improvements by redistributing the shares of Gulf" to the four companies, it was decided that "ownership of a United States company by Firooz, Zamzam, RTI and Mina was not advisable in light of the various financial and legal limitations and consequences. The transfer was not approved and was canceled." He goes on to say:

> After consultation with various senior members of the family, it was agreed in 1977 on behalf of Firooz and in order to benefit my three children (the only members of the Sabet family who were residing in the United States and United States citizens) to directly reissue the shares to Reja, Aram and Karim.

At the Hearing, Hormoz Sabet again emphasized that his three children were the first members of the Sabet family to become United States nationals and that this was a factor in the Sabet family's decision to transfer Gulf's shares to them.

66. Hormoz Sabet's brother, Iradj, who was then the President of Zamzam, confirms this explanation in his affidavit:

> My brother, Hormoz Sabet, did offer to sell shares of Gulf to my company Zamzam in 1976, but I opted to refuse the offer for various administrative and fiscal reasons. The close but independent business relationship we had with Gulf had been proceeding smoothly and I preferred not to have Zamzam involved as a shareholder in Gulf.

At the Hearing, Iradj Sabet elaborated on the reason for Zamzam's reluctance to own shares in Gulf Associates:

> [T]hose years the Iranian tax authorities had become very difficult, if not impossible . . . . So I knew that if Zamzam or Mina would be involved, as industrial organizations, in such a foreign company, I would have a nightmare on my hands just to explain the tax situation, the relations and so forth.

67. Gulf's version of events is further supported by affidavits from Mr. Massoud Khamsi (a director of Gulf from 1962 to at least 1989, President of Gulf from January 1976 to January 1979, and the brother of Bahereh Sabet), Mr. Philip Trager (Gulf's accountant from 1960 to 1981), and Mr. Andrew

Restaino (an officer and director of Gulf from 1960 until at least 1989).

68. While the Tribunal takes note of these latter affidavits, it is disturbed by the fact that neither these affiants nor Mr. Trager's then-assistant, Mr. Alan Kornbluth, testified at the Hearing. In view of the inconsistencies in Gulf's records, the Tribunal would have welcomed the testimony of Gulf's contemporaneous officers. Although at the Hearing Gulf's Counsel attempted to explain the absence of some of these witnesses by maintaining that Mr. Restaino had Alzheimer's disease and that Mr. Trager was old, he did not explain why Mr. Khamsi and Mr. Kornbluth did not appear, nor did he present any documentary evidence of Mr. Trager's and Mr. Restaino's inability to testify.

e. Legal Opinions

69. As noted above, the Respondents have submitted a legal opinion by Curtis, Mallet-Prevost, Colt & Mosle, a New York law firm which, inter alia, notes that there are "many irregularities in Gulf's corporate books and records that cause concern as to the actual facts on the transfer of the shares." The firm opines that when Gulf says that the transfer to the four Iranian companies was canceled, it is actually saying that Gulf redeemed the shares. However, according to the firm, Gulf could not have legally redeemed the shares, because it had a deficit in its income. Moreover, the four companies could not have canceled the transfer unilaterally, because that would have negatively affected the rights of third parties. The Report concludes that Zamzam, RTI and Mina were seemed still to be the owners of Gulf and that there is conflicting evidence regarding the alleged transfer from Firooz to the Sabet children about which the firm could not opine but which

suggested that Firooz had only 32 shares to transfer even if the Tribunal accepted the Claimant's allegations. See para. 18 supra. Mr. Peter Kalat of Curtis, Mallet-Prevost, Colt & Mosle also testified at the Hearing, confirming the earlier opinion.

70. In response to the legal opinion submitted by the Respondents, Gulf has submitted its own legal opinion by an attorney with Gulf's counsel, Baker & McKenzie.

71. The Baker & McKenzie Report emphasizes that failure to observe formalities of share transfer would not prevent transfer of the share interest. In this regard, it states that "[t]he most significant aspect of New York law regarding transfer of stock is that the intent of the parties to make the transfer governs, not the formalities of the transaction." It concludes:

> It is indisputable that the corporate records of Gulf Associates are inconsistent and unclear. However, what cannot be disputed is Hormoz Sabet's intent to transfer 100% of the ownership of Gulf to his three children in October, 1977. As discussed in this Letter, New York law clearly establishes that the intent takes precedence over inconsistencies in corporate formalities. The Gulf minutes and stock ledgers evidence the fact that the transfer of the shares of Gulf to the Children was intended and recorded. Therefore, the Sabet Children are the owners of 100% of the shares of Gulf Associates.

72. The Tribunal notes that it does not find either of these legal opinions to be particularly illuminating and does not rely directly on either opinion. Nevertheless, it finds that particularly in the context of a small, family-held corporation, which was not intended to make a profit, the intent of its officers should take precedence over non-compliance with certain corporate formalities, especially if

the nature of Gulf's business and its position within the Sabet family is taken into consideration.

f. The Tribunal's Conclusion on Ownership

73. The Tribunal remains troubled by the great number of inconsistencies in the evidence presented by Gulf. However, the Tribunal recalls that to prove allegations of forgery, an enhanced standard of proof defined as "clear and convincing," as set out, inter alia, in Dadras International, see para. 25 supra, must be met. After reviewing all the evidence, the Tribunal feels compelled to conclude that the Respondents have not proven by clear and convincing evidence that Share Certificates 10 to 12 or the stock transfer ledger of Gulf Associates were forged to support a claim before this Tribunal. Irregularities, abundant as they may be in this Case, in the corporate records of a small family-owned company, without more, do not amount to fraud. Consequently, on the basis of the evidence before it, the Tribunal is left with no other option but to accept the documentation relating to the share transfer of 31 October 1977 to Reja, Aram and Karim Sabet at face value.

74. The Tribunal notes in this regard that the Respondents' contentions that Gulf's shares were transferred to the four companies in January 1976 and were not subsequently transferred to the Sabet children in October 1977 are based entirely on documentation provided by Gulf. The Respondents have been unable to provide any corroborating evidence from the contemporaneous company records of the four Iranian companies to suggest that they had become shareholders of Gulf Associates at that or any subsequent time. For instance, the March 1980 audit report for Firooz, which includes a list of Firooz's investments, does not list any investments in Gulf Associates. Similarly, a November 1980 audit report for Zamzam done by

Bonyad Mostazafan does not reflect Zamzam's ownership of shares in Gulf. Moreover, the Respondents have not provided even a single example of the assertion of ownership by the four companies over Gulf Associates, either before or after the expropriation of the Sabet family's assets.

