In the Name of God

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 485
CHAMBER ONE
AWARD NO. 600-485-1

FREDERICA LINCOLN RIAHI,

Claimant,

And

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

Concurring and Dissenting Opinion of Assadollah Noori

I. INTRODUCTION

1. I write this separate opinion to express my reasons as to why I concur with or dissent from the findings of the Final Award in Case No. 485 (the "Award"), providing also, where applicable, additional reasons or grounds on which I would have expected the Chamber to rely in reaching its conclusions. As readers might also observe from the reading of this opinion, I have, in instances, joined in certain findings of the Award for the purpose of forming a majority, against my own belief formed on the basis of the evidence before the Chamber and applicable law.[1]

2. In writing this opinion, I will first discuss certain procedural issues, such as those related to the Claimant's tactics of i) exorbitantly increasing the amount of the relief sought under the guise of offering new valuation techniques, ii) presenting new claims under the guise of amending the original claims, and iii) filing motions for production of documents (discovery). After that, I will discuss the issues related to the merits of separate claims in the same sequence as the Award has treated them.

I.A. ALTERATION OF THE RELIEF SOUGHT

3. The Award notes in many places (e.g., paragraphs 1 and 56) that the Claimant had originally sought a relief of U.S. $6,528,116.90 as full compensation for all items of her claims, representing the full value of property allegedly owned by her and

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[1] This Concurring and Dissenting Opinion deals with the merits and jurisdictional issues related to the claims presented in Case No. 485 other than the Claimant's standing to sue before this Tribunal as a claimant whose United States nationality is effective and dominant. I have already dissented from that finding by expressing my view under my signatures in the present Award and in the Interlocutory Award in the instant Case, Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Award No. ITL 80-485-1 (10 June 1992), reprinted in 28 Iran-U.S. C.T.R. 176 ("Riahi Interlocutory").

expropriated by the Government of Iran. This amount was altered several times after a new counsel -- conversant with the Tribunal's work because of his involvement in many other cases -- was introduced to represent the Case. The alterations were made during the stages of exchanging Memorials and Rebuttal Memorials, under the pretext that new documents were found by, or sent from Iran to, the Claimant and that new valuation techniques were applied by valuation experts appointed in different times. The Respondent provided evidence of notorious practice of these experts before other Chambers of the Tribunal, where their inflated valuation results had not been welcome.

4. The record shows that, contrary to the Claimant's allegations, the new evidence, which had allegedly not been available to earlier experts, was not made available to the newly appointed experts and, in any case, was not taken into consideration in the new experts' valuations, either. Indeed, the subsequent valuations are not based on the actual figures recorded in the financial and tax return statements of the companies, which were either within the control of the Claimant or made available to the Tribunal and the Claimant, for example, through the valuation reports presented by the Respondent's experts.

5. Moreover, while I understand the Tribunal's noting that its practice has not been to consider as prejudicial multiple amendments resulting in more than a ten-fold increase of the amount claimed (paragraph 59 of the Award), I have to warn against these tactics taught and developed during the life of the Tribunal by certain professional counsel and appraisers with the intention of influencing the ultimate outcome of litigations by showing manipulated percentage gaps between the relief sought and the relief granted. I am not implying that this tactic could work here, though the Claimant has obtained a somewhat unprecedented percentage (nearly 26%) of her original claim,[2] notwithstanding ostensible rejection of major parts and items of her claims.

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[2] For a rough comparison, reference may be made to two other expropriation awards of the Tribunal, one rendered during the early stages of the Tribunal's work and the other

I.B. NEW CLAIMS AFTER THE JURISDICTIONAL CUT-OFF DATE

6. I agree with the Award where it has dismissed the new claims filed by the Claimant after the Tribunal's jurisdictional cut-off date (19 January 1982) with her Memorial and Rebuttal Memorial. In my view, the provisions of Article III (4) of the Claims Settlement Declaration were sufficient ground for this ruling, and there was no need to seek further support in the provisions of Article 20 of the Tribunal Rules, which applies to the amendment of claims filed within the time limits set forth by that Declaration. In fact, Article 20 of the Tribunal Rules subjects its application to an important proviso, added by the Full Tribunal to the original text of UNCITRAL Rule, to render the latter compatible with the Tribunal's mandate.[3]

7. Before stating my additional reasons supporting the findings of the Award in this respect, I should remind those who are not very familiar with the work of the Tribunal

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delivered recently. In the award rendered in American International Group, Inc., et al. and The Islamic Republic of Iran, et al., Award No. 93-2-3 (19 December 1983), reprinted in 4 Iran-U.S. C.T.R. 96 ("AIG"), a majority formed by Chairman Mangård awarded 6.8, 9 or at most 13.5 percent of the amounts sought, with the Iranian-appointed arbitrator dissenting. It should be noted that Judge Mangård was challenged because of his "persistent voting record against Iran." See, e.g., Rahmatollah Khan, The Iran-United States Claims Tribunal: Controversies, Cases and Contribution (Martinus Nijhoff Publications, 1990), pp. 61-77.) Although the original amount claimed by the Claimants in Aram Sabet, et al. and The Islamic Republic of Iran ("Aram Sabet") is not clear, the Tribunal awarded about 3.2 percent of the final valuation introduced by the same appraiser (a Mr. Reilly) who was also involved in Case No. 485. (U.S.$ 2,418,711 as against the U.S.$74,877,231 relief sought.) See, Partial Award No. 593-815/816/817-2 and Final Award No. 598-815/816/817-2 in the above Case, delivered 30 June 1999 and 28 November 2000, and reprinted in volumes – and - of Iran-U.S. C.T.R - and -, respectively. To provide a recent example of such a gap between the relief sought and the amount awarded, reference may be made to the award rendered in Middle East Cement Shipping and Handling Co. S.A. *v.* Arab Republic of Egypt, rendered by an International Center for Settlement of Investment Disputes ("ICSID") tribunal, wherein the tribunal awarded U.S. $ 2,190,430 (about 5 percent) of the U.S. $ 42,240,000 relief sought. (ICSID ARB/99/6, reprinted in Mealey's International Arbitration Report, Vol. 18, No. 4, April 2003, pp. 6-8, and C-1 to C-15.)

[3] Article 20 of the Tribunal Rules states, in relevant part, that "a claim may not be amended in such a manner that it falls outside the jurisdiction of the arbitral Tribunal." See, 2 Iran-U.S. C.T.R. 405, at 425.

that in many Cases before this Tribunal, a single Statement of Claim, with a single docket number, encompassed a number of different claims for different causes of action involving different claimants (parents, children, or siblings, in claims by individuals, and shareholders, or parent, sister, or affiliated companies, in claims by entities) against different Iranian entities as respondents. These claims were allowed to be filed under a single docket though they could, and in normal circumstances should, have been filed separately. However, filing of a single statement of claim has not been considered to be sufficient to allow additional, different claims after the Tribunal's jurisdictional cut-off date under the guise of amending those timely filed claims, unless the claimants could show that they were included by reference in the Statement of Claim.[4]

8. Therefore, the test is to see whether or not the claim, the amendment of which is sought, is clearly stated in the Statement of Claim as required by Article 18 of the Tribunal Rules, or "whether the proposed amendment is 'an attempt to introduce a new claim after the deadline prescribed in Article III, paragraph 4, of the Claims Settlement Declaration.'"[5] Indeed, it does not matter whether the claim was filed one day or several years after the treaty deadline, through the Claimant's fault or for reasons beyond his control.[6] Nor does it matter whether the claim was filed soon after

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[4] The Austin Company and Machine Sazi Arak, Award No. 257-295-2, para. 5 (30 September 1986) reprinted in 12 Iran-U.S. C.T.R. 288, at 289 ("Austin").

[5] In addition to the awards referred to in footnote 30 of the Award, see, St. Regis Paper Company and The Islamic Republic of Iran, Award No. 291-10706-1, para. 25 (29 January 1987) reprinted in 14 Iran-U.S. C.T.R 86, at 91 ("St. Regis"), relying also on The Austin, supra note 4, para. 4.

[6] See, e.g., Robert J. Lee, Decision No. DEC 14-REF 30-2 (23 September 1982), reprinted in 21 Iran-U.S. C.T.R. 7; Victor E. Pereira, Decision No. DEC 2-REF 5-2 (10 March 1982), reprinted in 21 Iran-U.S. C.T.R. 3 (stating that "[w]hatever the personal hardship to a claimant, the failure of a courier service to deliver a claim to the Registrar by January 19, does not permit the Tribunal to make an exception to the deadline established by the agreement"; Moshe Bassin, Decision No. DEC 39-REF 56-1 (13 August 1985), reprinted in 9 Iran-U.S. CTR 3; K and S Irrigation Co., Decision No. DEC 16-REF 29-1 (22 October 1982), reprinted in 1 Iran-U.S. C.T.R. 228; Ateyeh Showrai, Decision No. DEC 15-REF 28-1 (22 October 1982), reprinted in 1 Iran-U.S. C.T.R. 226;

the actual filing of the statement of claim in the guise of an amendment adding a new claim,[7] or introducing or replacing a claimant[8] or respondent.[9] This has been the case no matter whether the claim would have otherwise satisfied jurisdictional requirements on all counts. It is likewise immaterial, for that matter, whether or not the other party had the opportunity to answer to the untimely filed claim.

9. In my view, these late-filed claims were asserted as a part of the aforementioned litigation tactics[10] because they were either without merit or would have easily failed

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Mohammad Sadegh Jahanger, Decision No. 5-REF 2-FT (14 May 1982, reprinted in 1 Iran-U.S. C.T.R. 128; Cascade Overview Development Enterprises, Decision No. 4-REF 1-FT (14 May 1982), reprinted in 1 Iran-U.S. C.T.R. 127 (both latter Decisions repeating the same statement quoted from the Refusal in Victor E. Pereira, above).

[7] See e.g., Vera-Jo Miller Aryeh, et al. and The Islamic Republic of Iran, Award No. 581-842/843/844-1, paras. 65-70 (22 May 1997), reprinted in 33 Iran U.S. C.T.R. 272, at 292 ("Vera-Jo Miller Aryeh") (denying new claims for the alleged expropriation of certain bank accounts and bank shares, though the Statement of Claim in the Case concerned expropriation of a variety of the Claimants' property in Iran); Cal-Maine Food Inc., and The Government of the Islamic Republic of Iran, et al. Award No. 133-340-3 (11 June 1984) reprinted in 6 Iran-U.S. C.T.R. 52, at 59-60 (considering a claim for account receivables not an amendment of the claim timely filed for the Claimant's investment in the same company).

[8] See e.g., Harrington and Associates, Inc. and The Islamic Republic of Iran, Award No. 321-10712-3, para. 24 (27 October 1987), reprinted in 16 Iran-U.S. C.T.R. 297, at 303; St. Regis, supra note 5; Universal Enterprises, Ltd., and National Iranian Oil Company et al., Decision No. No. 38-246-2 (23 July 1985), reprinted in 8 Iran-U.S. C.T.R. 368; Raymond International (U.K.) LTD, Decision No. 18-Ref 21-FT (8 December 1982), reprinted in 1 Iran-U.S. CTR 394 (all finding that substituting a new Claimant for the original one is tantamount to the filing of a new claim and cannot be regarded simply as an amendment to the existing claim, timely received by the Registry).

[9] See e.g., Ministry of Economic Affairs and Finance of Iran, Decision No. 33-REF-24-3 (4 May 1984), reprinted in 6 Iran-U.S. C.T.R. 27 (refusing to consider the introduction of a new respondent as an amendment permissible under Article 20 of the Tribunal Rules. The Tribunal found that it could not agree to add the name of the United States as a respondent though a reference was made, in the Statement of Claim in that Case, to the United States' Presidential Executive Order of 14 November 1979 as a basis for the claims involved).

[10] Although a number of these new claims were filed for the first time with the Claimant's Hearing Memorial on 12 February 1993 (some others, as shall be observed, were filed with her Rebuttal Memorial on 30 December 1996), the Claimant's Affidavit

based on certain other jurisdictional and admissibility grounds. I will discuss these under the following Sub-sections, dealing separately with each item of the new late-filed claim, in the same sequence as discussed in the Award. Before doing that, however, it should be recalled that the Claimant was selective in choosing when to allege the existence of facts or events. This applies not only to her late-filed claims, as has been rightly noted by the Award,[11] but also to many other allegations raised here or elsewhere, such as the claim that she had held and managed various bank accounts in Iran used, inter alia, for the purchase of certain properties or other payments, including providing certain loans she allegedly extended to various companies involved in this Case.[12]

I.B.1 Alleged Deposit made in favour of Khoshkeh

10. This claim was asserted for the first time by the Claimant in her Hearing Memorial filed on 12 February 1993, more than eleven years after the jurisdictional cut-off date of this Tribunal. The Claimant did, for a time until the Hearing in May 2000, allege that Khoshkeh owed her an amount of 34,170,000 Rials ("Rls.") (or U.S. $483,994) because she had paid the amount into a fixed deposit account at Bank Melli for use by Khoshkeh. During the Hearing, the Claimant changed her position, alleging

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filed with her Hearing Memorial lacked any reference to any of these new claims, Sarhad Abad included, though she recapitulated all the items of her claim one by one in paragraphs 7 et seq.

[11] The Tribunal noted in this respect the fact that "the Claimant raised these additional Claims only after the Tribunal had decided that the Claimant has standing as a United States national before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration," thereby preventing the Tribunal from knowing that her social and economic ties with Iran were much stronger than what she was alleging in the proceedings until the year 1992 when the Interlocutory Award in the Case was rendered. (Paragraph 69 of the Award.)

[12] Instead of referring to these, the Claimant had only alleged, in her pleadings on the issue of the dominant and effective nationality, that she had bank accounts in Evergreen, Colorado.

that as she acquired her ownership of shares in Khoshkeh through donations from her husband, she also became, proportionately, the owner of that company's fixed deposit with the bank.[13] In addition to the fact that these contradictory statements undermine the Claimant's allegation,[14] I will show in the following paragraphs that both of the Claimant's allegations should have failed on a variety of grounds in addition to what has been discussed earlier in connection with the inadmissibility of such late-filed claims.

11. With respect to the Claimant's allegation that she became one of the owners of the nine certificates of deposit with Bank Melli because she paid the money to the bank, the claim must fail for two additional separate groups of reasons. First, unlike the claim for the value of her alleged expropriated shares in Khoshkeh that was a claim against the Government of the Islamic Republic of Iran, the new claim for the deposits with the bank was against Bank Melli for her alleged share in those certificates of deposit.[15] Assuming, arguendo, that the Claimant did own certain certificates of

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[13] See, also, footnote 27 of the Award.

[14] Reza Nemazee and The Government of the Islamic Republic of Iran, Final Award No. 575-4-3, paras 56 and 61 (10 December 1996), reprinted in 32 Iran-U.S. CTR 184, at 200-202 ("Nemazee Final Award"); Jacqueline M. Kiaie, et al. and The Government of the Islamic Republic of Iran, Award No. 570-164-3, paras 108-109 (16 May 1996), reprinted in 32 Iran-U.S. CTR 42, at 69-70 ("Kiaie"); W. Jack Buckamier and The Islamic Republic of Iran, et al., Award No. 528-941-3, para. 68 (6 May 1992), reprinted in 28 Iran-U.S. C.T.R. 53, at 76-77 ("Buckamier"); and Roy P.M. Carlson and The Government of the Islamic Republic of Iran, et al., Award No. 509-248-1, paras. 41 and 45-50 (1 May 1991), reprinted in 26 Iran-U.S. C.T.R. 193, at 211-215 ("Carlson").

[15] For a few out of a host of precedents differentiating between claims for expropriation and claims against direct entities involved as parties to bank accounts or debts for services rendered, reference may be made to: Training Systems Corporation and Bank Tejarat et al., Award No. 283-448-1, para. 24 (19 December 1986), reprinted in 13 Iran-U.S C.T.R. 331, at 337; Flexi-Van Leasing, Inc. and The Government of the Islamic Republic of Iran, Award No. 259-36-1 (13 October 1986), reprinted in 12 Iran-U.S. C.T.R. 335, at 348-352 ("Flexi-Van"); Sea-Land Service, Inc. and The Islamic Republic of Iran, Award No. 135-33-1 (22 June 1984) reprinted in 6 Iran-U.S. C.T.R. 149, at 166-168 ("Sea-Land"); and Harza Engineering Company and The Islamic Republic of Iran, Award No. 19-98-2 (30 December 1982), reprinted in 1 Iran-U.S. C.T.R. 499, at 504-506

deposit issued by the bank, Iranian law considers a certificate of deposit as a contract between the owner and the bank and recognizes the holder, to whom the certificate is issued, as the sole owner. Any contrary conclusion will surely upset the law and banking practice universally accepted and applied. Moreover, any certificate of deposit has a maturity date. For such a claim -- arising from a contractual relationship -- to be admissible, the Claimant should have named Bank Melli as a Respondent and proved that her claim against the bank was outstanding because the certificates of deposit were mature[16] and demands were made to the bank for withdrawal or transfer of the funds prior to 19 January 1981.[17]

12. Second, not only must the Claimant be taken to have failed in meeting her burden of proving that she owned any portion of the bank deposit, but the evidence on file proves that the Claimant never owned any portion of such a deposit or loan allegedly extended to Khoshkeh. 1) The Respondent produced two letters from Bank Melli both certifying that "no deposit has been issued at this Branch in the name of Mrs. Frederica Riahi." One of the letters further shows that the deposit, in the total amount of Rls. 170,000,000, belonged to Khoshkeh, against which credit facilities were granted. 2) Note 14 to the audited accounts of the company for the year ending 20 March 1981 lists the names of the contributors. Here too, there is no mention of Mrs. Riahi's

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("Harza Engineering"). For a more detailed discussion of the issue based particularly on the award in Flexi-Van and the precedent referred to therein, see, Section III.H.1., infra.

[16] Ali Asghar and The Islamic Republic of Iran, Award No. 475-11491-1, para. 20 (14 March 1990), reprinted in 24 Iran-U.S. C.T.R. 238, at 245 ("Ali Asghar"). See, also, Schering Corporation and The Islamic Republic of Iran, Award No. 122-38-3 (16 April 1984), reprinted in 5 Iran-U.S. C.T.R. 361, at 373; J.I. Case Company and The Islamic Republic of Iran, et al., Award No. 57-244-1 (15 June 1983), reprinted in 3 Iran-U.S. CTR 62, at 65; and Kimberly-Clark Corporation and Bank Markazi Iran, et al., Award No. 46-57-2 (25 May 1983), reprinted in 2 Iran-U.S. C.T.R. 334, at 341 (considering, respectively, the claims for certain promissory notes, installments under invoices, and royalties not outstanding because they had not matured prior to 19 January 1981).

[17] To make a long list short, reference may be made to the awards in Ali Asghar (supra note 16, paras. 12 et seq.); Robert R. Schott and Islamic Republic of Iran, et al., Award No. 474-268-1, paras. 45-51 (14 March 1990), reprinted in 24 Iran-U.S. C.T.R. 203, 219-220 ("Schott"); and the precedents referred to in those two awards.

name.[18] 3) There is likewise no mention of Mrs. Riahi's name in a letter issued by Khoshkeh on 21 July 1984, directly addressed to Bank Melli, Central Branch, listing the contributors to the nine certificates of deposit and asking for the release of the balances to them.[19] All these points are confirmed by the Claimant's alternative allegation that she became the owner not because of any payment to the bank, but automatically through acquiring shares from her husband.

13. The other allegation, that the Claimant acquired her ownership of a portion of the certificates of deposit through donation of shares, must fail on the same grounds explained in paragraphs 10 and 11. This time, the claim is formulated as a debt allegedly owed the Claimant by Khoshkeh. The new claim, therefore, has no relation to the original claim against the Government of Iran for the expropriation of the Claimant's shares in Khoshkeh. Rather, if allowed and awarded, the relief should have been added to the figure that would have been reached by any methods of valuation.[20] To the extent related to the expropriation of the Claimant's shares, these loans will be taken care of positively as assets, and negatively as liabilities, in the valuation of the company. Moreover, as we know, the Respondent had become the owner of only 4,465 (out of 10,000) shares in Khoshkeh from certain points of time, and the division of shares has experienced no change ever since, even up to the time of the Award, as best we can judge from the evidence before us. Thus, Khoshkeh remained an independent private company -- not controlled by Iran but managed by its shareholders, including Bonyad Mostazafan (Foundation for the Oppressed) -- and the

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[18] Bearing in mind the fact that Mr. Khajeh-Nouri (a long time family friend and associate of Mr. Riahi) was in charge of Khoshkeh for years, even after the alleged expropriation of the Claimant's shares, it must be assumed that the Claimant had been provided with all the account information provided to the auditors.

[19] This letter was produced by the Respondent in evidence pursuant to a discovery motion and a Tribunal Order. The Claimant refrained from addressing this letter throughout the proceedings.

[20] Thus, in either situation, whether it be a claim for deposits with Bank Melli or for debts owed by Khoshkeh, the Tribunal was correct in refusing to admit this late-filed claim as an amendment to the original claim for the expropriation of the Claimant's shares in Khoshkeh.

claim being for debts owed by that company, the Tribunal could also dismiss the claim for lack of jurisdiction over direct claims against private entities[21] and for not being attributable to the Government of Iran. The claim would have had no better fate even if we were able to conclude, wrongly, that Khoshkeh was a controlled entity, because it was not named as a Respondent in this Case.[22]

14. Moreover, in connection with the merit of the belated alternative allegation, reference may again be made to Khoshkeh's July 1984 letter, mentioned in paragraph 12 above. This letter names the contributors to all nine certificates of deposit. It also instructs the bank to withhold Rls. 31,500,000 and Rls. 38,500,000, respectively, from Messrs. Manouchehr Riahi's and Khajeh-Nouri's contributions against the 70,000,000 rials credit provided thereunder and to refund the remaining balance of the deposit to the respective contributors. This letter further shows that, contrary to what was alleged by the Claimant, certain shareholders, and not all of them, were the contributors.[23]

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[21] According to Article II (1) of the Claims Settlement Declaration, the Tribunal is "established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States... ." (1 Iran-U.S. C.T.R. 9).

[22] Since one of its early awards, the Tribunal made it clear that even the control of an entity by the largest single shareholder (incidentally the Foundation for the Oppressed) does not amount to the Government's liability for decisions of that entity against others, including a shareholder who was a claimant there. (Ataollah Golpira and The Government of the Islamic Republic of Iran, Award No. 32-211-2 (29 March 1983), reprinted in 2 Iran-U.S. C.T.R. 171, at 175-176). See, also, Flexi-Van, supra note 15, at 346-352, wherein the Tribunal found that the Government is not automatically liable for contractual obligations of an entity that is considered to be controlled by it. Noting at the outset that a couple of entities (controlled by the Foundation for the Oppressed), which allegedly owed certain debts, were not before it as respondents, the Tribunal refused to grant the claims for the alleged contract breaches by those entities against the Government of Iran because the claimant could not prove that the Government of Iran unreasonably interfered with the decisions of those entities with respect to their obligations. (For a more detailed analysis of the award, see, infra, Section III.H.)

[23] The letter demonstrates that the real owners of the family shares (heads of the families, not their spouses or children) were the contributors. The names are: Mrs. Giti Afshar, Mr. Gholam-Reza Kashani Adib, Mr. Reza All-e-Ahmad, Mr. Manouchehr Movasseghi, Dr. Dara Khajeh-Nouri, Mrs. Shamsi Zolaykhaei, Mr. Davood Termehchi, Mr. Hassan Khajeh-Nouri and Mr. Manouchehr Riahi. Thus, for example, from among five members of the Khajeh-Nouri family, only Dr. Dara and Mr. Hassan Khajeh-Nouri, from four

Therefore, the ownership of an amount of shares could not, and did not, actually serve as an automatic transfer of an equal portion of the deposits to that shareholder. Lastly, one should bear in mind that the shares involved were allegedly transferred to the Claimant through gratuitous (without consideration) donations. In such a situation, it is nonsensical to assume that such additional valuable rights were automatically transferred by donating the shares without any deed, irrespective of the weight that one might be prepared to accord to such allegations of donation, which the award has discussed in detail, and on which I will later elaborate where necessary.

I.B.2. Alleged Loans to Rahmat Abad

15. The Tribunal has rightly denied this new claim for 17 certificates of bank deposit, raised for the first time with the Claimant's Rebuttal Memorial on 30 December 1996, based on the provisions of Article III (4) of the Claims Settlement Declaration. As noted in Section I.B.1., above, this claim would have been dismissed even if instead of some fifteen years, it had been filed just a single day after the Tribunal's jurisdictional cut-off date.[24]

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members of the Termehchi family only Davood, and from the Riahi family, only Mr. Riahi contributed to the deposit.

[24] As with Khoshkeh, this late-filed claim was formulated as debts allegedly owed by Rahmat Abad to the Claimant and therefore had no relation with the claim for the expropriation of the Claimant's shares in that company. Had it been filed on time with the Statement of Claim and awarded, the independent relief should have been added to the share value that would have been reached by any valuation method. (See, e.g., the awards in Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., ITL No. 32-24-1 (19 December 1983), reprinted in 4 Iran-U.S. C.T.R. 122, at 129-131 ("Starrett Housing ITL") (with respect to loans claimed from the inception with the Statement of Claim in that Case); and Eastman Kodak Company, et al. and The Government of Iran, et al., Partial Award No. 329-227/12384-3, paras 25-29 and 57-62 (11 November 1987), reprinted in 17 Iran-U.S. C.T.R. 153, at 161-162 and 168-169 (accepting the alternative "Shareholder's Claim," invoked from the time of the filing of the Statement of Claim.)

16. Apart from that, the Claimant has been unable to prove her ownership of the alleged deposit or the so-called loans. Conversely, ample evidence on file, produced by the Claimant, points to other directions. To start with, the evidence shows that 17 certificates of deposit (numbers 916571 to 916587) were issued in the name of Rahmat Abad.[25] Therefore, as stated in connection with Khoshkeh, law and banking practice considers a certificate of deposit as a contract between the depositor and the bank and recognizes the holder, to whom the certificate is issued, as the sole owner.

17. Other documents, in the form of personal ledgers of Mr. Riahi, filed by the Claimant to support her allegation that her money was used to fund the deposit, show that the money was transferred to Bank Melli by Mr. Riahi from his own accounts.[26] Finally, there are documents showing that Rahmat Abad owed debts to other persons but not to Mrs. Riahi. For example, Rahmat Abad's trial balance covering the period from March 21, 1979 through December 21, 1979 names Malek Massoud as a creditor

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[25] In this connection, reference may be made to 1) Rahmat Abad's trial balance sheet covering the period from March 21, 1979 through December 21, 1979; 2) Procès verbal of delivery of the certificates to the Foundation for the Oppressed dated 23 November 1980 (both referring to the certificates as being owned by Rahmat Abad); and 3) a letter dated 25 February 1980 by Mr. Riahi to a Mr. Eric Mossaedi claiming that the certificates of deposit belonging to Rahmat Abad had been frozen.

[26] In addition to the check or account numbers mentioned, entries recording such transfers in the selectively filed pages of Mr. Riahi's personal and privately held ledger add the phrase "via your check no. ...") in relation to many of these transfers, with "your" referring to Mr. Riahi. See, e.g., ledger entries 213 (for Rls. 1,000,000) and 406 (for Rls. 1,500,000), at p. 26; and 358 (for Rls. 20,000,000) at p. 35. All these aside, we should bear in mind that the ledger belonged to Mr. Riahi, not his wife, and whatever payment, even if made from certain accounts jointly owned with his wife, must be taken to have been made by himself. Indeed, with the intention to prove her alleged payments, the Claimant produced a single transfer form (dated 28 May 1979) showing her request for the transfer of Rls. 700,000 to Rahmat Abad from an account jointly held with Mr. Riahi. Another piece of evidence, that too produced by the Claimant, demonstrates that a few days earlier, on 23 May 1979, the official request to the bank for the same transfer was made in writing by Mr. Riahi. However, whatever the purpose of this payment and Mrs. Riahi's involvement, Rahmat Abad's trial balance for the period ending 21 December 1979 conclusively shows that any payment made by Mrs. Riahi was later set-off by being debited and credited in the same balance sheet, resulting in a zero balance.

in the amount of Rls, 26,680,482[27] and shows that Mrs. Riahi had a debt of Rls. 4,625,000, which was off-set by the same amount of credit. Second, in a letter dated 2 July 1980, wherein Mr. Riahi asked Mr. Nabavi to transcribe, sign and return a pre-prepared letter confirming distribution of shares as he wished to make it appear, Mr. Riahi confirms the statement in the trial balance to the effect that the company did not owe any money to Mrs. Riahi.

18. However, were we to accept the allegation (against the evidence on file and without any proof to the contrary) that the certificates of deposit were in part owned by the Claimant, it was still for her to demand payment on the maturity date or to bring a claim against the depository bank if the bank refused to meet the demand without a legitimate reason. The depository bank not having been named a respondent in these proceedings, the claim should have failed on this additional ground, as has been established by ample precedents of the Tribunal.[28]

I.B.3. Alleged Loans to Tarvandan

19. The Claimant raised this claim for the first time with her Memorial filed on 12 February 1993, which was based on nine certificates of deposit (each Rls 1,000,000). The certificates produced in evidence by the Claimant were issued by Bank Melli in the name of Tarvandan. As noted earlier in connection with Khoshkeh and Rahmat Abad, a claim under a certificate of deposit against the issuing bank belongs to the person in whose name the certificate is issued. These certificates had maturity dates of July 22, 1980. Therefore, even if the claim could have survived the admissibility

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[27] Malek Massoud owed Rls. 100,911,074 to the company and the company owed him Rls. 129,397,193, the balance of which amounted to Rls. 28,680,482.

[28] See, supra notes 15-17.

objection based on Article III (4) of the Claims Settlement Declaration,[29] it would have failed on two other grounds.

20. First and foremost, the Claimant could not meet the burden of proving that she was the owner of the nine certificates of deposit involved. Quite to the contrary, those certificates clearly demonstrate that they were all owned by Tarvandan. Other evidence produced by the Claimant confirms this fact even further.[30] Moreover, in a letter issued on 16 July 1980 by Mr. Vaghefi pursuant to demands by the Claimant and her husband, as it will be discussed later, Mr. Vaghefi states that Tarvandan only owed Rls. 21,421,602 to Mr. Riahi.[31]

21. Second, were we to assume, against the evidence of official certificates of deposit issued by Bank Melli, that any such deposits, or portions thereof, were owned by Mrs. Riahi, the same jurisdictional problems would arise as discussed in connection with Khoshkeh and Rahmat Abad. The claim should have failed for i) not being raised against a proper Respondent (the depository bank) and ii) not being outstanding for lack of demand under the depository agreement on or after the maturity date, if such a right to demand by the Claimant existed. It bears worthy of repeating that all the

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[29] Similar to situations that obtained in connection with such claims against Khoshkeh and Rahmat Abad, a claim for debts allegedly owed by Tarvandan is different from a claim against the Government for expropriation of the Claimant's shares in the same company. The claim would have differed even more from that of expropriation of the Claimant's shares, had the Tribunal accepted that the Claimant owned a portion of the deposits with Bank Melli and that the latter failed to release the deposits on their maturity dates.

[30] Inter alia, in exchange of letters between Mr. Riahi and Mr. Vaghefi (Tarvandan's Managing Director), one written by the latter on 7 March 1980 and two written by the former on 13 April and 5 June 1980, they both confirm that Tarvandan was the owner of nine million rials deposits with the bank. Against these and clear indications on the certificates of deposit, the Claimant attempted to assert her ownership based on an entry in Mr. Riahi's personal ledger (supra note 26) only showing that a check for Rls. 9,000,000 was issued apparently for payment to Tarvandan. Nothing is even mentioned in the ledger explaining the purpose for the payment.

[31] See, infra paragraphs 206, 323 and notes 288 and 566.

certificates of deposit matured on 22 July 1980, a date that falls after the expropriation date alleged by the Claimant (27 February 1980) or accepted by the Award (16 July 1980).

