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IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 419
CHAMBER TWO
AWARD NO. 569-419-2

ROUHOLLAH KARUBIAN,
Claimant,
and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances :

For the Claimant :
Mr. John A. Westberg,
Mr. Lewis M. Johnson,
Ms. Guita Karubian,
Attorneys,
Mr. Rouhollah Karubian,
Claimant,
Mr. John Karubian,
Person Appearing for the Claimant,
Mrs. Vida Foroutan,
Assistant to the Claimant,
Mr. Manoochehr Vahman,
Mr. Hamid Sabi,
Expert Witnesses.

For the Respondent :
Mr. Ali H. Nobari,
Agent of the Islamic Republic of Iran,
Dr. Jafar Niaki,
Legal Adviser to the Agent,
Professor Ian Brownlie, Q.C.,
Professor Joe Verhoeven,
Counsel to the Agent,
Mr. Khosrow Tabasi,
Legal Adviser to the Agent,
Mr. Behrouz Salehpour,
Legal Assistant to the Agent,

Mr. Hossain Dadgar,
Mr. Seyed Zabiollah Alavi Harati,
Mr. Mohammad Isary,
Mr. Hossain Sedghi Nia,
Mr. Mohammad Taghi Madani,
Representatives of the Respondent,
Dr. Ahmad Hashemi,
Mr. Kamal Majedi,
Expert Witnesses.

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

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I. INTRODUCTION

1. The Claimant, ROUHOLLAH KARUBIAN, seeks compensation from THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent") in the total amount of U.S.$4,091,582, as finally pleaded, for the value of four separate properties[1] in Iran which he alleges were expropriated by the Respondent or subjected to other measures, attributable to the Respondent, that affected his property rights within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration. Interest and costs are also sought.

2. The Respondent submits that the Claimant is solely a national of Iran and, as such, cannot bring a claim against Iran before this Tribunal. Alternatively, it argues that the Tribunal lacks jurisdiction to hear the case on the basis that the Claimant's dominant and effective nationality is Iranian or at least not that of the United States. It further contends that if the Claimant is found to be a dual national whose dominant and effective nationality is that of the United States, the caveat in Case No. A18, infra, para. 146, bars his recovery. It also denies that it has expropriated any of the properties at issue in this Case or subjected them to other measures affecting the Claimant's property rights.

3. On 3 March 1989 the Tribunal issued an Order declaring that, on the evidence before the Tribunal at that time, it appeared that the Claimant was, during the period between the time the alleged claims arose and 19 January 1981, a national of both Iran and the United States. The Order stated that:

> to reach definitive conclusions as to the dominant and effective nationality of the Claimant, as well as the

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[1] In the Statement of Claim, filed on 18 January 1982, the Claimant sought compensation in respect of five separate properties which he valued at U.S.$13,006,100. At the outset of the Hearing, the Claim relating to a property at Varamin was withdrawn. In the final pleadings the amount claimed was adjusted to U.S.$4,091,582. See infra, para. 92 and note 31 thereto.

> Tribunal's jurisdiction over the Claims presented by the Claimant and the relevance, if any, to the merits of the Claimant's other nationality, the Tribunal will have to examine further the nationality issue, together with other issues, such as the facts and applicable laws relating to the alleged acquisition and ownership of the property which constitutes the basis of this Claim as well as the actions by the Respondent allegedly affecting them. The Tribunal therefore decides to join all jurisdictional issues, including the issue of the Claimant's nationality, to the consideration of the merits of this Case.

4. While listing this Case for hearing, the Tribunal decided, in its Order of 14 February 1994, that:

> No new documents may be introduced prior to the Hearing unless the Tribunal so permits and unless the request for the introduction of new documents is filed at least three months before the Hearing, the request is accompanied by the documents themselves, and an explanation is given of the circumstances that have prevented the filing of the documents earlier.

5. Two months before the Hearing, the Claimant submitted two new documents, filed at the Tribunal on 21 November 1994. The Tribunal, in its Order of 6 December 1994, reserved decision on the admissibility of these new documents in so far as they concerned matters other than the notice of witnesses. In view of the outcome of this Case, see infra, para. 164, it is unnecessary for the Tribunal to take a decision on the admissibility of these documents.

6. The Hearing in this Case was held on 19 and 20 January 1995.

7. At the Hearing, Professor Joe Verhoeven, Counsel to the Respondent, made a detailed argument on the question of the applicability of the standard of compensation in the Treaty of Amity[2] to dual nationals. The Claimant requested that he be

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[2] Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3553, 8 U.S.T. 900.

given an opportunity to reply to the Respondent by way of a post-hearing submission. At the close of the Hearing and in its Order of 27 January 1995, the Tribunal stated that it would decide in due course whether to permit such a submission. In view of the outcome of this Case, see infra, para. 164, it is unnecessary to make any determination on the standard of compensation applicable under the Treaty of Amity. Thus, there is no need to address the Claimant's request for a post-hearing submission on this issue.

II. FACTS AND CONTENTIONS: NATIONALITY

Birth

8. The Claimant was born in Teheran on 21 March 1912. His parents were Iranian. He holds an Iranian Identity Card issued at Tehran in 1918.

Education

9. The Respondent states, and it is not disputed by the Claimant, that he received his primary and secondary education in Iran.

10. In December 1934, at the age of 22, the Claimant went to the United States as a student on a scholarship to the Colorado School of Mines where he graduated with a Bachelor's Degree in Petroleum Engineering in June 1938. He entered the California Institute of Technology, Pasadena, in September 1938 and graduated in 1939 with a Master of Science Degree in Geology. In September 1939, it is contended, he entered the University of California, Berkeley, where he completed his studies in May 1940.

11. The Respondent submits that the Claimant studied in the United States as an Iranian holding an Iranian Passport and that the means by which he undertook his studies there were derived from Iran.

Residence

12. Following completion of his studies in the United States, the Claimant returned to Iran in 1940. He resided there until he, his wife, and their children moved to the United States in 1948. The Claimant has resided in the United States continuously since 1948.

13. From time to time the Claimant has returned to Iran using his Iranian Passport. The Claimant's son, John F. Karubian, stated at the Hearing that his father had visited Iran no more than ten times between 1948 and 1978, the average duration of these trips being approximately two weeks each and none of them longer than one month.

Employment

14. The Claimant contends that in 1942 he was a liaison officer in Iran between the Iranian, Soviet and United States Armies. During the years 1948 to 1961 he was president of Amir and Company, an import and export fine arts business based in New York. The Claimant and his wife, Touba, a graduate of the New York School of Interior Design, relocated to California in 1961 and commenced a similar business under the name of "Touba Kay Galleries" in Beverly Hills. This business continued until 1978 when they liquidated the business and retired. Since retirement, the Claimant has continued occasionally to deal in and appraise arts and antiques. The Claimant has been a member of the American Appraisers' Association since 1950. He has also been a member of other professional associations such as the Beverly Hills Board of Realtors and the Geothermal Institute of America.

Nationality

15. Because the Claimant was born in Iran and because his father was Iranian, he was, under Article 976, paragraph 2 of the

Iranian Civil Code, at all relevant times, and still is, a national of Iran.

16. The Claimant, his wife and children moved to the United States in March 1948. The Respondent contends that the assertion that the Claimant immigrated to the United States is groundless because he departed for the United States on an Iranian passport which indicates that it is not valid for the purposes of emigration. There is no evidence of the date on which the Claimant commenced the formal United States naturalization process, but it is clear that he was issued a Certificate of Naturalization on 6 April 1954.[3]

17. After obtaining his Certificate of Naturalization the Claimant obtained a United States passport, and he has maintained it since then. In 1968 the Claimant also obtained an Iranian passport and subsequently acquired another in 1973 after the loss of the former.

18. The Respondent argues that the Claimant's United States nationality is rendered null and void pursuant to Article 989 of the Iranian Civil Code because the Claimant acquired United States nationality without abandoning his Iranian nationality in accordance with Iranian law. The Respondent, therefore, is of the view that the Claimant does not have standing to claim against Iran.

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[3] The Claimant's Naturalization Certificate was issued under the name of Richard Kay. That name was adopted after he arrived in the United States to facilitate his immigration and that of his family. Subsequently, after deciding that the name change was unnecessary, he and his family assumed their original names, the Claimant's being Rouhollah Karubian, and a court order to that effect was obtained in 1956.

Family

19. The Claimant and his wife, Touba Karubian, were married in Tehran in September 1940. Three children were born of the marriage; all three were born in Iran.

20. The Claimant's three children were subsequently naturalized as citizens of the United States. They all reside in Southern California within the immediate residential area of the Claimant, and all are married to United States citizens. The Claimant has several grandchildren, all of whom, he says, are United States citizens. The Claimant's son graduated from the University of California at Los Angeles and is an economist who has worked for the United States Government and for American corporations involved in the defence industries. His youngest daughter is an attorney who practices law in the State of California.

21. As contended, the oldest brother, sister and younger brother of the Claimant went to the United States in 1947, 1948 and 1959, respectively. Since their respective arrivals they have resided continuously in the United States, have become naturalized citizens of the United States (with the exception of the younger brother), and have children who are all United States citizens. The younger brother has served in the National Guard of the United States.

22. The Claimant's father arrived in the United States in 1959. He passed away in 1961 and was buried in Los Angeles.

Property in the United States

23. The Claimant asserts that in 1951 he purchased a residential property for his family in Forest Hills, New York, and that the present family residence in Beverly Hills was purchased around 1963. He also contends that he owns or has been the owner of

several other substantial pieces of real estate located in the United States.