75. The Tribunal therefore holds that, throughout the relevant period, Reja, Aram and Karim Sabet owned 100 percent of the shares of Gulf Associates.

B. Dominant and Effective Nationality

76. The Respondents contended that Reja, Aram and Karim Sabet, who were dual United States-Iranian nationals from birth, were not dominant and effective United States nationals during the relevant period from 7 May 1979 until 19 January 1981. However, in Sabet, the Tribunal held that Reja, Aram and Karim Sabet had all become dominant and effective United States nationals by 11 April 1979. See Sabet para. 39. Accordingly, the Tribunal determines that, during the relevant period, Gulf Associates was a national of the United States as defined in Article VII, paragraph 1, of the CSD, and, further, that the claims in this Case were continuously owned by United States nationals, as required by Article VII, paragraph 2, of the CSD.

C. The Respondents

77. In its Statement of Claim, Gulf named as Respondents Zamzam, RTI and Mina, as well as four Iranian banks -- Iran Industrial Credit Bank (Bank Sanaye), Bank Melli, Bank of Tehran, and Bank Sepah, as collecting banks for certain drafts accepted by RTI. In later pleadings, however, Gulf failed to pursue any claim against these four banks. Therefore, the Tribunal dismisses the banks as Respondents.

78. The Tribunal has found previously that Iran expropriated Zamzam, RTI and Mina on 7 May 1979, by virtue of an 11 April 1979 Decree and a 7 May 1979 proclamation by the Revolutionary Prosecutor addressed to the Foundation for the Oppressed which interpreted the 11 April Decree. See Sabet paras. 102 to 106. In addition, with respect to Zamzam, the Tribunal has previously held that "the Foundation for the Oppressed has brought the Zamzam Companies under governmental control within the meaning of Article VII, paragraph 3, of the [CSD]." PepsiCo, Inc. and The Islamic Republic of Iran, et al., Award No. 260-18-1 (11 October 1986), reprinted in 13 Iran-U.S. C.T.R. 3, 21. The Tribunal further notes a notice of confiscation dated 7 May 1979 by the Supervisor of the Organization for the Confiscated Properties of the Foundation for the Oppressed stating that "the properties of Sabet family have been confiscated . . . and they will be managed by this Organization."

79. The Tribunal finds, on the basis of the evidence before it and in light of Tribunal precedent, that the Foundation for the Oppressed has brought the Respondent companies under governmental control within the meaning of Article VII, paragraph 3, of the CSD. Consequently, claims against those Respondents are claims against Iran.

D. Other Jurisdictional Issues

80. The Tribunal is satisfied that it has jurisdiction over the subject matter of Gulf Associates' claims, in that they all arise "out of debts, contracts . . . expropriations or other measures affecting property rights." Article II, paragraph 1, of the CSD.

81. Based on the foregoing, the Tribunal determines that it has jurisdiction over Gulf's claims.

IV. THE MERITS -- INTRODUCTION

82. Throughout its operation until 1979, Gulf provided various services for, inter alia, Mina, Zamzam and RTI. Typically, Gulf would buy goods and services for the companies in question and, on occasion, would secure financing for the companies, either by obtaining a loan in Gulf's own name and forwarding the money to the Iranian company, or by arranging for a loan in the company's name and acting as guarantor. Gulf debited the companies in its account books for payments it made on behalf of the companies, and it credited the companies for payments it received from the companies as reimbursement or from the companies' creditors.

83. This arrangement apparently proceeded satisfactorily for the parties involved until the expropriation of the Iranian companies in May 1979. Thereafter, the companies failed to reimburse Gulf for the amounts they owed it. Gulf, therefore, is claiming for unpaid balances from all three companies.

V. THE CLAIM AGAINST MINA GLASS COMPANY

A. The Claimant's Contentions

84. Mina manufactured glass bottles in Iran. To establish its contractual relationship with Mina, Gulf has submitted a letter dated 5 January 1967 that it received from Habib Sabet on behalf of Mina, asking Gulf to open an account in Mina's name and to "debit same with all payments effected for the said company." The letter indicates that Gulf had previously made payments on Mina's behalf, which were then debited to the accounts of Firooz and Zamzam. In his letter, Habib Sabet

asks Gulf to place those debits on Mina's newly established account and to send Mina a complete statement of its account. In response, Gulf sent a letter to Habib Sabet showing that on 17 January 1967 Mina owed Gulf more than $25,000.

85. Gulf has also submitted a number of other documents reflecting some of the transactions that it handled for Mina between 1968 and 1976. Most importantly, it has provided a letter dated 12 January 1977 to Habib Sabet, from Dr. Jalil Eghbal, who was one of Mina's shareholders and directors. Dr. Eghbal seems to be responding to a request from Habib Sabet for Mina's balance sheet. Dr. Eghbal included with his letter a "List of Obligations, Payments and Accounts Receivable" projected through March 1977 showing a debt to Gulf of $105,752.22. Gulf points out that this figure conforms exactly to the 16 February 1977 statement of account Gulf sent to Mina, which shows Mina with a debit balance of $105,752.22 on 31 January 1977.

86. Gulf has submitted subsequent debit and credit notes, as well as account statements, to show that Mina's total debt to Gulf came to $107,188.22 by 1 August 1977. Gulf contends that this amount was invoiced to Mina every 15 days, and a last account statement dated 4 August 1980 was sent to Mina on or about that date. Gulf further states that after orally extending Mina's time to pay, it commenced legal action against Iran and the Foundation for the Oppressed on 9 December 1980 and 16 January 1981.

87. Gulf further submitted an "Agreed Upon Procedures Report" prepared by Coopers & Lybrand, an accounting and consulting firm. The Report examines Gulf's claims against Mina, RTI and Zamzam, and in the Report as well as in the accompanying letter, Coopers & Lybrand states that "we gathered sufficient evidential matter that supported intercompany transactions

that were reflected in Gulf's general ledger." The report concludes that Mina owes Gulf $107,188.