I.B.4. Alleged Loans to Gav Daran

22. The claim for the alleged certificates of deposit with Bank Melli, or loans to Gav Daran, and circumstances related thereto are almost identical to those that obtained in the same claim related to Tarvandan. The claim 1) was filed with the Claimant's Memorial on 12 February 1993, 2) related to nine certificates of deposit (each amounting to Rls. 1,000,000), 3) issued by Bank Melli in the name of Gav Daran, and 4) matured on 22 July 1980.[32]

23. Therefore, not only was the Claimant unable to meet the burden of proving her alleged ownership in this respect, but evidence demonstrates that the certificates of deposit were owned by Gav Daran and, in any case, not by the Claimant. Here too, starting with the certificates of deposit, they were, as stated earlier, issued to and owned by Gav Daran. Documents produced in evidence by the Claimant further support this conclusion.[33] Like the situation in Tarvandan, the Managing Director of Gav Daran (a Mrs. Moalej) issued a letter on 16 July 1980 in response to demands

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[32] Here too, the claim for debts allegedly owed by Gav Daran is different from a claim against the Government for expropriation of the Claimant's shares. The same applies with more force to the claim for the alleged ownership of the deposits, or a portion thereof, with Bank Melli.

[33] The letter sent to Mr. Riahi by Mr. Vaghefi on 7 March 1980 (supra note 30) confirms the fact that the Rls. 9,000,000 in certificates of deposit belonged to Gav Daran.

made by the Claimant and her husband,[34] wherein she has stated that Gav Daran owed Rls. 9,060,000, but only to Mr. Riahi.[35]

24. As with Tarvandan, the Claimant's claim with respect to the certificates of deposit issued by Bank Melli should have also failed for i) not being raised against a proper respondent (the depository bank) and ii) not being outstanding for lack of any demand under the depository agreements, on or after the maturity dates, if such a right to demand by the Claimant existed. It is worth mentioning, here too, that all the certificates of deposit matured on 22 July 1980, which falls after the expropriation date of 27 February 1980 alleged by the Claimant.

I.B.5. Alleged Down Payments for Telephone Lines

25. With her Hearing Memorial filed in 1993, the Claimant alleged that she had paid Rls. 65,000 as down payment for two telephone lines that were allegedly intended for two Farahzad Apartments. Contracts for construction of these apartments were signed with a private Iranian construction company (Shah Goli) in March 1977, before their construction, but work on them was not completed until long after the Tribunal's jurisdictional cut-off date of 19 January 1981. This late claim suffers from many other flaws in addition to being inadmissible based on the provisions of Article III (4) of the Claims Settlement Agreement. First, there is nothing on file to prove that these telephone lines were purchased for use in the not-yet-constructed and unfinished Farhazad Apartments.[36] Nothing being specified on the dawn payment receipts, they

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[34] Infra Paragraph 210 and note 288.

[35] To assert her ownership of the deposits with the bank or debts allegedly owed by Gav Daran, the Claimant invokes, against this hard and clear evidence, an entry in Mr. Riahi's personal ledger, exactly the same as that referred to, supra, in note 30.

[36] To support her claim, the Claimant produced four Bank Melli transfer receipts and a single page (page 5) of Mr. Riahi's personal ledger (supra note 26) for the year 1358 (21 March 1979 to 20 March 1980). Bank transfer receipts show that two payments of Rls. 10,000 and two payments of Rls. 22,500 were made by the Claimant to Iran (later

could have easily been used for any place and by any person. Second, the party to contract with Mr. or Mrs. Riahi was Tehran Telecommunication Company, a separate and independent entity that has not been named as a respondent in this Case. Nothing is further produced to show that the Claimant took steps prior to, or even after, 19 January 1981, to have her down payments refunded by Tehran Telecommunication Company or the rights thereunder transferred. Moreover, it has neither been alleged nor proved that the Government of Iran had, at any point of time, interfered with the relationship between the Claimant and Tehran Telecommunication Company.[37] Under these circumstances, the claim would have also failed for not being outstanding, not having been filed against a proper respondent, and for not being attributable to the Government of Iran.

I.B.6. Alleged Expropriation Claims related to Sarhad Abad

26. It cannot be claimed, by any stretch of imagination, that the new claims for the alleged expropriation of Sarhad Abad and the lands allegedly managed by it, filed with the Claimant's Rebuttal Memorial on 30 December 1996, are amendments of a timely filed claim. In the Statement of Claim, or even in the Claimant's Memorial filed in 1993, nothing, whatsoever, was mentioned of Sarhad Abad: its name, its management role, the Claimant's ownership interests in the company, the lands under the management of the company, or their alleged expropriation. In this respect, the Tribunal has rightly concluded that the alleged unavailability of specific evidence to prove her claim at the time of filing of the Statement of Claim could not have

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Tehran) Telecommunication Company on 7 December 1977. Nothing is stated to relate the receipts to the Farahzad Apartments. Mr. Riahi's personal ledger records, on that single page, a payment allegedly effected for the purchase of the apartment in March 1977 and the total amount of the down payments for the telephone lines, though there was an interval of about one year between those payments. The ledger states that the transaction was transferred from page 327 of the ledger, but that page has not been made available to the Tribunal, and the entry does not even indicate from which year's ledger the transfer was made.

[37] See, supra notes 15 and 22.

prevented the Claimant from referring, generally, to that claim in the Statement of Claim (paragraph 71 of the Award), as in fact she did with respect to all other items of her separate claims.[38]

27. Although immaterial to the issue of admissibility under Article III (4) of the Claims Settlement Declaration, the fact of the matter with respect to the unavailability allegation is that the documents, relied upon as newly discovered evidence in the Claimant's Rebuttal Memorial, were comprised of i) Mr. Riahi's diary, ii) his personal ledger, iii) Mr. Vaghefi's letter of 25 October 1980 addressed to Mr. Riahi abroad, iv) a letter dated 28 April 1993 sent by a relative of Mr. Riahi (a Mr. Sheibani) to him abroad, v) an offer dated 9 July 1978 by Mr. Riahi to sell the lands as his own, vi) copies of the ownership deeds of the lands, vii) a copy of the Official Gazette of 17 March 1977, viii) a letter issued on 17 April 1977 by Sarhad Abad allegedly certifying the ownership of 60 shares of the company by the Claimant, ix) minutes of the shareholders meetings of May 1977 and June 1978, both reflecting the Claimant's participation as representative of 60, out of 600, shares, xi) minutes of the board of directors' meeting of May 1978, specifying the owners of, and details about, the parcels of lands intended to be rented to Sarhad Abad, wherein no reference is made to any such lands owned or rented by the Claimant. It is, therefore, clear that most of these documents, if not all, were exclusively available to the Claimant or her husband, abroad or somewhere in Iran. Just a few of these should have been enough to help the Claimant's memory so that she could include the Sarhad Abad claim in the Statement

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[38] Against Iranian respondents' requests and objections, the Tribunal regularly took the position from its very inception that the filing of supportive documents with the Statement of Claim is a matter within the sole discretion of the claimant. In this respect, the Tribunal relied on Article 18 (2) of its Rules, which states that "[i]t is advisable that claimants ... annex to their Statements of Claim such documents as will serve clearly to establish the basis of the claim," and ruled that "the language of Article 18, paragraph 2, is merely advisory in nature, not mandatory." QuesTech, Inc. and The Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1 (25 September 1985), reprinted in 9 Iran-U.S. C.T.R. 107, at 109.

of Claim.[39] In addition, Mr. Riahi must be taken to have remembered the company and his family's allegedly large parcels of lands placed under its management. Mr. Vaghefi was also one of the chief players in this Case, and he was available to Mr. and Mrs. Riahi from long before the filing of the claims. Likewise, Mr. Sheibani, a close relative of Mr. Riahi, was always available to the Claimant and her husband and, as we shall see later, provided many documents to them, whenever he was asked. Mr. Khajeh-Nouri, another very close family friend and associate of the Riahis, was one of the shareholders of Sarhad Abad and owner of certain parcels of the lands involved. Were they sincere in their allegations, nothing would have prevented the Claimant or her husband from refreshing their memories by talking to these persons at the time of filing of her Statement of Claim.

28. The inadmissibility issue aside, the claims (for the alleged expropriation of shares in Sarhad Abad and one percent ownership of lands) could have been dismissed on a variety of grounds ranging from lack of proof of ownership, the application of the important caveat expressed in Case No. A18,[40] and lack of proof of an outstanding expropriation claim before 19 January 1981.[41] It is admitted that Sarhad Abad was

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[39] For example, Mr. Riahi's personal diary and ledger (used in many instances with respect to other claims), Mr. Vaghefi's letter sent abroad, and presumably even the originals of the ownership deeds (which no owner would relinquish them) were readily available to the Claimant during all material times. A copy of the Official Gazette and copies of the minutes of shareholders and board meetings were easily and undeniably accessible to the Claimant. She could have gained access to them by simply having the Gazette purchased or copied, and by having the minutes of the meetings copied at the Office for Registration of Companies, because they are considered public documents. (See, note 53, infra.) It is hardly conceivable that a letter certifying ownership of 60 shares was not kept by the person (here Mr. or Mrs. Riahi) for whose benefit the certificate was issued but by others, including, presumably, the company that had certified such ownership.

[40] Islamic Republic of Iran and United States of America, Decision No. 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251 ("Case No. A18").

[41] The only evidence produced to prove the expropriation of Sarhad Abad and the parcels of lands claimed are Mr. Vaghefi's and Mr. Sheibani's letters of 25 October 1980 and 28 April 1993, respectively. Mr. Vaghefi stated in his letter that the offices of Tarvandan, Gav Daran, and Sarhad Abad were closed as of the beginning of the Iranian year 1359

formed to manage certain parcels of lands that were intended to be rented to it by their owners. There is, nonetheless, no proof that a deed was executed to actually materialize the intention. And, even if there were, there is no showing that the Claimant actually owned any parcels that were rented out to the Company for management.[42] The deeds of ownership produced in evidence show further that the lands' ownership remained with the owners, and nothing is mentioned in those deeds indicating their ninety-nine year lease to Sarhad Abad. The very fact that the Claimant is seeking relief for her alleged one percent ownership interest in those parcels of lands bears witness to the fact that they did not constitute an asset of the company.[43] In any event, it must be concluded that the Claimant's claim is for the ownership of lands acquired as an Iranian national, which would certainly have been dismissed since it is identical to the claims with respect to the ASP and Farahzad Apartments (see, Section

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(which started 21 March 1980). This is a general reference to an address where the offices of Tarvandan and of Mr. Riahi were located. Dormant companies like Gav Daran and Sarhad Abad had nothing there except for, probably, a couple of files. Therefore, in addition to the fact that the letter speaks about closure, not expropriation, reference to these companies must not be taken to have a serious basis. Moreover, the letter and its content must be weighed together with a letter dated 27 April 1980 sent by Mr. Riahi to Mr. Vaghefi wherein he stated that Mr. Khajeh-Nouri had proposed him "to dissolve the company," but he had advised him and another shareholder (Mr. Shamshiri) "not to dissolve the company but to eliminate all expenses ... and [to] keep the company on suspension." Decisions of this kind contradict any expropriation allegation. Mr. Sheibani's letter states, years later, in 1993, that "the company presently belongs to the Foundations for the Oppressed."

[42] In contrast, minutes of the shareholders meeting held on 7 May 1978 show that the lands were owned by Mr. Riahi and children, Mr. Mahvi, Mrs. Shirin Mahvi, Mr. Khajeh-Nouri, and Mr. Hassan Zarif Shamshiri and children. According to the same minutes, parcels of lands necessary for Sarhad Abad's operations were to be rented to it by Messrs. Riahi (1,116.5 square meters), Mahvi (3,750 square meters), Gholam-Hossein Zarif Shamshiri (4,400.99 square meters), and Gholam-Reza Zarif Shamshiri (1,016 square meters). With respect to Mr. Riahi's ownership, his 9 July 1978 letter offering the sale of lands as his own must not be overlooked, either.

[43] The company had no activity prior to or after 19 January 1981, the date of the entering into force of the Algiers Declarations, with which the outstandingness of a claim is tested.

IV of the Award, entitled A18 Caveat), falling squarely within the frame of the award in Karubian discussed therein.[44]

I.C. PRODUCTION OF DOCUMENTS (DISCOVERY)

I.C.1. Applicable Rules

29. As a matter of law, and as contemplated by Article 24 (1) of the Tribunal Rules, "[e]ach party shall have the burden of proving the facts relied on to support his claim or defence."[45] Therefore, it does not appear that the Tribunal can initiate a fact-finding process or take on an inquisitorial role. The Tribunal has always found that it is "for the Parties to select what evidence they wish to rely on in support of their claim."[46] However, relying on Article 24, paragraph 3 of its Rules, the Tribunal ordered

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[44] Rouhollah Karubian and The Government of the Islamic Republic of Iran, Award No. 569-419-2 (6 March 1996), reprinted in 32 Iran-U.S. C.T.R. 3 ("Karubian").

[45] See, 2 Iran-U.S. C.T.R., at 427. The rule finds its roots in Islamic and Roman Law as expressed, respectively, in the maxims البينه علىالمدعى and *actori incumbit onus probandit*, and. Moreover, "there is in substance no disagreement among international tribunals on the general legal principle that the burden of proof falls upon the claimant, i.e., 'the plaintiff must prove his contention under penalty of having his case refused.'" (Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals (Grotius Publication, 1987), at 326-335. See, also, Sandifer, Durward V., Evidence Before International Tribunals (Revised Edition, 1975, University Press of Virginia), at 123 et seq; and the awards of the Tribunal, inter alia, in Vera-Jo Miller Aryeh, para. 157, supra, note 7, at 316; Dadras International, et al. and The Islamic Republic of Iran, et al., Award No. 567-213/215-3, paras. 120-121 (7 November 1995), reprinted in 31 Iran-U.S. C.T.R. 127, at 161 ("Dadras"); Abrahim Rahman Golshani and The Government of the Islamic Republic of Iran, Final Award No. 546-812-3, paras. 47-49 (2 March 1993), reprinted in 29 Iran-U.S. C.T.R. 78, at 92-93; and CMI International, Inc. and Ministry of Road and Transportation, et al., Award No. 99-245-2 (27 December 1983), reprinted in 4 Iran-U.S. C.T.R. 263, at 268.

[46] Unpublished Orders in Brown & Root Inc., et al. and The Islamic Republic of Iran (Order of 30 July 1991); General Petrochemicals Corp. and The Islamic Republic of Iran, et al. (Order of 6 July 1989); and Offshore Company and National Iranian Oil Company (Order of 24 June 1986).

production of documents requested by one of the parties provided that certain conditions were met.[47] For a successful motion for production: 1) the request must be specific and clear, not general and vague, identifying specifically the requested documents,[48] 2) the requesting party must persuade the Tribunal that the documents are necessary, related to the Case or the issues involved, and have a bearing on the Tribunal's decision,[49] and 3) the requesting party must also show that the requested documents i) are within the sole control of the requested party,[50] ii) are not available or accessible to himself, and iii) that he took reasonable steps to gain access to them, but that his efforts failed for reasons not attributable to him.[51] Public availability of documents, even with certain difficulties (as against the impossibility), has in many situations been ground for not burdening the requested party with the task of producing the documents.

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[47] See, in general, Matti Pellonpää and David D. Caron, The UNCITRAL Arbitration Rules as Interpreted and Applied: Selected Problems in Light of the Practice of the Iran-United States Claims Tribunal (Finnish Lawyer's Publishing, Helsinki 1994), pp. 480-501, wherein certain unpublished Orders, referred to here, are also quoted.

[48] Unpublished Orders in Joan Ward Malekzadeh, et al. and The Islamic Republic of Iran (Order of 12 August 1993); Case No. B1 (Order of 18 March 1998); MCA Incorporated and The Islamic Republic of Iran (Order of 15 February 1985); and Kay Lerner and The Islamic Republic of Iran (Order of 26 September 1997).

[49] See, e.g., Joan Ward Malekzadeh, et al., supra note 48; Flour Corporation and Islamic Republic of Iran, et al. (Order of 11 November 1987, filed on 13 November 1987), reprinted in 18 Iran-U.S. C.T.R. 68; International Systems & Controls Corporation and National Iranian Gas Company (Order of 24 December 1986); and Case No. A15 (I:D and I:H) (Order of 24 May 1995).

[50] Case No. B1, supra note 48; and Nemazee Final Award, para. 4, supra note 14, at 187 and Order of 17 December 1990.

[51] See, e.g., Vera-Jo Miller Aryeh, supra note 7, at 316; Orders in Joan Ward Malekzadeh, et al.; MCA Incorporated; Kay Lerner, supra note 48; and Flour Corporation, supra note 49.

I.C.2. Facts Related to the Production Requests

30. As was the situation with respect to the facts pertaining to many issues related to the Claimant's claims, including her effective and dominant nationality and her ties with Iran, and late-filed claims,[52] the Tribunal was misled at the stage of proceedings on the merits into issuing certain Orders for production of documents in this Case (paragraphs 8-20 of the Award). As the Case developed further in time, the facts unfolded that the requests were tactical and that the documents requested were either 1) within the sole control of the Claimant and her husband, the chief architect of the Case, 2) nonexistent at all, or 3) public documents, such as the records with the Office for Registration of Companies.

31. First, as the Case proceeded on the merits, it became apparent that the Claimant's discovery motions were made with a dual purpose in mind. Many documents already at her disposal or readily available to public,[53] such as the minutes of shareholders and board meetings, were requested contemplating to avoid or diminish, if produced by the Respondent, the impacts of the latter's pleas as to their unauthenticity or fake nature because of their having been produced in evidence by it.[54] Some other documents, if not produced because of their unavailability to the Respondent or non-existence, could have served the purpose of procuring an adverse inference against the requested party.

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[52] See, supra paragraph 9.

[53] Article 26 of the Implementation Regulations of the Act of Registration of Companies provides that: "Reference to the Office for Registration of Companies is free for the public, whether Iranian or foreigner, and any interested person may obtain certified copies of the contents of the records." Tens of documents produced by the Claimant show that the Claimant could gain access to whatever documents she wanted, even those bearing internal notes, from the records at that office.

[54] For example, the Claimant had repeatedly requested the minutes of the shareholders and board meetings of Rahmat Abad to prove one of the most contentious allegations that 110 shares of Jahan Shahriar (one of the two deceased sons of Mr. Riahi) in that company were transferred to her, though all these documents, with one exception, were later produced in evidence by the Claimant herself as exhibits to her Memorials. (See, e.g., paragraphs 8, 126-131, and 145-158 of the Award.)

In fact, the evidence presented conclusively proved, for example, that no deed of ownership had ever been issued in the Claimant's name for the ASP Apartment,[55] that Gav Daran's share register book was missing or probably nonexistent because of the fact that the company was dormant, and that Rahmat Abad did not keep such a book in violation of law.[56] To the extent that such documents related to these closely held companies (formed, managed, and controlled by Mr. Riahi), nothing would have prevented their last moment manipulation, as later investigations proved had occurred.[57] To the extent that the documents of other independent entities, such as Khoshkeh and Iran Böhler, were concerned, the Respondent was actually in a weaker position than that maintained by the Claimant and her husband, because it had to look to these companies (although itself a shareholder) for any help. Evidence of such requests for help by the Respondent to these companies is abundant.[58] On the other hand, these companies were, and some of them are still being, managed, by managers and shareholders who were old and close family friends and associates of the Riahis, with whom they maintained contact and cordial relations during all material times

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[55] Backing away of her earlier request for production of the official deed of ownership of that Apartment, the Claimant presented new arguments in her Rebuttal Memorial, more specifically at the Hearing, against the applicability of the caveat expressed by the Full Tribunal in Case No. A18 (supra note 40) alleging that her claim was for contract rights and not for ownership of immoveable properties precluded by the caveat. (See, paragraphs 215 and 254 of the Award.)

[56] At the Hearing, Mr. Nabavi, a close relative of Mr. Riahi who managed Rahmat Abad for him prior to the expropriation of the company, testified to the fact that the company did not have a share register book. This testimony of Mr. Nabavi was neither objected to by the Claimant, who was present during his cross examination and the entire Hearing, nor rebutted. (See, the Transcript of the Hearing for 25 May 2000, Document 265, p. 152.)

[57] In addition to that which has been stated with respect to documents produced to prove the transfer of Rahmat Abad's (supra note 54), Tarvandan's, and Gav Daran's shares owned by the deceased sons of Mr. Riahi (paragraphs 181-183 and 201-203 of the Award), reference may be made to anomalies and incongruities in the contents of the minutes of the meetings of Tarvandan and Gav Daran, some of which are reflected in paragraphs 186-188, 193-194, and 204-212 of the Award.

[58] For a few examples of such documents to which the Tribunal has made reference, see, paragraphs 97 and 304 and note 35 of the Award.

until the time of the Award. Had there been any truth in the allegation that the documents available to these companies would have assisted the Claimant in proving her claims, the Riahis were in a far better position to gain access to such documents through them than was the Respondent.

32. It cannot escape notice that the Claimant in many instances chose to ignore documents produced by the Respondent in response to the discovery Orders or otherwise. In many such cases the Claimant tried to ignore the documents. A few examples of such behaviour by the Claimant will be illustrative. Pursuant to the Claimant's request, the Respondent provided a letter dated 17 July 1984, issued by Khoshkeh to Bank Melli Iran (Central Branch), but the Claimant made no use of this document because it would have undermined her claim for the alleged loan to Khoshkeh, if invoked.[59] In response to the Claimant's request, the Respondent produced Tarvandan's share register book, which listed all owners of all 300 shares of the company before their being changed to 75 shares, and all owners of the final 75 shares. Under items 299 and 300 on page 30, the Claimant is listed as the owner of 2 (out of 300) shares transferred to her by a Mr. Manouchehr Movasaghi because of her being named as a director. On page 38, under entry 73, the book lists the Claimant as the owner of 1 out of a total 75 shares. This page is closed by a line drawn across it under the last entry. The remaining part of the page is blank, although there were spaces for five additional entries. Attempting to disregard the evidentiary value of this requested and produced evidence, the Claimant alleged that the share register book "says nothing about her ownership as of March 1979" and Mr. Vaghefi's ownership of a statutory directorial share.[60]

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[59] See, supra paragraphs 12 and 14.

[60] See, paragraphs 155, 182, and 189 of the Award, and notes 56 and 58 thereto. I will return to these contentions and some other points later when dealing with the Claimant's ownership of shares in Tarvandan.

33. The most sought-after and fussed about evidence was that which had allegedly been kept in a safe with Bank Tehran (later Bank Mellat),[61] which was not a respondent in this proceeding. The Claimant resolutely persisted that if made available to her and the Tribunal, the contents of the safe could substantiate her ownership allegation with respect to shares in all companies involved. Later, before the Hearing, parties to the Case reached a Partial Settlement Agreement with respect to "the contents of the safe." A Partial Award on Agreed Terms was rendered by the Tribunal based on that Settlement Agreement and a Joint Request for Arbitral Award on Agreed Terms.[62] The contents of the safe were listed in two attachments (one for jewelry and another for documents), both forming parts of "the scope and subject matter" and integral to the Settlement Agreement. In the Settlement Agreement, the Claimant confirmed that she "has visually inspected the contents of the same on February 24, 2000 and found them in an acceptable condition." This process of visual investigation was carried out in the presence of the then Legal Assistant to the Chairman of the Chamber. He recalled that although the Claimant had apparently a sort of hesitation with respect to a piece of turquoise that was missing from a pendant, she soon appeared to remember that it might have been missing prior to the date that the items were deposited with the bank. No comment or objection as to the accuracy of the lists attached to the Settlement Agreement was ever raised, either during the handover process or at any material time thereafter. Nonetheless, during the Hearing, when the Respondent relied on the share certificates which were in the safe, the Claimant's counsel unexpectedly objected to such a reliance, because the certificates actually disproved the Claimant's allegations with respect to her share ownership claims, as I will show later in this opinion when dealing with those claims.[63]

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[61] Paragraphs 8-14 of the Award.

[62] Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Partial Award on Agreed Terms No. 596-485-1 (24 February 2000), reprinted in – Iran-U.S. C.T.R. – ("Riahi Partial Award on Agreed Terms").

[63] In the same vein, the Claimant took issue with the identity cards (passports) of two of the horses issued by the Royal Horse Society, because they proved beyond any doubt that they belonged to persons other than the Claimant (see, e.g., paragraphs 244-245 of the Award).

34. The next evidence requested and produced, but not invoked or considered by the Claimant or any of her experts, is that related to the financial statements of Khoshkeh and other companies. Although the Respondent produced these documents with the valuation reports of its experts (Messrs. Glover, Salami, and Ghorbani-Farid) at the Rebuttal phase, the Claimant failed to even show them to her experts or to ask for their opinion, notwithstanding the fact that the Claimant asked for and was granted an unprecedented opportunity to file a Surrebuttal Memorial after the exchange of Rebuttal Memorials, with which the rounds of pleading before the Tribunal normally end.[64]

35. The file is also riddled with evidence showing that the Claimant and her husband enjoyed unlimited access to documents from Iran. At the snap of their fingers, their relatives, friends and old associates barraged the Claimant with documents. Therefore, the Claimant's situation is nothing like that of those non-Iranian nationals before this Tribunal who, in certain instances, alleged that they had left documents behind in Iran that were no longer available to them. Such situations are surely not applicable to Iranian nationals and, in particular, the Riahis, who were in Iran long enough to arrange their affairs or to appoint people for that purpose, as indeed they did, enjoying good contacts and connections with them right until the time of the Award.[65] All the managers of the companies, including Mr. Khajeh-Nouri, Mr. Vaghefi, Mrs. Moalej, and Mr. Nabavi (and his wife), were in constant contact with the Claimant and her husband, as were a large number of their relatives, including Mr. Sheibani and Colonel

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[64] Paragraphs 26-29 and 42-47 of the Award. The Award makes it clear that the Claimant was further allowed, after the filing of her Surrebuttal, to file other documents not available to the Respondent and allegedly obtained with delay from the internal files of the Revolutionary Guards Corps of Natanz.

[65] Mr. Riahi states, in an entry for 13 March 1980 at page 979 of his diary, that his sister Pary was able to open his safe box in his Tehran office and to take out the things and documents there contained. It should be recalled that Mr. Riahi's office was co-located with the offices of Rahmat Abad, Tarvandan, Gav Daran, and Sarhad Abad.

Nabavi. Evidence on file amply demonstrates that these people were incessantly sending documents and information as and when demanded.[66]

36. I therefore concur with the Tribunal for not upholding the Claimant's tactical requests to draw an adverse inference in all situations wherein she failed to substantiate her allegations. On the other hand, in view of that which I have stated above and that which will be discussed later when dealing with the valuation of each individual company, I dissent from the Award's findings wherein it appears to have drawn certain inferences against the Respondent's valuation reports.[67]

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[66] In connection with the "hotly debated" issue of the probative value of the "affidavits or oral testimony of the claimants and their employees," the late Judge Virally noted that the Tribunal's "pragmatic and moderate approach towards this problem by deciding, on a case by case basis," did not seem "to have been well understood." In the context of this kind of evidence, Judge Virally first noted that certain claimants, who could not in the period "between the establishment of the Revolutionary Islamic Government on 11 February 1979 and the taking of the American Embassy on 4 November 1979... return to Iran ... to recover the files left behind," faced "specific difficulty in the matter of evidence, for which they are not responsible... particularly ... when [they] were forced by revolutionary events and the chaotic situation prevailing in Iran at the time, to rush out of Iran without having the opportunity or the time to take with them their files, including documents which normally should be submitted as evidence in support of their claims." Judge Virally went on to state that, however, the Tribunal "must not lose sight of its duty to protect the respondents against claims not properly evidenced," and that at any rate "it must be satisfied that the facts on which its awards rely are well established...." Even in situations where the other party fails "to adduce contrary evidence [which has not been the case here], when such evidence is apparently available or easily accessible," to it, Judge Virally concluded that "the Tribunal must not disregard the fact that destruction due to revolutionary events or to the war, the departure from Iran of persons responsible for the conduct of the business at time of the facts referred to in the claim, changes in the direction or the management of the undertakings concerned, can also impair the Respondents' ability to produce evidence." (Buckamier, supra note 14, para. 67, at 74-75.)

[67] In Particular, circumstances regarding the alleged ownership of shares and troubling questions in connection with the Claimant's evidence are other grounds that have rendered it inappropriate to draw any such inferences in this Case. See, e.g., Nemazee Final Award, para. 62, supra note 14, at 202; and Kiaie, para. 109, supra note 14, at 70.

II. OWNERSHIP CLAIMS

37. In this part of my opinion, I will explain my views on issues related to the ownership of shares claimed by the Claimant, following the same sequence employed by the Chamber in its Award. I will, however, discuss the ownership issues by dividing them into two groups based on the entities involved: 1) Ownership claims related to Bank Tehran and Iran Böhler, and 2) ownership claims related to other companies. My reason for doing this is that although there is no dispute with respect to the ownership of the shares in Bank Tehran and Iran Böhler, in both situations the inadmissibility issue is present because of the application of the Full Tribunal's important caveat expressed in Case No. A18. On the other hand, the ownership claims with respect to the other companies are contested, and they share many serious difficulties that go to the heart of the validity of the transfers or acquisitions involved, including the validity of the powers of attorney and the ambit of the mandate allegedly granted by Mr. Riahi's sons to their father, their competence and capacity to grant such powers of attorney, and the validity of the alleged gratuitous transfers of shares by donation. After that, I will also discuss, in a separate Section, the Claimant's alleged ownership of personal properties allegedly left behind in the ASP Apartment. I find it unnecessary to discuss the issues related to the ownership of the ASP and Farahzad Apartments because I entirely agree with the Award's application of the caveat under Part IV (A18 Caveat), Sections 1 and 2.

II.A. OWNERSHIP OF SHARES IN BANK TEHRAN AND IRAN BÖHLER

II.A.1. Bank Tehran Shares

38. As noted by the Award (paragraphs 77-78), the Respondent does not contest the Claimant's formal ownership of 33,871.70 shares in Bank Tehran. These shares were registered in the name of the Claimant in the share register book of the bank, and the Claimant produced the original share certificates, which indicate her ownership on

their face or by registering the transfer to her at the back, are proof of her ownership. As I will state elsewhere in connection with the ownership of shares of other companies, such evidence must be considered to be conclusive, particularly in the absence of highly convincing evidence to the contrary, though I understand the gist of the Respondent's argument that the Claimant lacked the standing to sue for these shares because they were not genuinely owned by her, but were bought by the Claimant's husband at a time of revolutionary movement in Iran when no investor would have ventured to make such a purchase without a hidden intention.

II.A.1.a. A18 Caveat

39. My only reason for disagreeing with the Award in this connection is that I expected the Tribunal to find the claim with respect to Bank Tehran's shares inadmissible because of the application of the Full Tribunal's caveat expressed in Case No. A18. [68] Since everyone familiar with the work of this Tribunal is very well aware of the history of Case No. A18 and the caveat expressed therein, and since the Award is fairly detailed in this respect, I do not intend to devote much time and space to its historical background and import, except for bringing to everyone's recollection that Iran found the decision to be unjust and unfair. People and officials in Iran were so shocked and so unhappy that, as may be recalled, the then Prime Minister of Iran, Eng. Mousavi, had to issue a statement casting serious doubt on the continuation of the Tribunal's work.

40. However, "an important caveat" was added to the award, which literally means a "warning to one to be careful. ... A formal notice or warning given ... to a court or a judge against the performance of certain acts within his power or jurisdiction."[69] Therefore, by adding the adjective "important" before the word "caveat," the Tribunal emphasized the importance that it wanted to attach to its warning, making it

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[68] Case A/18, supra note 40.

[69] Black's Law Dictionary (Fifth Edition).

abundantly clear that the Chambers should take the issue seriously and not lightly. I agree with the Tribunal's analysis with respect to the duality of purpose of the caveat barring a claimant from obtaining rights or benefits i) reserved exclusively to Iranian nationals, or that ii) even if not limited to Iranians, were acquired by using that nationality (paragraphs 258-279 of the Award, paragraphs 269-277 in particular).[70]

41. The A18 caveat is not a creation of the Full Tribunal. Rather, it is rooted in a number of well-settled doctrines and principles of customary international law that prevent the fraudulent or non-fraudulent execution of an individual's right against his/her national State in a variety of situations. These include, inter alia, the principles of good faith, abuse of rights,[71] fraud, clean hands,[72] estoppel, and state Responsibility.