Civic Activities

24. The Claimant belongs to numerous civic associations in the United States. His memberships include the Los Angeles County Museum of Art, the American Association of Retired Persons and the Concerned Citizens for the Safety of Beverly Hills. He has also served as the President of the Iranian Jewish Cultural Organization of California.

Other Factors

25. On the evidence presented by him, the Tribunal is satisfied that the Claimant has paid taxes in the United States since 1961; has held a California Driver's License; and is the holder of a social security number in the United States. The Claimant also contends that he has voted in Presidential, state and local elections in the United States since his naturalization.

III. LEGISLATION AND RELATED OFFICIAL ACTS

26. In order to understand fully the facts and contentions relating to the properties involved in this Case, it is necessary to review first the relevant Iranian land reform legislation and other official acts of the Respondent. The Tribunal will therefore discuss these before examining the facts and contentions related to the specific properties in question.

The 1979 Act Concerning Abolition of Ownership of *Mawat*[4] [Undeveloped] Urban Lands and the Manner of their Development[5]

27. On 27 June 1979, the Revolutionary Council of the Provisional Government of the Islamic Republic of Iran adopted the Act Concerning Abolition of Ownership of Mawat [Undeveloped] Urban Lands and the Manner of their Development ("the 1979 Act"). Its Preamble declared:

> Whereas under Islamic standards mawat [undeveloped] land is not recognized as anyone's property, it is at the disposal of the Islamic Government, and ownership deeds that were issued during the former regime with regard to mawat lands lying within or outside city boundaries, are contrary to Islamic standards and against the interests of the people.

The relevant provisions of the 1979 Act were as follows:

> Article 1: In connection with lands lying within the legal (25-year) boundaries of cities, where such boundaries exist, and also in other cities within the limits to be determined and announced by the Ministry of Housing and Urban Development, the Government shall, in a gradual manner and with due observance of the detailed urban plan in each region, inform those individuals who were, under the standards of the former regime, recognized as owners of such lands, to take measures to develop and improve those lands within a specified period. In the event no action is taken by them within the stipulated period, they shall be afforded no priority, and such lands will be taken over by the Government without compensation.

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[4] The Tribunal understands that mawat land is land which is undeveloped and has no prior record of development.

[5] English title of the Act as translated by the Tribunal's Language Services Division. The Parties have presented different English translations for this title. The Tribunal has previously referred to this Act as the "Act to Abrogate Ownership of Never-Utilized Lands and the Manner of Development Thereof." See Zaman Azar Nourafchan, et al. and Islamic Republic of Iran, Award No. 550-412/415-3, para. 19 (19 Oct. 1993).

Note: Those persons who have procured a small piece of land for their personal residence, and do not own a residential unit, shall be given, by the Government, a minimum period of three years to develop their lands.

. . . .

Article 3: The manner of notification to those individuals who were recognized as the owners of such lands in the former regime, classification of lands as mawat [undeveloped], and the manner of development and improvement, as well as the conditions of transfer of the said lands, the determination of the area of land referred to in the Note to Article 1 in each region, and other matters relating to the implementation of this Act shall be in accordance with the By-Laws which are to be prepared by the Ministry of Housing and Urban Development, and approved by the Council of Ministers.

Article 4: The Ministry of Housing and Urban Development shall implement this Act.[6]

28. The application of the provisions of the 1979 Act was extended on 25 September 1979 to the region beyond the 25-Year City Limit of Tehran out to the city's "Protective Border," the extent of which is not known, by the Law Concerning the Abolition of Ownership of Mawat [Undeveloped] Urban Lands Situated within the Legal Twenty-Five-Year [Development] City Limit of Tehran and its Protective Boundary[7] ("the Urban Lands Extension Act").

Regulations to the 1979 Act

29. On 13 August 1979 the Regulations to the 1979 Act[8] were approved by the Council of Ministers pursuant to Article 3 of the

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[6] Published in Official Gazette No. 10025 on 24 July 1979 and announced to the public by Notice No. 7/2064 dated 2 July 1979. English translation by the Tribunal's Language Services Division.

[7] Published in Official Gazette No. 10257 dated 14 May 1980.

[8] Published in Official Gazette No. 10075 dated 25 September 1979.

1979 Act. The Regulations to the 1979 Act, inter alia, provided guidelines on (a) how to determine whether a piece of land was mawat; (b) what constituted acceptable development and improvement of that land in order to obtain a certificate to the effect that the land was not mawat; (c) how to interpret the Note to Article 1; (d) how to notify the owners of lands specified in that Note of the requirement to develop and improve such lands; and (e) how mawat lands were to be disposed and assigned.

30. The Regulations were challenged as being unconstitutional and not conforming to the standards of Islamic law. On 3 February 1981, the Secretary-General of the Guardian Council, Mr. Lotfollah Safi, communicated to the Minister of Housing and Urban Development that, in the Opinion of the Islamic Jurists of the Guardian Council, the Regulations to the 1979 Act were unenforceable in so far as they applied to bayer land.[9] After a request by the Minister of Housing and Urban Development for a clarification of that Opinion, the Islamic Jurists of the Guardian Council, on 4 February 1981, held that their previous Opinion related solely to the applicability of the Regulations to the 1979 Act to bayer lands and did not concern the 1979 Act itself or measures taken on the basis thereof.[10]

Amendment to the 1979 Act

31. On 27 August 1979 an amending Act ("the Amendment to the 1979 Act")[11] limited the application of the grace period provided under Article 1 of the 1979 Act to lands within the size requirements of the Note to that Article. The Amendment declared

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[9] The Tribunal understands that bayer land is land which has previously been developed but which has fallen into disuse.

[10] Published in Official Gazette No. 10580 dated 27 June 1981.

[11] Published in Official Gazette No. 10062, dated 9 September 1979 and announced to the public by Notice No. 53688 dated 27 August 1979.

"with respect to areas in excess thereof there is no need for the Government to grant a time-limit and these [lands] will become Government property forthwith."[12]

Urban Lands Act 1982

32. In response to the pronouncements of the Islamic Jurists of the Guardian Council on the Regulations to the 1979 Act, the Urban Lands Act ("the 1982 Act") was approved at a meeting of the Islamic Consultative Assembly on 17 March 1982.[13] The relevant part of that Act reads as follows:

> Article 5: All mawat urban lands are at the disposal of the Government of the Islamic Republic of Iran, and previous ownership deeds and documents are devoid of legal validity, unless such lands have been transferred by the Government as of 22.11.1357 [11 February 1979].
>
> Note: The title deeds of mawat lands which, according to [the 1979 Act] and the present Law, have been, or will be, put at the disposal of the Government and are held as collateral, shall be considered as released. Claims by individuals arising from the sale of such lands will cease to exist. Other claims, however, shall be collected by the creditor from the debtor's other property.[14]

33. The Respondent explains that the 1979 Act and its Regulations did not provide a comprehensive framework for implementation of the law. The Act therefore posed problems for the government in carrying out its legal duty concerning urban mawat lands. Moreover, the Respondent considered the removal of the judiciary from the process not to be in the public interest.

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[12] English translation by the Tribunal's Language Services Division.

[13] Published in Official Gazette No. 10813 dated 13 April 1982 and announced to the public by Notice No. 10856 dated 7 April 1982.

[14] English translation by the Tribunal's Language Services Division.

The Respondent believed that the judicial authorities, rather than administrative committees, should be made responsible for hearing the objections of interested parties. The Respondent states that the 1982 Act addressed these concerns and completely changed the previous rules.

34. The Claimant argues that the 1982 Act did not explicitly repeal or amend the 1979 Act but rather that it confirmed the 1979 Act's nullification of deeds to mawat lands.

Rural Lands

35. The Claimant contends that rural lands not covered by the 1979 Act, its Amendment and Regulations were affected by the 1979 Law Concerning the Manner of Grant [of Usufruct] and Reclamation of Lands within the Jurisdiction of the Islamic Republic of Iran[15] ("the Lands Grant Act"). This Act gave owners of mawat, bayer and coastal[16] lands periods of two, five and three years, respectively, to take action to reclaim and exploit such land. Failure to do so within that period would result in those lands being taken over by the Government and granted for agricultural purposes or allocated for public use.

36. However, several subsequent amendments to the Lands Grant Act changed its initial purport. An amendment approved on 2 March 1980 and published in the Official Gazette No. 10238 dated 21 April 1980, remaining silent as to mawat land, declared that

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[15] English translation by the Tribunal's Language Services Division. The Act was approved on 16 September 1979, published in Official Gazette No. 10092 dated 16 October 1979 and announced to the public by Notice No. 55934 dated 26 September 1979.

[16] "Coastal lands" under Article 1, paragraph i, of the Lands Grant Act is defined, in relevant part, as "lands lying alongside the coasts of seas."

control of large areas[17] of bayer land in the hands of major land holders[18] which had been kept unutilized would be taken over by the Respondent in order to grant them to farmers and other eligible applicants so that they may be cultivated. An amendment approved on 19 March 1980 and published in the Official Gazette No. 10244 dated 29 April 1980, restricted the scope of the previous amendment by providing, inter alia, that large bayer lands belonging to major land holders would be taken over by the Government only "if necessary." In another amendment, approved on 15 April 1980 and published in Official Gazette No. 10254 dated 11 May 1980, mawat lands, the size of which was not specified, were declared to be at the disposal of the Respondent. They were to be granted to individuals or companies according to their needs and abilities and where the best interests of society warranted, to be allocated for public use.