B. The Respondents' Contentions

88. The Respondents challenged the validity of the 5 January 1967 letter from Habib Sabet on behalf of Mina, claiming that he had no authority to bind Mina and claiming that this letter, unlike Mina's other letters, bears no reference number. The Respondents submitted a Report by the Mahallati Audit Firm that criticizes the Coopers & Lybrand Report because it is not an audit. The Respondents also criticize the Coopers & Lybrand Report for failing to examine Mina's books. Further, at the Hearing, Counsel for the Respondents questioned the credibility of the Coopers & Lybrand Report, as it was prepared on the basis of "agreed-upon procedures." According to the Respondents, this means that Coopers & Lybrand was instructed as to what it should do.

89. Finally, the Respondents contended at the Hearing that there is no evidence showing that Gulf ever demanded in writing that Mina pay its balance after July 1977.

C. The Tribunal's Conclusions

90. The evidence that Mina submitted is sufficient to prove that until 7 May 1979 a contractual relationship existed between Mina and Gulf.

91. Contrary to the Respondents' contention, Gulf had no need to make a demand against Mina for payment. "[T]he Tribunal has previously held that debts owed and payable prior to 19 January 1981, unlike bank accounts, constituted outstanding claims, even though payment of the debts had not been demanded prior to that date." Sedco, Inc, et al. and Iran Marine

Industrial Company, et. al., Award No. 419-128/129-2, para. 31 (30 March 1989), reprinted in 21 Iran-U.S. C.T.R. 31, 45. See also Reza Said Malek and The Government of the Islamic Republic of Iran, Award No. 534-193-3, para. 44 (11 August 1992); Faith Lita Khosrowshahi, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 558-178-2, para. 67 (30 June 1994); and Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, Award No. 559-221-1, para. 97 (24 August 1994). As stated earlier, Gulf's claim against Mina became outstanding when Mina was expropriated, and no demand is required to make a claim outstanding in those circumstances. See para. 22 supra.

92. The Tribunal now turns to the amounts claimed by Gulf Associates. As a preliminary matter, the Tribunal notes that even though the Coopers & Lybrand Report is an "agreed-upon procedures" report, the Tribunal finds no grounds to doubt the veracity of the figures discussed therein, particularly in so far as the Report reflects Gulf's books. The Tribunal notes in this connection that the Respondents have not produced Mina's own books and records, nor have they presented any reason for such failure. In addition, the Tribunal finds the letter dated 12 January 1977 by Mina's director, Mr. Eghbal, to Habib Sabet and the attached "List of Obligations, Payments and Accounts Receivable" of great importance as they reflect Mina's own contemporaneous statement of its account with Gulf. These documents indicate that as of 31 December 1976, Mina admitted that it owed $105,752.22 to Gulf Associates. The Tribunal finds the documentation submitted by Gulf covering transactions from 1 January to 1 August 1977 sufficient to establish that as of the latter date, Mina owed Gulf $107,188.22.

93. The evidence in the record indicates that subsequent to 1 August 1977 no debits or credits were entered into Mina's

account. In light of the foregoing, the Tribunal concludes that the amount Gulf claims from Mina is sufficiently documented. Therefore, Gulf is entitled to recover the amount of $107,188 from the Respondent, Mina Glass Company.

VI. THE CLAIM AGAINST RADIO & TELEVISION CORP. OF IRAN

A. The Claimant's Contentions

94. RTI was a manufacturer and distributor of television sets in Iran. To prove its contractual relationship with RTI, Gulf has submitted a letter to Gulf dated 16 September 1975 in which RTI states that its Board of Directors "again agreed that Gulf Associates, Inc. should . . . continue to represent R.T.I. in the United States and Canada." In this letter, RTI also asked Gulf to "make payments to our suppliers as well as to honor drafts on our behalf." Gulf claims $938,695 for payments Gulf allegedly made on behalf of RTI but for which Gulf did not receive reimbursement from RTI.

95. Gulf's claim against RTI is composed primarily of transactions involving goods purchased from Radio Television Corporation of America ("RCA"). Gulf divides those transactions into two categories. The first category consists of goods that RCA sold to RTI and that RTI paid for by means of seven drafts made out to RCA. These drafts were guaranteed by Gulf. The drafts were to come due between approximately 3 and 15 months after shipping; that is, they were due between 30 January 1977 and 10 December 1977. The total amount of these drafts was $531,713. Gulf contends that RTI ultimately dishonored the seven drafts, thereby obliging Gulf to pay RCA under its guarantee.

96. In support of these contentions, Gulf has submitted a letter from RCA to Gulf dated 20 December 1978 in which RCA assigns Gulf all of its right, title and interest in the seven drafts, all of which had allegedly been accepted by RTI but ultimately dishonored. Gulf has also submitted copies of six of the seven drafts in question. It further has submitted a letter from RCA to Gulf stating that Bank Sepah never returned the seventh draft to RCA despite RCA's requests for it to do so.

97. The second category of transactions that Gulf describes involves two virtually identical purchases in which Gulf paid RCA on RTI's behalf and then looked to RTI for reimbursement. Each of these transactions involved a shipment of 5,000 television receiver components that RTI purchased from RCA. In each case, the total cost of the goods was $461,193.60, and for each transaction, RTI opened a letter of credit in favor of Gulf for 25 percent of the total amount of each transaction plus the shipping costs; thus, it opened two letters of credit, each for $143,048. Gulf contends that the remaining 75 percent was to be paid by five equal drafts of $63,629.04 due 3, 6, 9, 12 and 15 months after shipment. Gulf contends that RTI did not honor these drafts and that Gulf is therefore entitled to recover the face value of the drafts -- $318,145.20 for each of the two transactions.

98. Gulf has not submitted its account books for RTI, but it has submitted a report prepared by Coopers & Lybrand, which claims to reproduce the debit and credit amounts contained in Gulf's account books. Coopers & Lybrand confirms the descriptions of the transactions that Gulf describes above, but it goes on to state:

> [U]pon default by RTI, Gulf settled all outstanding debts totaling $1,168,003 for $775,000 which was

> payable in three installments of $250,000, $250,000 and $275,000. As Gulf made the installment payments the RTI account was increased to reflect the settlement of the drafts outstanding; however, we note that Gulf had subsequently recorded the full amount ($1,168,003) of the drafts outstanding.
>
> As a result, we calculate that the RTI intercompany account should be reduced by the installment payments totaling $775,000 previously recorded in the RTI account.

After making this adjustment, Coopers & Lybrand concludes that RTI owes Gulf $938,695. As noted in paragraph 94 supra, it is this sum that Gulf claims from RTI. Finally, Gulf has provided correspondence from RCA confirming that Gulf and RTI had "completed payment of all outstanding balances due RCA" by 31 January 1978.