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[70] The Award has studied thoroughly the precedent of the Tribunal on the issue. I am therefore relieved from burdening myself with that task, except for adding the views expressed by some of the members who formed the majority in Case No. A18 and appended an opinion thereto. In explaining the decision, Judge Riphagen referred, by way of example, to one of these aspects of the caveat, stating in his Separate Opinion that: "It is also often admitted that no international protection is given to a dual national as regards rights acquired by him through the use of his 'other' nationality, if such rights are validly reserved to its citizens by the other state." (Supra note 40, 273 at 274.) Thus whether by application of estoppel or other principles, he was of the opinion that the subjective element of fraudulent behaviour is unnecessary in such circumstances. What was also found to be enough was mere proof that the right was available only to nationals of the respondent State and that the given claimant acquired the right in his or her capacity as a national of that State. Judge Mosk, another member of that majority, refers to some other broader application of the caveat, by providing other examples wherein "the use by a United States citizen of his or her Iranian nationality in a fraudulent or other inappropriate manner might adversely affect the claim by that person." Ibid., 269, at 272 (emphasis added). This would mean that in such circumstances the claim would be denied even if the right was not specifically reserved for nationals of the respondent State. In fact, prior to the issuance of the award in Case No. A18, Judge Bellet, another member of the majority, had warned that "[t]here is precedent for denying jurisdiction on equitable grounds in cases of fraudulent use of nationality. Such a case might occur where an individual disguises his dominant or effective nationality in order to obtain benefits with his secondary nationality not otherwise available to him." (Nasser Esphahanian and Bank Tejarat, Award No. 31-157-2 (29 March 1983), reprinted in 2 Iran-U.S. C.T.R. 157, at 166.)

[71] There is no doubt that the principle of abuse of rights is a principle of international law, and as such it has been upheld in a number of the awards of the Tribunal discussed in the Award.

The principle of good faith is a catchall principle that covers other theories and principles. That which runs counter to it is considered unacceptable and is termed malus dolus or bad faith. Fraud is detested by the whole of human society and vitiates that which comes with it or which it touches. To commit a fraud, it is not necessary to perform a positive act. Rather an omission or passive conduct and behaviour, such as maintaining silence, can amount to fraud.[73]

42. The other principle is the well-settled principle of estoppel applied in a number of international decisions, including those rendered by the World Court,[74] which is said to correspond to the non concedit venire contra factum proprium principle applied by the United States-Italian Claims Commission in the Flegenheimer Case. Estopple is applicable in a variety of fraudulent or non-fraudulent situations such as when the injured party "has neglected to indicate his true nationality, or has concealed it, or has invoked another nationality at the time the fact giving rise to the dispute occurred...."[75] Therefore, application of the principle does not require the presence of a complex situation. It is sufficient that 1) one of the parties take a position, 2) the other party rely on that position, 3) the party who had taken the position change that previously adopted position, and 4) this change be detrimental to the party that had relied on that earlier position or be beneficial to the person who has adopted the

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[72] As stated by E.M. Borchard, "no one can profit by his own wrong, and ... a plaintiff or claimant must come into court with clean hands." E.M. Borchard, The Protection of Citizens Abroad or the Law of International Claim, at 713 (1965).

[73] Black's Law Dictionary (Fifth Edition), p. 595.

[74] See, *e.g.*, Cheng B., supra note 45, at 141-158; Virally M., "The Sources of International Law," in M. Sorensen (ed.) Manual of Public International Law, at 148 (1968); Martin A., L'estoppel en droit international publique, at 139-172 (1979); and Mueller J.P. and Cottier T., "Estoppel," in Encyclopedia of International Law, Vol. 7, at 78-81 (1984).

[75] Flegenheimer Case (United States v. Italy), 14 U.N. Reports of International Arbitration Awards ("RIAA"), 327, at 378 (1958) (emphasis added). As to the meaning of the principle, the International Court of Justice stated: "A party which has made an assertion necessary to its case is not permitted, subsequently in law-suit, to deny that assertion to the detriment of another party." Monetary Gold Removed from Rome, ICJ Report 1954, at 91.

changed position.[76] It is beyond any doubt that a claimant would benefit from this change of position, by using this Tribunal and having her/his claim adjudicated as a United States national and receiving hard currency, while the Government of Iran would be prejudiced by not being allowed to treat the individual similarly to its other nationals and by being forced to pay in hard currency. Either of these conditions is sufficient for invoking the principle of estoppel.

43. As to the principle of the international responsibility of States, the result will be the same regardless of whether the responsibility is based on "subjective" (culpa; fault or negligence) or "objective" (such as risk) theories. First, a claim of a national against his/her national State is barred by the application of the rule that, absent an international treaty, no State can be made accountable in the international plane for injuries to its own nationals. Second, under whatever theory, if a person has presented himself/herself as a national of the acting State, he/she is barred in the international domain from attributing liability to that State for not having been treated as an alien. The individual cannot later rely on remedies available to foreigners for benefits reaped as a national of that same State.

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[76] This definition is echoed not only in the international decisions referred to above, but also in the eloquent writings of scholars such as Martin A., who states: "Lorsqu'une Partie, par ses déclarations, ses actes ou ses comportements, a conduit une autre Partie à croire en l'existence d'un certain état de choses sur la foi duquel elle l'a incité à agir, ou à s'abstenir d'agir, de telle sorte qu'il en est résulté un modification dans leurs positions relatives (au préjudice de la seconde, ou à l'avantage de la première, ou les deux à la fois), la première est empêchée par l'estoppel d'établir à l'encontre de la seconde un état de choses différent de celui qu'elle a antérieurement représenté comme existant." English translation provided by the Respondent reads: "When a Party, by its declaration, deeds or behaviour, has let another Party believe in the existence of a certain state of affairs on the basis of which the latter has been prompted to act or to refrain from acting, to such an extent that it would result in a change of their respective positions (either to the detriment of the latter Party or to the benefit of the former, or both), the former Party is estopped from claiming vis-à-vis the latter Party a state of affairs different from the one it had previously asserted."

II.A.1.b. Application of the Caveat to Bank Tehran Shares

44. Before applying the law discussed above to the facts related to the ownership of the Bank Tehran shares, I have to say that had the Claimant been honest and informed Bank Tehran of her United States nationality, there would have been no need to make a decision regarding the caveat. Such abusive conduct, including omission by not conceding a fact is identical in nature to conduct that the Tribunal has elsewhere deplored.[77]

45. Although I have expressed my view on the Claimant's ownership in paragraph 38 above, based on Bank Tehran's share register book and share certificates, other circumstances must not be ignored when it comes to the application of the Full Tribunal's important caveat. The Chamber knows well, and cannot feign indifference to, the fact that Mrs. Riahi was an ordinary young lady who came to Iran to earn a modest income, sufficient for her living, by teaching English at a college in Tehran. She met Mr. Riahi sometime in 1974 and married him in 1975. The record shows that Mr. Riahi used to provide her with certain modest gifts, all reflected in his personal diary. Surprisingly, she allegedly started to receive substantial gifts in the span of a few months at the peak of the revolutionary movements and after the success of the Islamic Revolution in Iran, about which transfers no mention can be found in the same diary.

46. Circumstances denote the fact that at the instigation of, and in collaboration with, her husband, Mrs. Riahi abused her Iranian nationality vis-à-vis Bank Tehran to

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[77] Norman Gabay (also known as Nourollah Armanfar) and The Islamic Republic of Iran, Award No. 515-771-2, para. 13 (10 July 1991), reprinted in 27 Iran-U.S. CTR 40, at 45 (wherein, with respect of the presentation of a false document and delay in conceding the fact, the Tribunal ruled that it "disapproves of such behaviour on the part of the Claimant and his attorney. Although it does not have the power to impose sanctions or disciplinary measures for presentation of false evidence, the Tribunal cannot pass over such abusive conduct in silence.") Such behaviour is even more deplorable when it is coupled with those that will be cited below and in many other instances in this Case, including the manner of acquiring shares in other companies.

acquire rights (shares) in her name for Mr. Riahi.[78] They are now misusing the Claimant's United States nationality before this Tribunal to enforce benefits she falsely acquired with her other (Iranian) nationality. There is ample circumstantial evidence in the file indicating that Mrs. Riahi's acquisition of shares was not based on good faith. Therefore, even if the fictitious nature of the ownership of shares were not sufficient to deny the claim on the merits, the evidence shows, without doubt, that Mrs. Riahi came before the Tribunal with unclean hands, having abused her Iranian nationality, which behaviour renders her claim inadmissible by the application of the caveat, and based on the principles discussed above.

47. The Tribunal in general, and this Chamber in particular (by way of its Award in Robert R. Schott),[79] are aware (as this Award has also noted at paragraph 285) that the Monetary and Banking Law of Iran limited the ownership of foreigners in Iranian banks, and that the banks could not offer more than 40 percent of their shares to non-Iranians.[80] To control this, and to keep an exact record of foreign owners, Iranian banks were required to minutely follow certain procedures for recording the name of

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[78] Mr. Riahi's diary shows, at page 863, that the real owner of the shares in Bank Tehran was himself and not Mrs. Riahi. He states, in an entry related to June 1979, that all "banks of the country were nationalized, and I will lose at least more than 75% of the value of the amount of 165 million Rials which I have invested in the share of Bank Tehran." Though it has never been alleged that Mr. Riahi had Bank Tehran shares in his own name, the Respondent provided unchallenged and unrebutted evidence to avoid any misunderstanding regarding whether Mr. Riahi was referring in that diary to shares different from those acquired in his wife's name. A letter issued by Bank Mellat, successor to Bank Tehran, confirms that Mr. Riahi did not own any share in Bank Tehran, proving that when speaking of his loss, he was referring to the shares acquired in his wife's name. Furthermore, in keeping with his practice with respect to other items of property claimed -- in particular his act of transferring the hollow title to the Rahmat Abad farm to the Rahmat Abad Company, keeping all rights associated therewith for himself for life -- Mr. Riahi obtained a full-fledged and catchall power of attorney from his wife authorizing him to do whatever he wanted with respect to her accounts, rights, benefits, and transactions.

[79] Supra note 17.

[80] Soon after the success of the Islamic Revolution in Iran, the banking and insurance systems were nationalized and private ownership of shares in those sectors was entirely prohibited.

foreign shareholders in separate books. Bank Tehran was no exception. Bank Tehran's Articles of Association also provided, in a number of places, for the application of the Monetary and Banking Law of Iran.[81]

48. Mr. Abedini, an official of Bank Tehran (and later Bank Mellat) described in detail the two different processes that were required for Iranians and foreigners to acquire Bank Tehran shares. Not only should foreign shareholders have gone through the Tehran Stock Exchange to acquire such shares, but the approval of the Bank Manager was also necessary, which could have been denied based on the law and/or the Bank's policy and internal regulations. These processes and approvals were not applicable to the acquisition of shares by Iranians, nor was it necessary for them to prove the importation of foreign capital, which was the main reason for allowing foreign shareholdings.[82]

49. Mr. Abedini further explained that the Bank had two groups of shareholders and that the Bank's foreign shareholders comprised five international banks and three individuals who were among the directors of the Bank, apparently nominated by those banks, and whose shares were directorial shares.[83] Mrs. Riahi never applied to acquire shares as a foreigner, and her name never appeared as such on the bank's shareholder list. Furthermore, the evidence produced as attachments to Mr. Abedini's Affidavit shows that Mrs. Riahi has always introduced herself, in all her dealings with the bank,

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[81] Reference may be made, by way of example, to Articles 2, 3, 61, 65 and 66, the latter providing that any matter not foreseen in the Articles of Association must be governed by, inter alia, the provisions of the Monetary and Banking Law of the Country and the Law Amending a Part of the Commercial Code.

[82] To attract and encourage foreign banks to invest in Iranian banks, the Regulations Implementing the Law on the Attraction and Protection of the Foreign Investments ("The Regulations Implementing the Law on Attraction") also extended its protections to such investments brought from abroad by foreign banking institutions (note 3 to Article 1 of that Regulation).

[83] At the time of the acquisition of the shares by Mrs. Riahi and the day the banks were nationalized, those foreign shareholders owned an aggregate of 1,907,330.4 shares in Bank Tehran.

as an "Iranian national," identifying herself using her Iranian identity card instead of her American passport or any other identification relating her to the United States. On these documents, her Iranian identity card number is cited together with her Iranian nationality. The bank has always treated her as an Iranian shareholder.

50. In view of the above, I find irrelevant to the issue before us the Award's statements to the effect that the Respondent could not show that "the Claimant's ownership alone or together with the listed foreign shareholders would have reached [the 40 percent] limit" set by the Monetary and Banking Law of Iran, or that the right to acquire the shares in Iranian banks "is not restricted by Iranian law to Iranian nationals." (Paragraphs 285-286 of the Award.) Using her Iranian nationality and identity, Mrs. Riahi actually circumvented all the requirements for acquiring shares as a foreigner, which would have necessitated importing foreign currency into Iran, and in particular by avoiding the possibility of being rejected as a foreign shareholder, bearing in mind the fact that other shareholders were actually international banks. The Claimant acquired the shares the easy way, i.e., simple direct purchase from other Iranian shareholders by paying them Iranian rials. She should therefore now be estopped from invoking her United States nationality. By allowing her claim, the Tribunal has allowed her to abuse both her Iranian and United States nationalities, first by acquiring her shares as an Iranian and next by enforcing the rights under those shares as an American.

51. Thus, the claim for the shares in Bank Tehran should have been considered inadmissible by the application of the broader aspect of the caveat and/or any of the principles discussed above, though I would think that the other aspect of the caveat is equally applicable because of the limitation provided by the Monetary and Banking Law of Iran and Bank Tehran's regulations. By granting the Claimant's claim in this respect, the Tribunal, on the one hand, condoned her abusive behaviour and her appearance before us unclean handed, and on the other hand, sacrificed the principles of good faith, estoppel, and State Responsibility. Had Mrs. Riahi acted in good faith, she would have been able to receive, as did many other Iranian shareholders of the

Bank, the compensation calculated and set aside for her in Iranian rials. By its Award, the Tribunal has actually served as an exchange office for the Claimant, applying the most favourable dollar exchange rate.

II.A.2. Iran Böhler Shares

52. The claim for ownership of shares in this company is the only claim that is not fraught with anomalies, perhaps because of the involvement of a major foreign shareholder, Böhler Pneumatic International GmbH ("Böhler GmbH).[84] As it did with respect to the shares in Bank Tehran, the Respondent accepted the Claimant's ownership of 500 shares in Iran Böhler. I therefore concur in the Award's finding that the Claimant owned that amount of shares (paragraph 83 of the Award). However, as I will explain in the next section, I am of the opinion that the Claimant's claim with respect to those shares should have been considered inadmissible by the application of the Full Tribunal's caveat expressed in Case No. A18.

II.A.2.a. Application of the Caveat to the Iran Böhler Shares

53. Iran Böhler was formed by participation of Böhler GmbH (an Austrian company) and certain Iranian shareholders, including the Riahi family. Pursuant to Article 4 of the Articles of Association of the company, the shares were divided into groups A (Iranian national) and B (Foreign national) shareholdings. Group B shares (3,150 as compared to 3,850 group A shares) went wholly to Böhler GmbH and two of its appointed directors (one share each), as the single largest and the only foreign shareholder of the company. It is therefore clear that not only would participation of any other foreign shareholder have been vigorously resisted by Böhler GmbH, which

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[84] Indeed, Mr. Mahvi, a friend and associate of Mr. Riahi for about 60 years, testified in writing, and orally at the Hearing, that, except for certain directorial shares (required by law) and shares in a unprofitable company, Iran Böhler, other alleged transfers of shares to Mrs. Riahi were fictitious (soori, as he has put it in Persian).

was the sole provider of the factory and necessary raw materials and expertise, but also that any such participation would have also breached both the company's Articles of Association and the relevant Iranian law by changing the nationality of the company from Iranian to foreign because the majority of shares would have fallen into the hands of foreigners.[85] In fact this proportionality between the shares owned by group A and Group B remained intact, for the whole period until the time of the Award though the number of shares was later increased to 20,000 in number (9,000 owned by group B and 11,000 by group A shareholders).

54. It is not contested that the Claimant acquired and held her shares as an Iranian national, at all times. She could not have done otherwise in view of that which has been explained above, and she does not even allege that she acquired the shares as an American national. The Claimant agrees that based on Iranian laws and regulations, foreigners could not own more than 49% of the shares of companies established by partnership between Iranian and foreign shareholders. Acknowledging such a restriction, she argues, however, that the restriction would only affect the founding shareholders, but not her shares, because she was not a promoter of the company and had joined Iran Böhler as a shareholder later, after its formation![86] As noted in the previous paragraph, this requirement was followed by Iran Böhler dividing its shares into 11,000 shares held by Iranian shareholders and 9,000 shares allocated to foreigners. However, the Claimant's argument to the effect that a distinction must be drawn between founders of the company and other shareholders deserves no consideration for the simple reason that, if accepted, it would defeat the very purpose of all such laws by invoking similar tactics. The situation here is similar to that which obtained in Schott,[87] because here, too, all shares allocated for foreign shareholders

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[85] Deducting 500 shares from those owned by group A and adding the same amount of shares to those owned by group B would have resulted in the allocation of 3,350 shares to group A and 3,650 to group B shareholders.

[86] This allegation was put forth in the Claimant's Rebuttal Memorial filed on 30 December 1996.

[87] Supra note 17.

had already been taken by another shareholder, Böhler Pneumatic. In Schott, all shares of the Iranian Bank, available to foreigners, were owned by Citibank. Our Claimant here is estopped from using her U.S. nationality to enjoy ownership rights she obtained using her Iranian nationality, as we found in Schott in connection with Mrs. Mostoffi, a dual Iranian national by marriage.

55. However, the Tribunal refrained from applying the A18 caveat relying on the Sabet Partial Award rendered by Chamber Two, reasoning that although that award found that the Law on Attraction and Protection of Foreign Investments in Iran (the "Law on Attraction and Protection"), as interpreted by a decision of the Board for Attraction and Protection of Foreign Investments, disallowed the allocation of more than 49 percent of the capital increase of a company to foreigners, the Tribunal reached the conclusion that even though the law "may have set limits on the percentage of foreign shareholdings that would grant its protection, a foreigner was not prohibited from owning Iranian shares outside the [the Law on Attraction and Protection] regime."[88]

56. Both awards (the Award in the present Case and the Sabet Partial Award) have actually based their finding on Kimberly-Clark. This reliance is, in my view, misplaced because that award concerned neither a dual national claimant nor the application of the caveat. Here, the issue is not whether the Claimant owned the claim or whether she could seek compensation for her ownership rights in a competent court of law. The question was one of admissibility based on the caveat. Having introduced herself as an Iranian for obtaining rights that otherwise would not have been available to her, and also considering the nature of the corporation involved and its formation, the Claimant should have been barred from recovering under that right before this Tribunal. Moreover, the issue with respect to the application of the Law on Attraction

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[88] Paragraph 288 of the Award relying on the Partial Award in Aram Sabet, et al., paras. 115-117, and 142, supra note 2, which in turn had relied on the award in Kimberly-Clark Corporation and Bank Markazi Iran, et al., Award No. 46-57-2 (25 May 1983), reprinted in 2 Iran-U.S. C.T.R. 334, at 339 ("Kimberly-Clark").

and Protection is misunderstood by all the above three awards, the Award in Case 485 included. It is true that a foreign shareholder could have obtained shares without the support of that law, as was the case in Kimberly-Clark, but the point here is, first, that the Claimant was an Iranian and her investment could not have been qualified as a foreign investment. Second, the law provided for repatriation of the original investment and any dividends thereof if the conditions required by the law were satisfied, including the importation of capital as foreseen and observation of the quota set with respect to foreign shareholding. The capital not having been imported from abroad as a foreign investment and the claim being for rights acquired as an Iranian, the Tribunal should not have replaced competent Iranian courts to adjudicate a claim barred by the caveat because of the Claimant's other (Iranian) nationality,[89] nor should it have awarded a dollar sum to the Claimant, whose maximum right was, similar to many other Iranians, to seek remedies in rials in Iran.

II.B. SHARES IN OTHER COMPANIES

57. In this part, I will discuss my views with respect to the alleged ownership of other companies, except for the ownership claim related to Sarhad Abad for the reason that, as was explained in Section I.B.6 above, I firmly believe that it was properly denied based on the provisions of Article III (4) of the Claims Settlement Declaration and would have failed on many other grounds, including the application of the A18 caveat, before reaching this stage of scrutiny.

58. Having stated that, I will take up and discuss common vices related to the validity of the share transfers by Mr. Riahi allegedly on behalf of his children to the Claimant, before discussing the merit and the impact of those common problems on each particular ownership claim.

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[89] "[T]he Tribunal adds an important caveat. In cases where 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." (Case No. A18, supra note 40, at 265-266, emphasis added.)

II.B.1. Invalidity of Powers of Attorney of Mr. Riahi's Sons

59. The Claimant invoked powers of attorney to show that Mr. Riahi had the authority to transfer to her substantial amounts of shares owned by his children in various companies. The power of attorney given by Jahan Shahriar and that given by Amir Saeed both suffer from serious flaws because i) they, as the grantors of authority lacked legal capacity to grant such powers, and ii) the powers granted lacked any reference to the father's authority to gratuitously donate their property to others. To the extent related to Jahan Shahriar's power of attorney, evidence on file demonstrates that the power of attorney was not authentic but was forged and backdated under the influence of the fear that he had been taken hostage and killed. I will treat this latter problem first.

II.B.1.a. Jahan Shahriar's Power of Attorney was not Genuine

60. Setting aside for the time being Jahan Shahriar's incapacity, which will be discussed in the next Section, were we to accept, arguendo, that the Claimant could successfully surmount Jahan Shahriar's immaturity/insanity hurdle, the claim for transfer of shares and the allegation of donation should have failed on the ground that the power of attorney forming the basis of transfers and deeds on behalf of Jahan Shahriar was not authentic. In my view, the Tribunal has laxly set this issue aside. It should have declared the power of attorney and all transactions based on it invalid,

61. For a better understanding of the circumstances surrounding the alleged date of the signing of the power of attorney in December 1975, we have to go back in time and depict a real picture based on the contemporaneous documents on file. We should, however, bear in mind throughout this Section that there is no dispute between the Parties and their experts that the power of attorney was not, and could not have been, signed on the date therein indicated (24 December 1975). The Claimant's expert (Mr.

Mahloujian) tried to play down the forgery by hypothesizing, late during the proceedings, that probably one day prior to that date, on 23 December 1975, Jahan Shahriar had signed the Power of Attorney and left it with the notary public for registration. For the issue at hand, it must be mentioned first that it makes no difference whether Jahan Shahriar had left one or more days before the date of the execution of the power of attorney. In any event, the Claimant's admission serves no purpose but to further confirm that Jahan Shahriar could not have been present in Tehran, and for that matter at the notary public office, on the date when the power of attorney was allegedly drawn up and executed.

62. How did the events occur at that juncture? As we shall see later, Jahan Shahriar, suffering from a serious mental illness was moving from one psychiatric hospital to another from months prior to the alleged signing date of the power of attorney. However, absconding from Maymanat Hospital, he returned to their home in Farmaniyeh on 14 December 1975 around 16:30, although, as his father's diary's entry a few days earlier (7 December 1975) recorded, he was "confused and unbalanced ... and need[ed] long-term psychotherapy."[90] Thereafter, for about one week, Jahan Shahriar lived in solitude, locking himself in his room, refusing to go through psychotherapy, and using opium.[91] As further narrated by his father and the taxi driver who was directly involved, on Monday 22 December 1975, at about 22:30, Jahan Shahriar "left the home and after a short stop at the Hilton Hotel, he [went] to Mazandaran," a province in the north of Iran by the Caspian Sea. The driver and Jahan Shahriar were trapped "in the Kandavan tunnel because of avalanche" until the morning of Tuesday, 23 December, and he was kidnapped a few hours after his arrival at Villa Torang on the same day, with no news emerging regarding his whereabouts. One day later, on Wednesday 24, December, a power of attorney was executed at the notary public.[92]

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[90] Mr. Riahi's diary, page 438.

[91] Id, pages 438-439.

[92] Id., pages 440-443.

63. The facts made available to us show that in the months prior to the date of the alleged power of attorney (24 December 1975), and in particular in the days around it, Jahan Shahriar could not have walked into a notary public and signed the alleged power of attorney. Although Mr. Riahi's diary is laboriously detailed on every event of those days, there is not the slightest reference to the important action of going to the notary public and signing the power of attorney. Let's recapitulate Mr. Riahi's description of events around the 24th of December: without informing his father, Jahan Shahriar i) left home on 22 December 1975, ii) stayed for a short time at the Hilton Hotel, then iii) departed by taxi for Mazandaran, iv) was trapped in the tunnel until December 23, v) was kidnapped/disappeared the same day upon his arrival in the North, and vi) did not return to Tehran until 26 December 1975, around 23:15.

64. Although the events, as they occurred, leave no room for any allegation that Jahan Shahriar appeared before the notary public, at any point of time, to sign the power of attorney, I will briefly address the hypothesis put forth as an afterthought by Mr. Mahloujian that the power of attorney might have been signed one day earlier, probably on 23 December 1975.[93] Setting aside the inconsistency between Mr. Mahloujian's allegation and the events as narrated by Mr. Riahi and supported by evidence divulging the facts explained above, for any power of attorney given by Jahan

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[93] Mr. Mahloujian holds a bachelor degree in law from Tehran University. He 1) has had no experience in teaching law and has published no treatise on any aspects of Iranian law; 2) his experience as a judge, proved by evidence, was meager, and for a time he was even disciplined and downgraded for wrongdoing and was assigned to non-judicial posts; 3) he was living for years in the United States after his retirement in 1979 and was totally severed from the Iranian legal literature, and had admittedly not consulted the manuscripts of the most prominent Iranian scholars in the field; 4) Professor Safaei, the Respondent-appointed expert, has referred to a number of gross mistakes in his understanding and application of Iranian law; and 5) his answers at the Hearing were evasive, ambiguous, and confusing. Against this, Professor Safaei is a renowned and well respected scholar. In addition to his studies in Iran, he also studied in France where he obtained a doctoral degree and, in addition to being a member of the bar, has extensive experience teaching civil and comparative law at various universities in Iran, in particular at Tehran University, where he also served as the dean of the faculty of law. He has also published numerous books and other legal publications.

Shahriar to be valid and official, it must have been "drawn up (executed) at the Department of Registration of Deeds and Real Estate and/or at the Notary-Public Offices or before other official authorities, within the limit of their authority and in accordance with the rules of law."[94] To do this, the applicants are required to refer in person to either of the above-mentioned departments, offices, or official authorities, as the case may be.[95] There, the identity of the applicants (transacting parties and witnesses, if any) must be verified and established based on their identity cards.[96] Should the authority in charge have any doubts as to the identity of the applicants (transacting parties), he must obtain confirmation of their identity by two well-known and trusted persons.[97] Thereafter, the parties to the given document, the witnesses, and the official involved must all sign the document and the books together, in a single meeting.[98]

65. Article 52 of the Registration of Documents and Real Estate Act buttresses this conclusion even further, because it directs the notary public offices to "refrain from

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[94] Article 1287 of the Iranian Civil Code.

[95] Article 18 of the Law Governing Notary-Public Offices ("All documents are executed [drawn up] at the Notary-Public Offices on special forms made available to the Notary-Public Offices by the State Organization for the Registration of Deeds and Real Estate,..."); Article 8 of the By-laws Governing Notary-Public Offices ("When people refer to Notary-Public Offices for carrying out (executing) a transaction,..."; and Article 19 of the same By-law, infra note 98.

[96] Article 8 of the By-laws Governing Notary-Public Offices ("When people refer to Notary-Public Offices..., their identity card must be demanded from such referring persons.")

[97] Article 50 of the Registration of Deeds and Real Estate Act ("When the official in charge of the Office has doubts as to the identity of the transacting parties or the party who makes an undertaking, two well-known and trusted persons must in person confirm their identities and the person in charge of the Office shall enter the circumstances in the book and obtain the signatures of witnesses and note the point in the document itself.")

[98] Article 18 of the Law Governing Notary-Public Offices and Article 19 of the By-laws Governing Notary-Public Offices. Article 18 provides in part "... registration of the document will be signed by the transacting parties, the Notary Public and daftaryar (representative of the registration department) unless the Notary-Public Office does not have a daftaryar." Article 19 states: "The deed of transaction, after having been executed (drawn up) and registered in the book of the Notary-Public ... and after carrying out other

registering a document" if they "cannot establish the identity of persons by means of well-known and trusted witnesses." Article 100 of the same Act considers any such knowing non-observance by any "employees or members of the [Offices of] Registration of Deeds and Real Estate and Notary-Public holders" to be a punishable criminal act.[99] Because of these strict provisions, the Iranian Civil Code accords exceptional recognition to the date of a properly executed official document, extending its validity even against third parties.[100]

66. Apart from the fact that the sequence of events, as explained earlier, does not support any factual allegation about Jahan Shahriar's possible appearance before the notary public on the date involved, it is inconceivable to argue, against such mandatory provisions sanctioned by punishment, that a notary public could have obtained -- as is alleged by Mr. Mahloujian -- Jahan Shahriar's signature on an earlier date but completed the official deed and registered it in the books on a later date,

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formalities, must be signed by the transacting parties who must sign the relevant documents and books in a single meeting ..."

[99] Article 100 of the Registration of Documents and Real Estate Act provides:

> Any employee or member of [the organization for] Registration of Documents and Real Estate or holders of Notary-Public Offices who intentionally commits one of the following offences shall be deemed to be a forger of official documents and shall be sentenced to the same punishment provided for forgery:
>
> ...
>
> 2nd, to register a document in the absence of persons who are required to be present. (Emphasis added.)

[100] Iranian Civil Code, Article 1305. This presumption of validity is not extended to other pleas such as those attacking the lack of intention, insanity, and immaturity, as that Article shows. Professor Safaei also testified to this based on Article 70 of the Law of Registration of Deeds; Articles 190-195 on the essential conditions of the validity of contracts; Article 1288 of the Iranian Civil Code; the precedent established by the Iranian Supreme Court through Judgment No. 1653 of 1 August 1961; late Professor Seyyed Hassan Imami, Civil Law, (reprinted in 1977 by Islamieh Bookshop, Tehran) Vol. 6 (5th ed.), pp. 74-75; and Professor Nasser Katouzian, Civil Law: General Principles of Contracts, Vol. II (1987), § 477, page 323.

though those books, too, required the signature of the parties to the deed.[101] If true, none of this could have occurred without the unlawful help of a Mr. Esmaeil Gharavi, a family friend, mentor of Mr. Riahi's children, and erstwhile head of the notary public office where the power of attorney was drawn up.[102] The allegation regarding the existence of such a practice of obtaining a signature on an earlier date will fail if we just imagine a situation wherein the principal dies before the actual registration of the deed, for example if Jahan Shahriar had died in the tunnel because of the avalanche or in Mazandaran in the hands of his captors. It would have been totally unlawful and unwarranted for the notary public officer to certify that the principal appeared before him and signed the book on the registration date when he was no longer living.

67. That the power of attorney is a counterfeit document and that the relevant books at the notary public lacked Jahan Shahriar's signature is proved by the official report of the inspector of the State Organization for Registration of Deeds and Properties[103] and by the criminal proceedings initiated against Mr. Gharavi, the head of the notary public office, with whose help the power of attorney was forged. The fact that Mr. Gharavi received no punishment for the crime committed because of a general amnesty cannot make a wrong right and accord authenticity to an unauthentic document.

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[101] The power of attorney produced in evidence bears Jahan Shahriar's name, but not his signature. A report compiled based on an investigation carried out in 1995 confirms that the registration book also lacked "the signature of Principal and Attorney and apparently seems to be defective. One and a half lines below the registration, a signature is seen which may eventually be attributed to the Notary Public [Officer] himself. If it is the case, then it is not correct for the Notary to sign the registration before the Principal proceeds with the signing thereof."

[102] Mr. Riahi's diary (e.g., at pages 86 and 446) is indicative of the fact that Mr. Esmaeil Gharavi was a family friend and a mentor of his children.

[103] See, supra note 101.

II.B.1.b. Invalidity Because of Incapacity of Jahan Shahriar and Amir Saeed

68. Here, I will first discuss, individually, facts proving Jahan Shahriar's and Amir Saeed's incompetence/incapacity to grant powers of attorney to their father. After that, I will discuss the law and its application to the mental condition of these two sons of Mr. Riahi and the authority they had allegedly granted to their father.