37. In addition to referring to many of the above-mentioned pieces of legislation, the Claimant cites the Implementing Regulations for the Lands Grant Act, approved on 21 May 1980 and published in Official Gazette No. 10285, and alleges that by May 1980 his properties that could be considered rural lands were explicitly declared to be under the Respondent's control for the purposes of redistribution to persons who would cultivate them.

Newspaper Reports on Official Statements and Governmental Action

38. The Claimant has submitted several extracts of reports from the Etela'at newspaper to support his claim that the Respondent purported to implement the above-mentioned land reform legislation in 1979 and 1980. That newspaper reported a number of governmental acts and public statements allegedly made by

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[17] A large area of land is described as one that is three times the size of the land area which, in accordance with local custom, is necessary to support one farmer and his family.

[18] The term "major land holder" is not defined.

Iranian officials during the years 1979 and 1980 regarding the meaning and effect of the foregoing legislation. A brief description of some of the English translations of the Etela'at reports submitted by the Claimant follows.

39. The Iranian Minister of Housing and Urban Development in 1979, Mr. Mostafa Katirai, is reported to have announced:

> We have divided the lands into two categories. Small undeveloped lands and large undeveloped lands. The owners of the small undeveloped lands must develop their lands within the time limit provided in [the 1979 Act]. Large lands, and lands in excess of the limit provided by the law belong to the government. For this reason, we have asked the Ministry of Justice to notify the National Organization for Registration of Documents and Real Properties to issue a circular to the offices of Notary Public prohibiting transaction on lands in excess of the limit specified by law, because the status of owners of large lands must first be determined so that if they allege that their lands are not undeveloped, the matter be examined and decided whether or not the land has been developed, then a transaction on it would be permitted.[19] (Claimant's emphasis not included.)

Etela'at, 2 September 1979.

40. It is reported that the Director of the Ministry of Housing and Urban Development, Mr. Mohsen Yahyavi, declared:

> [T]here is no owner for large lands. If an individual or an association attempts to divide lands without the permission of the Organization for Development of Undeveloped Lands and to make it available to the others, this is against the law and the government shall not recognize such an act.[20]

Etela'at, 27 November 1979.

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[19] English translation by Claimant.

[20] English translation by Claimant.

41. The Mayor of Tehran, Mr Tavassoli, though neither a government official nor an officer of the said Organization, allegedly stated:

> The Organization for Development of Urban Lands shall first transfer the ownership of the lands in excess of 1,000 square meters in Tehran and other cities with more than 200,000 population and lands in excess of 1,500 square meters [in other cities] to the government and then will divide said lands into separate parcels, construct canals and prepare the lands for development.[21]

Etela'at, 4 September 1979.

42. In the fall of 1979 the National Organization for Registration of Documents and Real Property reportedly issued a circular notice to all officers for the registration of official documents throughout Iran. According to an Etela'at newspaper report on 6 September 1979, the circular notice prohibited the recording of any transfer of title to land which exceeded the limits imposed by Article 5 of the Regulations to the 1979 Act.

43. The Public Relations Bureau of the Ministry of Housing and Urban Development is reported to have announced that 10 June 1980 was the last day to file petitions to exempt lands within the city limits of Tehran from the scope and effects of the 1979 Act. The report further stated that the deadline would not be extended. Etela'at, 9 June 1980. It is not known whether there were further such extensions.

44. In Guilan Province, where the Chaboksar property is located, see infra, para. 49, and in Mazandaran Province, where the Nashtarood property is located, see infra, para. 82, similar deadlines were set. The owners of unutilized urban lands in Guilan Province had until 1 July 1980 to file exemption petitions

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[21] English translation by Claimant.

and those in the Province of Mazandaran had until 26 November 1980. Etela'at 4 May 1980 and 24 November 1980.

45. The Respondent regards the foregoing extracts from the Etela'at newspaper as irrelevant.

46. In addition to the newspaper extracts that the Claimant has submitted, the Tribunal notes that the Etela'at of 5 March 1980 reported as follows:

> Today, Ali Ghoddoussi, the Islamic Revolutionary Prosecutor General, issued a circular in which he notified all government offices, banks and notary public offices that powers of attorney sent to individuals from foreign countries shall, until further notice, be null and void.[22]

IV. FACTS AND CONTENTIONS: PROPERTY

A. The Properties Subject to the Claim

47. The original Statement of Claim, filed in 1982, sought compensation in respect of five properties, viz., Chaboksar, Ahmad-Abad, Farahzad, Nashtarood and Varamin. At the Hearing, Counsel for the Claimant formally withdrew the Claim relating to the Varamin property.

48. Most of the Claimant's assertions regarding the current status of his properties are founded on the contents of a report by an unidentified representative in Iran. The Claimant maintains that he made repeated attempts to obtain information from persons in Iran on the status of his properties. In his Affidavit of 12 May 1992 the Claimant explains that he finally obtained the services of a representative in Iran to make an

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[22] English translation by the Tribunal's Language Services Division.

independent report but that the representative was unwilling to be identified. The report is dated 6 May 1992.

Chaboksar

49. The property described as Chaboksar is comprised of eight parcels of land located in the Village of Mahaleh Sheikh Zahed in Guilan Province.[23] The property fronts the Caspian Sea and covers an area of 31,300 square meters. It was purchased by the Claimant from Major General Amir-Hossein Attapour in February 1973.

50. The Respondent admits that it canceled the Claimant's title deeds to the eight parcels of land which constituted the Chaboksar property. However, the Respondent submits that those deeds were canceled pursuant to the 1982 Act. According to the Respondent, the Urban Lands Organization, in compliance with that Act, considered the land to be mawat. As a consequence, the matter was brought before the Assessment Commission established under Article 12 of the 1982 Act. On 15 August 1985 the Commission, comprised of representatives of the Minister of Housing and Development, Minister of Justice and the local Mayor, unanimously determined that the Chaboksar property was mawat land, given the absence of evidence of development, rehabilitation, construction, cultivation or harvesting. Subsequently, upon request by Guilan's Department General of Urban Land, new title deeds for the Chaboksar property were issued in the name of the Respondent, represented by Guilan's Department General of Urban Land. All Notary Public offices were notified of the circumstances by way of circular No. 2103 dated 19 May 1986.

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[23] The Chaboksar property title deeds submitted by the Claimant state that he is the owner of the property and that the deeds are in accordance with the records on file with the Department of Real Estates.

51. The Respondent submits that, because the Claimant's title deeds to the Chaboksar property were canceled only after the Assessment Commission's finding in August 1985, the matter falls outside the jurisdiction of the Tribunal. According to the Respondent, there is no connection between the relevant 1979 legislation and the 1982 Act because the latter changed totally the 1979 legislation.

52. Furthermore, the Respondent submits that the Chaboksar property was never found to be subject to the 1979 Act. This Act necessarily required that certain procedures were to be carried out under its Regulations and that a determination had to be made regarding whether the land in question was mawat. The Respondent adds that such a determination regarding Chaboksar should have been made during the period of enforcement and validity of the 1979 Act. It is the Respondent's view that the 1979 Act was no longer in force after the approval date of the 1982 Act.

53. This conclusion of the Respondent is also based on an analysis of the Note to Article 5 of the 1982 Act which, in relevant part, states "[t]he title deeds of [mawat] lands which, according to the [1979 Act] and the [1982 Act], have been, or will be, put at the disposal of the Government and are held as collateral, shall be considered released."[24]

54. The Respondent expresses the view that the above Note distinguishes between lands that have already been acquired by virtue of the 1979 Act and those that will be acquired in accordance with the 1982 Act. Consequently, the Respondent infers that, after the enactment of the 1982 Act, the 1979 Act was no longer in force and that, thereafter, the Respondent could only acquire title deeds to urban mawat lands by virtue of the 1982 Act.

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[24] English translation by the Tribunal's Language Services Division.

55. The Claimant, however, maintains that the expropriation of mawat urban lands was complete in September 1979, after the Amendment to the 1979 Act came into effect. It is his contention that the enactment of the 1982 Act only confirmed the 1979 Act. At the Hearing, Counsel for the Claimant submitted that the 1982 Act did not replace or repeal the 1979 Act, but rather ratified it, in so far as it referred to mawat lands.

56. Included in the evidence presented by the Claimant is a letter written to him by Mr. Menashe Yaghoubzadeh, dated 3 June 1979.[25] The letter states that the Respondent has "appropriated" the Chaboksar property. The Claimant contends that this letter, which predates the enactment of the 1979 Act, describes what was happening during the period leading up to the 1979 land reform legislation.

57. The Claimant also relies on the 1979 land reform legislation in conjunction with related official acts, see supra, paras. 27-44, to substantiate his claim that he was deprived of his ownership rights in the Chaboksar property as of September 1979.

58. According to the Respondent, the consequence of the 1985 decision by the Assessment Commission was to render invalid ab initio the Claimant's Chaboksar title deeds, which had been acquired illegally. Therefore, the Respondent maintains, this decision could not amount to an expropriation of property. The illegal acquisition is said to have resulted from the Claimant's purchase of mawat land, which could not be privately owned. The only way to legally own mawat land, states the Respondent, is for an individual to undertake a process of reclamation and improvement in accordance with Articles 141-145 of the Iranian Civil Code.