B. The Respondents' Contentions

99. The Respondents contend that Gulf has not submitted the documentary evidence necessary to support its claim. In their early pleadings, the Respondents challenged the authenticity of the letter dated 16 September 1975, described in paragraph 94 supra, in which the relationship between Gulf and RTI is set out. The Respondents contend that there is no record of any such letter in RTI's files and that it does not conform to certain formalities.

100. In addition, the Respondents rely on a report by the accounting firm, Mahallati and Co., which criticizes the Coopers & Lybrand Report for failing to examine RTI's books and for not observing auditing standards. The Respondents also raise several objections to the various drafts. With respect to the first group of drafts, they contend that Gulf has not proved that it paid all the drafts; that Gulf was not authorized to make the payment; that one of the drafts is

absent; and that the requirement of continuous ownership has not been satisfied because the drawer and original beneficiary of the drafts -- RCA -- was a Canadian company. With respect to the drafts issued in April 1978 (for the second category of claims), the Respondents claim that eight of the ten were not accepted by RTI and therefore not payable.

101. In the alternative, the Respondents contended at the Hearing that RTI's debt to Gulf is at most $545,549 rather than $938,695, the figure that Coopers & Lybrand advocates. As the Coopers & Lybrand Report points out, Gulf's books, at the time Coopers & Lybrand examined them, contained debit entries for both the face value of RTI's dishonored drafts ($1,168,003) and for the settlement that Gulf eventually paid RCA for all of the debts ($775,000). See para. 98 supra. Since these sums represent the same debt, Coopers & Lybrand determined that one of them should be eliminated to prevent double counting, and Coopers & Lybrand eliminated the $775,000 settlement amount. At the Hearing, the Respondents argued that Coopers & Lybrand should have eliminated the $1,168,003 debit entry instead because Gulf would be unjustly enriched if it were permitted to recover for the face value of the drafts when its actual outlay was substantially less than that.

C. The Tribunal's Conclusions

102. The Tribunal notes that Gulf did not submit its account books for RTI (as it did for Zamzam and Mina). Nonetheless, it finds that the claim against RTI is generally well documented by correspondence attesting to Gulf's payments, as well as by the submission of the drafts themselves. The Tribunal thus dismisses the Respondents' objections with respect to the drafts. Furthermore, as noted in paragraph 98 supra, Gulf's debit and credit amounts for RTI are reflected in the Coopers & Lybrand Report. In this connection, the

Tribunal finds the Mahallati Report to be of little assistance and refers to paragraph 92 supra for its view of the Coopers & Lybrand Report.

103. As noted in paragraph 98 supra, the Coopers & Lybrand Report concluded that Gulf had debited RTI's account not only for $775,000 for the installment payments it made to RCA in settlement of RTI's debt but also for $1,168,003 for the face value of the drafts. Gulf made the latter entry sometime after July 1980, i.e., long after the expropriation of RTI. In order to correct this, Coopers & Lybrand subtracted $775,000 from the amount that RTI owed to Gulf, leaving a total claim against RTI of $938,695.

104. However, the Tribunal agrees with the Respondents that Gulf is entitled to recover only for the amounts that it actually paid on RTI's behalf. Until RTI and other Sabet companies were expropriated, Gulf and the Sabet companies for whom Gulf provided services seemed to share the understanding that the companies would reimburse Gulf only for the sums Gulf actually spent during their on-going relationship. This understanding is reflected in the fact that, prior to RTI's expropriation, Gulf debited RTI only for the amount that Gulf paid to settle RTI's debts. In light of this practice, the Tribunal finds that Gulf should recover only the amounts it actually paid for RTI during their ongoing relationship. Therefore, because Gulf is entitled to $775,000 instead of $1,168,003 for the transactions in question, the Tribunal subtracts $393,003 -- the difference between the two figures -- from Gulf's final claim of $938,695 against RTI, which leaves $545,692.

105. As noted in paragraph 97 supra, RTI opened two letters of credit in favor of Gulf in connection with the two

transactions with RCA involving 5000 television receiver components each. The amount of each of these letters of credit was $143,048, which was 25 percent of the purchase price of each transaction plus shipping charges. Because Gulf claimed only for the face value of the seventeen drafts, and because Counsel for Gulf stated at the Hearing that "RTI paid 25 percent of the amount that was owed to Gulf for each of the shipments," the Tribunal concludes that Gulf called both letters of credit and received the money available therein. However, the evidence submitted by Gulf indicates that only one letter of credit was credited in Gulf's books for RTI. At the Hearing, Counsel for Gulf was unable to explain why Gulf's books seemed to reflect only one entry for $143,048. Because the evidence indicates that Gulf received the funds available in both letters of credit yet credited RTI for only one, the Tribunal must subtract $143,048 from Gulf's claim against RTI of $545,692, leaving $402,644.

106. The Tribunal also notes that RTI's books, as reflected in the Coopers & Lybrand Report, show four entries -- in addition to the entry reflecting the face value of the drafts -- that are dated subsequent to 7 May 1979, i.e., after RTI's expropriation. The Tribunal concludes that RTI's expropriation had the effect of implicitly terminating RTI's contractual relationship with Gulf. Nevertheless, the Tribunal holds that Gulf is entitled to business-related payments that it made after the expropriation so long as they were made pursuant to pre-existing obligations. Consequently, the Tribunal must address the question whether Gulf is entitled to recover for the amounts of these debit entries.

107. In 1979, two debit entries were made after the expropriation, on 5 July and 30 November for $6 and $326, respectively. Coopers & Lybrand explains that all the debit entries in RTI's books between 1 December 1978 and 30 November

1979 "were made up of shipping charges of $603 and payments for electronic equipment to RCA of $5,397 and Liberty Electronics of $5,260." The Tribunal finds this unrebutted explanation sufficient to conclude that the $6 and $326 debits represent shipping charges and that those sums were paid in connection with obligations existing before RTI's expropriation. The Tribunal upholds these debit entries. However, Coopers & Lybrand does not explain, or even mention, two debit entries made in the course of 1980 -- $50 on 11 January 1980 and $93 on 19 August 1980. For this reason, the Tribunal finds that Gulf has not proven its entitlement to those amounts, and it subtracts $143 from Gulf's claim against RTI.

108. Taking into account the adjustments to Gulf's claim against RTI the Tribunal made above, Gulf is entitled to recover $402,169 from RTI.