II.B.1.b.i. *Facts Proving Jahan Shahriar's Incapacity*

69. A number of psychiatrists at mental (psychiatric) hospitals inside and outside Iran had examined Jahan Shahriar at different points of time prior to and after 24 December 1975, the date when the power of attorney was allegedly signed at the notary public office in Tehran. Relying on Jahan Shahriar's records at those hospitals from 1975-1979 and several admissions within a few months in 1975, and based on his own direct knowledge and professional examinations of the patient at the time of his treatment at St. Luke's Woodside Hospital in London, and family records, Dr. Sanati (a psychiatrist who provided his expert opinion for the Respondent) opined in writing and orally[104] that Jahan Shahriar lacked the decision making capacity to enter into any transaction, including granting power of attorney to his father, a few days after absconding from Maymanat Hospital.[105] Dr. Sanati testified that Mr. Riahi's

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[104] Dr. Sanati explained that the reason for his earlier reluctance to rely heavily on his personal knowledge was an ethical (patient/doctor) concern about maintaining "confidentiality." He stated during cross-examinations that he remembered that in London, Jahan Shahriar was "incoherent" in his talks and that the doctors "could not understand a word of what he said, he was deluded, [and] he was very disturbed," though "he was not under the influence of any hallucinogenic drugs." (Pages 152-167 of the Hearing Transcript for 24 May 2000 and pages 5-44 of the same Transcript for 25 May.)

[105] Maymanat Hospital's report states that Jahan Shahriar was discharged of his own accord, which is delicately referring to the act of absconding. In fact, in narrating Jahan

evaluations about his son's immaturity and mental disorder did conform to his medical observations and conclusions. Dr. Sanati testified to the fact that Jahan Shahriar's hospitalization, prior to his death, for a period of about 3-4 months in London was for treating his psychosis and not to cure his addiction to drugs because he had stopped using drugs at least 45 days prior to his hospitalization,[106] and that his concern about Jahan Shahriar's release from the hospital proved to be well-founded, as Jahan Shahriar committed suicide the same afternoon.

70. It is therefore inconceivable that the Award should set aside the well-founded written opinions and oral testimony of Dr. Sanati,[107] favouring the last minute general and passing comments of Dr. Ratner, who was introduced by the Claimant at the last minute to rebut Dr. Sanati's expert opinion. Contrary to what we have observed in connection with Dr. Sanati's opinion, Dr. Ratner 1) did not render any written opinion,[108] though the Claimant could have asked him to do so with the filing of her Surrebuttal, 2) had not consulted records of any of the hospitals, and 3) did not have the benefit of knowing Jahan Shahriar and Iranian society and culture. Additionally,

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Shahriar's travel to the North (supra paragraph 62), Mr. Riahi refers to his son absconding from the hospital and traveling to Mazandaran.

[106] Dr. Sanati recollected, during cross-examinations by one of the Claimant's counsel, that he had told this, then in London, to Jahan Shahriar's mother (Mrs. Homa Khan Zand) and that she was aware that her son's illness was quite serious. He also recollected that Jahan Shahriar was also receiving Modicate, which is a well-known drug for the treatment of schizophrenia.

[107] Notwithstanding Dr. Sanati's direct knowledge about Jahan Shahriar's mental condition through his involvement with this patient in London and his laborious study of Jahan Shahriar's and Amir Saeed's files at various hospitals, the Award surprisingly sets aside his opinion, stating that "Dr. Sanati's account is not based on his own examination of the patients during the relevant period, or direct consultation with the attending physicians." (Paragraph 137 of the Award.) It is worth noting that Dr. Sanati testified at the Hearing that the psychiatrists who had treated Mr. Riahi's children were not available to him because they had either passed away or left the country.

[108] This was probably because he would have, otherwise, contradicted his writings and publications, as it was indeed the case to the extent the short span of time during the Hearing could allow such disclosures. The Respondent distributed certain excerpts at the

what is conclusive in these circumstances is the fact that Dr. Ratner could not underestimate the contemporaneous evaluations of the father -- based also on his contemporaneous consultations with psychiatrists -- about the mental disorders and immaturity of his children (Jahan Shahriar and Amir Saeed), expressed abundantly in almost every page of his diary. If not overvaluing, no father would, for no good reason, undervalue his children. The following are just a few examples of Mr. Riahi's many contemporaneous observations on his children's mental conditions.

71. Pages 407-408 of Mr. Riahi's diary, related to 20 and 28 July 1975, less than five months before the alleged date of signing of the power of attorney, cover violent conduct by Jahan Shahriar -- who threatened his father and step-mother with knife -- and family's consultations with Dr. Ashorpour and Dr. Dara Khajeh-Nouri about that conduct and possible treatment for Jahan Shahriar. Contrary to Mrs. Khan Zand's (Jahan Shahriar's mother's) denial, she was present at the meeting with the above-named doctors on 28 July 1975 and was fully aware of her son's serious illness.[109]

72. Page 413, related to 22 August 1975, reports Jahan Shahriar's hospitalization at the Gendarmerie Hospital and his being in such a hysterical state that he was fastened to his bed out of fear that he might commit suicide. Page 428, related to 12 October 1975, about 2 months prior to the alleged date of signing the power of attorney, covers Mr. Riahi's consultation with Dr. Chehrazi about his children's mental problems.[110]

Hearing to show that Dr. Ratner actually contradicted some of his views expressed elsewhere.

[109] Compare, e.g., with paragraph 116 of the Award. As Judge Virally has aptly put the point across in connection with testimonies and affidavits of such persons:

> It is clear that the value attributed to this kind of evidence is directly related not only to the legal and moral traditions of each country, but also to a system of sanctions in case of perjury, which can easily and promptly be put into action and is rigorous enough to deter witnesses from making false statements. Such a system does not exist within international Tribunals.... (Buckamier, supra note 14, para. 67, at 75.)

[110] Dr. Chehrazi was then the foremost psychiatrist in Iran, owning and managing the largest private psychiatric hospitals in the country.

Page 432 reports another of Jahan Shahriar's violent outbursts on 10 November 1975 -- about 45 days prior to the alleged signing date of the power of attorney -- breaking furniture, beating and injuring his brother, and threatening to kill his father. Page 435, related to 25 November 1975, less than one month prior to the alleged signing date of the power of attorney, covers the transfer of Jahan Shahriar to the Maymanat Hospital with the help of the police because of the development of more serious symptoms of insanity.[111]

73. Pages 494-495, related to 18 June 1976, attest to the fact (also confirmed by Dr. Sanati) that even after the date of the alleged signing of the power of attorney, Jahan-Shahriar remained immature, even though he was eight months past the age of majority at that time.[112]

74. To cut a long list short, Pages 413, 428, 553, 679, 718-724, 730, 737-783, and 821 of Mr. Riahi's diary and the testimony of Dr. Sanati prove the fact that i) Jahan Shahriar's mental ability and behaviour were in constant decline since early 1975, ii) he was under constant and prolonged treatment by psychiatrists for serious mental disorders, and that iii) the insanity problem was not an unknown phenomenon, because it ran in the family.

75. The fact that Jahan Shahriar (and Amir Saeed, for that matter) were incompetent is further conclusively proved by their need to have a guardian/custodian appointed for them (a Mr. Botha) during their stays and travels abroad. However, as stated by Dr. Sanati during the Hearing, "life is major affairs," and Jahan-Shahriar was not in any state of mind, nor did he have the maturity, to "make a sound decision for his own

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[111] Accord this with Dr. Sanati's testimony at the Hearing and his answer to cross examination that on or about November, in particular December, 1975 Jahan Shahriar was so ill that "he didn't have a sound mind." (Page 165 of the Hearing Transcript for 24 May 2000.)

[112] Referring to the above and page 701 of Mr. Riahi's diary, Dr. Sanati concurred, in his written Opinion, with Jahan-Shahriar's other doctors and his father that Jahan Shahriar was immature.

major affairs" and to decide about the consequences of his act of giving a power of attorney to his father.

76. Mr. and Mrs. Riahi's statements in their Affidavits filed as late as December 1996 put an end to any contrary argument. In my view, the Tribunal erred in not according appropriate weight to these admissions. The Claimant states:

> During this same period the health of my husband's two younger sons, Amir Saeed and Jahan Shahriar, had deteriorated to the point that my husband realized that they could not cope with family financial affairs.[113]

In Mr. Riahi's own words:

> Neither seemed likely to complete his education. Neither had any sense of financial responsibility. Indeed, I had serious doubts that they would survive me or be able to live normal lives. Their physical condition continued to deteriorate from 1975 until 1979. My concern about the health of these two sons is reflected in numerous places in my diary. See, e.g., Cl. Ex. 171, pp. 737-738. In the spring of 1979, my worst fears were confirmed. These two sons of mine committed suicide.[114]

77. The Claimant's Counsel also shares the above judgments, conceding some of the facts but concealing others:

> Both of these sons (Jahan Shahriar and Amir Saeed) were drug users who, sadly, lacked any capacity to manage properties properly. Claimant's husband had lost hope that these two sons could prudently manage his properties after his death or even that they would survive him. His concern was, unfortunately well founded. Jahan Shahriar and Amir Saeed both committed suicide in 1979.[115]

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[113] Claimant's Affidavit of 18 December 1996, paragraph 12, emphasis added.

[114] Mr. Riahi's Affidavit of 18 December 1996, paragraph 8, emphasis added.

[115] Claimant's Rebuttal Memorial at page 40, emphasis added.

As we shall see later, these descriptions squarely fit the definition of "immaturity" in Iranian law, in particular that of Article 1208 of the Civil Code.[116]

II.B.1.b.ii. *Facts Proving Amir Saeed's Incapacity*

78. As with Jahan Shahriar, Dr. Sanati opined, based on the records and particularly Mr. Riahi's contemporaneous description of events in his diary, that "since his late teens," Amir Saeed was suffering from serious "psychiatric disorder" and "abnormal personality." Dr. Sanati concluded that because of Amir Saeed's mental conditions he was "incompetent of looking after himself, always needed a guardian,[117] and ... did not have a sound mind to make sound judgment and reasonable decisions for his own affairs." In reaching his conclusion, Dr. Sanati also referred to Amir Saeed's failures in his normal life including studies, marriage, selection of friends, his severe addiction to drugs, "strong genetic overload in the family," and his eventual suicide in March 1979.

79. Dr. Ratner rendered no written opinion and could not challenge Dr. Sanati's written and oral opinion in any degree at the Hearing. However, as has been said in connection with Jahan Shahriar, Mr. Riahi's contemporaneous evaluation of his son's mental condition must be considered conclusive and final. To provide some of these evaluations, I have to turn a few pages of Mr. Riahi's diary. Before doing that, and to avoid repetition, I invite attention, once again, to the statements of the Claimant, her husband, and her Counsel, quoted at the bottom of Section II.B.1.b.i., above, particularly paragraphs 76-77.

80. Page 428 of the diary relates to 12 October 1975 and covers Mr. Riahi's consultations with Dr. Chehrazi, then the most prominent psychiatrist in Iran,

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[116] See, para. 87, infra.

[117] Because of his mental condition, Amir Saeed was under the supervision of a guardian/custodian (a Mr. Colin Botha) during his travels abroad. (See, e.g., page 508 of Mr. Riahi's Diary.) There are further indications in Mr. Riahi's diary that Amir Saeed was also under guardianship/custodianship in Iran. (See, para. 80 and note 118, infra.)

regarding the mental problems of Jahan Shahriar and Amir Saeed. Page 440 relates to 23 December 1975 and relates the arrest of Amir Saeed by police in Mashhad (the capital of Khorassan, a province of north eastern Iran) and his admission to a psychiatric hospital there. Page 444, covering 29 December 1975, shows that Amir Saeed was still in Mashhad and was visiting the hospital there, reporting his mental and physical illness. Mr. Riahi describes his son's behaviour by stating that he had become "talkative, aggressive, violent, and nonsensical," proclaiming "himself the lord of the Age [the last Imam of twelver Shii Muslims]." He was predicting an earthquake that would destroy Mashhad and all its inhabitants. This part of the diary also shows that Mr. Riahi could not obtain Amir Saeed's release from the hospital until after referring to the Guardianship Department of the Ministry of Justice and obtaining confirmation that he could take him under his custody.[118]

81. Pages 445-446, covering 30 December 1975, report Amir Saeed's hysterical behaviour, his acts of insulting his mother and father, and his threatening to kill his father. On 31 December 1975, he was taken to the 4th Aban Hospital for treatment. Pages 448, 454, 457, and 461 cover the period from after Amir Saeed's hospitalization at the 4th Aban Hospital, where he was kept for 57 days. Not responding to medications, he was subjected to shock-therapy. His health and mental condition were so deteriorated that he was unable to even talk. The diary reports, at pages 464-465, that a few days after his release from the hospital on 26 February 1976, he was taken to another hospital for an overdose of 60-70 largagtil tablets.[119]

82. This state of affairs repeated itself wherever Amir Saeed went. Pages 544-547 of Mr. Riahi's diary show that he went missing in Pretoria on or about 16 April 1977, was

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[118] These were also reported in one of Dr. Sanati's written opinions. The fact that Amir Saeed was not released until the Guardianship Department of the Ministry of Justice could ascertain that he would be released under the control of a custodian shows in itself that he was not considered by legal authorities to be sane and matured enough able to manage even the normal daily affairs of his life.

[119] All these are also referred to by Dr. Sanati in his written opinion.

found nude 3 days later by his guardian, and admitted to a psychiatric hospital.[120] In India he went missing once more in Delhi. He was found and admitted to a psychiatric hospital on or about 21 May 1978. This event is reported at pages 651-652 of Mr. Riahi's diary. Pages 656-657 of the diary report Amir Saeed's suffering from delirium.[121] Amir Saeed's mental condition was no better in London. There, he was admitted to Priory Hospital. Mr. Riahi recorded in pages 660-661 of his diary that no improvement was reported in his behaviour in London, and he continued to be aggressive and abusive. Pages 724 and 730 of the diary show that Amir Saeed's mental condition was aggravated. He twice clashed with the police in London (on 24 and 25 November 1978), and on both occasions his psychiatrist, Dr. McSweeny, secured his release.[122]

83. Here again, to cut a long list short and to bring this to a conclusion, reference may be made to Mr. Riahi's diary wherein he speaks about the facts that 1) Amir Saeed was deported by British Immigration Officials due to his mental problems and insanity on or about 7 December 1978,[123] and 2) insanity was a genetic phenomenon running in the family.[124] Finally, as a consequence of his aggravated state of mind, Amir Saeed put an end to his life on the eve of the Iranian New Year, 20 March 1979.[125]

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[120] Mr. Riahi stated, at pages 546-547 of his diary, that his son's "mental state was then similar to what it was like in Mashhad."

[121] The diary records at page 657 that arrangements were later made to send Amir Saeed with his guardian, Colin Botha, to London.

[122] Again, all these are also referred to by Dr. Sanati in his opinion.

[123] Mr. Riahi's diary, page 769.

[124] Id., page 821.

[125] Although it is true that Amir Saeed's power of attorney was executed in September 1971, this would not affect my arguments with respect to the invalidity of transactions based on that power of attorney. Were we to accept the hypothesis that Amir Saeed was not incapacitated or incompetent on the date the power of attorney was granted, the above facts and the rules of law to be discussed in following Sections eradicate any doubt that he was incompetent from 1975, in particular during the relevant years of 1978 and 1979, and that according to Articles 678 and 682 of the Iranian Civil Code, the supervening death or incapacity of either the principal or agent will dissolve the power of attorney

II.B.1.b.iii. *Application of the Rules of Law to Incapacity of Jahan Shahriar and Amir Saeed*

84. It has not been doubted that Iranian law is applicable to the issue before us. The Parties discussed in much detail, through their Counsel and experts, the mandatory rules and principles of Iranian Law governing the question of incompetence and incapacity of Jahan Shahriar and Amir Saeed because of being insane or immature.

II.B.1.b.iii (one). Incapacity and its Definition

85. To start with, Article 190 of the Iranian Civil Code, titled "Essential Conditions for the Validity of a Transaction," provides:

> For the validity of a contract the following conditions are essential:
> 1. ...
> 2. The competence/capacity of both parties. ...

86. Pursuant to the same Code, under the same title, for a contract to be valid "transacting parties ... must have reached the age of puberty, be sane, and have attained the age of majority,"[126] and a transaction "with persons who have not reached the age of puberty and or are not sane or mature is invalid because of their incompetence."[127] Under Article 1207 of the Iranian Civil Code:

> The following persons are considered incapacitated and are forbidden to take possession of their property and pecuniary rights:
> 1) Minors.
> 2) Persons who are not mature.

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upon their occurrence. For example, as will be discussed later, 5 March 1979 is the only date when Mrs. Riahi appears as the owner of 28 shares in Tarvandan, apparently transferred from those owned by Amir Saeed. This date falls only 15 days prior to the date Amir Saeed committed suicide.

[126] Iranian Civil Code, Article 211.

[127] Id., Article 212

3) Insane persons.

87. Article 1208 of the same Code defines a "not mature" person to mean

> a person whose dealing in his properties and pecuniary rights is not in accordance with reason.[128]

In dealing with this definition, the late Professor Dr. Seyyed Hassan Imami stated that a person who acts to his own peril by disposing his property to obtain narcotics is not mature.[129] However, the unreasonableness of dealing with one's own property and pecuniary rights is a matter of public judgment (custom) and no one is a better judge than the parents and close relatives of the individual involved. I have already amply referred to Mr. Riahi's contemporaneous judgment through entries in his diary (supra Sections II.B.1.b.i., and II.B.1.b.ii.), and his and Mrs. Riahi's most recent conclusions in paragraph 76. As also stated earlier in paragraph 70, no parent would underrate his children for no good reason, if not overrating them.

88. And "insanity of whatever degree" is considered by the same law to amount to "incapacity."[130] Invalidity of a contract is not, as a matter of fact and law, limited to "insanity" or "immaturity." Relying on other Articles of the Iranian Civil Code, particularly those covering the "Essential Conditions for the Validity of Transactions," Articles 191-195 included, learned Iranian scholars are of the view that "whatever destroys the conscience and mentality has the same destroying impact on the intention as insanity. Therefore, drunkenness, unconsciousness, agedness, sense of horror,

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[128] Compare this with the descriptions provided about the state of mind of Mr. Riahi's sons by their father, stepmother, and the Claimant's Counsel, as stated in paragraphs 76 and 77, above.

[129] Professor Seyyed Hassan Imami, Civil Law, Vol. 5 (6th ed. 1978), pp. 255-256. See, also, Professor Seyyed Hossein Safaei, Civil Law: Obligations and Contracts, Vol. 2, pp. 132-133. In his opinion, Professor Safaei defines an "immature" person to be "the one who is not able to take a reasonable care of his properties. In other words he/she is devoid of sound sense to manage his financial activities, so he is usually cheated in every transaction, or he wastes his properties in an unreasonable way."

[130] Article 1211 of the Iranian Civil Code, and Professor Safaei's Opinion.

strong dependence on drugs and alcohol, and hysteria, would have the same impact as insanity in so far as they cause the collapse of mind, though they cannot be termed as 'insanity.'" The reason for this is the "lack of intention."[131]

II.B.1.b.iii. (two). Nullity of Actions taken based on Powers of Attorney

89. While the acts and words of the insane and minors are void and cannot be ratified at any stage,[132] acts and words of "immature" persons are "voidable." They can be ratified by their guardians, of course, in the interest of the ward, provided that the guardianship is valid. Guardianship, and for that purpose the right of rectification by ratification, collapses, inter alia, by the supervening death of the guardian or ward.[133]

90. There are, however, other, additional important provisos that must be taken into consideration: First, according to the Iranian Civil Code, "the death or insanity" of the principal or attorney (agent) terminates the attorneyship (agency),[134] and "the incapacity of the principal renders [it] void."[135] Therefore, nothing in such

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[131] Professor Nasser Katouzian, Civil Law: General Principles of Contracts, Vol. II (1987) § 310, pp. 38-39 (relying also on Article 195 of the Civil Code); Professor Nasser Katouzian, Introduction to the Science of Law, Vol. V, § 161, p. 134; Professor Seyyed Hossein Safaei's Opinion and testimony; and Professor Seyyed Hassan Imami, Civil Law, Vol. 5 (6th ed. 1978), p. 262 (where he considers the act of an insane person to be invalid even in a situation wherein he is suffering from a mild degree of mental disorder).

[132] See, e.g., Articles 213, 1212-1214 of the Iranian Civil Code (with the exception that a minor who can discern may "take possession of property with no consideration, such as accepting a free gift, gratuitous transfer, or assuming possession of unclaimed property.")

[133] Articles 1214, 1248-1253 of the same Code, and Professor Safaei's testimony.

[134] Article 678 (3) of the same Code; Professor Safaei's Opinion and testimony; Mr. Mahloujian's testimony; and Professor Seyyed Hassan Imami, Civil Law, Vol. 2 (1983), p. 239.

[135] Article 682 of the same Code, "except with respect to the affairs to which incapacity is not an impediment...." See, also, Article 954 of the same Code and Professor Seyyed Hassan Imami, Civil Law, Vol. 2 (2nd ed. 1983), pp. 217, 240-241.

circumstances remains to be rectified. Second, the incapacitated person (be he immature or insane) cannot be presumed to have the right and ability i) to give a power of attorney to any person, even to his father, and ii) to ratify the act of his attorney or guardian.[136] Third, "transactions of an immature person that are detrimental to him, such as a donation or guarantee that is not in his interest, can be considered null and void even if accompanied with the permission of his natural guardian or his guardian ad litem."[137] Fourth, the guardian's right of ratification applies to acts taken by the ward and not by the guardian himself.[138] Fifth, the right of ratification cannot be applied to a decision that is detrimental to the ward, such as those that obtain here, i.e. donating the ward's property to others without any consideration. As a matter of fact, the Iranian Civil Code provides for the disqualification and dismissal of the guardian (natural or otherwise) for his "unworthy administration," "misappropriation,"[139] "lack of honesty,"[140] or "incompetence or inability" in the management of the affairs of the ward."[141] Disposing of the property of the ward through a gratuitous gift to others is a

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[136] Ratification is a juridical act and will only have effect if the person who ratifies has the capacity to transact. Professor Nasser Katouzian, Civil Law: General Principles of Contracts, Vol. II (1987), p. 75.

[137] Professor Seyyed Hossein Safaei, Civil Law: Obligations and Contracts, Vol. 2, p. 139.

[138] Article 1214 of the Iranian Civil Code. See, also, Professor Seyyed Hossein Safaei, Civil Law: Obligations and Contracts, vol. 2, pp. 138-139.

[139] Article 1184 of the Iranian Civil Code provides:

> If the natural guardian of the child is unworthy of the administration of the estate of his ward or if he misappropriates property, the court will ... also appoint a financial trustee to work with the guardian. ...

[140] Article 1186 of the same Code provides:

> In cases where strong indications exist showing the dishonesty of the natural guardian in respect of the estate of his ward,.... The court will ... act according to Article 1184....

[141] Articles 1185, 1187 and 1248 (1 and 5) of the same Code. Article 1248 provides:

> A guardian is dismissed in the following circumstances:
>
> 1) If it be established that the guardian lacked honesty or loses this quality.

clear example of breach and betrayal of trust, misappropriation, dishonesty, and unworthy administration of his property,[142] even if the property had earlier been transferred to the ward by the guardian himself. Sixth, a guardian is further prevented by law from transacting "on behalf of the ward between himself and the ward, whether by transferring to himself the property of the ward [even against consideration] or by transferring his own property to the latter."[143] The guardian is also barred from "settling by compromise a claim related to the ward unless the approval of the Public Prosecutor is obtained."[144] Finally, a guardian will have absolute liability for any failure in safeguarding "the property of the person placed under his guardianship ... even if the loss or waste be not caused by negligence or excessive use on the part of the guardian."[145] Not only does the law provide for the removal of a guardian for lack of honesty, unworthiness and misadministration of the properties of the ward, but it also renders all his actions null and void ab initio.[146]

...

5) If the incompetence or inability of the guardian in the management of the affairs of the ward is established.

[142] Professor Safaei's testimony. Professor Safaei has not expressed this view for the sake of these proceedings, but he had expressed the same view before and elsewhere. (See, Professor Seyyed Hossein Safaei and Dr. Seyyed Morteza Gassemzadeh, Civil Law: Persons and Incapacitates, pp. 225-226, 240, 252-253, and 255 et seq.).

[143] Article 1240 of the same Code. Neither is he allowed, "except in the interests of the ward and with the approval of the Public Prosecutor," to "sell, mortgage or dispose of the immoveable property of the ward in such a way that he [the guardian] becomes indebted to his ward." Id., Article 1241.

[144] Id., Article 1242.

[145] Id., Article 1238.

[146] Professor Seyyed Hossein Safaei and Dr. Seyyed Morteza Gassemzadeh, Civil Law: Persons and Incapacitates, pp. 255 et seq., particularly pp. 259-260.

II.B.1.c. Mr. Riahi's Alleged Authority as Natural Guardian

91. A belated argument put forth by Mr. Mahloujian with Claimant's Surrebuttal was that even accepting the Respondent's arguments with respect to the invalidity of the powers of attorney granted to Mr. Riahi by his children, their father's acts would nonetheless have remained valid because their insanity could be traced back to the time when they were still minors and Mr. Riahi's authority as the natural guardian of his children would have continued uninterrupted.[147] This argument has many flaws, as pointed out by Professor Safaei in his written and oral testimony.

92. To start with, attorneyship (principal/agent relation) is a distinct institution different from guardianship. The former is a contractual relationship (governed by Articles 656-683 of the Iranian Civil Code) and the latter, a relationship established by force of law or the decision of competent courts (Articles 1180-1194, 1218 and 1256 of the Iranian Civil Code). It was the Claimant's allegation from the inception that Mr. Riahi's actions were taken in his capacity as his sons' attorney and not as their natural guardian.[148] A declaration of intention as an attorney is different from that of a natural guardian, and in any case it should be manifested in plain terms. Mr. Riahi's declaration of intention was allegedly based, at the relevant time, on powers of attorney that have been proved to be invalid for a number of different reasons. Therefore, in our situation here, the declaration of intention as an attorney for the sons cannot be rectified by the mere fact that the father was the actor, and his declaration manifested then in that capacity must not be taken to also mean a declaration in his capacity as a natural guardian.[149] Additionally, ever since the death of his sons in

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[147] See, e.g., paragraph 115 of the Award.

[148] Mr. Riahi has never been appointed a guardian ad litem, therefore this kind of guardianship is out of the question though all the discussions so far put forth in connection with the rights and duties of a guardian and those to be raised here will apply to that kind of guardianship with equal force.

[149] Jurists in Iran come to this conclusion, inter alia, based on the provisions of Articles 254-255 of the Civil Code. Article 255 provides:

1979, Mr. Riahi could enjoy no authority to declare his intention as a natural guardian to retroactively validate a void or voidable action.

93. Moreover, as stated in the previous Sections, and as will be discussed in more detail in the next Section, the hypothetical right of Mr. Riahi to act on behalf of his incapacitated children would not give him the authority to gratuitously dispose of their properties by donation. A natural guardian has to look after the interests of his child, as a guardian ad litem or an attorney should. The fact that donation is not in the best interest of the ward and that the guardian, natural or otherwise, is prevented by law and by custom from doing that, is not doubted.[150]

II.B.1.d. Mr. Riahi Lacked the Right to Donate his Children's Properties

94. Setting aside for a while the invalidity of the powers of attorney allegedly given by Jahan Shahriar and Amir Saeed as discussed in previous parts of this opinion, the next insurmountable hurdle is that, by the wording of those powers of attorney and the

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> If anyone makes an unauthorized contract with this belief that the property belonged to another person and it turns out that the property in question belongs to the man who made the contract or to a person on whose behalf he was authorized to act as a guardian, or legal representative, the validity of the contract depends on the renewed consent of the person who made the contract; if he does not give such consent the contract is invalid.

This Article simply means that even in a situation where the owner of a property transacts in that property not knowing that it belongs to himself, but with the belief that it belongs to another person, and later learns that the property was his own, he has to declare a second intention, this time as the owner, in order to conclude a valid transaction. See, e.g., Professor Seyyed Hassan Imami, Civil law, Vol. 1 (1955) p. 306; and Professor Safaei's written opinions and testimony based on the application of Iranian law.

[150] Professor Seyyed Hossein Safaei and Dr. Seyyed Morteza Ghassemzadeh, Civil Law: Persons and the Incapacitated (1996), pp. 252-253. See, also, Professor Seyyed Hossein Safaei, Civil Law: Obligations and Contracts, Vol. 2, p. 139; and Professor Nasser Katouzian, Civil Law: General Principles of Contracts, Vol. II (1987), p. 85. (The latter considers the natural guardian's mortgaging or donating the property of the child to be against his/her interest).

applicable law, Mr. Riahi was not authorized to dispose of the property of his sons by donating it to others (here their stepmother) without any consideration whatsoever. According to the mandatory provisions of Articles 190 (3) and 216 of the Iranian Civil Code, governing the essential conditions of transactions, the subject matter and scope of a contract (here, a contract of agency/attorneyship) must be clearly and unambiguously defined.[151] The law precludes the attorney from exceeding "the limits of his power of attorney" that "the principal has explicitly given him, or the authority which is inferred by custom, usage, and circumstantial evidence."[152] In the same vein, an attorney for litigation is not authorized to receive the sum of the judgment debt or what is found to be due, unless the circumstances so dictate, and the attorney who has been fully authorized to sell is not authorized to receive consideration unless there is indisputable proof to that effect.[153]

95. Moreover, as was explained in connection with the guardian's duty to safeguard the best interest of his ward, the attorney has, a priori, the same obligation under the law. This applies to all kinds of representation, both under the law and by custom.[154] The attorney "must, in his handling and performance act in the interest of his principal."[155] For obvious reasons, donating the property of the principal to others for no consideration can not be qualified as an act "in [his best] interest." Quite to the contrary, in such a situation the attorney is legally answerable for damages to the principal, and, being a trustee vis-à-vis his principal, is liable if he exceeds his

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[151] See, also, Professor Seyyed Hassan Imami, Civil Law, Vol. 2, (1983), pp. 219-220.

[152] Iranian Civil Code, Articles 663 and 667. See, also, Professor Seyyed Hassan Imami, id., p. 224.

[153] Articles 664 and 665 of the same Code. See, also, Professor Seyyed Hassan Imami, id., pp. 220-221.

[154] Professor Nasser Katouzian, Civil Law: General Principles of Contracts, Vol. II (1987), pp. 74-75, and 77-78. ("Thus, if the guardian or the attorney uses his authority to the detriment of the principal, his action will create no obligation for the ward or principal.")

[155] Iranian Civil Code, Article 667, and Professor Seyyed Hassan Imami, Civil Law, Vol. 2, (1983) p. 224.

authority or fails to observe it.[156] The attorney should provide to his principal an "account of the time of his representation and must hand over to him what he has received on his behalf."[157] The attorney will be responsible if "the principal suffers loss owing to the fault of the attorney."[158]

96. Thus, the inevitable conclusion is that donation requires a specific mandate given by the principal to the attorney. The fact that, even with the most general powers of attorney, the authority to donate on behalf of the principal must be specified is confirmed by law and doctrine.[159] To prove this, the Tribunal did not need to go far. A comparison of the powers of attorney produced by the Claimant demonstrates that whenever such specific authority was intended, that authority was specifically stated in the deed. Notwithstanding the grant of authority to "enter into all transactions ... with any person ... at any price and under any terms," Malek Massoud's power of attorney also specifically refers to "gift." Conversely, the powers of attorney allegedly granted by Jahan Shahriar and Amir Saeed lack any reference to "gift."[160] The Claimant teams, and especially Mr. Mahloujian, did not point to a single authority that would go against any of these conclusions.

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[156] Professor Seyyed Hossein Safaei, Civil Law, Obligations and Contracts, Vol. 2, p. 423, based on Articles 663 and 667 of the Iranian Civil Code. Yet, Iranian law considers a sale for consideration below the market value of the day to be against the interest of the principal. Id. See, also, Professor Nasser Katouzian, Civil Law: General Principles of Contracts, Vol. II, p. 78.

[157] Iranian Civil Code, Article 668. Nothing is produced to show that Mr. Riahi has ever provided an account for the period of his representation.

[158] Article 666 of the same Code. No damage can be greater than that of gratuitously giving away the property of the principal.

[159] Professor Safaei testified that all the obligations of guardians and vices/limitations to their authority are a fortiori and because of supporting the same cause, applicable to attorneys under Iranian law.

[160] See, paragraphs 166-168 of the Award.

II.B.1.e. Alleged Donation Lacked Essential Elements of Validity

97. Even were we to presume, against the law, logic and facts, that the powers of attorney allegedly given by Jahan Shahriar and Amir Saeed were valid deeds, that Mr. Riahi had the authority based on those powers of attorney and the law to give away their property as gifts and that such donations were in the interest of the ward and principal, the alleged contracts of gift between Mr. and Mrs. Riahi still did not satisfy the mandatory requirements of Iranian law, which were enacted to safeguard the public order and interest.