59. The Claimant, however, asserts that pursuant to Article 140 of the Iranian Civil Code he is the legitimate owner of the title

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[25] The Claimant's English translation of this letter incorrectly translates the date as 13 June 1980.

deeds to the Chaboksar property. That Article provides that ownership is acquired, inter alia, by "means of contracts and obligations." This provision, according to the Claimant, renders irrelevant any examination of whether he reclaimed and improved mawat land. The Claimant argues that he acquired ownership over the land in question by purchasing it from its prior owner by contract, for valuable consideration.

60. Furthermore, the Claimant contends that the title deeds are valid under Articles 1287, 1290 and 1292 of the Iranian Civil Code which read as follows:

> Article 1287. Documents which have been drawn up at the General Department for Registration of Documents and Landed Properties, or at the offices of Notaries Public, or before other official authorities, within the limit of their competency and in accordance with legal Regulations, are notarial [official].
>
> . . . .
>
> Article 1290. Official documents are binding in respect of the two parties and their heirs and successors. They are binding in respect of third parties if this has been stipulated by the law.
>
> . . . .
>
> Article 1292. Denial and expression of doubt is not entertainable against notarial documents or documents which have the value of notarial documents, but the party can claim that the documents have been forged or prove that they have for some reason lost their validity.[26]

61. The Claimant notes that these provisions have been supplemented by Articles 70 and 72 of Iran's Registration Law which provide as follows:

> Article 70. An instrument which has been registered in accordance with the laws and all of its provisions and signatures included therein shall be valid unless it is proved to be a forgery. The denial of the provisions of official documents concerning the

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[26] English translation by Claimant.

> receipt of all or a portion of the price or the property or the undertaking to pay the price or to deliver the property shall not be heard.
>
> . . . .
>
> Article 72. All transactions relating to immovable properties which have been registered in accordance with the regulations for the registration of immovable property shall have complete validity and official status for the parties to the transaction and their legal successors and for third parties.[27]

62. Based upon the above legislative provisions, the Claimant asserts that the title deeds, which state that he is the owner of the properties described therein, may not be challenged under Iranian law.

63. In reply, the Respondent draws attention to the condition in Article 1287 of the Civil Code of Iran which requires that the document must be drawn up "in accordance with legal regulations" and the proviso in Article 1292 which allows a party to claim that a notarial document has "for some reason lost validity." The Respondent also refers to the Articles 27 and 141 to 145 of the Civil Code of Iran and Article 41 of the By-Law to the Registration of Property Act to support its assertions that mawat land cannot be privately owned and that the title deeds to the Chaboksar property have not been registered in accordance with the law.

64. Article 41 of the By-Law of Registration of Property Act states that applications for registration of mawat lands shall not be accepted. Thus, the Respondent submits that, pursuant to this Article, the acceptance of an application for the registration of mawat land by the Registration Bureau is unlawful. Consequently, it asserts that if such an application is accepted, the condition requiring the adherence to law in Article 1287 of the Civil Code is not met and a party may claim that the title deed has lost its validity under Article 1292.

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[27] English translation by Claimant.

65. The Respondent also argues that since 1952, several laws such as the 1956 Law Concerning Lands Belonging to the State, Municipalities, Endowments and Banks, as amended, were passed to annul title deeds that nonetheless might have been or might be issued for mawat lands in contravention of the Iranian Civil Code.

66. Finally, it is the Respondent's submission that the transfer by contract of the Chaboksar property to the Claimant could not have conveyed proper title because the deeds to that property had been issued contrary to law. That is, the Respondent argues that the vendor of the property did not have legal title and therefore could not transfer legal title to Mr. Karubian.

67. In spite of the Respondent's admission that it acquired Chaboksar in August 1985, the Claimant's representative in Iran reported on 6 May 1992 that the Claimant's ownership of Chaboksar "is confirmed in the Registration File and has not been taken away from him. The Laws passed have also not yet put a cloud on his title [in the Registration File]."

Farahzad

68. The property described as Farahzad consists of five parcels of land which total 20,250 square meters. It is situated in Shemiran, Tehran.[28] The Claimant purchased the property on 22 February 1958 from the Farahzad Company.

69. The Respondent's pleadings indicated that, after the commencement of the 1982 Act, the Tehran Urban Lands Organization considered that certain parcels of land in the Village of Farahzad, including three of the parcels owned by the Claimant,

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[28] The Farahzad property title deeds submitted by the Claimant state that he is the owner of the property and that they are in accordance with the records on file with the Department of Real Estates.

were mawat. The Respondent also states, and there is evidence in support of its position, that the issue was reconsidered by the said Organization which decided that the Claimant's three parcels of land were not mawat but were instead dayer[29] because there were two water pools, an orchard, a building, and a water and electricity connection on the property. As for the remaining two parcels of the Claimant's Farahzad property, no records indicate that they have been found to be mawat.

70. The letter written by Mr. Yaghoubzadeh to the Claimant, see supra, para. 56, also refers to the Farahzad property and states that this property, in addition to the Chaboksar property, was "appropriated" by the Respondent. The only other evidence related to the Farahzad property that the Claimant has submitted is contained in his representative's report which alleges that a portion of the Farahzad lots probably had been "turned into a green belt (park) and a temporary produce market by the Tehran Municipality District 2 Office. But all of the local people are of the opinion that about half the area has not been seized."

71. In response to this allegation by the Claimant's representative, the Respondent draws attention to a passage in the representative's report relating to the Farahzad property where he states that "the Registration File shows no transaction or transfer or cancellation of a deed or request for issuance of a deed against the interests of [the Claimant]. There are no adverse claims against the ownership of [the Claimant] on the Registration File." The Respondent considers that this passage shows that there was no interference with the Claimant's ownership rights in the Farahzad property and that it confirms the Tehran Urban Lands Organization's decision, see supra, para. 69.

72. The Respondent also highlights the inability of Claimant's representative to determine the exact location of the Claimant's

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[29] Developed land.

Farahzad property. One cannot, according to the Respondent, ascertain that the green belt and the temporary produce market are located on the Farahzad property when there is uncertainty with regard to the location of the Claimant's lots. At the Hearing, the Respondent's valuation expert, Mr. Kamal Majedi stated that the Farahzad village was in the midst of a rural area but did not indicate when this was the case. Mr. Majedi acknowledged that he had not visited the Farahzad property.

73. The Respondent further states that the Claimant has given no date as to when the alleged taking of the property actually or probably began. Thus, it submits that the Tribunal has no jurisdiction to decide the claim.

Ahmad-Abad

74. Ten parcels of land make up the property described as Ahmad-Abad, which is located south of the Farahzad property in Ahmad-Abad, Shemiran, Tehran.[30] It covers an area of 2,726.9 square meters. The property was purchased from Yousef Daee and Touran Toubia on 4 March 1957.

75. The Claimant's representative in Iran reported that the Ahmad-Abad property is in the Municipality Limits of District 2 of Tehran and that, in general, all property within the Districts of the Municipality of Tehran are within the 25 year boundary. Thus, the Claimant contends the property was subject to the 1979 Act, the affected area of which was widened by the Urban Lands Extension Act.

76. The Respondent, in its written pleadings, agreed that there was no dispute that the Ahmad-Abad property was urban land. At

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[30] The Ahmad-Abad property title deeds submitted by the Claimant state that they were transferred to him on 4 March 1957 and that they are in accordance with the records on file with the Department of Real Estates.

the Hearing, however, the Respondent's valuation expert, Mr. Kamal Majedi expressed the opinion that the property was located in a rural area but did not indicate when this was the case. Mr. Majedi acknowledged that he had not visited the Ahmad-Abad property.

77. The Claimant's representative in Iran alleges that the Ahmad-Abad property is under the possession and control of the employees of the municipality and is known as "lands of the Islamic Judge." He explains that during 1979 and 1980 a sharia judge[31] of a municipal court, acting ultra vires, gave lands to the employees of the municipality by way of a handwritten order. The employees of the municipal authority took possession of such lands, built on them and obtained title deeds that were not in conformity with the official registration files. The representative's search of the registration file failed to reveal any transfer, request for cancellation of a deed, request for issuance of a new deed or request for the seizure of Claimant's land. The representative notes that the rightful owners of the "lands of the Islamic Judge," who at the time of seizure complained to the judicial authorities, were able to obtain alternate lands.

78. The Respondent contests the Claimant's assertions that it is liable for any deprivation related to the Ahmad-Abad property by arguing that it is bound by the by-laws of the 1982 Act and that it cannot transfer the lands to others without possession of the title deeds to that land. It adds that the title deed is issued in the name of the Respondent only after (a) referral to an Assessment Commission; (b) obtaining a final determination declaring the land to be mawat, which determination is subject to judicial review; and (c) referral thereafter to the State Registration of Deeds and Properties Bureau for annulment of the Claimant's title deeds.

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[31] Islamic religious judge.

79. The Respondent relies on the report of the Claimant's representative which states, in reference to the Ahmad-Abad property, that "no transfer or request for cancellation of a deed or a request for the issuance of a new deed under Articles 147 and 148 of the Registration Law is to be found. There is also no request for the seizure of this block. Consequently, according to the Registration File, there is no cloud on or change in the ownership of [the Claimant], while, in fact, the ownership title is in question." This statement, according to the Respondent, serves as a confirmation of its position that it took no measures affecting the Ahmad-Abad properties.