VII. THE CLAIM AGAINST ZAMZAM BOTTLING COMPANY

A. The Claimant's Contentions

109. Zamzam, which is comprised of eleven separate bottling companies, bottled and distributed soft drinks throughout Iran. To prove its contractual relationship with Zamzam, Gulf has submitted a letter dated 2 November 1962, in which Zamzam states that its "business and handling charges" have been "operated through Gulf Associates" since 1 December 1961 and which sets forth various terms for the arrangement. Gulf also has submitted other correspondence between Gulf and Zamzam to prove that every time Gulf made a payment on Zamzam's behalf and every time it received a payment from Zamzam or its creditors, Gulf sent Zamzam a letter informing it of the transaction. Gulf also has submitted copies of the statements

of account which it allegedly sent to Zamzam every 15 days and which reflected the transactions occurring during those 15 days as well as the total sum that Zamzam owed to Gulf at the end of the period. Finally, Gulf has submitted its account books for Zamzam -- the books in which it recorded debits and credits for the payments described above.

110. Gulf's account books and statements of account show Zamzam's debt to Gulf at $1,588,684.86 as of August 1979. Gulf contends that Zamzam never objected to the statements of account Gulf sent it twice a month, and it cites Tribunal precedent to argue that Zamzam cannot now dispute Gulf's accounts when it raised no contemporaneous objections to them.[7] Moreover, Gulf has submitted a letter dated 21 June 1978 that it received from Zamzam's then-President, Iradj Sabet, in which he acknowledged receiving Gulf's 1 June 1978 statement of account and confirmed the accuracy of that statement of account; that is, he confirmed that Zamzam owed Gulf $1,728,508 as of 31 May 1978.

111. Gulf has further submitted several documents pertaining to one rather large transaction that is reflected in its account books. Gulf contends that it obtained a $2,000,000 loan from First National Citibank ("Citibank") in its own name, but in order to re-lend to Zamzam. Gulf maintains that it subsequently forwarded the loan proceeds to Zamzam. Gulf has submitted a 15 December 1974 agreement between Gulf and Zamzam in which Gulf agrees to obtain the loan and forward the proceeds on terms set forth in the Agreement. Gulf has next submitted a 3 January 1975 letter that it sent to Zamzam

[7] DIC of Delaware, Inc. v. Iran , Award No. 176-255-3 (April 26, 1985), reprinted in, 8 Iran-U.S. C.T.R. 144, 164; R.J. Reynolds Tobacco Co. v. Iran, Award No. 145-35-3 (July 31, 1984), reprinted in, 7 Iran U.S. C.T.R. 181, 190-1; Ultrasystems Incorporated v. Iran, Partial Award No. 27-84-3 (March 4, 1983), reprinted in 2 Iran-U.S. C.T.R. 100, 111.

advising Zamzam that Gulf had been credited for $2,000,000 from Citibank. Gulf also submitted a copy of the loan agreement that it concluded with Citibank. Finally, Gulf points to its account books which seem to show that Gulf credited Zamzam for $2,000,000, reversed that credit, and then debited Zamzam $1,800,000 for the Citibank loan.

112. In support of its entire claim, Gulf submits a report prepared by Coopers & Lybrand. According to Coopers & Lybrand, Zamzam owes Gulf $2,647,299, and that is the sum Gulf claims.

113. Coopers & Lybrand reached this figure by making three adjustments to Gulf's books. First, Coopers & Lybrand increased Zamzam's debt by $1,000,000 for a payment that Gulf allegedly made to Republic National Bank on Zamzam's behalf. Coopers & Lybrand states:

> The $1,000,000 increase reflects a September 1978 payment to Republic National Bank from funds remitted upon Gulf's request from the Union Bank of Switzerland. The $1,000,000 payment related to a $1,500,000 Zamzam loan with the Republic National Bank (RNB). The date of the loan was April 25, 1977. The proceeds of the loan were paid to Zamzam from RNB.

114. Gulf has submitted a copy of the loan agreement between Zamzam and Republic National Bank. Gulf also points to its account books to show that Gulf made monthly interest payments on the loan on Zamzam's behalf and debited Zamzam therefor. In support of its claim for the $1,000,000 payment, Gulf has submitted a letter dated 15 September 1978 that it received from Zamzam's then-President, Iradj Sabet, asking Gulf to "effect payment on our behalf to Republic National Bank of New York on the date of September 29, 1978 the amount of $1,000,000 due to them." The letter concludes with Zamzam's

promise to "reimburse [Gulf] for the payment by bank transfer at the earliest possible moment."

115. Gulf contends that it made this payment on 28 September 1978 by instructing its bank to transfer $1,000,000 to the Trade Development Bank of Geneva, an affiliate of Republic National Bank. As proof, it submits a document that appears to be a transfer form and that states: "en faveur gulf associates/ ordre d'un de nos clients/ ref. repayment of loan to zamzam co." A telex dated 3 October 1978 goes on to say:

> suite a notre + o.p.tx du 28.9.78 [i.e., the order form] de usdollars 1.000.000,- en faveur de gulf associates nous vous communiquons le message suivant "in complement to our transfer of usdollars 1.000.000,-- please take note that this transfer is destined to your sister company Republic National Bank 452 fifth ave - new york.

Finally, Gulf has submitted a letter it sent to Zamzam dated 29 September 1978 in which Gulf confirmed that it had made the payment and requested prompt reimbursement from Zamzam.

116. Coopers & Lybrand's second adjustment pertains to the Citibank loan. Gulf's account books for Zamzam show a credit entry of $200,000 dated 1 March 1980. Coopers & Lybrand reversed that credit. It explains that the credit represented "the settlement of the Citibank debt by Gulf," and it states that "[s]ince the liability to Citibank was Gulf's rather than ZamZam's, the settlement should not have affected ZamZam's liability to Gulf."

117. Finally, Coopers & Lybrand increased Zamzam's alleged debt to Gulf by adding three debits for "professional fees for services related to ZamZam that were paid by Gulf." These total $11,500 and are dated between March 1982 and July 1982.