98. According to the provisions of Articles 191-195 of the Iranian Civil Code, intention, capacity,[161] offer and acceptance, and ownership of the object of the contract (here the thing donated by the donor)[162] are basic requirements of each and every contract, donations included. None of these appear to have been present in the transactions alleged in this Case. First, as previously discussed at length, Jahan Shahriar and Amir Saeed did not have the capacity to contract. Second, the actual donor, Mr. Riahi, was not the owner of the thing that was donated. Third, real intention and offer and acceptance were absent.[163]

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[161] In addition to these Articles, when it comes to the specific contract of donation, Article 796 of the Iranian Civil Code further requires that the "donor must have the capacity to contract and possess his thing." (One of the conditions for the validity of donation "is the capacity, as is emphasized by Article 796 of the Civil Code, ... thus if an incapacitated person donates his property his action is null and void and with no degree of validity." Professor Seyyed Hossein Safaei, Civil Law, Obligations and Contracts, Vol. 2, p. 492.) See, also, Professor Nasser Katouzian, Civil Law: Specific Contracts, Vol. III (1993), p. 59.

[162] Article 797 of the same Code requires that the "donor must be the owner of the thing which is donated." (Professor Seyyed Hossein Safaei, id., p. 493.)

[163] A transaction that lacks intention is null and void. See, Professor Nasser Katouzian, Civil law: General Principles of Contracts, Vol. I (1993) including pp. 248-253, based, inter alia, on Articles 191 and 339 of the Iranian Civil Code. See, also, Professor Nasser Katouzian, Civil Law: Specific Contracts, Vol. III (1993), pp. 56-57.

99. In addition to the above requirements, for a contract of donation to be valid two other essential conditions must be met: 1) the contract must be in the form of an officially registered deed, and 2) the gifted property must have been accepted and taken into possession by the donee. As to the first requirement, the mandatory rule of Article 47 of The Act of Registration of Deeds and Properties (approved in 1310 [1932]) requires:

> In places where there is a Department of Registration of Deeds and Real Estate and there are Notary-Public Offices, and the Justice Ministry deems it appropriate, registration of the following documents shall be obligatory:
> 1- ...
> 2- Deeds of settlement and gift (donation), ... (emphasis added).

Article 48 of the same Act provides for the sanction and states:

> A document which must be registered under the provisions of the foregoing Articles but has not been registered will not be accepted by any of the authorities and courts.

100. Inadmissibility or non-acceptance of a document as proof of the underlying transaction by the government authorities and courts "renders the transaction devoid of effects and a transaction without any legal effect is tantamount to void, inasmuch as it, from the standpoint of effect, is the same as void."[164] In our case here, no deed of donation, be it official or ordinary, is produced in evidence. In view of this, proof of a valid contract of donation (gift) is entirely lacking.

101. In addition to the registration requirement, for the validity of a donation the law requires that the donated thing be accepted and taken into possession by the donee.[165] In this respect Article 798 of the Iranian Civil Code provides:

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[164] Professor Seyyed Hassan Imami, Civil Law, Vol. 4, p. 60. See, also, id, Vol. 5, p. 374; and Vol. 6, p. 89. This was also confirmed by Professor Safaei in his testimony.

[165] "Taking possession is a condition for the validity of donation and one of the pillars of its conclusion." Possession means full control over the property. (Professor Seyyed Hassan Imami, Civil Law, Vol. 2, p. 494.) See, also, Professor Nasser Katouzian, Civil Law: Specific Contracts, Vol. III (1990), pp. 42-43.

> A gift does not take place except with acceptance of the donee and his taking possession of the gift, whether he takes possession personally or through his agent... (emphasis added).

That this is a sine qua non condition for the formation of a donation is further supported by the provisions of Article 802 of the same code, which provides for nullification of the donation by the supervening death of either donor or donee before the latter's taking possession of the donated item.[166] Understandably, proof of "delivery" and "possession" differs depending on the nature of the property.[167] With respect to shares, the Claimant could have satisfied the "delivery" and "possession" requirement if she could have filed the original share certificates with the Tribunal or, with respect to the registered shares, if the shares were registered in her name in the share register book of the company involved.[168] In the absence of such proof, the allegation of transfer by donation must fail.[169]

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[166] As Professor Katouzian explains the law, offer and acceptance are not sufficient for the formation of donation but actual delivery is also an essential condition. Professor Nasser Katouzian, Civil Law: General Principles of Contracts, Vol. I (2nd ed. 1993), pp. 322-323; Professor Nasser Katouzian, id., Vol. III (1990), pp. 42-45.

[167] Taking possession is defined to mean:

> Having sole control over the property [share] and delivery means ceding into possession. Delivering and taking possession means giving the property and receiving the price of it, and *vice versa*. (Professor Hassan Hassani, Commercial Law, pp. 69, and 74-75.)

[168] Compare the situation here with the transfer of shares of Bank Tehran and Iran Böhler. In connection with these claims, the Claimant could provide shares that were either issued in her name or on the reverse side of which transfer from transferor to transferee was specifically registered and signed.

[169] I will discuss later, with respect to each company, whether or not the share certificates kept in the safe with Bank Tehran were really probative of the Claimant's ownership claim. Much to my regret, the majority opted not to accept those documents into evidence, notwithstanding the fact that the contents of the safe formed the subject matter and an integral part of the Award on Agreed Terms issued by the Chamber. (See, also, supra paragraph 33).

II.B.2. Ownership of Khoshkeh Shares

102. The Claimant alleges that she owned 2,010 shares of Khoshkeh. The Award holds that the Claimant owned 1,500 shares of Khoshkeh at the time the company was expropriated. It is from this finding of the Majority that I dissent in connection with this ownership claim. On the other hand, the Tribunal holds that the Claimant could not prove that she became the owner of 510 additional bearer shares of Khoshkeh, in which I concur. For the reasons to be stated below, in my view the Tribunal has erred in awarding the Claimant for more than 250 shares, which should have been the upper limit of her claim under any circumstances.

II.B.2.a. Ownership of 1,500 Shares in Khoshkeh

103. By producing various minutes of the annual shareholders meetings for the years 1976 to 1979, the Respondent demonstrated that the Claimant was not an owner of any share in Khoshkeh at least until 22 May 1979.[170] Nonetheless, the Claimant alleges that at an unknown point of time prior to 26 May 1979 she had acquired 250 registered shares of Khoshkeh and that an additional 1,250 registered shares were donated to her on that date, bringing her total ownership to 1,500 registered shares. Nothing has been produced to show that at any particular point of time any such transfers had been executed, or that they had been registered in Khoshkeh's share register book,[171] or that a valid contract for donation had been concluded.[172]

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[170] All the lists attached to the minutes of the annual meetings are signed, inter alia, by Mr. Riahi as the Chairman. The list related to the meeting held on Tuesday, 22 May 1979 names Messrs. Riahi, Khajeh-Nouri, All-e-Ahmad, Davood and Bijan Termehchi as shareholders.

[171] That any transfer of registered shares must be recorded in the share register book of the company has not only been a requirement under Article 40 of the Commercial Code of Iran, as amended in 1969, but also under Article 10 of Khoshkeh's Articles of Association. The Tribunal is fully familiar with this legal requirement because it has been confirmed by the Tribunal's established precedent to which the Award later refers, e.g., in paragraphs 143-144. (Article 10 of Khoshkeh's Articles of Association requires that:

104. The only evidence on which the Claimant has relied in support of her ownership of 250 shares is an undated and unsigned typed note which had allegedly been sent to Mr. Riahi by Mr. Khajeh-Nouri as an attachment to his letter of 17 May 1989.[173] The typed note appears on its face to have been addressed either to Mrs. Riahi or her husband and purports to answer certain earlier demands.[174] It vaguely states that "[a]ccording to minutes of the annual [shareholders] general meeting (photocopy attached), on May 22, 1979 [she] owned 250 shares." The attachment referred to in the note has not been produced by the Claimant. However, the note lacks any specifity as to when, from whom, and how the transfer of 250 shares had been effected. In contrast, the allegation sharply contradicts the shareholders list attached to the minutes of the 22 May 1979 ordinary annual shareholders meeting of Khoshkeh, wherein Mrs. Riahi's name is not mentioned.[175]

105. To prove the alleged donation of 1,250 additional registered shares, the Claimant invoked the same afore-mentioned typed note wherein it is claimed that based on Mr. Riahi's request and the minutes of the board of directors meeting of 26 May 1979, 1,250 shares were added to Mrs. Riahi's shares bringing her total shares to 1,500. Nothing is produced to prove this allegation whether in the form of a donation deed,

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"Transfer of the registered shares must take place with the approval of the board of directors and registration in the share register book [of the Company].")

[172] See, Sections II.B.1.e., above.

[173] Though with no material difference for our purpose, the original Persian text of the letter bears the Gregorian date of May 17, 1989 and not 1987 as the Claimant indicates in her translation of the letter. Moreover, it should be borne in mind that Mr. Khajeh-Nouri was the best, the most intimate, and trusted friend of Mr. Riahi, and was a partner with him in most of the companies in which Mr. Riahi had participated. As the evidence on file demonstrates, Mr. Khajeh-Nouri would do whatever Mr. Riahi asked from him to help to bolster Mrs. Riahi's claim, which in actual fact belonged to Mr. Riahi himself.

[174] The letter starts: "Mrs. Frederica Riahi, wife of Mr. Manouchehr Riahi, this is to inform [you]:". The Claimant has translated this to read: "[Concerning] Ms. Frederica Riahi, wife of Manouchehr Riahi, I would like to inform [you] as follows:".

[175] Supra note 170.

share register book, or even a simple list attached to any shareholders or board of directors meeting. Even assuming, arguendo, that, to meet the requirement of Article 10 of Khoshkeh's Articles of Association, the board's approval had been obtained on 26 May 1979 for the transfer of shares, proof that other requirements under the law and the same Articles of Association were met is totally wanting.[176]

106. Not having surmounted the above hurdles and despite the absence of any previous evidence of ownership, the Claimant jumps to the conclusion by stating that her ownership of 1,500 registered shares should be taken for granted because the list attached to the minutes of a board meeting held on 24 February 1980 (on the eve of the expropriation of Mr. Riahi's property) shows that she was, on that date, the owner of 1,500 shares of Khoshkeh.[177] Before discussing this allegation, one should not lose sight of the background and the time frame in the context of which the bulk of the alleged transfers were executed. Mr. Mahvi has unveiled a part of that repugnant background in his written and oral testimony by informing the Tribunal of what he was told by Mr. Riahi when he had rushed back to Iran at the peak of the Islamic Revolution to make all these last-minute fake and hollow (soory) transfers to protect his property by later invoking his wife's United States nationality.[178] In fact, prior to

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[176] Supra note 171. As I have discussed in Section I.C.1, above, the Claimant and her husband were both better positioned to gain access to Khoshkeh's share register book through his friends, relatives, and associates, if it would genuinely have been probative of her allegation. As emphasized repeatedly by the Respondent with respect to production requests, production of any share register book by the Respondent, if available to it, would have had no better fate than that of Tarvandan. (See, e.g., supra paragraph 32, and, infra paragraph 143.)

[177] From this perspective, it makes no material difference whether the date suggested by the Respondent (24 February 1980, when the Revolutionary Court's decision was rendered) or that suggested by the Claimant (27 February 1980, when the decision was registered and the Order was actually issued) is accepted. (See, e.g., paragraphs 99-100 of the Award.)

[178] See, also, paragraph 123, infra. Mr. Mahvi provided two written Affidavits based on the evidence which also included also correspondence between himself and Mr. Riahi. He confirmed their contents by providing oral testimony at the Hearing and undergoing cross examinations by the Claimant's counsel and members of the Tribunal. Against the ethical behaviour of Mr. Mahvi, who plainly stated that he was limiting himself to Mr. Riahi's

the date of the above board meeting, Mr. Khajeh-Nouri had, in his letter of 16 January 1980, suggested to Mr. Riahi "that it would be appropriate for [Mr. Riahi] to transfer [his] shares to someone else."

107. However, we should bear in mind that until the time of the alleged board's decision on 24 February 1980 and its publication in the Official Gazette in April 1980, no valid decision was taken to convert the registered shares of Khoshkeh into bearer shares.[179] Therefore, evidence proving the Claimant's ownership of 1,500 registered shares as stated above is still wanting: earlier official deeds of donation validly concluded and earlier registration of shares in the company's share register book. In the absence of such proof, the ownership of Mrs. Riahi should have been denied based on, inter alia, the provisions of i) Articles 191-195, 339, 797-798, and 802 of the Iranian Civil Code, and Articles 47-48 of the Act of Registration of Deeds and Properties, with respect to donation,[180] and ii) Article 40 of the Iranian Commercial

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own book published in Iran and other evidence on file instead of relying on personal information he had accumulated through his nearly 60-year relationship with Mr. Riahi, the Claimant has resorted to whatever straw she could. To discredit Mr. Mahvi's Affidavits and testimony, the Claimant first alleged that Mr. Mahvi performed certain infamous services for the then Shah of Iran and second, that Mr. Riahi had heard from his own son that he (the son) had heard from Mr. Mahvi's son that he (Mr. Mahvi's son) had heard from his father that he (Mr. Mahvi) had heard from his daughter that some unknown persons had threatened his daughter's son (Mr. Mahvi's grandson). During the Hearing, Mr. Mahvi denied all this and any implications thereby intended by the Claimant. In connection with the first allegation, Mr. Mahvi recalled the fact that the Shah was suffering from cancer and that his secretively frequenting his (Mr. Mahvi's) house for secret treatments probably prompted a great deal of gossip.

[179] Ironically, the publication in the Official Gazette refers to another minutes of the shareholders extraordinary meeting that had agreed, on its face, with the conversion of 90 (instead of 80) percent of registered shares to bearer shares.

[180] Supra Section II.B.1.e.

Code upheld by the precedent established by the Tribunal,[181] and Article 10 of the Articles of Association of Khoshkeh, with respect to the registered shares.[182]

108. Apart from that which will be observed soon in connection with the board's conversion decision and its actual implementation when treating the alleged transfer of 510 bearer shares, the board's minutes of meetings held at that particular and dubious juncture can, at most, prove the existence of a decision to convert the shares which can, by no means, be probative of the transfer/ownership of the shares claimed, registered or otherwise.[183]

109. There is no doubt, and evidence on file testifies to the fact, that Mrs. and Mr. Riahi were not present at any of the meetings that were held to decide about conversion of registered shares to bearer shares and, therefore, no decision as to conversion of their shares to bearer shares could have been taken. Mrs. Riahi's safe deposit box at Bank Mellat (successor to Bank Tehran) contained the originals of 250 share certificates bearing the Claimant's name, which is further evidence that Mrs. Riahi's registered shares were never increased to 1,500 and that they were never returned to the company and replaced with bearer shares.[184] Nonetheless, assuming,

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[181] See, e.g., the awards in Ian McHarg, et al. and Ralph P.M. Carlson, referred to in paragraphs 143-144 of the Award, and footnotes 46-47 thereto.

[182] Supra note 171. With the intention to prove that the ownership of registered shares can be established even in the absence of their being registered in the share register book of the company involved, the Claimant refers to a litigation before a court in Ahwaz (in the south of Iran) wherein a purchaser of a certain equity interest in a company had sought that the company, which had apparently refused to register his ownership in its share register, be ordered to do so. This claim proves even further the fact that for ownership of registered shares to be valid, their transfer must be registered in the share register book. It was because of this that the plaintiff went so far as to bring a claim against the company in the courts.

[183] Professor Safaei has testified to this fact as well.

[184] See, infra paragraph 116. Interestingly, except for the alleged conversion of the Riahis' shares, shares belonging to other absentees (Dara Khajeh-Nouri, holder of 158 shares, Ms. Afshar, holder of 63 shares, Shahrokh and Jacqueline Termehchi, each holder of 25 shares) were not among the converted shares.

arguendo, and against all odds, that Khoskeh's shares were validly and timely converted to bearer shares -- based on Article 35 of the Iranian Civil Code[185] and Articles 39 and 320 of the Iranian Commercial Code[186] and the Tribunal's precedent established by the Partial Award in Aram Sabet -- the Claimant's claim should have been dismissed for her failure to produce the original bearer share certificates to prove her ownership.[187] Additionally, the Clamant has failed to prove that the requirements for a valid donation, discussed under II.B.1.e., above, were met.[188]

110. I am therefore unable to agree with the Tribunal's finding, which is based solely on the list attached to the minutes of Khoshkeh's board meeting of 24 February 1980. The Tribunal's reliance on Mr. Khajeh-Nouri's letter of 19 May 1999 and on the attachments to Messer. Salami's and Glover's valuation reports adds nothing beyond that list. In deed, by doing this the Tribunal has entangled itself in the web of a vicious circle. The Tribunal appears to have lost sight of the fact that Mr. Khajeh-Nouri has tellingly constructed his letter on the same list that was attached to the minutes of the board meeting. He states that "the quantity of shares held by [the Claimant] ... as of 24 February 1980, constituting the subject of the Company's Board of Directors process verbal of the same date, was 1,500 bearer shares."[189] Thus, Mr. Khajeh-Nouri plainly conveys what was stated in the same list attached to the minutes of the board meeting of 24 February, nothing more and nothing less. The same applies to the attachments to Messrs. Salami's and Glover's valuation reports, which included the list of the

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[185] Article 35 of the Commercial Code of Iran provides that "[p]ossession as owner is proof of ownership unless the contrary is proved."

[186] For the provisions of Articles 39 and 320 of the Commercial Code of Iran, see, footnote 39 of the Award.

[187] Aram Sabet, et al., para. 69, supra note 2.

[188] Not only is an official deed of donation wanting, but the Claimant also admitted, in answering my question at the Hearing, that neither she nor her husband had any representative in Iran to take delivery/possession of the new bearer shares allegedly issued.

[189] Paragraph 97 of the Award, emphasis added.

shareholders in February 1980.[190] Therefore, numerous problems discussed with respect to the ownership of 1,500 shares and the list attached to the minutes of the board meeting of 24 February remain unresolved.

II.B.2.b. Ownership of 510 Shares of Khoshkeh

111. Until the time of filing her Rebuttal Memorial, the Claimant alleged that she had become the owner of all 2,010 shares in Khoshkeh before her departure from Iran in September 1979. She later changed this position by alleging that she owned 1,500 shares until 24 February 1980 and that soon after the conversion of Khoshkeh's registered shares to bearer shares, she received an additional 510 shares as a gift from her husband. Setting aside for a while these contradictory statements, nothing is on file, except for the Claimant's own and her husband's allegations in the form of affidavits, to prove that the Claimant received, on that date or on any other material date, any bearer share as a gift or otherwise. Actually, no exact date has ever been specified by the Claimant.

112. The file amply proves that the conversion of shares, confusingly intended to cover 90 percent of the shares on one occasion and 80 percent on the other, did not materialize until sometime in late March (when Khoshkeh finally rectified a number of flaws pointed out by the Office for Registration of Companies) or in early April 1980 (when the conversion was accepted and published). As stated above, no member of the Riahi family appeared at any of the meetings held for the conversion of shares, either in person or by proxy. There are, therefore, serious doubts as to whether Riahi's shares were converted at all. Nonetheless, even assuming that Mr. Riahi's shares were among those converted, the claim should have failed because Mr. Riahi was not, on any of those dates, the owner of the allegedly transferred bearer shares because his property had been expropriated on 24 or 27 February 1980, as the case may be.[191]

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[190] Id.

[191] See, supra note 177.

113. Other contradictory evidence relied upon by the Claimant in support of the allegation that the transfer had occurred pursuant to Mr. Riahi's instructions to Mr. Khajeh-Nouri further undermines the allegation rather than supporting it.[192] Relying on a letter dated 28 August 1979 allegedly sent by Mr. Riahi to Mr. Khajeh-Nouri, the Claimant first alleged that on that date, Mr. Khajeh-Nouri was requested by Mr. Riahi to transfer 1,610 shares out of his own 2,865 shares to her and 810 shares to her stepson, Malek Massoud. This decision was allegedly taken by Mr. Riahi to provide an equal number of 2,010 shares each to his wife and son.[193] The Claimant further alleged that the old registered shares were returned to Khoshkeh and that new bearer shares were delivered to Mr. Khajeh-Nouri, as the Riahis' trustee, after their conversion. The Claimant later backed off on virtually all the above allegations, and they are contradicted by evidence made available to the Tribunal.

114. With simple arithmetic, the Respondent proved that all the figures indicated in the above letter allegedly sent to Mr. Khajeh-Nouri were incorrect. The Respondent demonstrated that the allegation, if accepted, would entail a number of illogical conclusions. In that situation, the Claimant's and her stepson's shares would have amounted, respectively, to 3,110 (1,500 plus 1,610) and 2,310 (1,500 plus 810) shares, instead of 2,010 shares each.[194] Moreover, if accepted, the allegation would have

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[192] In many instances this Tribunal has construed such contradictory or inconsistent statements or evidence against the party that had presented or relied on them. See, e.g., the award in Woodward-Clyde Consultants and The Government of the Islamic Republic of Iran, et al., Award No. 73-67-3 (2 September 1983), 3 Iran-U.S. C.T.R. 239, 249 and those referred to, supra, in note 14.

[193] In support of this, the Claimant once again relies on the undated and unsigned typed note allegedly written by Mr. Khajeh-Nouri (supra paragraph 104) wherein, referring to Mr. Riahi's letter of 28 August 1979, it is stated that "[a]fter the shares were converted to bearer shares, he [Mr. Riahi] held 445 shares for himself and increased shares owned by his wife ... to 2,010 shares and that of his child Mr. Malek Massoud Riahi to 2,010 shares as well."

[194] To speculated further, were we to presume the accuracy of the Claimant's ownership of 2,010 shares, we should have also presumed on 24 February 1980, she could not have owned more than 410 (410+1,610=2,010) shares.

meant that the Riahis had owned a total of 5,865 shares (3,000 belonging to Mrs. Riahi and her stepson and 2,865 to Mr. Riahi), rather than owning 4,465 shares which, is undisputed.

115. Having been faced with these anomalies, the Claimant tried to convince the Tribunal that shortly after his departure from Iran, Mr. Riahi had already forgotten his family's total shares in the most important company on whose revenue his family allegedly depended,[195] making a gross error regarding his own ownership and that of his son and wife. This time, the Claimant and her husband alleged that Mr. Riahi had later (on an unspecified date) orally requested Mr. Khajeh-Nouri to transfer equal amounts of 510 shares to his son and wife. This belated explanation collapses further when tested by other evidence produced by the Claimant. As explained above, the Claimant has heavily relied on an undated and unsigned typed note which was allegedly sent to Mr. Riahi abroad as an attachment to Mr. Khajeh-Nouri's letter of 17 May 1989. That letter and the note were filed with the Claimant's Rebuttal Memorial on 30 December 1996. Although the note purports that the Claimant's shares were increased to 2,010 pursuant to Mr. Riahi's letter of 28 August 1979 (discussed in, supra, paragraph 113), there is no mention of the later changes by oral instructions. Nor was there any move to explain that mistake and later correction in Mr., Khajeh-Nouri's letter of 17 May 1989 -- or in any other place in the pleadings -- until the Claimant's Rebuttal Memorial was filed in this proceedings in December, 1996. Moreover, in a letter sent to the Respondent answering its inquiry, Khoshkeh stated that Mr. Khajeh-Nouri had never acted as the Riahis' trustee. Interestingly, in his letter of 28 August 1979, Mr. Riahi orders Khoshkeh to "refrain from endorsing the same certificates" in his wife's name as the transferee, which must be taken to refer to all

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[195] Mr. Riahi recalled long afterward (this time minutely in his second Affidavit of 18 December 1996) that "Khoshkeh was the main source of [his] and [his] family's regular cash income," and provided him "sufficient funds to maintain three residences in Iran, pay [family] expenses, cover the expenses of [his] son abroad... [and] that between 1953 and 1978 Khoshkeh had made distributions to [him] and [his] family members amounting to Rials 1 billion (US $14,184,379)... [and] that in the last five years before [he] left Iran, the Company had paid [his] family and [himself] an average of over $1 million per year."

converted shares. A transfer without endorsement and delivery to the transferee is no transfer, particularly with respect to donation. I have discussed all these points in Section II.B.1.e. of this opinion, and I find it unnecessary to repeat them here.

II.B.2.c. Ownership of Khoshkeh Shares Based on Contents of Safe

116. The Claimant persistently maintained throughout the proceedings on the merits that she could have easily proved her ownership interests in Khoshkeh and all other companies if the contents of her safe with Bank Tehran (later Bank Mellat) had been made available to her. The Respondent finally managed to do that for the Claimant pursuant to a partial Settlement Agreement. The Claimant visually controlled the contents of the safe and found all the documents and jewelry therein contained acceptable (supra paragraph 33). To the extent related to the shares in Khoshkeh, the safe contained 25 certificates, numbered 401 through 425, bearing the name "Mrs. Frederica Esther Riahi" as owner, each representing 10 registered shares.[196] This evidence indicates, inter alia, that at least until the date of her departure in September 1979, her ownership of Khoshkeh shares was limited to 250 shares. Additionally, it proves that all allegations concerning the return of the registered shares to Khoshkeh and receipt of newly issued bearer shares are unfounded. Thus, a more reliable conclusion would have been that the Claimant could not prove, by producing original share certificates,[197] that she was the owner of any share after their conversion to bearer shares and before their alleged expropriation on 5 July 1980.[198] However, had the majority that has been formed on this issue opted to accept into evidence the

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[196] Certificates are signed by Messrs. Riahi and Khajeh-Nouri as the Chairman of the Board and Managing Director, respectively.

[197] See, supra, paragraph 109, and notes thereto. Article 10 of Khoshkeh's amended Articles of Association requires that the provisions of Article 39 of the 1969 Amended Commercial Code of Iran shall govern the transfer of the company's bearer shares. This Article considers the holder of such shares as their owner (see, footnote 39 of the Award).

[198] Paragraph 323 of the Award.

contents of the Claimant's safe to which the Claimant had persistently referred, I would have been ready, for the sake of consistency in my approach, to accept her ownership of that amount of shares, notwithstanding all the aforementioned problems.

II.B.3. Ownership of Rahmat Abad Shares

117. Noting the parties' agreement, the Award finds (at paragraph 134) that the Claimant owned two shares in Rahmat Abad. For the same reason, I concur with this finding of the Award, notwithstanding the fact that I am more inclined to consider those two shares as directorial shares that frequently change hands between persons who from time to time are appointed as members of the board.[199] Indeed, the file is riddled with evidence of such changes of ownership of directorial shares from one meeting to the other, even though they were at times held on the same day or a few days apart. To name a few, persons like Mr. Jazani, Mrs. Jazani, Mr. Nabavi, Mr. Vaghefi, Mrs. Moalej, and Mrs. Afshar appeared as shareholders of one company and were removed from the shareholders list of the other, depending on when and on what board they had been appointed from time to time. They were not, however, treated as real owners of those shares. Mrs. Riahi was not an exception to this process[200] and she appeared as a director, and hence as a shareholder, of one or the other company, every

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[199] Under Iranian law (e.g., Article 107 of the 1969 Amended Iranian Commercial Code), directors of, for example, joint stock companies must be appointed from among the shareholders of the company involved. Because of this, a few shares are formalistically allocated to persons who are appointed as directors. They lose their title to such shares at the end of their term appointment, at which time the shares are formalistically transferred to the newly appointed directors, and so on and so forth. (See, e.g., the situation with respect to Tarvandan discussed, supra, in paragraphs 32 and 117 and, infra, paragraphs 142 and 143.)

[200] Until December 1978, the Claimant appeared as the owner of a single share in Rahmat Abad and, just four days prior to receiving 110 additional shares from her stepson, she emerged as the owner of two shares in the handwritten minutes of the board meeting allegedly held on 16 December 1978. This second share was actually acquired by the Claimant from Mrs. Afshar, who, according to the minutes of the meeting, had resigned from the board the same day.

now and then until prior to the Islamic Revolution and the time that the bulk of the shares were allegedly donated to her.[201]

118. Having stated the above, I will now first sketch out the backdrop against which the play involving the transfer and ownership of shares is performed, and, after that, I will discuss, in light of the rules of law discussed in Section II.B.1., above, and the evidence produced by the parties in connection with the ownership of the remaining 156 shares allegedly donated to the Claimant by her husband: i.e., 110 shares on 20 December 1978 and an additional of 46 shares on or about 18 June 1979.[202]

II.B.3.a. Sketching out the Backdrop

119. Mr. Riahi states that the "Rahmat Abad farm had been in the Riahi family for four centuries" and was transferred to him by his "late great father" in April 1956.[203] He has amply and repeatedly made it clear that Rahmat Abad was inherited from his ancestors, it was very precious to him, and that he did not intend to part with this precious gift from his dear father and wanted to keep the property in the family.[204] This was

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[201] Although he tries to deny a similar process with respect to his wife, Mr. Riahi acknowledges the fact that "[a]ccording to the Iranian commercial code, anyone who becomes a member of the board of a private stock company must own at least one share of the company. Consequently, in the cases of any person besides a shareholder who was chosen as a member of the board of Rahmatabad, Tarvandan and Gav Daran companies, I transferred one share of the relevant company stock to that person so that he or she could act as a member of the board. It was understood that after termination of the period of service specified at the time of appointment to the board, that person would return the one share previously transferred to him or her." The shares so transferred were "soori, 'nominal, in name only.'" (Mr. Riahi's third Affidavit dated 15 March 1999, paras. 32-33.)

[202] Paragraphs 111-113 of the Award.

[203] Mr. Riahi's Affidavit of 18 December 1996 and entries in his diary for 19-21 May 1970.

[204] At page 834 of his diary, Mr. Riahi states, in an entry related to 15 April 1979, that from among all that God almighty had bestowed upon him, he loved the Rahmat Abad farm most, because it was a gift from his "noble father." He continues to say that his love for the trees planted there was akin to his love for his own children.

actually his prime reason for forming the Rahmat Abad Company. He states that "[i]n the past I had transferred Rahmat Abad [farm] to my son Jahan Shahriar. But now, with due regard to this youth's addiction, the huge investment [made] in this farm and the requirement for equal treatment toward my children, I intend to transfer its ownership to a company and give its [the company's] shares to my sons on equal basis. I will, probably appoint Ata-ollah Nabavi to serve as the managing director of this company."[205] Because of this intention, in his letter of 21 February 1976, Mr. Riahi asked Mr. Nabavi to "take care that the above transfers [of the parcels of land forming the farm] be effected with minimum price because they are just formalities in nature."

120. Mr. Riahi reiterates that same intention and decision in his diary entry for 15 November 1976 by stating, "In the past, I had transferred ownership of Rahmat Abad to my son Jahan Shahriar. However, the tremendous investment which I have made during recent years in this farm -- and such investment must continue at least for three more years -- as well as the requirement for balance and equality in ownership [of properties] transferred to my children, together with the status of physical and spiritual health of Shahriar and finally the need to preserve the integrity of this farm in the future has induced me to form Rahmat Abad Agro-Industrial Company."[206]

121. The entry in the same diary for 2 September 1978 confirms that he had succeeded in transferring the farm to the Rahmat Abad company and points out that "the said transfer was made in order to [secure] equal treatment of my children as well as preserving the integrity of this agricultural unit [which] cost me about 1,500,000 rials."[207] In line with the aforementioned settled intention and firm decision, persons other than Mr. Riahi and

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[205] Mr. Riahi's diary, entries for 14-15 February 1976. Interestingly, Mr. Riahi was so attached to this land that he had arranged only for a hollow transfer of the farm to Jahan Shahriar (whom he loved much) in 1971, and had secured and reserved, for himself and for "his long life," all the imaginable "benefits" and rights "arising from farming" in the farm.

[206] Id., entries for 15 November 1976 (emphasis added).

[207] Id., entries for 2 September 1978.

his children (Mrs. Riahi, Mr. Nabavi, and Mrs. Jazani) each had until 12 December 1978 only 1 directorial share in the company formed. On that date, the shares of the company were divided equally among Mr. Riahi's three sons (110 shares each) and the remaining 17 shares were owned by Mr. Riahi himself. A handwritten document purported to be the minutes of the 16 December 1978 meeting of the board of directors of Rahmat Abad speaks of the transfer of another share to Mrs. Riahi from Mrs. Afshar (who was until that date a director of the company), increasing Mrs. Riahi's directorial shares to two. Therefore, as late as 16 December 1978, the Claimant owned a maximum of two shares in Rahmat Abad. Mr. Riahi maintained the same 17 shares and the remaining 330 shares were divided equally among Mr. Riahi's three sons.