80. The Respondent argues that no evidence has been adduced to indicate the land was mawat and, thus, subject to the legislative enactments and regulations in issue. The Respondent further submits that the Claimant's real action is against the sharia judge and any usurpers of his lands, particularly because the Claimant possesses the title deeds to his lands. The Respondent states that it opposed the action of the sharia judge and that he was subsequently dismissed from his position. It further states that some owners of the seized lands, on the basis of the order of the sharia judge, complained to the competent courts. The courts reportedly found that the complaints were justified and allowed the complainants to obtain lands in exchange for the lands constituting the subject matter of their complaints. This course of action, the Respondent adds, was also open to the Claimant if the lands in question had indeed been among those lands seized.

81. The Respondent also submits that the Claimant's representative in Iran has not been able to determine the precise location of the Ahmad-Abad property. Thus, it questions how the representative can say with any certainty that the lands are part of the sharia judge's lands and that they have been occupied by others.

Nashtarood

82. The property described as Nashtarood is a single parcel of land measuring 3760 square meters. It is located in the Marzeh Village of Nashta in Mazandaran Province and its northern side faces the Caspian Sea.[32] It was acquired on 9 November 1972 from Mr Ardeshir Binesh Aghevli.

83. The Claimant contends that the Nashtarood property was taken by the Respondent on the basis of what is said in his representative's report. The representative alleges that a custodian or guard is living on the property. The custodian or guard apparently refused to identify himself to the Claimant's representative and did not disclose any particulars of who authorized him to act in such a capacity.

84. The Respondent argues that the guard was the Claimant's appointed caretaker, who had been retained long before the Islamic Revolution. The Respondent denies having interfered with, or taken, the Nashtarood property. It has presented a letter dated 18 March 1991 from the Head of the Department for Registration of Deeds and Real Estate, Tonokabon, which refers to the Nashtarood property and concludes that "according to our records on file, the said land continues to be in [the Claimant's] ownership."

85. In response to this letter, the Claimant asserts that what appears in the registration file for particular parcels of land does not represent what has actually happened to his property.

86. The Respondent also states that there is no evidence presented by the Claimant to prove that the Nashtarood land was determined to be mawat or that it was subject to the 1979 or 1982

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[32] The Nashtarood property title deed submitted by the Claimant states that one undivided share of eighty shares thereof was transferred to him on 9 November 1972 and that it is in accordance with the records on file with the Department of Real Estates.

Acts. It relies on the report by the Claimant's representative which states "[the Claimant] whose ownership, according to the Registration File, is without objection may request the issuance of a fee simple title deed to his lot. To this date, 3,679 square meters of the block are shown in the Registration File under [the Claimant's] own ownership and there is no outstanding registered or legal claim against it."

B. Alleged Governmental Actions Affecting the Claimant as a Land Owner Living Outside Iran

Alleged New Regulations on Powers of Attorney

87. The Claimant contends that after the Revolution in 1979, new regulations were implemented which were specifically designed to prevent persons residing outside Iran from engaging in any major transaction in the country. The Claimant states that he was "told of a new regulation that had been put into effect that prohibited legalization of transactions involving more than [] 1,000,000 [rials] . . . by means of a power-of-attorney executed outside Iran." He further asserts that it "became known throughout the Iranian-American community that Iranian consular offices in Europe and the United States would not 'consularize' (authenticate) powers-of-attorney involving more than [] 1,000,000 [rials]."

88. The practical effect of the alleged restriction on powers of attorney, the Claimant argues, is that it prevented land transactions by any person residing outside the country. It appears that prior to 1979, the Claimant had granted a formal power of attorney to Dr. Mousa Hanani, giving Dr. Hanani full authority to sell any of the Claimant's real property on the instruction of the Claimant. It also appears that on another occasion in 1972, an Iranian attorney in fact, Dr. Parviz Taleghani, acted on the basis of a power of attorney given by the Claimant to carry out the acquisition of the Nashtarood property.

89. The Respondent states that, even if the new alleged regulations did exist, they would not prevent the Claimant from authorizing his attorneys in fact in Iran to protect his property interests. At the Hearing, the Respondent referred to other cases before the Tribunal, and in particular Jalal Moin and Islamic Republic of Iran, Award No. 557-950-2, para. 14 (25 May 1994), which, in the opinion of the Respondent, shows that it was possible for the Claimant, without entering Iran, to grant a power of attorney authorizing an attorney in fact in Iran to transfer his properties.

Travelling to Iran

90. The Claimant asserts that from 1979, as an American, he could not safely travel to Iran for any purpose.

91. The Respondent denies that it was dangerous for the Claimant to travel to Iran. It contends that it was not the Respondent's actions but the United States Government that prohibited the travel of Americans to Iran.

C. Valuation

92. As noted supra, in the Statement of Claim filed on 18 January 1982, the Claimant sought compensation in respect of five separate properties the total of which he valued at U.S.$13,006,100 on the basis of alleged offers to purchase the properties. In the final pleadings, following a valuation by an Iranian appraiser of the properties, the amount claimed was

adjusted to U.S.$4,091,582.[33] The Respondent, however, gives a considerably lower estimate of the 1979 value of the properties.[34]

V. JURISDICTION

Nationality of the Claimant

93. In accordance with the various criteria set forth by the Full Tribunal in its decision in Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal must first determine, on the basis of the evidence, whether the Claimant was, during the relevant period from the time his Claims arose until 19 January 1981, the date of the Claims Settlement

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[33] The following table lists the U.S. dollar values of the properties as claimed by the Claimant at different stages of the proceedings:

Property	Statement of Claim	Final Pleadings
Nashtarood	$ 380,000	$ 255,143
Chaboksar	$ 4,696,800	$ 1,788,572
Farahzad	$ 5,062,500	$ 1,880,357
Ahmad-Abad	$ 879,000	$ 167,510
Varamin	$ 2,000,000	---
	$13,006,100	$ 4,091,582

[34] The following table lists the different 1979 values of the properties in rials per square meter as submitted by the Claimant and the Respondent:

Property	Claimant	Respondent
Nashtarood	4,750	250-300
Chaboksar	4,000	300-350
Farahzad	6,500	400-450
Ahmad-Abad	4,300	250-300

Declaration, a national of the United States or a national of Iran, or of both. If the Claimant is found to be a national of both countries, i.e., a dual national, his dominant and effective nationality during that period must be determined.

94. It is the Claimant's contention that his Claims arose sometime between February 1979 and 19 January 1981 as a result of the Respondent's actions. For the purpose of determining the Claimant's dominant and effective nationality, therefore, this is assumed to be the relevant period in this Case.

95. It is not in dispute that the Claimant is an Iranian national by birth under Article 976 of the Iranian Civil Code. No proof has been offered that he ever relinquished his Iranian nationality or that he otherwise lost that nationality. At the same time, the Claimant has shown to the Tribunal's satisfaction that he has been a United States national since 1954 and that he maintained that nationality during the relevant period. The Tribunal therefore finds that the Claimant was a national of both Iran and the United States during the relevant period.

96. The question remains, however, as to the Claimant's dominant and effective nationality during that same period. For jurisdictional purposes, the Claimant must show to the Tribunal's satisfaction that his dominant and effective nationality was that of the United States during this period.

97. The Claimant has made the United States his continuous and habitual place of residence since moving there with his family in 1948. He became a naturalized citizen of the United States approximately twenty-five years before the relevant period. Most, if not all, of his family are fully integrated into the United States, having acquired American nationality and being resident there for considerable lengths of time. All of his grandchildren have been born in the United States. His import and export fine arts business was based in the United States from 1948 until his retirement in 1978. The Claimant's attachment to

the United States is also demonstrated by his active participation in public life in that country. All these facts, as reflected in the evidence submitted, remain uncontradicted. The Tribunal, therefore, has little difficulty in reaching the conclusion that the Claimant has demonstrated that his dominant and effective nationality, during the relevant period, is that of the United States.

98. Because the Tribunal has found that the Claimant was a dominant and effective United States national during the relevant period, the Tribunal concludes that his Claims are claims of a national of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration. See Case No. A18, supra, at 25, 5 Iran-U.S. C.T.R. at 265.

Other Jurisdictional Issues

99. The Claims are for the alleged deprivation of the Claimant's various parcels of real property in Iran. The Claimant has submitted title deeds in his name, deeds which were issued by the Registration Office of Documents and Real Estates, Iranian Ministry of Justice, for all the properties which form the subject matter of the Claims. The Tribunal is satisfied that the Claims fall within the Tribunal's subject matter jurisdiction of claims arising "out of . . . expropriations or other measures affecting property rights. . . ." Article II, paragraph 1, Claims Settlement Declaration.

100. The Respondent argues that the Claims were not outstanding on 19 January 1981, as jurisdictionally required by Article II, paragraph 1, of the Claims Settlement Declaration, because no expropriation of the Claimant's property ever took place during the relevant period. Whether the Claimant was able to prove to the Tribunal's satisfaction that prior to 19 January 1981 a compensable deprivation of his properties or interference with his property rights occurred forms part of the merits of the

Claims. "The Tribunal cannot base its jurisdiction on the presumption that the Claimant will eventually prevail on the merits." Albert Berookhim, et al. and Islamic Republic of Iran, et al., Award No. 499-269-1, para. 17 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 278, 286. To deny the Tribunal's jurisdiction on the ground put forward here by the Respondent "would amount to endorsing a fin de non-recevoir, that is . . . a 'ground [] of defence based on the Merits of the case and calculated to cause the judge to refuse to entertain the application.'" Vernie Rodney Pointon, et al. and Islamic Republic of Iran, Award No. 516-322-1, para. 28 (23 July 1991), reprinted in 27 Iran-U.S. C.T.R. 49, 58. See also Edgar Protiva, et al. and Islamic Republic of Iran, Award No. 566-316-2, para. 40 (14 July 1995). Consequently, the Tribunal rejects this jurisdictional objection by the Respondent.