B. The Respondents' Contentions

118. The Respondents assert that Gulf's claim against Zamzam must be dismissed because one of the Zamzam affiliates, Zamzam Central, was dissolved in 1977, thus long before the Revolution in Iran. They argue that Zamzam Public Joint Stock Company is a different entity; therefore, that company is not a proper party to this claim. At the Hearing, the Respondents also argued that Gulf failed to identify the Zamzam respondent with sufficient specificity; that is, they claimed that Gulf did not make clear whether it is claiming from Zamzam Tehran, Zamzam Central and/or some or all of the other Zamzam companies. In response, Gulf acknowledges that Zamzam Central was dissolved in 1977 but maintains that Zamzam Tehran and the other Zamzam companies assumed all of its outstanding liabilities. Moreover, Iradj Sabet explains that "Zamzam Tehran, and each of the other Zamzam companies, were always known in the English language as Zamzam Bottling Company."

119. In their pleadings, the Respondents submitted two reports by a chartered accountant, Mr. M.E. Ghorbani-Farid, who is a member of the Institute of Chartered Accountants in England and Wales. Mr. Ghorbani-Farid concludes that not only does Zamzam owe Gulf nothing but that Gulf owes Zamzam approximately $1,800,000.

120. Mr. Ghorbani-Farid reports that he examined the books of Zamzam Central -- which was dissolved in 1977 -- and those of Zamzam Tehran, the Zamzam company which handled financing and ordered supplies for all of the Zamzam companies. For his analysis, Mr. Ghorbani-Farid relies to a large extent on a letter dated 21 November 1975 allegedly from Gulf to Zamzam Central in which Gulf asks Zamzam Central to "transfer the credit standing to our account at the close of business today - 21st November, 1975 - to the personal account of Mr. Iradj

Sabet." Zamzam Central's books, which Mr. Ghorbani-Farid submitted, show a credit entry dated 20 November 1975 for 39,591,177 rials ($565,584) with the description "carry over the sum due to [Gulf] to Iradj Sabet's account." Mr. Ghorbani-Farid first notes that Gulf's books contain no comparable entry, but he maintains, in addition, that the entry should have been for $2,878,578 because that is the amount that appeared on Gulf's books on 21 November 1975 as owing from Zamzam. Mr. Ghorbani-Farid states that if Gulf had credited Zamzam for $2,878,578, as he believes it should have, then "the balance due by Zamzam to Gulf at 21st November 1975 would have been cleared."[8]

121. The $2,878,578 that in Mr. Ghorbani-Farid's opinion should have been credited to Zamzam includes the $1,800,000 debit for the Citibank loan that Gulf had forwarded to Zamzam. Because Mr. Ghorbani-Farid believes that these funds were transferred to Iradj Sabet, he opines that Zamzam should be relieved of liability for the loan, and he credits Zamzam for all the loan payments that it subsequently made to Gulf. Also with respect to the Citibank loan, Mr. Ghorbani-Farid states that Zamzam did not receive all the loan proceeds to which it was entitled. Mr. Ghorbani-Farid maintains that Gulf was supposed to send Zamzam $1,800,000, but, in fact, it sent Zamzam only $1,636,500. He claims that Gulf sent the remaining $163,500 to Union Bank of Switzerland, where, according to Mr. Ghorbani-Farid, Zamzam did not have an account. Finally, Mr. Ghorbani-Farid raises several objections to Coopers & Lybrand's reversal of the $200,000 credit.

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[8] Mr. Ghorbani-Farid also mentions another alleged transfer -- this one for 42.7 million rials ($610,000) -- from Zamzam to Iradj of sums allegedly owed to Gulf.

122. Next, Mr. Ghorbani-Farid points out that Gulf made payments totalling between approximately $30,000 and $40,000 for personal expenses for Iradj Sabet and his family. He believes that Gulf is not entitled to recover these payments from Zamzam and accordingly credits them to Zamzam.

123. Mr. Ghorbani-Farid further states that Gulf is not entitled to recover for its alleged $1,000,000 payment to Republic National Bank because it has not provided sufficient proof that it made the payment. Mr. Ghorbani-Farid points out that not only did Gulf fail to enter a debit in its books for the payment, but that Gulf's contemporaneous financial statements -- which, among other things, list Zamzam's debt to Gulf -- do not reflect the payment. The payment does not appear on Gulf's financial statements until 30 November 1982, long after the Algiers Declarations were signed. At the Hearing, the Respondents argued, in addition, that Hormoz Sabet made the payment, not Gulf. In support, the Respondents point to two documents that were filed in litigation between Republic National Bank and Habib and Hormoz Sabet regarding a loan that the bank made to Firooz, and in these documents Hormoz and Habib Sabet indicated that they had made the $1,000,000 payment. Hormoz Sabet stated in an affidavit that the "Sabets, as guarantors of th[e] loan from the bank to the Zamzam Bottling Company, had personally repaid $1,000,000 of that loan." In a subsequent letter, Hormoz stated that he and his father had "advanced the sum of $1,000,000 to Republic in September of 1978 pursuant to the obligation of the Zamzam Bottling Company . . . ." In light of these statements, the Respondents interpret the words "faveur gulf associates/. . . 'ordre d'un de nos clients" in the transfer form, referred to in paragraph 115, supra, to mean that the payment was either made on behalf of Gulf and not by Gulf or that the payment was made to Gulf.

124. Finally, Mr. Ghorbani-Farid points to various smaller discrepancies and emphasizes the differences between Gulf's books and those of the Zamzam companies. According to Mr. Ghorbani-Farid, the fact that the books are so different calls into question the reliability of Iradj Sabet's 21 June 1978 letter confirming the accuracy of Gulf's 31 May 1978 statement of account; that is, Mr. Ghorbani-Farid does not see how Iradj Sabet could have confirmed the accuracy of Gulf's statement of Zamzam's debt to Gulf when Zamzam's own books did not reflect a debt in that amount. At the Hearing, the Respondents also questioned the reliability of this letter, pointing out that the Claimants in Cases No. 815-817 had submitted a handwritten version of the letter as part of their valuation materials. The handwritten version has blanks for the date, invoice number and balance to be filled in. The Respondents questioned this fact as well as the fact that "Gulf got a copy of the handwritten version in the United States." The Respondents maintained that they could find "no trace" of the letter in Zamzam's files, so they "den[ied its] existence."

C. The Tribunal's Conclusions

125. The Tribunal does not find persuasive the Respondents' contentions regarding Gulf's identification of the appropriate respondent. In its Statement of Claim, Gulf named as respondent "Zam Zam Bottling Company." The Tribunal finds credible Iradj Sabet's explanation that all the Zamzam companies were known as Zamzam Bottling Company in English. Further, the Tribunal notes that Mr. Alan Kornbluth states in his affidavit that "[i]t was Gulf's historical practice to maintain only one account in relation to Zamzam and its affiliates in Iran."