122. Against the above background, the Claimant strives to make the Tribunal believe, based on the documents to be discussed in the next Sub-sections, that in the span of four days, Mr. Riahi's wishes, intentions, and decisions with respect to securing the integrity of the ownership of the farm and equal ownership of his sons had evaporated and experienced drastic twists and turns. In this scenario, portrayed by the handwritten minutes of a board of directors meeting allegedly held on 20 December 1978, one is asked to accept that Mr. Riahi -- who, until about three days earlier, had long intended that the farm should not be kept only in the name of one of his sons and who had implemented that intention by transferring the farm to Rahmat Abad in order to secure the integrity of the family heritage and to have the ownership divided equally among his sons -- transferred nearly half of the shares of the company (which would mean half of the farm) to his American wife by divesting his two sons (in particular Jahan Shahriar who was his favourite son and the only original owner) of their ownership rights. Strangely enough, against Mr. Riahi's habit of recording much less important events in his diary, there is not even the slightest reference to this important decision in the entire diary. Adversely, as late as 2 January 1988, in his letter to Mr. Mahvi, Mr. Riahi continued to consider himself the sole owner of the farm, expressing the wish that he "could return to Iran and perhaps by taking the farmland which [he] had in Natanz, [he] could have lived on for the rest of [his] life in Rahmatabad."

123. The above background, the content of the so-called minutes of the 20 December 1978 meeting of the board of directors, the whole context within which the alleged transfers were effected, together with the corroborating evidence introduced by two independent persons, who must be taken to have the best direct knowledge of the events after the Claimant and her husband, direct us to no other conclusion but that the minutes of the meeting were fabricated. Mr. Nabavi (a close relative of Mr. Riahi, in farming business in Iran) and Mr. Mahvi (a close friend of Mr. Riahi and his associate for about 60 years, living for decades in Switzerland) have had no contact whatsoever with one another, and they are not even of the same social class such that they might be presumed to have met each other at any point of time. Nonetheless, their testimonies, under heavy cross examinations, support each other independently and mutually on this issue. As observed above,[208] Mr. Mahvi testified under oath in his Affidavit that Mr. Riahi, returning from Africa on his way to Iran, had told him that, notwithstanding the prevailing revolutionary turmoil, he was going to Iran to prevent his property from being lost. On his return back from Iran in 1979 after the success of the Iranian Islamic Revolution, he told Mr. Mahvi that "he had fictitiously transferred the companies' shares to his American wife in order to be able to bring claim before the domestic courts of the United States."[209] Mr. Mahvi confirmed forcefully and credibly the same under oath during the Hearing, adding that he had in fact commended Mr. Riahi for his "intelligent" and "smart move."[210] As will be discussed here below, Mr. Nabavi also testified under oath --in Mrs. Riahi's presence and without being rebutted or challenged by her, her husband or anybody else -- that the minutes of 20 December 1978 were actually prepared in spring/summer (June) 1979, after the death of Jahan Shahriar, but were back dated to December 1978. After that, Mr. Riahi left Iran in August 1979, and on his way to France he met Mr. Mahvi, as explained above.

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[208] See, supra paragraph 106, and note 178.

[209] Mr. Mahvi's Affidavits.

[210] Hearing Transcript for 25 May 2000, pages 101-105 and 112-114.

II.B.3.b. Transfer of 110 Rahmat Abad Shares

124. To prove her allegation with respect to the transfer of 110 shares from Jahan Shahriar, the Claimant clinches to two documents: 1) a handwritten minutes of a meeting of the board of directors allegedly held on 20 December 1978; and 2) a list attached to the minutes of the extraordinary general shareholders meeting allegedly held on 5 June 1979. Actually, the minutes of the board meeting of 20 December 1978 are the only evidence adduced by the Claimant to prove her ownership of the additional 110 registered shares because, as we shall observe later, the minutes of the shareholders meeting of 5 June 1979 show that it was allegedly held to convert registered shares to bearer shares. I will, however, deal with these two pieces of purported evidence separately.

II.B.3.b.i. *Minutes of the Board Meeting of 20 December 1978*

125. Based on what that I have stated earlier in detail, the allegation regarding the donation of Jahan Shahriar's 110 shares to the Claimant should fail for a variety of reasons, including the fact that the power of attorney allegedly given by Jahan Shahriar to his father was not authentic but fake,[211] that he was not in a sound state of mind to accord such an authority to his father,[212] and that his father could, neither as his attorney nor as his guardian, gratuitously transfer his valuable property to the Claimant.[213] In addition to all the above, the minutes of the board's meeting of 20 December 1978 are neither authentic nor probative of an actual transfer of shares.

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[211] Supra Section II.B.1.a.

[212] Supra Section II.B.1.b.

[213] Supra Sections II. B.1.c., and II.B1.d.

126. To start with, the handwritten and unpublished minutes of the board meeting[214] bear the signatures of Mr. and Mrs. Riahi and Mr. Nabavi. The Claimant and her husband are interested parties in this Case, and they had every reason to create, at any point of time, such a paper in support of their claim. Mr. Nabavi was a close relative of the Riahis, and evidence points to a sort of cleansing prior to the signing of the minutes. According the minutes of a meeting allegedly held about four days earlier, on 16 December 1978, Ms. Afshar was removed from the board of directors even though she had been appointed, just four days earlier, on 12 December 1978, to serve as a member until 22 October 1980 (paragraphs 155-156 of the award).

127. However, during the Hearing, Mr. Nabavi (the then Managing Director of Rahmat Abad) provided uncontroverted testimony based on his vivid recollection of the day when the document was made. Mr. Nabavi recalled that he was asked by Mr. Riahi, before his departure, in summer (June) 1979, to sign the backdated minutes of the board meeting because of the death of Jahan Shahriar.[215] In explaining how he so vividly recalled that event, he convincingly explained that the time was close to that of Jahan-Shahriar's death, and "the situation was very bad. It was tragic. Everybody was mourning the death and I remember that. It was very vivid for me."[216]

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[214] Although the minutes of another board meeting dated 16 December 1978 were registered and published in the Official Gazette, albeit with much delay, it has not been alleged, and there is no evidence to show, that the minutes of this board meeting and/or the list allegedly attached thereto were ever registered with the Office for Registration of Companies and/or published in the Official Gazette. As noted by the Award (paragraph 157), evidence also contradicts the allegation that even this meeting of 16 December 1978 was held on the alleged date. The minutes were not published until 5 July 1979, after the minutes of the shareholders meeting of 5 June 1979 had been registered and published, which date falls far after the dates when both of the Riahi sons had committed suicide.

[215] See, e.g., page 151 of the Hearing Transcript for 25 May 2000, and pages 24-25, and 32 of the Hearing Transcript for 26 May 2000. See, also, paragraphs 124 and 149 of the Award.

[216] As explained in the Claimant's Second Affidavit (dated 8 November 1990) produced during the early stages of the proceedings with respect to the issues of nationality and dominant nationality and also at page 857 of Mr. Riahi's diary, Jahan Shahriar had passed away on 30/31 May 1979.

128. Not only has Mr. Nabavi's testimony been corroborated by other evidence on file, but his honesty and truthfulness in answering the questions was also very convincing.[217] As a close relative and ex-employee of Mr. Riahi, he was very thankful and grateful, as put by him in so many kind words, for what Mr. Riahi had done for him and his family. He was, however, an honest man who could not but disclose the truth under the pressure of his conscience and the oath taken, though it was against his cousin and former employer. In according appropriate weight to Mr. Nabavi's testimony, particular attention had to be paid to his repeated statements at the Hearing that Mrs. Riahi (the Claimant) "is fluent in Persian" and understood him perfectly. He in many instances invited Mrs. Riahi to challenge his statements if she believed that he was not telling the truth.[218] No objection, whatsoever, was raised by Mrs. Riahi and the Claimant's team refrained, throughout the entire Hearing, from calling Mr. Riahi to deny those important and shocking statements by Mr. Nabavi directed against the authenticity, the date, and the contents of the minutes of the board meeting. This inaction on the part of the Claimant was very telling because she was present during the entire Hearing, and Mr. Riahi was available in The Hague. Thus, the highly persuasive testimony of Mr. Nabavi remains firm and unchallenged.[219]

129. Furthermore, the minutes of the board meeting of 20 December 1978 also falls short of proving such a transfer because they refer to "[d]iscussion ... made by the board of directors concerning ... transfer of 110 shares of Jahan Shahriar Riahi to Ms. Frederica Riahi and the board's agreement with such transfer." Therefore, were we to

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[217] Accord this with the written and oral testimony of Mr. Mahvi about the disclosed intentions of Mr. Riah, supra paragraph 106.

[218] Pages 11-12 of the Hearing Transcript for 26 May 2000.

[219] Not only do many other pieces of evidence, as observed here and in the Award, testify to, and support, the veracity of Mr. Nabavi's testimony, but the Claimant's and her husband's silence vis-à-vis Mr. Nabavi's testimony also makes any judge entrusted with the task of trial of the facts certain that he was correct and trustworthy. Indeed, as a member of the Chamber forming the majority on this part of the claim, I found Mr. Nabavi to be a man of integrity and honesty.

accept as authentic the minutes of the meeting, that document can, at most, be probative of the board's consent whereby the transfer was authorized.[220] It cannot replace the necessary process for executing a valid deed of share transfer. As with any other transaction, the Claimant should have proved that, after obtaining the permission of the board, a transfer of shares from Jahan Shahriar (or his authorized representative) through a declared intention by offer and acceptance actually took place.[221] Interestingly enough, although Mr. Riahi signs the lists of persons who were allegedly present at the board meeting as the attorney acting on behalf of Malek Massoud, any reference to representation on behalf of Jahan Shahriar, let alone a transfer on his behalf, is lacking.[222]

130. Being a transaction involving registered shares, the alleged transfer should have been effected through registration in the company's share register book. This is a requirement under the provisions of Article 40 of the Iranian Commercial Code, recognized and endorsed by a number of precedents established by this Tribunal, including this Chamber.[223] Non-observance of the provisions of Article 40 of the Commercial Code renders the transfer void.[224]

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[220] This practice was followed by Mr. Riahi with respect to his closely held companies because in such companies involving a family or a group of friends, shareholders are cautious about the transfer of shares and try to subject such transfers to strict supervision of the board of directors. See, Professor Hassan Hassani, Commercial Law, p. 75.

[221] Compare the situation with that of Bank Tehran. Not only were all registered shares produced, but the shares also proved, on their face or on the back, that there had been an identified transferor (offeror) and transferee (offeree) and that both had signed the relevant columns to effect each and every transfer.

[222] Irrespective of the validity of Mr. Riahi's act of representation, in instances wherein he or any other shareholder (such as Mr. Khajeh-Nouri) acted on behalf of their children, their representation was specifically expressed with their signatures.

[223] Supra, paragraph 107, and note thereto.

[224] Professor Hassan Hassani, Commercial Law, p. 75.

131. Mr. Nabavi has also testified that -- against the requirement of the law -- the company did not maintain a book for registration of shares.[225] In this respect too, Mr. Nabavi's testimony was neither challenged by Mrs. Riahi, who was present at the Hearing, nor rebutted by Mr. Riahi, who was available as a rebuttal witness. Rather, this statement of Mr. Nabavi is further supported by the copies of share certificates that were in the safe box at Bank Mellat and were submitted to the Tribunal together with the Settlement Agreement that formed the subject matter of the Partial Award on Agreed Terms in this Case.[226] For the time being, and for this purpose, suffice it to say that these certificates are not numbered. (See, infra Section II.B.3.d.)

II.B.3.b.ii. *Minutes of the Shareholders Meeting of 5 June 1979*

132. Another document adduced by the Claimant to prove the transfer of 110 registered shares from Jahan Shahriar is a list allegedly prepared on 5 June 1979 and attached to the minutes of the shareholders meeting. The Claimant tries to allege that such a meeting was held a few days after the death of Jahan Shahriar, when the family was in deep grief and awaiting arrival of the corpse from England. Describing the then prevailing circumstances, Mr. Riahi speaks of sorrow and solitude, not being able to say a word.[227] However, the minutes of the meeting purport to show that in such a state of affairs, a meeting was convened (with the presence of Mr. and Mrs. Riahi who were in Natanz, over 300 kilometers from Tehran) to decide, inter alia, about certain important matters such as conversion of shares, changing the name, and the Articles of Association of the company with respect to the capital of the company and its division into three hundred and fifty bearer share certificates.[228]

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[225] Page 52 of the Hearing Transcript for 25 May 2000.

[226] Supra, paragraph 33 and note 62.

[227] Mr. Riahi's diary, page 858.

[228] Id. Mr. Riahi states: "I have been absorbed into sorrow. I don't speak to anybody of my agony. I don't even say a word. ... The corpse of dear Putzi will arrive in Tehran in the early hours of the night of Thursday 7th June.") See, also, page 57 of the Hearing Transcript for 25 May 2000.

133. Based on the shareholders list attached to the above minutes, the Claimant purports to prove that on the date of the meeting, Mrs. Riahi's 112 shares (of which 110 shares had been allegedly transferred from Jahan Shahriar) were converted to bearer shares. Therefore, the document carries no weight unless the numerous hurdles described above with respect of the transfer of 110 shares are surmounted. Setting aside, for the time being, all the arguments so far presented with respect to the validity of the transfer of 110 shares to avoid repetition, both the minutes of the meeting and the list attached thereto fall short of proving the Claimant's ownership for the following additional reasons.

134. First, the evidence is, at most, demonstrative of a decision to change the company's registered shares into 350 bearer shares. It cannot replace the requirement of the sale/transfer of shares by offer and acceptance between the seller/transferor and the buyer/transferee. The transfer instrument is an indispensable document in such claims. Even if capable of showing a kind of transfer, which it is not, the evidence relates to events after the death of Jahan Shahriar. Therefore, it is unable to retroactively prove the alleged earlier transfer of this person's registered shares to Mrs. Riahi, proof of which had been lacking at least until the time of that meeting.

135. Second, in addition to the mandatory requirements pertaining to the publication of a notice in a mass-circulation newspaper and resolutions of the board and general meetings,[229] to convert registered shares to bearer shares it is further necessary that the share certificates be returned to the company, and upon their nullification, new bearer shares be issued to the owner.[230] Nothing is produced to prove the fulfillment of these requirements. Moreover, similar to the laws of many other nations, under Iranian Law

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[229] See, Iranian Commercial Code, inter alia, Articles 43-50.

[230] Iranian Commercial Code, Articles 47-48. See, also, Professor Hassan Hassani, Commercial Law, p. 74.

bearer shares are negotiable instruments and are the "property of their holder."[231] Any transfer of such shares becomes effective by "delivery" and "taking possession."[232] The Claimant has failed to produce evidence proving the delivery and possession of this quantity of bearer shares, which is a requirement also recognized by the awards of this Tribunal. In denying the ownership allegation of certain bearer shares claimed by the Claimants, the Tribunal noted in Aram Sabet that:

> Article 39 of the Iranian Commercial Code, as amended, states that bearer shares "shall be considered as the property of the holder unless contrary is established."[233]

II.B.3.b.iii. *Alleged Admission by Mr. Riahi*

136. It has also been alleged, again in a belated argument put forth by the Claimant's counsel particularly during the Hearing, that by signing these minutes of meetings the Claimant's husband must be taken to have admitted the ownership of his wife. This argument is totally irrelevant and plainly untenable. First, as discussed in some detail during the Hearing in the course of the cross-examination of Dr. Safaei,[234] Iranian law is very clear as to the meaning of the admission. Article 1259 of the Iranian Civil Code provides:

> Admission means acknowledgment of a right for another to the detriment of one's own interests.

Therefore, Mr. Riahi's acknowledgment of something -- in support of his disguised claim before this Tribunal -- against his sons and their natural mother by no means

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[231] See, supra paragraph 109.

[232] See, supra Section II.B.1.e., and paragraph 101.

[233] Aram Sabet, et al., para. 69, supra, note 2.

[234] Pages 119-121 and 136 of the Hearing Transcript for 24 May 2000. See, also, Professor Seyyed Hassan Imami, Civil Law, Vol. 6, (5th ed.), pp. 23-24.

falls within the ambit of the definition.[235] Apart from the requirement of capacity and competence,[236] in none of the documents produced had either Jahan Shahriar or Amir Saeed (with respect to the transfer of their respective shares here or elsewhere) accepted any right in favour of Mrs. Riahi. In fact, even a signature on their behalf is lacking.

137. Second, not every acknowledgement would amount to an unrebuttable admission. To have this effect, the admission must be stated either in an official document or before a court.[237] Under Iranian law, an acknowledgement outside the court, even if in writing, is tantamount to a verbal acknowledgement and both must be proven anew before the court.[238] In addition, statements in the minutes of meeting (such as these allegedly indicating the board's agreement with the transfer of shares) are not admissions within the legal meaning of the term.[239]

II.B.3.c. Transfer of 46 Shares: Ownership of a Total of 158 Bearer Shares

138. With no shred of supporting evidence, the Claimant alleges that at an unknown point of time after June 1979, her husband donated an additional 46 bearer shares to her, bringing her total bearer shares to 158.[240] Proof is totally lacking to show that 46

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[235] Admission must not be detrimental to third persons (Professor Seyyed Hassan Imami, Civil Law, Vol. 6 (5th ed.), p. 37).

[236] Admission made by minors, insane, and immature persons with respect to their financial matters, is invalid and with no effect (Iranian Civil Code, Article 1262-1263). See, also, Professor Seyyed Hassan Imami, Civil Law, Vol. 6 (5th ed.) pp. 31-32.

[237] Professor Seyyed Hossein Safaei, pages 119-120 of the Hearing Transcript for 24 May 2000.

[238] Professor Seyyed Hassan Imami, Civil Law, Vol. 6 (5th ed.), pp. 48-49.

[239] Professor Seyyed Hossein Safaei, Pages 119-120 of the Hearing Transcript for 24 May 2000.

[240] The Claimant's Affidavit of 18 December 1996, para. 15 and Mr. Riahi's Affidavit of the same date, para. 44.

shares were transferred, as alleged, from the 220 shares earlier owned by Malek Massoud and that the transfer occurred based on the transferor's agreement through any transfer deed.[241] The file is tellingly silent on this, although Malek Massoud, the only living son of Mr. Riahi, could have expressed himself on these matters. The fact that he kept silence for the nearly 20 years that the file was pending before the Tribunal cries out loudly against the Claimant's allegations. Moreover, all legal and factual arguments put forth in connection with the allegation of donation, transfer of bearer shares, delivery and taking possession, and the requisite for proof by actual submission of the share certificates, discussed in the preceding Sections, apply with full force to the alleged transfer of these 46 shares.

139. Strangely enough and against all odds, to prove her ownership of a total 158 shares, the Claimant refers to a handwritten letter by her husband, allegedly dispatched from Nice, France on 2 July 1980, requesting Mr. Nabavi to sign a pre-typed letter prepared by Mr. Riahi confirming the Claimant's alleged ownership of 158 bearer shares.[242] Apart from the fact that Mr. Nabavi denies receipt of the letter, no confirmation to that effect given by Mr. Nabavi exists, and it has not even been alleged that such confirmation was ever given.[243] As stated above and confirmed by the Award

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[241] Factually, it is also impossible to test the new allegation of distribution of shares (158 to Mrs. Riahi, 158 to Malek Massoud, and 34 to Mr. Riahi) against the Shareholders list allegedly attached to the minutes of the shareholders meeting of 5 June 1979. It is not clear when and how the shares of Malek Massoud were reduced to 158 from 220 and when and how 17 shares of Mr. Riahi were increased to 34 and what happened to Mr. Nabavi's share.

[242] The letter instructed Mr. Nabavi, inter alia, "to write a statement on behalf of Rahmat Abad Company, Tehran office, under your signature as the managing director, addressed to Malek Massoud [and the Claimant], as per attached draft, with typewriter, on the letter head of the company and send the same to me [Riahi]."

[243] Before all else, one should recollect that the Claimant has been of the view that a letter sent around the same time by Mr. Riahi to Mr. Khajeh-Nouri was riddled with gross mistakes about Riahis' ownership of shares in Khoshkeh (supra paragraph 115). However, even if such confirmation based on a pre-prepared letter existed, that confirmation could not have been accorded any value because i) it would have been based on a pre-dictated letter, and ii) Mr. Nabavi would have signed the letter, irrespective of the veracity or fallacy of its content, because he was asked to do so by Mr.

in Aram Sabet (paragraph 135), Article 39 of the Iranian Commercial Code considers bearer shares as "the property of their holder."[244] Bearer shares being a negotiable instrument, Article 320 of the Commercial Code also confirms the same by stating that "[t]he holder of any instrument payable to the bearer shall be considered as its owner and is entitled to claim its payment...."[245] This is further proved by the provisions of Article 35 of the Iranian Civil Code, which provides that "[p]ossession as owner is proof of ownership unless the contrary is proved."[246]

II.B.3.d. Ownership of Rahmat Abad Shares Based on Contents of Safe

140. Time and again in numerous submissions, the Claimant has alleged that she could not prove her ownership of the claimed shares because they were kept in her safe deposit box at Bank Tehran (later Bank Mellat), central branch. Prior to the production of the contents of the Claimant's safe deposit box at Bank Mellat, the Claimant repeatedly alleged that the original share certificates of Rahmat Abad were left in that safe box.[247]As we have observed earlier, the contents of the box were handed over to the Claimant, through the Tribunal, pursuant to a Partial Settlement Agreement reached between the Parties which formed the subject matter of an Award on Agreed Terms.[248] The contents of the safe, listed in Attachments 1 and 2 to the

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Riahi (pages 146-148 of the Hearing Transcript for 25 May 2000). Furthermore, even if signed, it could not have replaced the required transaction, based on an instrument between Jahan Shahriar or Malek Massoud, as the case might have been, as the transferor, and Mrs. Riahi as the transferee. Mr. Nabavi was neither a transferor nor a transferee.

[244] Footnote 39 of the Award.

[245] Id.

[246] Supra Section II.B.1.e., and paragraph 109.

[247] See, e.g., the Claimant's Hearing Memorial, p. 54; her Rebuttal Memorial, pp. 25, 30-31; the Claimant's and her husband's Affidavits of 18 December 1996, paras. 15 and 44, respectively.

[248] Supra Paragraph 33.

Settlement Agreement, formed "the scope and the subject matter of [that] Agreement" and "the Claimant [had] visually inspected the content... on February 24, 2000 and found them in an acceptable condition." However, contrary to her previous persistent allegations and similar to her stance in this respect in connection with Khoshkeh, the Claimant refrained from relying, and objected to the Respondent's reliance, on the contents of the safe because they fell far short of proving the Claimant's possession and ownership of 158 bearer shares. To my surprise and great regret, the majority opted not to address the uncontested evidence, which alone, even without considering all the previous arguments based on fact and law, would have sufficed to dismiss the Claimant's claim.

141. According to the minutes of the shareholders meeting of 5 June 1979, Mrs. Riahi was appointed secretary of the board, and Mr. Riahi was the Chairman. Unlike the situation with respect to the share certificates in Bank Tehran, Iran Böhler, and Khoshkeh,[249] that were all signed by the chairmen of the boards of those entities, copies of the Rahmat Abad share certificates kept by the Claimant in her safe box with Bank Mellat lacked Mr. Riahi's (the chairman's) signature. Additionally, there were only 47 (not 158) shares in the safe which were all unnumbered, undated and signed by Mrs. Riahi (the Claimant) on behalf of the board of directors. A number of the certificates lacked even the stamp of Rahmat Abad. All these anomalies pointed clearly to the fact that that limited number of shares was made in a rush and placed in the safe sometime between Mr. Riahi's departure in August 1979 and the subsequent departure of Mrs. Riahi. Indeed, contrary to the Claimant's contentions, the contents of the safe deposit box could not establish any ownership in Rahmat Abad for the Claimant.

II.B.4. Ownership of Tarvandan Shares

142. The Tribunal accepts the Claimant's ownership of one share in Tarvandan because she was registered as such in the last share register book of the company. I

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[249] In connection with the shares of the latter company, see, supra Section II.B.2.c.

join in this finding, though I believe that the Claimant's share was a directorial share and therefore she should not have been considered a genuine owner. As a matter of fact, the single share owned by the Claimant was one that had remained from her two earlier shares that she had acquired from a Mr. Manouchehr Movasseghi when the company's capital was still divided into 300 shares.[250] With respect to those two shares (entries 299 and 300 of the share register book of the company) a note was added in the book stating that they were acquired as directorial shares.[251] The fact that the Claimant had not owned more than two shares (out of 300) and one share (out of 75) is also confirmed, respectively, by the minutes of the shareholders meetings of 26 February 1977 and 21 June 1978, produced in evidence by the Claimant. Minutes of Tarvandan's ordinary general meeting dated 3 March 1979 further confirm that Mrs. Riahi held only one share.

143. Despite the fact that the share register book of Tarvandan bears the signatures of the Claimant, her husband, and other shareholders (thus including those who served on the board of directors), she resorts to a self-serving and conclusory argument in challenging the book. In short, she argues that the book kept by Tarvandan (or, more precisely, by the Riahi family) may not be accepted as good evidence because her name has not been recorded therein as the owner of the 28 registered shares she claims. The Claimant's allegation boils down to this illogical conclusion: that the book could have been considered to be genuine if, and only if, it proved the Claimant's allegation.[252] Rather, as discussed earlier, according to Iranian law, where the share register book of a company does not reflect the ownership of a given person, it would mean that that person is not a shareholder. Another argument offered in support of her challenge is that the book "also does not reflect the transfer of Dr. Khabir's share to ...

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[250] When the company's capital was divided into 300 shares, Article 12 of Tarvandan's Articles of Association required that "[e]very member of the board of directors must during his tenure hold at least two of the Company's shares of ten thousand rials each and must deposit those shares in the Company's safe... ."

[251] See, also, supra notes 199 and 201.

[252] See, also, paragraphs 189-190 of the Award.

[Mr.] Vaghefi," which had occurred on 3rd March 1979.[253] In addition to that which is stated by the Award (paragraph 190), the fact of the matter is, as stated earlier in connection with Rahmat Abad (paragraph 117, above, and the footnotes thereto), that these statutory directorial shares used to change hands frequently as the managers of the companies were changed. Tarvandan's laxity in not timely recording the last transfer of ever-changing transfer of directorial shares cannot affect the validity of such an important document kept by a company that was under the control of the Claimant's own family.

II.B.4.a. Transfer of 27 Tarvandan Shares

144. Against the above hard evidence in the form of Tarvandan's share register book,[254] which shows that the composition of the owners of shares has undergone no changes, the Claimant alleges that, soon after the success of the Islamic Revolution in Iran, the ownership of shares in Tarvandan suddenly experienced a major restructuring in an extraordinary general meeting held on 5 March 1979,[255] only 2 days after the ordinary general meeting wherein she had appeared as the owner of one single share.[256] By producing a list attached to the minutes of the shareholders meeting allegedly held on 5 March 1979, the Claimant contends that on the same date her interests in Tarvandan increased from one to 28 registered shares by receiving as gifts 27 additional such shares. Without specifically mentioning how and from whom, Mrs. Riahi claims that her husband donated these shares to her, relying on his authority

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[253] The Claimant's Rebuttal Memorial, p. 93.

[254] See, inter alia, paragraphs 101 and107, above, and paragraphs 143-144 and 189-190 of the Award.

[255] Accord this with the situations explained, supra, in paragraph 106, in connection with Khoshkeh, and in Sections II.B.3.a. and II.B.3.b., in connection with the transfer of 110 shares of Rahmat Abad.

[256] See, paragraph 186 of the Award.

pursuant to powers of attorney he enjoyed from his sons.[257] I concur with the finding of the Award denying this claim for the reasons stated there and that which will be discussed in the following paragraphs.

145. To start with, the maximum weight, if any, that can be accorded to this piece of evidence is that the company's shareholders general meeting agreed -- among other things irrelevant to our issue here -- to convert the registered shares of the company to bearer shares.[258] Therefore, the evidence, even if authentic, fails to satisfy the Claimant's burden of proving that at any time, even a minute prior to the meeting, those 27 registered shares were properly transferred to her or that they were acquired by her from their owners after the conversion. Not being a document proving the actual transfer of shares, proof of transfer of 27 registered shares prior to that date, based on a valid transaction, is wanting. As observed above, the Claimant has been unable to prove that the transfer of those registered shares was ever registered in the books of the company, which is a requirement under Article 40 of the Iranian Commercial Code.[259] Tarvandan's share register book, which recorded the transfer of the Claimant's directorial shares (supra paragraph 142), together with the share certificates issued by Bank Tehran,[260] clearly demonstrate the practice based on law that, for a valid transfer of registered shares, the transfer and delivery of the shares should be reflected in the share register book and on the back of the already issued share certificates.

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[257] The Claimant's Rebuttal Memorial, p. 93. See, also, paragraphs 175-176, 184, and 187 of the Award.

[258] As a matter of fact, this requirement for the conversion of shares was found, as will be observed below, insufficient by the Office for Registration of Companies because the Office asked for the resolution of the board before validating the conversion.

[259] Article 8 of the Articles of Association of Tarvandan also provided that the "[t]ransfer of registered shares shall be subject to the approval of the board of directors and due recording in the Company's share register. ..."

[260] See, supra paragraph 38.

146. Moreover, the situation surrounding the minutes of the 5 March 1979 meeting appears to have been intentionally smoke screened to hide its real nature,[261] though certain conclusions about its irregular nature can be manifestly deduced from the available evidence on file.[262] For this purpose, it is necessary to note first that based on the list that was attached to the minutes of the 21 June 1978 meeting, Mr. Riahi appeared as the owner of 12 shares, and his three sons (Malek Massoud, Amir Saeed, and Jahan Shahriar) each owned 20 shares. Mrs. Riahi, Mr. Khabir, and Mr. Jazani each owned one statutory directorial share. The same composition had been maintained at the time of the 3 March 1979 shareholders meeting, except for minor changes in the ownership of two statutory directorial shares, as noted in paragraph 186 of the Award. The minutes of the 5 March 1979 meeting indicate, however, that a total 45 shares had been allocated to Mr. Riahi and his children as against 28 shares allocated to his wife. This can be taken to mean that Mr. Riahi's 12 shares aside, his three children were each accorded 11 shares. Such a conclusion sharply contradicts the well known and settled practice of Mr. Riahi established by ample evidence on file. Based on that practice, it is inconceivable that Mr. Riahi would have accorded far fewer shares to each of his children than that accorded to his wife.[263]

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[261] For example, the list attached to the minutes of the ordinary meeting held on 3 June 1979 is not produced and the list attached to the minutes of the 5 March 1979 extraordinary meeting does not stipulate how 45 shares represented by Mr. Riahi were divided between he himself and the persons represented by him.

[262] However, one should not lose sight of the fact and law that the burden of proof rests on the Claimant who alleges ownership of certain shares and that under penalty of having her claim refused she has the duty of proving that the alleged transfers of registered or bearer shares were properly and genuinely occurred as asserted. (See, e.g., supra note 45.)

[263] Were we to assume against the fact, but pursuant to speculation based on Mr. Vaghefi's letter alleged to have been issued by him, long later on 16 July 1980 (infra paragraph 149), that Mr. Riahi's shares had been reduced to 5 at a time between 3rd and 5th March 1979, the result would not have changed because 40 remaining shares could not have been divided equally among his three sons unless the second conclusion, to be discussed shortly below, were to be accepted. In any event, each of his three or two sons would have ended having fewer shares than his wife.

147. Second, knowing that each of Mr. Riahi's three sons appeared as the owner of 20 shares in the meetings of 21 June 1978 and 3 March 1979, another likely conclusion might be that two of the sons had been removed from the list of shareholders in the extraordinary general meeting allegedly held on 5 March 1979, and that their shares were divided between Mrs. Riahi and Malek Massoud. Being further aware of the death of Amir Saeed[264] and his brother[265] and the date when the minutes appear to have been sent to the Office for Registration of Companies, there is no alternative to the conclusion that the minutes of the meeting were made after their death and back dated to show that their shares were transferred to Mrs. Riahi before their actual deaths. As noted by the Award in paragraph 189, the evidence produced by the Claimant fails to prove that the 5 March 1979 meeting was actually held on that date. The only evidence to support such a claim consists of two letters issued by the Office for Registration of Companies dated 4 July 1979 and 2 November 1982. The former only shows that the minutes of the meeting of 5 March 1979 were received on or around 4 July 1979 and that the Office for Registration of Companies was demanding thereby the submission of the decision of the board of directors of Tarvandan agreeing with the conversion of shares to validate the conversion.[266] The second letter is even less helpful. Not only is the original Persian text illegible and apparently related to Gav Daran, the translation provided by the Claimant purports that the letter was

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[264] The Claimant maintained throughout the proceedings that Amir Saeed had committed suicide on the eve of the Iranian New Year, 20 March 1979. ("By March 1979, the mental illness and drug addiction of my husband's son, Amir Saeed, reached its climax and he committed suicide on March 20, 1979." The Claimant's Affidavit dated 8 November 1990, para. 65.) However, a "duplication" of the certificate of death introduced as evidence by the Claimant contributes to ambiguities. Strangely enough, the Persian text of this certificate implies that Iranian death certificates include the Christian (Gregorian) date, which is completely wrong. Moreover, since the Iranian solar calendar date on such a certificate must be taken to be genuine, the certificate shows on its face that Amir Saeed had passed away on 7 Esfand 1357, which equals 26 February 1979, well before the alleged meeting of 5 March 1979. Ironically, the English translation of this certificate states that "Amir Saeed Riahi ... has died on March 27, 1979...."