101. The Tribunal is satisfied that these Claims were owned continuously by a national of the United States throughout the relevant period, as required by Article VII, paragraph 2, of the Claims Settlement Declaration.

Conclusion on Jurisdiction

102. For all the foregoing reasons, the Tribunal concludes that it has jurisdiction over these Claims.

VI. MERITS

A. Liability

103. The Tribunal now proceeds to determine whether the Claimant has been subjected to "expropriation or other measures affecting property rights" for which the Respondent bears responsibility in accordance with Article II, paragraph 1, of the Claims Settlement Declaration.

Expropriation under the 1979 Act

104. The Claimant contends that to establish the expropriation of property, an actual physical taking of property or formal transfer is not necessary. Consequently, he claims that the above-mentioned legislation and governmental actions, see supra, paras. 27-44, amounted to an expropriation of all the properties subject to these Claims.

105. In the absence of a formal act of expropriation, the possibility of the occurrence of a deprivation or taking is not excluded. It is well settled in this Tribunal's practice "that a taking of property may occur under international law, even in the absence of a formal nationalization or expropriation, if a government has interfered unreasonably with the use of property." Harza Engineering Co. and Islamic Republic of Iran, Award No. 19-98-2, at 9 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 504. See also Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA, et al., Award No. 141-7-2, at 10-11 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225; Harold Birnbaum and Islamic Republic of Iran, Award No. 549-967-2, para. 28 (6 July 1993); and Edgar Protiva, et al., supra, at para. 53.

106. The Amendment to the 1979 Act declared that the mawat lands in excess of the area size mentioned in the Note to Article 1 of the 1979 Act "will become government property forthwith." Therefore, the title deeds to those properties located within the geographical scope of the 1979 Act and the Urban Lands Extension Act were susceptible to cancellation at any time thereafter. However, the implementation and the enforcement of the 1979 Act, coupled with its Amendment, still remained contingent upon a determination that the subject land was, in fact, mawat. The Amendment to the 1979 Act abolished the grace period within which to take measures to develop and improve so-called large mawat lands, those lands in excess of the size stipulated in the Note to Article 1 of the 1979 Act. The Amendment did not abolish the guidelines set out in the 1979 Regulations. All findings as to

whether a parcel of land was mawat were still required to be made in accordance with those Regulations. In effect, the Regulations laid down the preconditions to be satisfied before the acquisition of any mawat land by the Respondent.

107. The practical effect of the 1979 Act and its Amendment is also consistent with the legal meaning ascribed to the term "forthwith," the definition of which is "without delay, hence within a reasonable period of time under the circumstances of the case." Black's Law Dictionary (4th ed.).

108. The view of the Tribunal is also confirmed by the announcement of the Iranian Minister for Housing and Urban Development, Mr. Katirai, in the Etela'at of 2 September 1979 where he is reported to have said that the status of lands in excess of the size limit provided for in the Note to Article 1 of the 1979 Act must first be individually determined before a transaction on it would be permitted, see supra, para. 39.

109. No evidence has been adduced to indicate that any such determinations concerning the status of the Claimant's properties were made pursuant to the 1979 Act. Nor does the Tribunal have any evidence before it to conclude that there had been an implementation of the 1979 Act which resulted in the transfer of the Claimant's properties to the Respondent.

110. However, the uncertainty as to whether a certain parcel of land was mawat was always present after the enactment of the Amendment to the 1979 Act. Inextricably linked to this uncertainty was the doubt over the ownership of such lands. Only after an investigation and a final finding was made on whether that property was considered to be mawat land, in accordance with the 1979 Act and its Regulations, could the doubt over the ownership of that property be removed.[35]

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[35] While there was no right of judicial review specifically provided under the 1979 Act, the Tribunal is aware that such a right was granted by the 1982 Act. See infra, para. 125.

111. In sum, the Tribunal is not satisfied that the very existence and binding force of the 1979 Act, its Amendment and its Regulations constituted, by themselves, a measure or measures which amounted to an expropriation of the Claimant's Chaboksar, Ahmad-Abad, Farahzad and Nashtarood properties. It is therefore unnecessary to examine whether the properties were located within the geographical area covered by the 1979 Act or the Urban Lands Extension Act.

Validity of Title Deeds to the Chaboksar Property

112. The Tribunal will now consider the Chaboksar property. As an initial matter, the Respondent's objection to the validity of the Claimant's title deeds to that property will be addressed.

113. The Respondent submits that the land on which the Chaboksar property is situated was mawat and that, as such, the title deeds to that property have no validity because mawat land cannot be privately owned under Iranian law. Thus, the Respondent argues, these title deeds were illegally issued. The Respondent concludes that it is not possible to consider the cancellation of such illegally acquired title deeds as expropriation.

114. The Tribunal observes that a title deed issued by an official government registration office is, prima facie, strong evidence indicating that title to real property has been officially conferred on the person whose name appears on the deed as the owner or transferee. Affirmation of this general presumption is found in Articles 1287, 1290 and 1292 of the Iranian Civil Code and Articles 70 and 72 of the Iranian Registration Law, see supra, paras. 60-61.

115. The Respondent asserts, however, that Articles 27 and 141 to 145 of the Iranian Civil Code together with Article 41 of the By-Law to the Registration of Property Act prevented the registration of mawat lands, and that the 1956 Law Concerning Lands Belonging to the State, Municipalities, Endowments and

Banks, as amended, provided for annulment of title deeds to mawat lands that nonetheless had been issued and for the return of title to such land to the government, leaving the title deed holder to seek compensation from the transferor, see supra, paras. 63-65. Therefore, according to the Respondent, the Claimant could not have legally registered his title deeds to this land, which was subsequently confirmed to be mawat.

116. On the evidence before the Tribunal, it appears that the investigation of whether a certain piece of land can properly be defined as mawat is a complex process and until a final decision is made regarding whether the land is mawat or not, the status of that land is uncertain or even unknown. The circumstances relating to the Farahzad property, where the Tehran Urban Lands Organization initially found that certain parcels of the Farahzad property were mawat and the subsequent reversal of that position, see supra, para. 69, serve as an illustration of the problems associated with ascertaining the status of a piece of land.

117. No submission has been made nor any evidence produced which shows that, prior to registration, any investigation was made to determine the status of the Chaboksar land.

118. The Tribunal concludes that at the time of registration, it was unknown whether the Chaboksar property was mawat land. Consequently, at that time, Article 41 of the By-Law to the Registration of Property Act could not have been applied to prevent registration of the Chaboksar property. Also, Articles 1287 and 1292 of the Iranian Civil Code could only be invoked to question the validity of the title deeds when the land was finally determined to be mawat in 1985. The Tribunal, therefore, proceeds with the assumption of the validity of the Chaboksar title deeds during the relevant period.

Expropriation of the Chaboksar Property: the report by Claimant's unidentified representative

119. The only specific evidence proffered by the Claimant in support of this Claim is the report by his unidentified representative in Iran. The evidentiary value that could be given to such a report is highly questionable. But even if the Tribunal were prepared to give weight to that report, its contents would not justify a finding that actions attributable to the Respondent had resulted in the expropriation of the Chaboksar property. Though the Tribunal is mindful of the difficulties faced by the Claimant in collecting evidence on this issue, it could not, in any event, give such great weight to a report, the author of which is not specifically identified, as to make it the foundation of its findings in the absence of other corroborative evidence. The Claimant has not, therefore, presented adequate evidence to establish that the Respondent has expropriated the Chaboksar property.

Expropriation of the Chaboksar Property under the 1982 Act

120. The admission by the Respondent that the title to the Chaboksar property has formerly been transferred to it pursuant to the provisions of the 1982 Act necessitates the Tribunal's consideration of whether the 1979 Act and its Amendment constituted a formal expropriation of all lands subsequently determined to be mawat and whether, as the Claimant argues, a determination under the 1982 Act that the Chaboksar land was mawat could be an expropriation which should properly date from 1979. If so, the Tribunal would have jurisdiction to entertain the claim for the deprivation of the Chaboksar property.

121. In order to resolve this question, the Tribunal must examine the relationship between the 1979 Act and the 1982 Act. The Claimant argues that the differences between the two Acts are

merely procedural and that the 1982 Act did not repeal or amend the 1979 Act but explicitly confirmed the nullification of title deeds to all urban mawat lands under the 1979 Act. He further asserts that the Respondent's interference with the Claimant's rights in respect of the properties that qualified as urban mawat lands was complete in September 1979.

122. While acknowledging that the aim of the 1982 Act was to maintain the principle underlying the cancellation of title deeds to mawat lands introduced by the 1979 Act, the Respondent contends that the 1982 Act totally changed the previous rules on determining mawat land and thus replaced the 1979 Act, which thereafter had no effect or application.

123. Despite the absence of an explicit law repealing the 1979 Act, the Tribunal is not persuaded that the 1979 Act would have been invoked to annul ownership of mawat lands after the adoption of the 1982 Act. In the present case, the Chaboksar property title deeds were canceled pursuant to the 1982 Act, an indication that the implementation of the 1982 Act took precedence over or superseded the 1979 Act.

124. Moreover, as the Respondent points out, a reasonable inference may be drawn from the Note to Article 5 of the 1982 Act that the words "have been," as used there, refer to the title deeds which had previously been annulled by the 1979 Act and the words "will be" refer to those title deeds which would in future be annulled in accordance with the procedure contemplated by the 1982 Act. In other words, the intention of this Note was to preserve the previous annulment of title deeds carried out under the 1979 Act. All future annulments, as far as the evidence before the Tribunal suggests, were to take place under a different procedure pursuant to the 1982 Act.