126. As noted above, Gulf has submitted its account books for Zamzam. Mr. Ghorbani-Farid submitted Zamzam Central's books in

total, but he submitted only a few pages of Zamzam Tehran's books, and these from 1974. The Tribunal's basis for comparison, therefore, is limited; in addition, the comparison the Tribunal has been able to undertake has shown that Gulf's and Zamzam's account books cannot be reconciled. The Tribunal, therefore, must at the outset determine whether it will take Gulf's books as a starting point for its examination of Gulf's claim against Zamzam. An important document for this determination is the 21 June 1978 letter from Zamzam's then-President, Iradj Sabet, in which he confirmed the accuracy of Gulf's 1 June 1978 statement of account, and which therefore shows that Zamzam owed Gulf $1,728,508.07. As noted above, the Respondents dispute the letter's existence. However, the Tribunal finds no reason to take the letter of 21 June 1978 for anything other than what it appears to be on its face -- Zamzam's confirmation of its debt to Gulf on 31 May 1978. The author of the letter, Iradj Sabet, confirmed that that was what it was in a sworn affidavit, and the Respondents have not discharged their burden of proving otherwise.

127. The Tribunal notes further that Zamzam made no contemporaneous objections regarding the issues that it now raises. The Tribunal has held that "[t]he failure to dispute an account for a lengthy period of time at least places a burden on [the Respondent] to demonstrate that the account was not accurate." DIC of Delaware, Inc., et al. and Tehran Redevelopment Corporation, et al., Award No. 176-255-3, (26 April 1985), reprinted in 8 Iran-U.S. C.T.R. 144, 164. See also R.J. Reynolds Tobacco Co. and Islamic Republic of Iran, Award No. 145-35-3 (6 August 1984), reprinted in 7 Iran-U.S. C.T.R. 181, 190-91. In this Case, the Tribunal finds that the Respondents have failed to meet that burden. They have provided no explanation for their failure to object contemporaneously to the numerous statements of account Gulf sent, and, as noted above, they have not submitted Zamzam

Tehran's books, except for a few pages from 1974. These omissions are particularly noteworthy because Gulf has submitted two letters that Zamzam sent to Gulf, one of which informed Gulf that Zamzam had not received the December 16 - December 31, 1970 statement of account and asked Gulf to send a copy of that statement, while the other pointed to a $9.25 error that Gulf had made in the 15 December 1971 statement. These letters indicate that Zamzam monitored its transactions with Gulf and would not have overlooked discrepancies of the magnitude to which the Respondents are now pointing. In light of these considerations, the Tribunal decides to take Gulf's account books for Zamzam as a starting point for its examination of the claim.

128 As a result of this conclusion, the Tribunal need not inquire into the Respondents' allegations as to Zamzam's alleged 21 November 1975 transfer to Iradj Sabet of its debt to Gulf. The Tribunal notes, however, that in his affidavit, Iradj Sabet explained the transfer as an inter-company transfer that was intended only to balance Zamzam Central's books. According to Iradj Sabet, his personal account was maintained on Zamzam Tehran's books, and the credit to that account "was [to be] allocated by Zamzam Tehran to the various Zamzam companies and/or settled in Zamzam Tehran's books through salary or other payments payable to me." Because, as noted in paragraph 125 supra, it was Gulf's practice to maintain only one account for all of the Zamzam bottling companies, such an inter-company transfer would not affect Zamzam's overall debt to Gulf. Further, the Tribunal notes that Iradj Sabet's explanation of the transfer is supported by the fact that the transfer occurred on the last day of Zamzam Central's fiscal year; it left Zamzam Central with a zero balance; and a year later, on 16 November 1976, Zamzam Central again "carried over" its then-current debt to Gulf to again leave a zero balance. These facts indicate that Zamzam Central engaged in a yearly

"clearing" of the books that was unrelated to its actual debt to Gulf.

129. The Tribunal next turns to the Respondents' contention that Gulf is not entitled to reimbursement from Zamzam for the payments Gulf made for the personal expenses of Iradj Sabet and his family. In his affidavit, Iradj maintains:

> I had a personal account at Zamzam Tehran for purposes of handling personal or family expenses. With Zamzam Tehran's approval expenses for this internal account were also handled and recorded by Gulf. Gulf forwarded all related invoices or entries to Zamzam Tehran. This in turn was debited or credited to my personal account with Zamzam Tehran in Iran, to be eventually settled against my salary or dividend payments I received or was entitled to from Zamzam Tehran.

The Tribunal finds this explanation credible. Moreover, the Respondents have submitted no evidence to suggest that Zamzam did not authorize these payments. However, the Tribunal draws a distinction between payments for personal expenses made before the date that Zamzam was expropriated -- 7 May 1979 -- and payments made after that date. While the Tribunal has no reason to doubt that Zamzam authorized Gulf to make payments for Iradj Sabet and his family while the Sabets owned and controlled Zamzam, the same cannot be said after Iran expropriated the company from the Sabets. The expropriation constituted an implied termination of Zamzam's relationship with Gulf, see para. 22 supra, so Zamzam cannot be considered to have authorized payments for Iradj and his family's personal expenses made after that event. Consequently, the Tribunal holds that Gulf is not entitled to reimbursement for the personal expenses it paid subsequent to 7 May 1979, and the Tribunal therefore subtracts $13,976 from Gulf's claim against Zamzam.

130. The Tribunal turns now to the questions relating to the Citibank loan. First, the Respondents contend that Gulf failed to send Zamzam $163,500 of the Citibank loan proceeds to which it was entitled. Dispositive of this issue is the fact that Zamzam made no contemporaneous objection to the alleged shortfall, and Iradj Sabet, moreover, confirmed Zamzam's debt to Gulf -- a debt that included the alleged shortfall -- more than three years after Gulf sent Zamzam the funds. Given this evidence and the nature of the relationship between Zamzam and Gulf before the expropriation, the Tribunal can only assume that Zamzam was aware of, and approved of, the transmittal of the remaining $163,500 to Union Bank of Switzerland. Consequently, the Tribunal finds that the $1,800,000 debit entry appearing in Gulf's account books for Zamzam was appropriate.