[265] Jahan Shahriar committed suicide on 30 or 31 March 1979 (see, also, paragraph 193 of the Award).

[266] See, infra paragraph 151, which shows that the conversion was never validated.

addressed to Bank Melli and was merely enclosing a copy of the minutes of the meeting of 5 March 1979. Thus, there is nothing in either document to show that the minutes of that meeting were filed with the Office for Registration of Companies prior to the death of Mr. Riahi's sons.

148. However, were we to assume that Mr. Riahi had donated 27 shares to his wife on 5 March 1979, her claim must fail on many grounds, inter alia, because i) the powers of attorney granted to Mr. Riahi by Jahan-Shahriar and Amir-Saeed were invalid because of their incapacity (supra Section II.B.1.b.),[267] ii) Jahan Shahriar's power of attorney was not authentic (supra Section II.B.1.a.), iii) Mr. Riahi had no authority, based on the powers of attorney and law to donate his children's property to their stepmother for no consideration, (supra Sections II.B.1.c., and II.B.1.d.), and iv) mandatory legal requirements for donation (supra Section II.B.1.e.) and for transfer of shares (supra paragraph 107) were not satisfied.

II.B.4.b. Transfer of 6 Tarvandan Bearer Shares

149. As noted by the Award (paragraph 195), there is no evidence to prove the alleged transfer of 6 additional shares except for the Claimant's and her husband's Affidavits. However, by introducing a letter issued by Mr. Vaghefi as Managing Director of the company on 16 July 1980, long after the expropriation date of Mr. Riahi's property in February that year, the Claimant alleges that, yet at another unknown date, the number of shares donated to her was increased to 34. The above letter, asked for and pre-

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[267] As stated, supra, in note 125, were we to hypothesize that Amir Saeed was not insane or incompetent on the date when he granted the power of attorney to his father, the facts as discussed in Section II.B.1.b.ii, above, remove any doubt but that he was insane or mentally incapacitated from 1975, in particular in 1978 and on or around 5 March 1979. The March date is the only date when Mrs. Riahi appears as the owner of 28 shares by allegedly having received a donation of 27 new shares on the same date. It is not surprising, in view of the practice experienced in this Case, that this date is only 15 days prior to the date when Amir Saeed's "mental illness ... reached its climax" that culminated in his suicide. (Supra note 264.)

drafted by the Claimant and her husband, states that, after being converted from registered to bearer shares, the shares of the company were owned by Mrs. Riahi and Malek Massoud (34 shares each), Mr. Riahi (5 shares), and Ms. Moalej and Mr. Vaghefi (one share each). Therefore, knowing that Mrs. Riahi had allegedly owned 28 shares on the date of the alleged conversion of shares, this letter neither shows nor is intended to show when, how, and on what basis these shares were transferred to Mrs. Riahi. Nothing else is made available to solve these issues.

150. That the letter was requested by the Claimant and her husband with the content and in the format drafted is not a revelation. There is ample evidence in the file, also in the form of the Claimant's own Affidavit,[268] demonstrating that this letter was pre-prepared by Mr. Riahi and was sent from France together with other, identical letters[269] for the signature of the managing directors of the companies involved. As Mr. Nabavi testified,[270] and in view of the master and servant relationship between Mr. Riahi and Vaghefi,[271] no weight can be accorded to such letters issued pursuant to Mr. Riahi's instructions.

151. One additional point must be made with respect to this transfer. A letter dated 20 April 1994 produced from the Office for Registration of Companies confirms that the shares of Tarvandan were never converted into bearer shares. This fact is further confirmed by the Claimant's own evidence (letter of 4 July 1979, paragraph 147,

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[268] See, e.g., the Claimant's Affidavit dated 18 December 1996, para. 23 (wherein she states, in response to the Respondent's objections to these pre-drafted letters, "my husband and I asked, in telephone calls and letters to the managing directors of Khoshkeh, Tarvandan and Gav Daran, for reports on the status of these companies.")

[269] Identical letters were asked for and sent by the managing directors of Gav Daran and Khoshkeh. See, supra paragraph 139 and note 242, in connection with a similar specific instruction given to Mr. Nabavi, the managing director of Rahmat Abad Company.

[270] Hearing Transcript for 25 May 2000, pages 146-148.

[271] Mr. Vaghefi also was a relative of Mr. Riahi from Natanz. Even after Mr. Riahi's departure from Iran, he continued to seek his help even for insignificant sums of money, Rls. 50,000, for example. It is not intended to be sinister, but in fact, it would not be strange for such a person to certify whatever Mr. Riahi might ask him to certify.

above) wherein the Office for Registration of Companies had asked Tarvandan for the decision of the board of directors on the intended conversion of shares. Mr. Vaghefi signed the letter with the promise to rectify the defect, but as the 20 April 1994 letter of that Office shows, this defect was never rectified. Therefore, I concur with the Award that the allegation with respect to the transfer of 6 bearer shares and the ownership of 34 bearer shares is untenable.

II.B.4.c. Ownership of Tarvandan Shares Based on Contents of Safe

152. Although there are genuine doubts regarding the conversion of Tarvandan's registered shares to bearer shares, the contents of the safe deposit with Bank Mellat produced pursuant to a Partial Settlement Agreement integrated into a Partial Award on Agreed Terms[272] is worthy of note. Similar to her stance opted in connection with other companies, the Claimant fell back on her earlier insistence by refraining from relying on those share certificates. Actually, she and her Counsel vehemently objected to the Respondent's reliance on them either. Unfortunately, despite my insistence, the Majority chose not to address the contents of the safe in any deserved manner. Here too, the share certificates allegedly held in the safe deposit box demonstrate that the Claimant allegation as to the ownership of 34 bearer shares was unwarranted. Like the situation experienced with respect to Rahmat Abad, these certificates were unnumbered and were signed only by the Claimant herself,[273] which proves, on the one hand, that the shares were not yet converted to bearer and that they were, on the other hand, just made in a last moment rush prior to the Claimant's departure from

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[272] Supra Paragraph 33.

[273] Articles 20 and 21 of Tarvandan's Articles of Association provide that "all documents, correspondence, cheques, and papers issued by the company must bear two signatures," as authorized by the board of directors, and that no member of the board "shall have the right to severally carry out any affair in the name of the company unless so approved by the board of directors and provided that he holds a special letter of authorization."

Iran.[274] What contributes more to the latter conclusion is the fact that the certificates found in the safe deposit box represented 77 bearer shares even though the capital of the company was divided into only 75 shares.[275]

II.B.5. Ownership of Gav Daran Shares

153. Except that Mrs. Riahi appears to have been a founder of the company with an initial ownership of 33 shares out of 100 shares, the process of her acquiring shares in this company is strikingly similar to that which obtained in connection with Tarvandan, though irregularities pointing to the hasty fabrication of minutes of meetings are even more disturbing. Documents submitted covering the period after the acquisition of those initial shares in 1975 and until 5 March 1979 are tellingly silent about the number of shares owned by Mrs. Riahi. None of the minutes of the shareholders and/or board meetings produced in evidence is accompanied with any information or list to show who the shareholders were and how the shares were divided. As has been noted by the Tribunal[276] and will be observed in the following paragraphs, the other evidence presented to support the sudden emergence of the Claimant's name as the owner of 20 shares taints the situation with more uncertainty, irregularity, and doubt rather than solving the problems. The evidence appears to have been hastily fabricated in a desperate attempt to show as if it was made prior to the

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[274] According to the minutes of the shareholders meeting of 3 March 1979, Mrs. Riahi was elected to serve as an alternate member of the board. There and in the meeting allegedly held on 5 March 1979, Mr. Riahi appeared as the Chairman of Tarvadan's board of directors.

[275] The fact that the company's capital was divided into 75 shares is not in dispute, and it is amply supported by the evidence on file, including the minutes of the shareholders meetings held on 21 June 1978 and 3 March 1979. The minutes of the extraordinary general meeting allegedly held on 5 March 1979 and the alleged share certificates kept in the safe deposit box show on their face that the "capital of the company is Rials 7,500,000, divided into 75 bearer shares with value of Rials 100,000 each, totally paid."

[276] Paragraphs 205-212 of the Award. The Tribunal states, at paragraph 212, that "it cannot accept, in a situation so fraught with uncertainties, the Claimant's assertion that she owned 20 shares in Gav Daran at the time of the alleged expropriation."

death of the Claimant's stepsons, Amir Saeed and Jahan Shahriar. I therefore agree with the Tribunal's denial of the ownership claim with respect to Gav Daran.

II.B.5.a. Proof of Ownership of 20 Shares in Gav Daran

154. Similar to other companies, the situation with respect to Gav Daran experiences a drastic turn soon after the success of the Islamic revolution in Iran,[277] particularly around the time that two of Riahi's sons committed suicide, one after the other, in a span of about two months. By producing two minutes of meetings, the Claimant alleges that an ordinary shareholders general meeting, convened extraordinarily, and another extraordinary general meeting were held within a one hour interval between 10 and 11 a.m. on 5 March 1979. The date falls exactly on the same day that the alleged transfer of 27 Tarvandan shares to the Claimant occurred, and also happens to be 2 weeks prior to the death of Amir-Saeed.[278]

155. Number of shares owned by each of the shareholders participating in the meeting held at 10 a.m. are not disclosed, and no list is attached to the minutes, either. However, the minutes of that ordinary meeting, not produced until the time of filing the Claimant's Surrebuttal Exhibits in March 1999, purport to show that at 10 a.m., members of the board of directors (Messrs. Khabir, Sheibani, and Vaghefi) resigned before the end of their terms of office, and Mr. Riahi, the Claimant, and Mrs. Moalej were appointed as principal directors, and Mr. Vaghefi as alternate director, of Gav Daran for the remaining of the term period ending on 20 August 1979. Signatures of Mrs. Riahi, Mr. Vaghefi, Mrs. Moalej, and Mr. Riahi appear under the minutes of the meeting. A note under Mr. Riahi's signature states that he had signed the minutes for himself and on behalf of his three sons.

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[277] Accord this with the situations explained, supra, in paragraph 106, in connection with Khoshkeh, in Sections II.B.3.a. and II.B.3.b., in connection with the transfer of 110 shares of Rahmat Abad, and in paragraph 144, in connection with Tarvandan shares.

[278] As seen above (paragraph 144), Tarvandan's meeting was allegedly held on the same day at 9 a.m., before these meetings.

156. To the extent related to ownership of shares, two directorial shares that were held by Messrs. Khabir and Sheibani were transferred to Mr. Riahi (who was a director and the Chairman of the board), increasing his total shares to 14, and Mr. Vaghefi's only share went to Mrs. Moalej because the latter was elected as a principal member, and the former as an alternate member, of the board of directors. The minutes of the meeting further state that "fifteen shares of Mr. Amir Saeed Riahi were transferred to Messrs. Malek Massoud and Jahan Shahriar Riahi in equal number." This attests to the hasty creation of the document, particularly if one takes note of the strange fact that the above minutes purport to strip Amir Saeed of his shares in Gav Daran just 15 days or so prior to his death.[279] The only evidence that might be taken to give an indication as to the exact date of the minutes of the 10 a.m. meeting is a stamp fixed at the bottom of the second page, which shows that the registration fee was paid on 23 April 1979, more than a month after the death of Amir Saeed.[280] However, apart from all these doubts about the authenticity of the minutes of the meeting, this evidence does not prove any ownership of any share by the Claimant. Rather, the fact that the Claimant was allegedly elected as a principal member of the board at that meeting to replace Mr. Vaghefi, further indicates that she was not previously a shareholder.[281]

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[279] It is highly questionable how fifteen shares of Amir Saeed could have been equally divided between his two brothers. Knowing of Mr. Riahi practice, the alleged allocation of one half of a share to each son must be taken to be very strange, to say the least.

[280] There is also a "Notice of Changes in Gavdaran Private Joint Stock Company" issued on 19 June 1979 by the Office of Registration of Companies, which appears to announce on that date the above changes in the composition of the board of directors. While the "Notice" refers to the minutes of the extraordinary shareholders meeting, using the Claimant's own translation, it states, referring to the ordinary meeting allegedly held on 5 March, at 10 a.m., that according to the minutes "Mr. Manouchehr Riahi, Ms. Frederica Riahi and Ms. Azam Moaledj were elected to serve as principle member of the Board of Directors and Mr. Vaghefi was elected to serve as alternate members of the Board of Directors." The minutes of the extraordinary meeting allegedly deal, as we shall soon see here, with the changes to be made in the Articles of Association of the company and conversion of registered shares to bearer shares. Nothing about these issues is contained in the "Notice" of Office for the Registration of Companies.

[281] Some of the earlier minutes of the meetings show that Messrs. Riahi, Khabir, Sheibani, Malek Massoud Riahi, and Vaghefi were the principal members of the board of

157. The minutes of the extraordinary general meeting allegedly held at 11 a.m. on 5 March 1979 is the first and the only evidence, which purports, after a long period of silence, to deal with the Claimant's ownership interest in Gav Daran. By producing this document, the Claimant wanted us to believe that one hour after the ordinary general meeting, held extraordinarily at 10 a.m., another extraordinary general meeting of Gav Daran was convened wherein she appeared as the owner of 20 shares. Mr. Riahi appeared as representing 28 shares for himself and by proxy,[282] and Mr. Vaghefi and Mrs. Moalej are listed as the owners of the remaining 2 shares, though Mr. Vaghefi had lost his single share an hour earlier when he lost his post as a principal member of the board of directors. The Tribunal has put the finger on a number of inexplicable problems that cast serious doubt on the authenticity of the minutes of the 11 a.m. meeting. I, therefore, find it unnecessary to deal with those problems in detail.[283] There are, however additional problems that cast even further doubt on the validity and reliability of those minutes.

158. Setting aside the strange disappearance and reappearance of Mr. Vaghefi as a principal member of the board and his losing and gaining one share in the span of one hour during Gav Daran's ordinary and extraordinary general shareholders meetings, there are, in view of Mr. Riahi's practice and Mrs. Riahi's alleged ownership of 20 shares, a number of other unexplained problems, deducible from the minutes of the 11 o'clock meeting. First, Jahan Shahriar, who was a shareholder until an hour earlier, appears to have lost all his shares, because it is inconceivable that Mr. Riahi had only kept 28 shares for himself, Jahan Shahriar, and Malek Massoud. In such a situation, knowing that Mr. Riahi had owned 14 shares until an hour earlier, the impossible must

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directors and that Mrs. Riahi was elected to serve as an alternate member of the board in the shareholders extraordinary general meeting held on 13 August 1977.

[282] Here too, Mr. Riahi signs the minutes vaguely as the owner and representative of 28 shares without specifying how and among whom those shares were divided. (See, also, supra, paragraph 146 and note 261.)

[283] Paragraphs 205-212 of the Award.

be presumed: that Jahan Shahriar and Malek Massoud owned 7 shares each, but Mrs. Riahi owned 20 shares. Second, were we even to assume, based on Mr. Riahi's settled practice, that Malek Massoud owned 20 shares as did the Claimant, then 1) Mr. Riahi must be taken to have lost 6 of the 14 shares he owned an hour earlier, or 2) that he and Malek Massoud each owned 14 shares, which inexplicably renders Malek Massoud's shares lower than the amount of shares allegedly accorded to the Claimant.

159. With the intention to accord some weight to the minutes of the meeting allegedly held at 11 a.m. on 5 March 1979, the Claimant relies on a draft letter of the Office for Registration of Companies dated 4 July 1979, wherein it requires (referring to the minutes of 5 March 1979) that the minutes of the meeting of the board of directors approving the collection of the company's shares and issuance of new shares be provided.[284] The date of the letter falls four months after the date of the alleged meeting, 3 months and a half after the death of Amir Saeed and about 35 days after the death of Jahan Shahriar.

160. Were we to ignore, all the above irregularities and incongruities that militate against the validity of the above minutes of the meetings and to presume that the shares were transferred (donated) to the Claimant by her husband pursuant to the authority he allegedly enjoyed from his sons or by law, the ownership claim must still fail based on many other grounds.

161. To begin with, the most that can be concluded based on this evidence is that at the company's shareholders meeting it was agreed that the registered shares of the

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[284] It is not clear whether or not this handwritten draft was ever reduced to a letter and issued, either on the date that it was drafted or on any later date, because under the letter there appears a handwritten note signed on 7 July 1979 by Mr. Vaghefi on behalf of Gav Daran stating that the deficiency was observed and "[t]here is no need for the issuance of this letter. The deficiency will be rectified."

company should be converted to bearer shares.[285] Therefore, the evidence, even if authentic, fails to satisfy the Claimant's burden of proving that at any time prior to the meeting, those 20 registered shares were properly transferred to her. Not being a document proving the actual transfer of shares, proof of transfer of 20 registered shares based on a valid transaction prior to that date, is wanting. The Claimant has been unable to prove that the transfer of those registered shares was ever recorded in her name in the share register book of the company, which is a requirement under Article 40 of the Iranian Commercial Code and Articles 47 and 48 of the Registration of Deeds and Properties Act, previously confirmed by the awards of this Tribunal.[286] Tarvandan's share register book, which recorded the registration of transferred shares at the time of transfer, together with the share certificates issued by Bank Tehran,[287] clearly demonstrate that, for a valid transfer of registered shares, the transfer and delivery should have been reflected in the share register book and on the back of the already issued share certificates.

162. Moreover, all flaws cited and objections discussed in connection with the Claimant's ownership of shares in Rahmat Abad and Tarvandan would apply with full and equal force to these shares.[288] Those flaws and objections include the nullity of Mr. Riahi's alleged attempts to transfer shares of Jahan-Shahriar and Amir-Saeed to their stepmother because of, inter alia, i) the invalidity of Jahan Shahriar's power of attorney, ii) the incapacity of both Jahan Shahriar and Amir Saeed, iii) Mr. Riahi's

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[285] There is no evidence to show that the deficiency noted by the Office for Registration of Companies was ever rectified, as promised by Mr. Vaghefi, at any time prior to the expropriation of the company (supra note 284).

[286] See, supra, Section II.B.1.e., and paragraph 107, and the notes thereof.

[287] See, supra, paragraph 38.

[288] Similar to what we have observed with respect to other companies, the Claimant purports to prove her ownership of Gav Daran shares by introducing a letter issued on 16 July 1980 by Mrs. Moalej as managing director of the company, long after the expropriation date of Mr. Riahi's property in February that year. This letter is identical, in its format and content, to that written by Mr. Vaghefi with respect to Tarvandan and was issued pursuant to the instructions given by the Claimant and her husband. (See, also, supra, paragraph 139 and note 242, and paragraphs 149-150 and notes 268-269.)

lack of authority to donate, iv) non-fulfillment of the mandatory requirements of a contract of donation, v) non-existence of any transfer instrument, vi) non-observance of the best interest of the principal or ward by their attorney or guardian, vii) the impossibility of ratification of such actions, for not being in the best interest of the principal or ward and because of the termination of the actor's capacity as a guardian by the supervening death of those children, and viii) the irrelevance of the alleged admission by Mr. Riahi.[289]

II.B.5.b. Ownership of Gav Daran Shares Based on Contents of Safe

163. As observed above, the minutes of the extraordinary general shareholders meeting allegedly held on 5 March 1979 purport to convert the registered shares of Gav Daran to bearer shares, though there is evidence to show that the requirements for such transfers were not met until 4 July 1979 (supra paragraph 159). However, the Claimant maintained throughout the proceedings on the merits that the originals of her 20 shares were kept in her safe deposit box with Bank Mellat (previously Bank Tehran). The contents of that safe box were delivered to the Claimant pursuant to a Partial Settlement Agreement which formed the basis of a Partial Award on Agreed Terms.[290] Here too, the Claimant retreated from her earlier insistence and for no reason, let alone a good one, during the Hearing objected to any reliance on the contents of the safe, which included the alleged Gav Daran share certificates. To my regret, the Majority chose not to address the contents of the safe. Here too, the certificates kept in the safe deposit box demonstrate that the Claimant's allegation as to the ownership of 20 bearer shares was unfounded. Like the situation experienced with respect to Rahmat Abad and Tarvandan, these certificates were unnumbered and were signed only by the Claimant herself, which proves, on the one hand, that the shares of Gav Daran were probably not converted to bearer and that they were, on the

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[289] Supra, Section II.B.1 and its Subsection, and Section II.B.3.a.iii.

[290] Supra, paragraph 33.

other hand, just made at the last moment in a rush prior to the Claimant's departure from Iran.[291] Similar to that which was observed in connection with Tarvandan, the certificates found in the safe deposit box represented 51 bearer shares, though the capital of the company was admittedly divided into only 50 shares, and they show, on their face, that only 50 shares were issued.

II.B.6. Ownership of Personal Property in ASP Apartment[292]

164. To summarize, the Claimant alleges that when she left Iran in September 1979, she had various art works, antiques, furniture, household goods, and carpets with a total value of U.S. $476,691[293] in the ASP Apartment and that this property remained there until the time that her apartment and its contents were allegedly expropriated based on a court order that had expropriated Mr. Riahi's property on 24 or 27 February 1980, as the case might be.[294] The Claimant admits that this property had been owned by Mr. Riahi but alleges that it was given to her when she and Mr. Riahi decided to briefly live in the ASP Apartment. To bolster her allegation of ownership, the Claimant states that the property must be presumed to be hers because she possessed it on the premises which belonged to her. The Tribunal found it unnecessary to decide whether or not the Claimant owned the property, because she was unable to prove that the property existed in the Apartment on the day of the alleged expropriation or, even if the property remained there, that it was taken by the Government of Iran or by

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[291] Throughout the time, as evidenced by many minutes of meetings, and in any event at least from 5 March 1979 as is indicated in the minutes of the meeting allegedly held on that date, Mr. Riahi was the Chairman of the Gav Daran's board of directors.

[292] Fully concurring with the Award's application of the A18 caveat to the Claimant's claim in connection with the ASP Apartment (paragraphs 258-279 of the Award), I find it unnecessary to discuss ownership of the property here or its alleged expropriation.

[293] The Claimant's Statement of Claims does not specify what portion of her relief sought covers this item of claim. This amount was mentioned for the first time in the Claimant's Hearing Memorial filed in February 1993.

[294] See, supra note 177, and infra note 315.

persons for whose action that Government could be found liable under the rules of law.[295] While agreeing with the Tribunal's eventual findings, I would have also denied the claim for lack of proof of ownership prior to reaching those stages.

165. As also noted by the Award, the Claimant's main evidence, apart from her and her husband's affidavits,[296] comprises certain lists and a few photos of certain items of furniture and paintings. The photos of furniture are professional and auction-like pictures taken within a royal blue background, completely detached from any real environment that might allow their visual attachment to any place or person. The same applies to the discrete photos taken of the paintings, showing them detached from the place where they were hung. Nothing is produced to show that any of these belonged to the Claimant and were in the ASP Apartment. Moreover, the Claimant admits that the furniture and most of the other items were owned by her husband and were kept, before being transferred to the Apartment, in a storeroom at the Riahi's former residence in Farmaniyeh. Therefore, this earlier ownership being a fact, convincing evidence is required to show that the status quo ante was changed by their transfer to Mrs. Riahi.

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[295] Paragraphs 228, and 368-376 of the Award. In addition to all that is stated by the Award in these latter paragraphs, one should bear in mind the fact that the Claimant expected the Chamber to accept her allegation that she had left nearly U.S. $500,000 worth of property at the Apartment notwithstanding the fact that it had been sequentially rented by her to two other persons (Mrs. Nassr and Mrs. Vahabzadeh), or that they were allowed to stay there after her and her husband's departure from Iran. Against a reasonable and logical expectation, there is even nothing on file to show that a list of such precious property was drawn up and signed by Mr. or Mrs. Riahi and any of those tenants or caretakers.

[296] The Claimant's mother has stated, in an affidavit, that she had shipped certain china and Iranian wedding silver to her daughter in Tehran in 1975. The ironic allegation that Iranian silver sets were shipped from United States to Iran apart, the fact of the matter is that this shipment happened at least a year before the sale of the Farmaniyeh house, and there is nothing to persuade any person that such easily disposable and removable items were still owned by the Claimant, and were moved and kept in the Apartment until the time of the alleged expropriation of the Apartment.

166. During the proceedings related to the Claimant's effective and dominant nationality, the Claimant and her husband maintained that in early 1976 they had the intention to leave Iran, and because of that they sold their house in Farmaniyeh and packed their household belongings for overseas shipment. It was further alleged that, after moving to a hotel and another apartment, they "briefly resided from June to September 1979 in the Asp [Apartment]... in order to avoid leaving their property [the Apartment] vacant and susceptible to taking by Iran."[297] By these allegations, the Claimant led the Tribunal to conclude that it "does not see any evidence suggesting that the Claimant intended to live in Iran permanently."[298] When the proceedings reached the merits, the Claimant changed her position drastically and alleged that they furnished the Apartment with nearly U.S. $500,000 worth of property, even though, as they had alleged, it was susceptible to taking by Iran and they intended to reside there only briefly. Actually, she and her husband resided there together for less than 2 months, and she stayed for an additional month after her husband's departure.

167. Apart from the above strange shift in the Claimant's positions, Mr. Riahi's diary speaks of the property as his and not his wife's. With respect to the Farmaniyeh house and furniture and other properties and antiquities therein contained, Mr. Riahi states that he and his wife "left Farmaniyeh," and he "set a big storeroom in a part of the garden belonging to [his] son, Jahan Shahriar, and stored the furniture of [his] house, that was packed by [a] German entity ..., there."[299] Then, in another entry related to 5 July 1979, Mr. Riahi continues to state that "by making use of the furniture from the storeroom of Farmaniyeh, and a little furniture belonging to us in our Saman apartment [that too furnished earlier from the Farmaniyeh storeroom], we somewhat

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[297] Riahi Interlocutory, paras. 13 and 39, at 180 and 187, supra, note 1.

[298] Id., para. 39, at 187.

[299] Mr. Riahi's diary, page 508 (emphasis added). At page 757, he states that "I succeeded in selling the Farmaniyeh residence and gathering and packing my furniture and collection of antiques." (Emphasis added.)

furnished the ASP Apartment to make it somehow useable."[300] Thus, Mr. Riahi's own diary demonstrates that the furniture, furnished at the lowest requirement to make the Apartment useable, belonged to him. There is no indication, whatsoever, to suggest that property belonged to his wife or that he transferred it to her at any point of time.

168. Unsurprisingly, to those who are familiar with the Claimant's behaviour in this Case, the Claimant's reliance on a selective portion of Professor Seyyed Hassan Imami's book is misleading and misplaced. That part of the book referred to by the Claimant falls under a chapter dealing with lost and found items of property and the situation wherein any such item is found on the property of others. The book cites Article 166 of the Iranian Civil Code which provides, in part, that:

> If anyone finds an article on another person's property or on property that has been bought from another and presumes that the article belongs to the present or former owner, he must inform them. ...

In our case here, the property was not lost property found on premises belonging to another person. The property admittedly belonged to the Claimant's husband who had used it to furnish their common residence, though it was a temporary one.[301] Therefore, being against a previously established status, it is the contrary that must be proven. Interestingly, even with respect to a found item, the Article continues to provide that the present or previous owners can claim ownership "if their ownership is established by indications," otherwise all the rules governing a found item must be observed.[302]

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[300] Id., page 873. Mr. Riahi converts the 14/4/1358 Iranian solar calendar date to 5/6/1979, Gregorian calendar date, which is a wrong conversion.

[301] According to Iranian law, the husband must provide for the dwelling, clothing, food, and furniture necessary for the wife's living (Articles 1106-1112 of the Iranian Civil Code). Thus, unless a contract to the contrary is produced, the property, belongs to the head of the family (the husband), except for personal items like jewelry and dresses that customarily belong to the wife.

[302] Professor Seyyed Hassan Imami, Civil Law Vol. 1 (6th edition 1977), p. 149.

II.B.7. Contractual Rights to Farahzad Apartments

169. Although I fully concur with the Award's application of the A18 caveat to the Claimant's claim in connection with the Claimant's contractual rights related to Farahzad Apartments (paragraphs 280-283 of the Award), and I find it unnecessary to discuss the ownership of such rights here, I am of the opinion, as I will discuss later when it comes to the issue of expropriation, that the claim also fails on the grounds that i) the Claimant's rights were not expropriated, ii) any such claim should have been raised against an independent entity, Shah Goli, which was not named as a respondent in these proceedings, and iii) the claim was not outstanding prior to 19 January 1981.[303]

II.B.8. Ownership of Automobiles

170. The Tribunal has rejected the Claimant's allegation with respect to an Iranian-made (Peykan) car but accepts her ownership of a Toyota car. I agree with both these findings, though the Tribunal's acceptance of the ownership of the Toyota is not based entirely on direct evidence (paragraphs 231-233 of the Award).

171. As the Tribunal has noted, the Claimant attempts to prove her ownership of the Peykan mainly by adducing her Affidavits and those of her husband. Although the Claimant also relies on her husband's diary (pages 834 and 978-979), these entries refer to a trip by Mrs. Riahi's Toyota to Rahmat Abad and to Mr. Riahi's being informed while abroad, by an undisclosed source on 13 March 1980, that the Toyota

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[303] In addition, the evidence shows that Mr. Riahi, and not Mrs. Riahi, was "the obligor" and payer of the purchase prices under the promissory notes. Article 197 of the Iranian Civil Code provides: "If the price or the subject of a transaction is a thing which belongs to another person, the transaction will be for the owner of that thing." Mr. Riahi stated at page 873 of his diary for 5 July 1979 that he had bought the Farahzad Apartments for himself. Further, the other evidence produced by the Claimant to prove the payment of certain promissory notes also shows that it was Mr. Riahi who had instructed the bank to effect the payments. This is further proof that the money in Mr. Riahi's account was used for payment of sale prices with respect to these apartments.

had been taken. Except for a reference to a stolen white Peykan,[304] there is no other indication in the diary that Mrs. Riahi had owned a green Peykan. The Claimant also relies on her husband's unaudited personal ledger, where, at page 17 for the year 1358 (starting 21 March 1979 and ending 20 March 1980) a debit entry of Rls. 100,000 is recorded and a note is added which reads: "Peykan belonging to Frederica Riahi (my wife), purchased in Esfand 1353 [February 20-March 20, 1975] for Rls 300,000." The purchase date thus falls prior to the date when the white Peykan was reported as stolen in Mr. Riahi's diary. In another entry at the same page, it is reported that a Toyota was purchased for Mrs. Riahi in Azar 1356 (November 21-December 20 1977). There is no explanation as to why transactions occurring about 3 years apart are reported together in the ledger for the year 1358 (1979-1980), and there is nothing to explain whether these entries were carried over from previous ledgers, and if so, why, and from which ledger.

172. Assuming, arguendo, that the prior purchase of the Peykan car is proven by Mr. Riahi's personal ledger, proof is still wanting as to the continuous ownership of the car until the time of the alleged expropriation. In addition to the deed of purchase, in Iran, similar to many other countries, I presume, a vehicle registration card is issued for each car by the Government (police authorities in main) wherein the car's license plate number and chassis number are reflected. No owner departs from these important ownership documents. The card being an instrument necessary for proof of ownership when selling and when stopped by the police, it is never left in the car unattended as the Claimant would have the Tribunal to believe. I therefore concur with the Tribunal that in the absence of any ownership document, the Claimant's claim with respect to the Peykan must be dismissed for lack of proof of ownership.

173. In contrast, not only is there more direct evidence proving that the Claimant owned a Toyota until around the time of expropriation, but what contributes more to the weight to be accorded to this evidence is the fact that the Foundation for the

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[304] Mr. Riahi's diary, page 497, entry for 6 August 1976.