125. The 1982 Act was a far more detailed piece of legislation than its predecessor. It was comprised of 17 Articles and 14 Notes as compared to the 4 Articles and 1 Note of the 1979 Act.

A major substantive difference between the two Acts was the introduction, in Article 12 of the 1982 Act, of a stage at which the determination of whether land was mawat or bayer was entrusted to an Assessment Committee composed of the representatives of the Minister of Housing and Urban Development, the Minister of Justice, and the local mayor. Built into that procedure was a right to challenge the finding of the committee in a court of law, a right which had not been granted in the 1979 Act.

126. In light of the foregoing considerations, the Tribunal rejects the Claimant's argument that the cancellation of the deeds to the Chaboksar property under the 1982 Act is an expropriation which should properly date from 1979. In so concluding the Tribunal attaches particular importance to the fact that the deeds to the Chaboksar property were canceled pursuant to the 1982 Act and not pursuant to the 1979 Act. The Tribunal therefore finds that the cancellation of the Claimant's title to the Chaboksar property occurred subsequent to 19 January 1981. In addition, there is absence of proof of expropriation during the relevant period, see supra, para. 119. Consequently, the Claim for the Chaboksar property is dismissed for lack of proof during the period over which the Tribunal has jurisdiction.

Expropriation of the Farahzad, Ahmad-Abad, and Nashtarood Properties

127. The Tribunal now turns to the Claims for the alleged expropriation of the Farahzad, Ahmad-Abad and Nashtarood properties. The only specific evidence proffered by the Claimant in support of these Claims is the report by his unidentified representative in Iran. The Tribunal has already explained why this report cannot justify a finding that actions attributable to the Respondent had resulted in the expropriation of these properties, see supra, para. 119. Accordingly, the Tribunal dismisses for lack of proof the expropriation Claims related to the Farahzad, Ahmad-Abad and Nashtarood properties.

Other Measures Affecting Property Rights

128. The Claimant argues alternatively that if the Tribunal reaches the conclusion that his properties were not expropriated, it is open to the Tribunal to make a finding that the previously referred legislation and governmental actions, see supra, paras. 27-44, constitute other measures affecting property rights as contemplated by Article II, paragraph 1, of the Claims Settlement Declaration. The Claimant maintains that these other measures interfered with his ownership rights in all the properties in question and that as a direct result of the Respondent's actions he lost the enjoyment of those properties. Thus, he seeks compensation for the full value of his interests in the properties.

129. The Respondent denies that the measures referred to by the Claimant have any relevance to the Claimant's claim. The Respondent states that the cited legislation and governmental actions, see supra, paras. 27-44, relate to mawat land in a general manner and by no means apply to the Claimant's properties because the actions were not directed at the Claimant's properties specifically. It is the Respondent's position that it has not interfered in any way with the Claimant's use or enjoyment of the benefits of his lands.

130. It is well settled in this Tribunal's practice that liability may be established for interference with property rights despite there being no effect on the formal legal title to that property. For example, in Tippetts, Abbett, McCarthy, Stratton, supra, the Tribunal held that "[a] deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected." Id. at 10-11, 6 Iran-U.S. C.T.R. at 225 (footnote omitted); see also Harza Engineering Co., supra.

131. In Eastman Kodak Company, et al. and Islamic Republic of Iran, et al., Partial Award No. 329-227/12384-3 (11 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 153, the Tribunal stated:

> The fact that Iran's interference did not rise to the level of an expropriation or of a deprivation of ownership rights does not, however, preclude the Tribunal from considering whether the interference established here was such as to constitute "other measures affecting property rights" as contemplated by Article II, paragraph 1, of the [Claims Settlement Declaration]. Such measures, while not amounting to an expropriation or deprivation, may give rise to liability in so far as they give rise to damage to the Claimant's ownership interests.

Id. at para. 59, 17 Iran-U.S. C.T.R. at 169 (citation omitted).

132. The Tribunal, in Foremost Tehran, Inc., et al. and Islamic Republic of Iran, Award No. 220-37/231-1 (11 April 1986), reprinted in 10 Iran-U.S. C.T.R. 228, also stated that an interference "attributable to the Iranian Government or other state organs of Iran, while not amounting to an expropriation, gives rise to a right to compensation for the loss of enjoyment of the property in question." Id. at 33, 10 Iran-U.S. C.T.R. at 251.

133. The Claimant contends that the Etela'at newspaper extracts he has submitted are evidence in support of his Claim that his property interests were subjected to other measures affecting property rights.

134. Commenting on the Etela'at newspaper reports submitted by the Claimant, the Respondent takes the position that "newspaper writings, which may contain personal views and opinions of their writers concerning events and occurrences, cannot be recognized as valid evidence by an international forum." The Respondent further states that even if it is assumed that all the submitted reports of statements made by Iranian government officials were true, they do not prove these Claims.

135. In view of these arguments, the Tribunal will assess the relevance and probative value of this type of evidence.

136. In Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Merits, Judgement of 27 June 1986, I.C.J. Reports 1986, p. 14, the International Court of Justice approached press materials with much caution. Nonetheless it held that:

> [A]lthough it is perfectly proper that press information should not be treated in itself as evidence for judicial purposes, public knowledge of a fact may nevertheless be established by means of these sources of information, and the Court can attach a certain amount of weight to such public knowledge.

Id. at p. 40, para. 63.

The Court added:

> [S]tatements [by representatives of States made during press conferences or interviews and reported by the local or international press] . . . emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavorable to the State represented by the person who made them. They may then be construed as a form of admission.

Id. at p. 41, para. 64.

137. In the circumstances of this Case, as the information in the Etela'at newspaper reports submitted by Mr. Karubian has not been contradicted, the Tribunal finds these reports to be of sufficient probative value to corroborate his assertion that his property rights were affected by the Respondent's actions.

138. The Respondent relies on the decision in Moin, see supra, para. 89, and states that the Claimant, without entering Iran, could have used the powers of attorney he had granted before the

Islamic Revolution or could have granted a new power of attorney authorizing an attorney in fact in Iran to transfer property on his behalf.

139. The statements in Moin concerning powers of attorney were restricted to that part of the Award which dealt with facts and contentions. The Tribunal takes note of the statement by the Claimant in the present Case that his attorney in fact was not in Iran during the relevant period. The Tribunal is also aware of the existence of restrictions placed on powers of attorney sent from abroad, see supra, para. 46. These are restrictions of the type alleged by the Claimant.

140. These Iranian restrictions on the Claimant's ability to sell were not, however, the only hindrance the Claimant faced in relation to transactions in his Iranian properties. For example, on 9 April 1980 the United States amended its "Iranian Assets Control Regulations" to impose certain restrictions on Iranian transactions. See 45 FR 24432, Apr. 9, 1980, as amended at 45 FR 26940, Apr. 21, 1980. These amendments provided that "no person subject to the jurisdiction of the United States," unless authorized, "shall, directly, or indirectly, in any transaction involving Iran . . . or any person in Iran . . . [m]ake any payment . . . or other transfer of funds or other property or interests therein to any person in Iran." §535.206, (a) (4) (emphasis added). The Tribunal cannot know whether the United States Government would have authorized such a transfer of the Claimant's Iranian real property had the Claimant requested United States' authorization for such a transfer.

141. The language of Article II, paragraph 1, of the Claims Settlement Declaration, viz., "other measures affecting property rights," is not limited to a taking of legal title to property. It envisages a broader range of circumstances which may give rise to liability. See, e.g., Kenneth P. Yeager and Islamic Republic of Iran, Award No. 324-10199-1, para. 30 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 92, 99-100.

142. The Tribunal is satisfied that governmental action, at least for some time, restricted transactions in undeveloped lands that were larger than a certain size. The Respondent's action also prevented transactions by persons outside Iran. On this basis, the Tribunal concludes that the Claimant's right to dispose of his properties was adversely affected.

143. Even if the Claimant could have transferred his real property, the Tribunal is persuaded that the effect of adoption of the 1979 Act, along with its Amendment and its accompanying Regulations, was to impair the actual possibility of such a transfer. These laws made all undeveloped or unutilized properties in both urban and rural areas vulnerable to a determination that they were mawat, and as a consequence of that determination, subject to immediate cancellation of their title deeds by Iran. Under the circumstances, the Claimant would have had difficulties in finding a buyer for his properties.

144. The Tribunal concludes that, while the interference created by the cumulative effect of the land reform legislation and related governmental action, see supra, paras. 27-40 and 42-44, did not rise to the level of an expropriation, it has been established that the interference was of such a degree as to constitute other measures affecting the property rights of the Claimant within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration. Consequently, the Respondent is responsible to the Claimant for damages resulting from these measures.

145. It remains to be determined whether the interference of the type described above caused damage to the Claimant and what compensation, if any, is due to him. See Eastman Kodak, supra, at para. 61, 17 Iran-U.S. C.T.R. at 169. While the Tribunal is satisfied that there has been an interference with the Claimant's ownership rights, a determination of the amount of damage caused for which the Respondent is liable is unnecessary in view of the Tribunal's finding on the applicability of the caveat in Case No. A18 in the present Case, see infra, para. 162.