131. The second and final issue with respect to the Citibank loan concerns Coopers & Lybrand's reversal of a $200,000 credit dated 1 March 1980 appearing in Gulf's books. The evidence indicates that Gulf settled the Citibank loan sometime in 1980, and the Tribunal understands the $200,000 credit to represent the difference between the remaining principal of the loan and the amount that Gulf actually paid in settlement of the loan. Coopers & Lybrand reversed the credit on the theory that "the liability to Citibank was Gulf's rather than Zamzam's, [so] the settlement should not have affected Zamzam's liability to Gulf." The issue that arises, then, is whether Zamzam is entitled to the benefit that Gulf received by settling the Citibank loan for less than face value.

132. A similar issue arose with respect to Gulf's claim against RTI. See para. 104 supra. There, Gulf settled certain debts of RTI for less than their face value and the Tribunal held that Gulf was entitled to recover only for the amounts that it actually paid because Gulf and RTI seemed to share the

understanding that RTI would reimburse Gulf only for the sums Gulf actually spent during their on-going relationship. Although the situation with respect to the Citibank loan differs from that involving RTI because Gulf settled the Citibank loan after its contractual relationship with Zamzam was severed through Zamzam's expropriation, the Tribunal regards the 1 March 1980 $200,000 credit entry as evidence that, on its part, Gulf continued to operate on the understanding between Gulf and Zamzam as it existed before the expropriation. As in the case of RTI, this understanding meant that Zamzam would reimburse Gulf only for the sums Gulf actually spent. On the basis of the foregoing, the Tribunal upholds the credit entry in question and thus rejects Coopers & Lybrand's adjustment.

133. Next, the Tribunal turns to the remaining two adjustments that Coopers & Lybrand made to Gulf's books. As noted in paragraph 117 supra, Coopers & Lybrand added three debit entries for the fiscal year 1981-1982 which total $11,500. According to Coopers & Lybrand, these increases represent "professional fees for services related to Zamzam that were paid by Gulf." The Tribunal has held in paragraph 106 supra that Gulf is entitled to business-related payments that it made after the expropriation so long as they were made pursuant to pre-existing obligations. However, because Gulf has not submitted any evidence showing that the aforementioned payments were related to obligations existing before the date of the expropriation, the Tribunal subtracts $11,500 from Gulf's claim against Zamzam.

134. Finally, the Tribunal turns to Coopers & Lybrand's largest adjustment -- its addition of $1,000,000 for Gulf's alleged payment to Republic National Bank. On 15 September 1978, Iradj Sabet, as President of Zamzam, sent a letter to Gulf asking it to make a $1,000,000 loan payment to Republic National Bank on

Zamzam's behalf. In his affidavit, Mr. Restaino stated that he effected the payment on 28 September 1978 and that "[t]his was not a usual transaction and was to be settled immediately." Accordingly, on 29 September 1978, Gulf sent a letter to Zamzam informing Zamzam that Gulf had made the payment and requesting prompt reimbursement. This evidence suggests that the loan payment was handled in the same way as all the other transactions between Gulf and Zamzam. There is one important difference, however: Gulf failed to enter a debit in its books reflecting the payment. Gulf likewise failed to list the $1,000,000 for the Republic National Bank loan as an asset in its financial statements and on its tax returns until 30 November 1982 -- i.e., only well after the signing of the CSD. Because Gulf's contemporaneous records are inconsistent, the Tribunal turns to other evidence.

135. In an affidavit and a letter -- both mentioned in paragraph 123 supra -- Hormoz Sabet states that he and/or his father paid $1,000,000 to the Republic National Bank for the Zamzam loan. The Tribunal notes further that apart from the telex and the transfer form mentioned in paragraph 115 supra, the terms of which the Tribunal finds somewhat ambiguous, Gulf has not submitted any evidence as to the arrangements made in Geneva for the payment of the loan. The Tribunal would not ordinarily consider it relevant from where -- Hormoz, Habib, or any other source -- Gulf received the funds it used to make its payments. Here, however, Hormoz Sabet's statements in conjunction with Gulf's failure to enter a debit for the payment in its books suggest that Gulf did not consider Zamzam indebted to Gulf for the payment. The Tribunal therefore rejects this adjustment made by Coopers & Lybrand and subtracts $1,000,000 from Gulf's claim against Zamzam.

136. In conclusion, the Tribunal subtracts $13,976 for Iradj Sabet's and his family's personal expenses that Gulf paid after

7 May 1979; $200,000 for Coopers & Lybrand's adjustment for the settlement of the Citibank loan; $11,500 for professional fees that Gulf paid in 1981-1982; and the $1,000,000 payment for the Republic National Bank loan. The Tribunal concludes that Zamzam owes Gulf $1,421,823.

VII. INTEREST

137. In order to compensate the Claimant for the damages it suffered due to delayed payment, the Tribunal considers it appropriate to award interest at the rate of 7.75 percent per annum from 7 May 1979.

VIII. COSTS

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

IX. AWARD

139. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Claims against IRAN INDUSTRIAL CREDIT BANK (BANK SANAYE), BANK MELLI, BANK OF TEHRAN and BANK SEPAH are dismissed.

(b) The Respondent, MINA GLASS COMPANY, is obligated to pay the Claimant, GULF ASSOCIATES, One Hundred Seven Thousand One Hundred Eighty Eight United States Dollars and No Cents (U.S.$107,188) plus simple interest at the rate of

7.75 percent per annum (365-day basis) from 7 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(c) The Respondent, RADIO AND TELEVISION COMPANY OF IRAN, currently the NATIONAL IRANIAN RADIO AND TELEVISION, is obligated to pay the Claimant, GULF ASSOCIATES, Four Hundred Two Thousand One Hundred Sixty Nine United States Dollars and No Cents (U.S.$402,169) plus simple interest at the rate of 7.75 percent per annum (365-day basis) from 7 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(d) The Respondent, ZAMZAM BOTTLING COMPANY, is obligated to pay the Claimant, GULF ASSOCIATES, One Million Four Hundred Twenty One Thousand Eight Hundred Twenty Three United States Dollars and No Cents (U.S.$1,421,823) plus simple interest at the rate of 7.75 percent per annum (365-day basis) from 7 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(e) The 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.

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

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

Dated, The Hague
07 October 1999

Krzysztof Skubiszewski
Chairman
Chamber Two

In the Name of God

George H. Aldrich

Koorosh H. Ameli
Dissenting as to the jurisdiction;
concurring in part, dissenting
in part as to the merits.
Separate Opinion.