B. A18 Caveat

146. In Case No. A18, Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Full Tribunal added the following important caveat to its conclusion: "[W]here the Tribunal finds jurisdiction based upon a dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim." Id. at 26, 5 Iran-U.S. C.T.R. at 265-266. In its Order of 3 March 1989 in this Case, the Tribunal stated that the relevance of the Claimant's other nationality was to be examined together with other issues "such as the facts and applicable laws relating to the alleged acquisition and ownership of the property which constitutes the basis of this Claim as well as the actions of the Respondent allegedly affecting them." See supra, para. 3.

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

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

Id. at para. 54.

148. The Respondent argues that because the Claimant comes before the Tribunal as a United States national and because his Claims relate to benefits limited by Iranian law to sole Iranian nationals, the Claims are barred by the A18 caveat and also by principles of clean hands, estoppel, good faith and abuse of rights which operate in international law. The Respondent states

that Iranian law prohibits foreigners from owning real estate in Iran. Although there are certain limited exceptions to this rule, see infra, para. 158, according to the Respondent, these exceptions do not apply to the properties involved in this Case. The Respondent further contends that the Claimant concealed his United States nationality when registering his purchase of the properties in order to circumvent Articles 988 and 989 of the Civil Code of Iran. See infra, paras. 155-156.

149. The Claimant asserts that Iranian law does not prohibit an Iranian national from acquiring a second nationality. The only consequence of holding two nationalities, argues the Claimant, is that only the Iranian nationality will be recognized within Iran. The Claimant denies that he concealed his United States nationality from anyone in Iran and maintains that no legal provision renders illegal the purchase of real estate in Iran by an Iranian national who has acquired another nationality. He also states that any Iranian real property owned by dual nationals will be subject to sale by the relevant public prosecutor and the proceeds will be paid to the dual national under Article 989 of the Iranian Civil Code, see infra, para. 156. According to the Claimant, this confirms a dual national's right under Iranian law to receive compensation whenever the government exercises its statutory authority to sell a dual national's real estate.

150. The Claimant further argues that, prior to the 1979 Revolution, the Iranian government actively encouraged dual nationals to invest in Iran in order to develop the economy. Consequently, he submits that the Respondent is estopped from arguing that the Claimant was not permitted to purchase land in Iran as a dual national.

151. The Claimant asserts that he was informed by Iranian government officials, including Engineer Khalil Taleghani, former Minister of Agriculture, and Engineer Moazami, former Minister of Post, Telephone and Telegraph, that he could invest in the

country as an Iranian national because he had been born in Iran and had remained an Iranian citizen under Iranian law. He contends that the purchase of real estate by dual nationals was tolerated in Iran so long as the dual national made the purchase in his or her capacity as an Iranian national. He denies that he concealed his United States nationality from any Iranian government authority.

152. The Claimant's son, Mr. John F. Karubian, states in his Affidavit of 8 May 1992 that, prior to the Revolution, he was invited by Mr. Taher Ziaie, the President of the Iranian Chamber of Commerce and Industries, to participate in a committee established to encourage Iranians who resided overseas and who were dual nationals to return to Iran and become involved in Iran's development. He claims that government officials on this committee said that dual nationals who returned to Iran would not be required to give up their other nationality.

153. In the Tribunal's view, the evidence referred to supra, at paras. 151 and 152, is not sufficient to establish that Iranian government officials encouraged him, as a dual national, to purchase real property in Iran. No indication is given as to whether the persons mentioned in the affidavits were acting in their official capacities or were implementing governmental policies. Further, it is not made clear what type of investment was allegedly encouraged. The Tribunal therefore rejects the Claimant's contention that the Respondent should be estopped from arguing that he illegally purchased real property in Iran as a dual national.

154. The Tribunal will now examine whether the right to acquire real property in Iran by contract is a benefit limited by Iranian law to those whose nationality is Iranian. The starting point for this determination is Article 988 of the Civil Code of Iran.

155. Article 988 of the Iranian Civil Code states that Iranian nationals cannot abandon their nationality without complying with

the conditions set out in that Article. Of the four conditions stipulated in Article 988, the condition most relevant for present purposes is subparagraph 3 which provides that a person seeking to abandon his or her Iranian nationality must undertake:

> to transfer to Iranian nationals, by one means or another and within one year from the date of their renunciation of [Iranian] nationality, their rights to immovable properties in Iran which they possess or which they may acquire through inheritance, even if Iranian law permits foreign nationals to own them.[36]

156. Iranian nationals who acquire foreign nationality without observing the provisions of law are subject to Article 989 of the Iranian Civil Code. That Article provides that the foreign nationality of such individuals will be considered null and void and that they will be regarded as Iranian subjects. It further states "[n]evertheless, all his landed properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale."[37]

157. The Respondent, in addition to the Civil Code, also relies on the Law of Nationality of Iran, decreed by the King in 1906, to support its argument that the right of ownership of real property is exclusively reserved for Iranian nationals. The relevant Sections of this Law follow.

> Section Eight: If an Iranian national living abroad wishes to acquire the nationality of another state, firstly, he/she must not be under criminal charges in the courts of Iran; secondly, he/she must not already have been on trial or have escaped such trial; thirdly, he/she must not have escaped military

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[36] English translation by the Tribunal's Language Services Division from Civil Code of Iran, Amir-Kabir Publications, 1977-78. The Note to Article 988 states, inter alia, that orders for the sale of the property will be issued for those who renounce their Iranian nationality but do not leave Iran within the specified time.

[37] English translation by Musa Sabi.

> service; and, fourthly, he/she must not be in debt and intend to escape such debt. Otherwise his/her change of nationality shall be null and void.
>
> Section Nine: Change of Iranian nationality, in spite of compliance with the stipulated requirements, is still subject to the permission and decision of the King. If an Iranian national living abroad acquires foreign nationality without obtaining such permission, he/she shall be barred entry into Iran. If he/she owns real estate or other property in Iran, he/she shall be forced to give up such property.
>
> . . . .
>
> Section Fourteen: Those who came to Iran from foreign countries and during their residence in Iran concealed their nationality and were treated in all matters as Iranian nationals, or purchased real estate in Iran, which privilege is exclusively available to nationals of Iran, shall be treated as nationals of the State of Iran, and their claim to foreign nationality will not be accepted.[38]

158. Aside from the Civil Code and the Law of Nationality of Iran, various other laws and regulations exist, or have existed, which specifically address the issue of foreign ownership of real estate in Iran. The Foreign Nationals Immovable Properties Act, enacted on 6 June 1931, provides for the forced sale of any farmlands in Iran that a foreign national may have owned. The Decree Law Concerning Landed Property Ownership by Foreign Nationals, approved by the Council of Ministers on 26 November 1948, sets out detailed disclosure requirements that a foreign national must comply with to obtain permission to own real estate in Iran. Such permission is granted only if the real estate is for the place of residence or business of the foreigner. The foreigner must pledge that if Iran ceases to be his or her permanent place of residence, any real property owned in Iran must be transferred within six months from the date of his or her departure from Iran. Furthermore, such transfer may only be made to an Iranian national or to a foreign national who has obtained permission to own real property. The Decree Concerning Landed

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[38] English translation by the Tribunal's Language Services Division.

Property Ownership by Foreign Nationals, approved on 25 September 1963, enabled those without Iranian permanent residence permits, but who regularly made seasonal trips to Iran to tour and use resort areas, to buy immovable properties for their personal residence.

159. The foregoing legislation indicates that, except for certain circumstances which do not exist in the present Case, the right to acquire real property in Iran by contract is reserved by relevant Iranian law to Iranian nationals. Accordingly, the Tribunal finds that the Claimant could only have acquired the properties in question as an Iranian national.

160. In seeking compensation for the alleged expropriation of his properties or for any recoverable damage sustained by other measures which affected his property rights, the Claimant, a dual national with dominant and effective United States nationality, brings his Claims before the Tribunal as a United States national. The Claimant's use of his other nationality, i.e., his purchase of real property as an Iranian national, is relevant to the merits of the Claims as envisaged by the A18 caveat.

161. As the Tribunal has concluded, under Iranian law, the right to acquire real property in Iran by contract, apart from certain limited exceptions, is a benefit reserved for Iranian nationals, see supra, para. 159. The Tribunal must therefore assume that the Claimant purchased all the properties that are the subjects of these Claims in his capacity as an Iranian national after he had acquired United States nationality. He now claims in respect of those properties as a national of the United States. If the Tribunal were to allow him to recover against the Respondent in these circumstances, it would be permitting an abuse of right. Consequently, the A18 caveat must bar the Claimant's recovery. See James M. Saghi, et al., supra.

162. In view of the foregoing considerations, the Tribunal finds that the A18 caveat bars the Claimant, who brings these Claims

as a United States national, from recovering against the Respondent for interference with property rights that, under Iranian law, he could have acquired only as an Iranian national.

VII. COSTS

163. Each Party shall bear its own costs of arbitration.

VIII. AWARD

164. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

A. The Claim for the expropriation of the Chaboksar property is dismissed for lack of proof during the period over which the Tribunal has jurisdiction.

B. The Claims for the expropriation of the Ahmad-Abad, Nashtarood and Farahzad properties are dismissed for lack of proof.

C. Other measures attributable to the Respondent affected the Claimant's property rights in the Chaboksar, Ahmad-Abad, Nashtarood and Farahzad properties, but the caveat in the Decision in Case No. A18 bars the Claims in regard to the said measures.

D. Each Party shall bear its own costs of arbitration.

Dated, The Hague
06 March 1996

Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God

George H. Aldrich

Koorosh H. Ameli
Concurring Opinion