Oppressed admitted, in its letter of 14 May 1983 to the Islamic Revolutionary Court of Isfahan, that it had in its possession a blue Toyota with police registration number 58855, Tehran-22. Notwithstanding its claim that the car belonged to Mr. Nabavi, which might have been a correct assertion because Mr. Nabavi also owned a blue Toyota, the Respondent failed to produce any evidence in the form of a registration card, deed of purchase, or even an affidavit from Mr. Nabavi that the car actually belonged to him. This the Respondent could have easily done, and failing which it acted to its own peril.

II.B.9. Ownership of Horses

174. While denying the Claimant's claim for ownership of two horses (Festival and Sharareh) based on hard evidence in the form of their official identity cards (passports),[305] the Tribunal has accepted the ownership of two other horses (Tarlon and Pishdad) on very flimsy evidence, against other direct and circumstantial evidence on file and the presumption, acknowledged by the Majority, that a foal belongs to the owner of the mare.[306] I dissent from the Majority's findings with respect to the latter horses.

175. To challenge the fact that Festival was registered in the name of Daryoush Elghanian and that no transfer of ownership, or any other form of transfer, is recorded in the relevant columns of the identity card of the horse, the Claimant relies on an apparently self serving second affidavit by Mr. Fereydoun Elghanian wherein it is alleged that although he had initially purchased Festival for his son (Daryoush), the horse was later transferred to Mrs. Riahi because it was not suitable for his son.[307] This

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[305] Paragraphs 244-245 of the Award.

[306] Id., paragraphs 246-247. The claim for Tarlon was later denied for lack of proof of expropriation (id., paragraph 386).

[307] Mr. Elghanian was a horse breeder and rider himself. His property was expropriated soon after the success of the Islamic Revolution. He would, therefore, do anything within his ability to save his horse from expropriation. This practice is not unprecedented either.

allegation was absent in Mr. Elghanian's first affidavit and was put forth after the production of the Festival's identity card by the Respondent. With respect to Sharareh, Mr. Kambiz Atabai claims in his affidavit that he had, as the owner, transferred Sharareh to Mrs. Riahi. There is, however, no explanation as to why Sharareh's identity card reflects the ownership of the horse by the Royal Stable. This gains particular importance if we recall that Mr. Atabai was, at the time, general director of the Royal Horse Society and the Royal Stables.[308]

176. Before discussing my views as to the ownership of Tarlon and Pishdad, I have to state here that the Respondent has produced a number of affidavits by relatives of Mr. Riahi and ex-workers of the Rahmat Abad farm[309] who testified to the facts that Mr. Riahi was a horse lover and rider and that he himself, not his wife, owned a number of horses, though Mrs. Riahi also used to ride them when visiting the farm for leisure. They actually refer to horses owned by Mr. Riahi, such as Apollo and Ajin. Similarly, while Mr. Riahi's diary refers to the ownership of Ajin and Apollo,[310] there is no reference to Mrs. Riahi's ownership with respect to other horses. This lack of reference to Mrs. Riahi's ownership is telling because he has referred, in one entry at the time of the success of the Islamic Revolution, to Tarlon and Sharareh as being in

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There were situations wherein a non-owner of a horse presented himself as the owner to save the horse of another or to receive compensation for a person who could not be qualified as a claimant before this Tribunal. (See, Leonard and Mavis Daley and The Islamic Republic of Iran, Award No. 360-10514-1, Concurring and Dissenting of Opinion of Assadollah Noori, paras. 18-20 (filed on 3 June 1988), reprinted in 18 Iran-U.S. C.T.R. 244, at 256-258.

[308] The Atabai family, including Mr. Kambiz Atabai (a horse fancier and owner himself) and particularly his father, were very close to the ex-Shah of Iran, and their properties were expropriated soon after the success of the Islamic Revolution in Iran.

[309] In addition to being a longtime Managing Director of Rahmat Abad until the appointment of Mr. Nabavi to replace her, Mrs. Hatefi (Jazani), one of the affiants, was also a close relative of Mr. Riahi. This makes her affidavit more reliable than the others.

[310] Notwithstanding the fact that the Claimant has not claimed the ownership or expropriation of these two horses, page 551 of Mr. Riahi's diary purports to state that they belonged to Mrs. Riahi.

Rahmat Abad,[311] and to the birth of the foal, Pishdad, in another place on a later date.[312]

177. Returning to the ownership of the two remaining horses, the Majority accepts the Claimant's ownership of Tarlon based solely on a single affidavit of a Colonel Sohrab Khalvati, admittedly supporting only "partly" the Claimant's ownership allegation. Not only is this affidavit rebutted by four affidavits produced by relatives of Mr. Riahi and ex-workers of the Rahmat Abad farm who continued to live in the area, but its content also remains uncorroborated by any other evidence, Mr. Riahi's own diary included. Not having been presented with even prima facie evidence of ownership, the Majority has erred, in my view, by hastily shifting the burden of proof to the Respondent, expecting it to produce evidence showing that the horse was not owned by the Claimant.[313] The Majority's finding in connection with the ownership of the foal, Pishdad, is even weaker. The Tribunal has already found that Sharareh (the mare) was not owned by the Claimant. The Majority also shows familiarity with the strong presumption that a foal belongs to the owner of the mare. The only evidence apparently considered by the Majority to lessen this presumption is the fact that Pishdad was born at Rahmat Abad.[314] This finding is, in my view, untenable. The fact that the Riahis accepted to do a favour for a friend, Mr. Elghanian, by allowing him to keep his horse at Rahmat Abad, at the pick of the Revolution and the fact that the horse was pregnant cannot be taken to bestow the ownership of the foal upon the

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[311] In entries for days close to the success of the Islamic Revolution in February 1979 (page 767 of the diary), Mr. Riahi states that Sharareh is eight months pregnant and that they enjoyed riding Tarlon.

[312] At page 825, related to the end of March 1979, Mr. Riahi reports the birth of a foal named Pishdad.

[313] Paragraph 246 of the Award. The situation is totally different from that which obtained with respect to the Toyota car. There, unlike here, the evidence was much stronger. In addition, there was no doubt or dispute that the Foundation for the Oppressed has continuously had in its possession a blue Toyota car that was reported to have been owned first by Mr. Riahi and later allegedly by Mr. Nabavi. The Respondent failed to even produce an affidavit from Mr. Nabavi, whose ownership it invoked.

[314] Paragraph 247 of the Award.

Claimant. Moreover, although Mr. Nabavi testified at the Hearing that one mare and one young stallion were at the farm when Revolutionary Guards arrived there (paragraph 385 of the Award), he stopped short of testifying that these two horses (the young one believed by the Majority to be Pishdad) belonged to the Claimant.

III. NATIONALIZATION AND EXPROPRIATION

178. I agree with the Tribunal's finding that, except for nationalization of Bank Tehran shares, none of the property belonging to the Claimant was expropriated de jure by the Respondent. The facts surrounding the taking of the shares in Bank Tehran being totally different from other claims, I will treat the de jure expropriation (nationalization) first and separately. Before that, however, I will briefly express myself as to why I support the Tribunal's finding that the Order (judgment) of 24 or 27 February 1980 of the Islamic Revolutionary Court of Isfahan must be limited to the expropriation of Mr. Riahi's property, and not that allegedly owned by the Claimant.[315]

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[315] As stated earlier, the Respondent believes that the date when the Court decision was taken with respect Mr. Riahi's property (24 February 1980) must be accepted as the expropriation date of that property. On the other hand, the Claimant maintains that 27 February 1980 (the date that the decision was registered and numbered in the register book of the Court) must be taken to be the expropriation date of Mr. Riahi's property. The difference, in their views, would have, positively or negatively, affected the Claimant's allegation of receiving 1,750 (1,250 plus 510) Khoshkeh shares donated on that date or thereafter, because, depending on which alternative is accepted, Mr. Riahi would be taken to have had the right to donate them, or to have lost such a right even if they were part of his own property. I have discussed in detail why the Claimant's claim for ownership of these shares should have failed in either situation (paragraphs 106-116, above). However, this difference of opinion has no bearing here because I concur with the Award's finding that none of the Claimant's properties was de jure expropriated based on that Court Order.

III.A. GENERAL DISCUSSION REGARDIN DE JURE EXPROPRIATION

179. The February 1980 Court Order is specific on this. After citing a number of reasons all related to Mr. Riahi's personal conduct and his being a relative of, and closely connected to, the Pahlavi dynasty, exploiting peasants and farmers, having had connections with foreign embassies, and plundering the wealth of the nation, the Court ordered the expropriation of all his property for the benefit of the poor. No mention is made of other members of the family, his sons, wife, brothers, or sisters. Having faced with the situation, in the course of finding the property belonging to Mr. Riahi, wherein certain properties were fictitiously or otherwise registered in the name of his first degree relatives, the Foundation for the Oppressed had to return in 1983 to the Revolutionary Court of Isfahan for clarification of its earlier decision. In its letter of 14 May 1983, the Foundation sought the Court's interpretation of its judgment issued in February 1980 because "the expropriation order ... [did] not apply to first degree relatives," and "in most cases, due to the reason that the children of the condemned individual [Riahi] [held] shares in the estates and property," and because it "[had] not succeeded in taking that property." The letter lists certain specific items of property over which the Foundation could admittedly exert, by that time, a sort of supervision "solely for protection until determination of their final fate," and because they were abandoned and could have been subjected to "theft" and "destruction." These items of property comprised the Rahmat Abad farm and its pigeon tower, the company's office in Tehran, two apartments in Youssefabad, a Toyota car, and a villa located in Neshtarood, in the north of Iran.[316] Confirming the previous Order, the Court finally ruled on that request on 7 February 1986, stating that "faked shares in the name of others are null and void" and must be considered Mr. Riahi's property.

180. There are two other pieces of evidence that conclusively demonstrate that no official (de jure) decision as to the expropriation of all the Riahi family's property (other than the portions owned by Mr. Riahi of the items listed in the 1983 letter of the

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[316] One of the Apartments and this villa are not at issue in this Case.

Foundation) was taken prior to the second verdict of the Revolutionary Court, and, in any event, not before the Tribunal's jurisdictional cut-off date, pursuant to the Order of February 1980. First, paragraph 4 of the Process Verbal signed between the representatives of the Foundation for the Oppressed and the former Bank Keshavarzi (Agricultural Bank) on 18 March 1983, states, with respect to the loan obtained by Mr. Riahi mortgaging the Rahmat Abad farm, that since "measures are about to be taken in order to clarify the legal aspects of the Foundation's share [in the property] ... if the Foundation is considered to be the owner of the whole property, it [the Foundation] shall repay the related debts ... in 30 installments... otherwise it shall repay the debts proportionate to the Foundation's share in one installment." Second, as also noted by the Award (paragraph 307) and will be discussed later with respect to the expropriation of other companies, it was not until 23 May 1984 that Messrs. Hosseinof and Khabbaz were assigned to find other properties belonging to Mr. Riahi who, pursuant to that assignment, found a property located at No. 781 Koucheh Mahtab (Eisenhower Avenue) on 16 October 1984.

181. Therefore, not only was the de jure expropriation of all the property listed in the Foundation's letter still in limbo at the time of the letter, remaining so until the second verdict of the Revolutionary Court, but there is not even an indication in either the 1983 letter or the 1986 Court verdict -- let alone in the February 1980 Order -- based on which one could logically presume that the Claimant's property was de jure expropriated prior to the Tribunal's jurisdictional cut-off date of 19 January 1981.

182. To bolster her allegation that the Court Order of February 1980 must be taken, despite the absence of any reference to her name, to cover the property of Mr. Riahi's wife and children, the Claimant relies on the provision of the Law adding One Note to Article 2 of the Act for Protection and Development of Iranian Industries, and two other judgments of the Islamic Revolutionary Courts dated 12 April and 8 October 1979, all of which are totally irrelevant to the case at hand. These, in the Claimant's view, demonstrate that the Respondent's established policy was not to recognize any border between property rights separately owned by various members of a family.

183. To begin with, the judgment of February 1980 and that of 1986 extending the import of the former to shares belonging to first degree relatives of Mr. Riahi who had fictitiously acquired such ownership rights support the conclusion that, unless specifically indicated in a law, court order, or verdict, their contents must not be extended to persons not affected. However, Paragraph B of the Act for Protection and Development of Iranian Industries relates to the ownership of heavy industries.[317] A note added on 13 August 1979 to Article 2 of this Act provided that since the individuals falling under Paragraph B of the Act had often recorded their own shares in the names of their relatives, shares owned by their spouses and children, and by their brothers and sisters if a commission to be established for this purpose so decided, were to be subjected to the provisions of Paragraph B. Likewise, the judgment of 12 April 1979 expropriating the property of 209 individual specifically referred to the spouses and children of those named, as did the judgment of 8 October 1979 that expropriated the property of 38 other individuals.[318] The fact that the above Note to the Act for Protection and Development of Iranian Industries and these two judgments were all issued prior to the Court Order of February 1980 gives a very telling meaning to the absence of any such references in the latter Order.[319]

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[317] The Act was not applied to Mr. Riahi because neither he nor any of his companies were covered by it. Indeed, a list of the 51 individuals who fell under the application of Paragraph B was attached to the Act.

[318] Mr. Riahi is not named in any of these judgments.

[319] The letter of 20 November 1991, allegedly sent by the head of the Registration Office of the North West Zone of Tehran to a notary public office declaring invalid, rightly or wrongly, a previous transfer by Mr. Riahi to his ex-wife, Mrs. Azizeh Khan Zand (Riahi) based on the judgment of 15 February 1986 is totally irrelevant. In addition to being issued towards the end of 1991, the letter clearly shows that it was based on this latter judgment of 1986 interpreting the February 1980 Order. Moreover, the Tribunal has not been made privy to whether or not its application was, successfully or otherwise, challenged by Mrs. Azizeh Khan Zand. Although this lady appeared before the Tribunal in May 2000, she made no mention of such a complaint.

184. Moreover, even in the circumstances wherein a law or verdict exists which generally expropriates a person's property, the long standing precedent established by the Tribunal, including that of this Chamber in Vera-Jo Miller Aryeh, et al., shows that the application of the law or decree to each particular property involved must depend on the measures taken based on that law or decree with respect to that Particular property, which might differ from one property to the other.[320]

III.B. NATIONALIZATION OF BANK TEHRAN SHARES

185. Without any prejudice to my views expressed with respect to the application of the A18 caveat to the claim related to Bank Tehran sharés (supra Section II.A.I.b.), I concur with the Award's finding that Bank Tehran was nationalized on 11 June 1979, entailing the nationalization of shares belonging to that Bank's shareholders. This finding is supported by the amply established precedent of the Tribunal confirming that banking institutions in Iran were nationalized pursuant to the 11 June 1979 decree of the Revolutionary Council of the Islamic Republic of Iran, known as the Law of Nationalization of Banks.[321]

III.C. EXPROPRIATION OF IRAN BÖHLER SHARES

186. For the reasons stated in paragraphs 178-184, above, I concur in the Award's finding that the Claimant's shares in Iran Böhler were not de jure expropriated based on the Isfahan Revolutionary Court's Order of February 1980. I concur also in the Award's finding that the question with respect to this claim is not whether Iran Böhler fell under the control of the Government of Iran because of the expropriation of the

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[320] Vera-Jo Miller Aryeh, paras. 189-202, supra note 7, at 326-330, wherein the Tribunal looked for specific measures against KTT and GTT (the entities involved) to see when and how the general verdict dated 12 April 1979 of the Revolutionary Court expropriating the Aryeh family's property (supra paragraph 183), was actually applied to those entities.

[321] Paragraphs 290-295 of the Award.

Claimant's shares. As the Tribunal has noted, the company remained within the control of its shareholders and continued to be managed by them (paragraphs 310-311 of the Award). Since one of its March 1983 award in Ataollah Golpira, this Tribunal made it abundantly clear that expropriation of shares of even a majority shareholder does not automatically amount to expropriation of the company involved and the shares belonging to other shareholders.[322] This precedent was frequently confirmed thereafter, inter alia, by the awards rendered by this Chamber more than 11 years later in Catherine Etezadi,[323] and Mohsen Asgari Nazari.[324]

187. On the other hand, the Award also noted the subtle and very important distinction appreciated by the established precedent of the Tribunal that appointment of temporary directors -- more so of temporary supervisors -- does not automatically amount to expropriation of the company as such, unless other conditions are met.[325] In the Case

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[322] Ataollah Golpira, supra note 22, at 175-176. There the Tribunal held that the control exerted by the Foundation for the Oppressed over the entity involved because of the expropriation of shares belonging to a majority shareholder could not be construed to amount to the expropriation of the Claimant's shares, though the Tribunal found -- unlike our case here -- that other shareholders did not receive notice of meetings or other communications.

[323] Catherine Etezadi and The Government of the Islamic Republic of Iran, Award No. 554-319-1, para. 62, (23 March 1994), reprinted in 30 Iran-U.S. C.T.R. 22, at 398-399, wherein the Tribunal denied the expropriation of the Claimant's shares in Shiraz Plastic Product Corporation, notwithstanding its finding that 32.5% of the shares of the company had "been taken under government control and that the supervisor and temporary manager" were appointed ("Catherine Etezadi").

[324] Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, Award No. 559-221-1, paras. 121 et seq. (24 August 1994), reprinted in 29 Iran-U.S. C.T.R. 123, at 158 et seq., wherein the Tribunal noted, as is the situation here, that the company existed and that the mere taking of the shares of the majority shareholder could not amount to the taking of the Claimant's shares.

[325] See, e.g., Catherine Etezadi, supra note 323; James M. Saghi et al. and The Islamic Republic of Iran, Award No. 544-298-2, para. 75 (22 January 1993), reprinted in 29 Iran-U.S. C.T.R. 20, at 44 ("Saghi"); Motorola Inc. and Iran National Airline Corporation, et al., Award No. 373-481-3, para. 59 (28 June 1988), reprinted in 19 Iran U.S. C.T.R. 73, at 85-86; and Otis Elevator Company and The Islamic Republic of Iran, et al., Award No. 304-284-2, paras. 40-44 (29 April 1987), reprinted in 14 Iran-U.S. C.T.R. 283, at 297-298.

at hand, it has not been doubted that the shares belonging to the Austrian company (Böhler International) and certain Iranian shareholders (such as Messrs. Khajeh-Nouri and his family, All-e-Ahmad, Movasseghi, Farzandshad, and Mirmohammad) were not expropriated.[326] There is no evidence either to demonstrate that any specific action was taken with respect to the Claimant's shares in Iran Böhler prior to the Tribunal's jurisdictional cut-off date. Thus, in the particular circumstances of this claim, it is wrong to conclude that the mere appointment of a temporary supervisor or director had led to the expropriation of Iran Böhler or of the Claimant's shares.

188. For all the above reasons and the additional reason that the company did not fall under any of the categories of industry contemplated by the Act for the Protection and Development of Industries, it came as a surprise to see that the Majority deems the Claimant's shares as expropriated on 1 March 1980, when a managing director was appointed to Iran Böhler by the Ministry of Industries and Mines.[327] What remains to be seen, however, is what specific action had actually been taken with respect to Mrs. Riahi's shares in Iran Böhler that could be qualified as a final, conclusive, and irreversible expropriation of those shares. Indeed, neither the Claimant nor the Award has been able to pinpoint any measure taken by the Respondent against the Claimant's shares except for stating that, pursuant to an 8 March 1981 assignment, a representative of the Foundation for the Oppressed represented 2,631 shares of the Riahis in a shareholders meeting held on 8 March 1981 (paragraphs 297, 300 and 311 of the Award). This is the first and the only tangible involvement of the Foundation

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[326] Many documents related to March 1981 and thereafter show that, as late as 20 March 1986, the above company and certain Iranian individuals together held about 61% of the company's shares. Mr. All-e-Ahmad, a minor shareholder of the company and apparently a director at some point of time, testified in his written affidavit that for a short period at the beginning of the Revolution a supervisor from the Ministry of Industries and Mines was appointed to make sure that the company would be managed in the same manner as it was managed prior to that time. Later, representatives of the Foundation represented only the shares that were expropriated.

[327] See, supra paragraphs 182-183. Iran Böhler cannot be found to have been expropriated pursuant to that Act. It has not been alleged that Mr. Riahi or any members of his family were included in the list of 51 persons promulgated pursuant to Note B to the Act. Therefore, any reliance on that law is misplaced.

and evidence of any previous specific action is wanting. Therefore, even if I had been able to surmount the application of the A18 caveat (supra Section II.A.2.), I would have denied the claim for lack of proof of an outstanding claim (expropriation) prior to 19 January 1981.

III.D. EXPROPRIATION OF KHOSKEH SHARES

189. Based on all that I have stated in paragraphs 178-184, and in the previous Section in connection with the expropriation of Iran Böhler, I concur in the Award's finding that the Claimant's shares in Khoshkeh, if any, were not expropriated de jure in February 1980 based on the Isfahan Revolutionary Court's Order, which by its plain terms covered solely the property belonging to Mr. Riahi. In addition to the aforementioned reasons, there are three other pieces of evidence specifically related to this claim that undermine such a conclusion.[328]

190. The Claimant produced in evidence two letters, one apparently written on 18 Khordad 1359 (8 June 1980) by the Foundation for the Oppressed, wherein a Mr. Noori was assigned on that date to refer to Khoshkeh and to find out about Mr. Riahi's ownership in that company. Another letter issued 8 days later on 16 June 1980 by the Foundation, this time addressed to Khoshkeh, instructed this company to "refrain from payment of any dividends or making transfer of shares" of Mr. Riahi because his property had been expropriated based on a decree of the Islamic Revolutionary Court. Neither of these letters proves the expropriation of the Claimant's shares in Khoshkeh. Rather, the first letter shows that no action had been started with respect to Khoshkeh until 8 June 1980, to say the least, that too limited to investigating Mr. Riahi's

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[328] The Claimant has also relied on a general circular by the Foundation for the Oppressed published in the Official Gazette of 13 July 1980 preventing companies, with the intention to forestall the plundering of the nation's wealth during the chaotic aftermath of the Revolution, from transferring shares without prior approval. This circular has no direct bearing on the Claimant's expropriation allegation. In any event, it does not prove that the expropriation of Mr. Riahi's property extended to Mrs. Riahi's property on that or any prior date.

ownership in Khoshkeh. The second letter is intended to preserve the status quo by preventing transfer of Mr. Riahi's shares to others. Bearing no reference to Mrs. Riahi's name or shares, this second letter makes it clear that her property had not yet been subjected to any measure by 16 June 1980.

191. The other evidence is the famous undated and unsigned typed note which had allegedly been sent to Mr. Riahi by Mr. Khajeh-Nouri as an attachment to his letter of 17 May 1989.[329] In this note it is stated that "[a]ccording to decree no. 361-58 dated February 27, 1980 [Esfand 8, '58], only the shares of Mr. Manouchehr Riahi have been expropriated and there is no reference to the name of Ms. Frederica Riahi or close relatives." Thus, rather than corroborating, this note refutes any allegation that the February 1980 Order had anything to do with the Claimant's property.

192. The first apparent intervention by the Foundation for the Oppressed appears to have occurred on 5 July 1980. For no clear reason, representatives of the Foundation for the Oppressed participated in the Company's extraordinary meeting, representing the 4,465 shares owned by the Riahi family. The Tribunal, thus, finds that the Foundation for the Oppressed expropriated all the Riahis' shares on that date because its representative represented those shares without differentiating between the owners of them. Subject to my view with respect to the ownership of shares,[330] I concurred in this finding, though the act does not appear to me to be a final and conclusive deprivative measure and the Respondent asserted that this participation was a mistake and that it could not explain the action because of the death of Mr. Mihmanchi, who had participated in that general meeting.

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[329] Supra Paragraphs 104 and 115.

[330] Supra Section II.B.2.

III.E. EXPROPRIATION OF RAHMAT ABAD SHARES

193. While agreeing with the Award's finding that the Claimant's shares in Rahmat Abad were not de jure expropriated based on the February 1980 Court Order expropriating Mr. Riahi's property (see, also, paragraphs 178-184, above), I disagree with the Majority that fixes the de facto expropriation of the Claimant's shares, if owned, on 27 February 1980, which coincides with the Islamic Revolutionary Court's Order. In my view, Rahmat Abad as a whole, and Mrs. Riahi's shares in particular, were not expropriated prior to 19 January 1981, though certain actions were taken prior to that date, first by the Revolutionary Guards and later by the Foundation for the Oppressed. The evidence introduced to prove the de facto expropriation falls short of proving such an allegation. Rather, it indicates that the measures taken did not culminate in the expropriation of the farm or the shares Mrs. Riahi allegedly owned in Rahmat Abad.

194. In support of her expropriation claim in this respect, the Claimant relies on a series of documents listed in paragraph 325 of the Award. To start with the letters allegedly written by Mr. Nabavi, the first letter, on which the Claimant and the Majority have heavily relied, is dated 19 March 1980.[331] This is the only letter that Mr. Nabavi has accepted to have written to Mr. Riahi.[332] It is true that this letter states that the Revolutionary Guards came to the farm on 1 February 1980 and that Mr. Nabavi was shown an order allegedly stating that "since Manouchehr Riahi... has run and his farm is without any caretaker, they were assigned with this said decree to protect and safeguard it." Thus, irrespective of the fact that no copy of such an order has been produced in evidence, the text of Mr. Nabavi's letter, as translated by the Claimant, demonstrates that the visit by the Guards was not to expropriate the farm but to "safeguard" it from vandalism. Logically for this purpose, they carried out an

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[331] The date of this letter was wrongly converted to 20 March 1980 by the Claimant. As also noted by the Award (footnote 38), a number of such mistakes occurred because the Parties to the Case lost sight of the fact that 1980 was a leap year.

[332] Paragraphs 335 and 347 of the Award.

inventory and listed the contents of the guest house but "did not take away the furniture" at the first visit. The day after, they returned and took a few items of property; namely carpets, a hunting picture, three guns, and a Blazer truck, providing a receipt as we shall observe soon. Mr. Nabavi's letter concludes: "Mr. Riahi, according to me and [continuing] in this way, Rahmatabad is lost and if nothing is done it will be ruined. If you think that, by coming here, you would not have any trouble, please come because in these people's view if [you] have not run away and if you have done nothing wrong why are you not coming back?"[333] Therefore, Mr. Nabavi believed at the time that expropriation was not final even in connection with Mr. Riahi, and that the property could have been returned if Mr. Riahi would come back.[334] The letter allegedly written by Mrs. Nabavi on 26 May 1980 leads to similar conclusions.[335]

195. Before continuing with Mr. Nabavi's other letters, it should be recalled here that the Claimant's and the Award's references to receipts given on 4 and 5 February 1980 by the Foundation for the Oppressed and Revolutionary Guards (paragraphs 325, 328, and 348) are references to the list of the items taken discussed in the above paragraph. The Majority has, therefore, erred in stating that "from 2 February 1980, authorities started to remove some items from the farm." (Paragraph 347 of the Award.) Removal

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[333] The Claimant's translation reads: "Mr. Riahi, to my understanding, Rahmatabad is lost and, if nothing is done, it will be ruined. If you think that, by coming here, you would not have any trouble, please come because these people are saying, if you have not run away and there is no trouble for you here, why are you not coming back."

[334] The Claimant's translation of a portion of the letter starts to imply that the Nabavis were "forbidden ... to send [their] children to school," though the rest of it clarifies that they were instructed not to have the children to be taken to school using, apparently, the farms' facilities. Not sending children to school is a crime in Iran and the next sentence translated by the Claimant actually clarifies the point further. The letter purports that notwithstanding all his other troubles and works, Mr. Nabavi, himself, had "to take them [the children] back and forth" to school.

[335] In this letter, Mrs. Nabavi states, inter alia, that Mr. Riahi should take action by appointing a lawyer because 1) after five months, no decision in connection with Rahmat Abad had yet been taken, 2) the expropriation Order was limited to the property of Mr. Riahi himself, and did not cover Mrs. Riahi and Malek Massoud, 3) the farm continued to be run by a number of their workers, 4) only one Guard was present there daily, and 5) "the presence of the Revolutionary Guards [was] to the benefit of every body."

of property was limited to those items on that single occasion, for which receipts were given. As will be discussed later, upon reaching the valuation stage, the personal property and all furniture in the buildings at Rahmat Abad farm belonged to Mr. Riahi's son, Malek Massoud.[336] However, such actions disprove rather than prove the alleged expropriation of Rahmat Abad on any of those dates. It is inconceivable that the expropriator would give receipt to the agent of the person whose property has been expropriated for a few of the larger items expropriated if the whole property was to be considered as taken. Indeed, Mr. Nabavi was at around the same time assigned to take care of the farm and the remaining properties. In a declaration signed by Mr. Nabavi (and countersigned by the person in charge of the Revolutionary Guards of Natanz), under which a reference is also made to the inventory list referred to in the previous paragraph, Mr. Nabavi declares, as the Managing Director of Rahmat Abad and agent of Mr. Riahi, that he undertakes "to take care of all moveable and immoveable properties of the farm and to continue with [his] work, even better than before, and to be responsible for any shortage or sabotage until the time that [he] returned the property, in good shape, to the owner thereof who is presently in Europe."[337] Nothing could declare more loudly than this piece of evidence at that juncture that no action had yet been taken by any authority, with respect to Mr. Riahi's property in general and with respect to the farm and moveable and immovable properties located thereon in particular.

196. Returning to the other letters of Mr. Nabavi, the Claimant also invokes an undated brief note, the addressee of which does not appear in the copy made available to the Tribunal. It starts with the word "Greetings" and, alleging that a seven-page letter concerning the status of the Rahmat Abad Company has been enclosed, it purports that there had been no negligence or oversight as of 31 January 1980 and that

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[336] A Process Verbal signed on 2 February 1980 shows that of three rifles found at Rahmat Abad, only one belonged to Mr. Riahi which was taken. The other rifles were not expropriated, as they belonged to Mr. Nabavi and Mr. Vaghefi.

[337] Emphasis added. Mr. Riahi admittedly resided in France for a long period before immigrating to the United States.

all properties were inventoried in the presence of representatives of responsible organs and delivered to them. Apart from Mr. Nabavi's admission that these letters were sent as dictated by Mr. Riahi,[338] this note adds nothing new to what we have observed above. As noted earlier, the Guards had inventoried the property at the farm on 2 February 1980 and entrusted it to Mr. Nabavi until its handover to its owner, who was in France. Therefore, the allegation that the property was delivered to governmental organs on an earlier date (31 January 1980) is without any basis.

197. It is also alleged that over a year after the alleged expropriation date and about two months after the signing of the Algiers Declarations, another letter, dated 8 March 1981, was sent by Mr. Nabavi to Mr. Riahi. In the circumstances of this Case, it is highly likely that Mr. Riahi had asked for this letter, as he did in many other situations with respect to this and other claims.[339] However, Mr. Nabavi denied writing or signing this letter (paragraph 335 of the Award)[340] and pointed out again, during the Hearing, that he did not know how to type and had never possessed or used a typewriter.[341] Irrespective of its lack of authenticity, the letter shows that Mr. Nabavi and his wife were removed by Mr. Riahi from the task of managing Rahmat Abad and were replaced by Mr. Vaghefi. To the extent related to the alleged expropriation of Rahmat Abad, letter specifically states that "until to date [8 March 1981] except for what they have removed and have given me a receipt for, they have not taken anything away from Rahmat Abad and Madam's buildings."[342] The letter suggests actions by

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[338] See, infra note 343.

[339] See, also, supra paragraphs 139 and150, and note 288. As observed in paragraphs106 and 123, and note 84, above, Mr. Riahi had not kept secret his true intentions behind his fictitious transfer of shares to his wife who was a dual Iran-U.S. national.

[340] As Mr. Nabavi pointed out in his written and oral testimony, the fact that the signature on this letter completely differed from his signature is easily discernable even with untrained eyes.

[341] Pages 126, and 147-148, Hearing Transcript for the 25 May 2000.

[342] It is unclear to what buildings the phrase "Madam's buildings" is referring. However, should there be any interpretation that by "Madam's buildings" the ASP Apartment was also intended -- which is unlikely because the reference is made to "buildings," rather

Mr. Riahi, or through a lawyer, to prevent the taking, and states that it was because of the efforts of the writer and his wife that nothing had been done "until [then] with respect to the building and removal of the furniture in the building and the company." In my view, this single document produced as evidence by the Claimant should have been sufficient for the Tribunal to conclude that her claim with respect to Rahmat Abad was not outstanding on 19 January 1981.

198. Finally, the Claimant also relies on another letter allegedly written by Mr. Nabavi in October 1992.[343] In this letter, the writer appears to have been trying to exonerate himself and his wife of the accusation that properties and funds of Rahmat Abad were misappropriated by them. Except for certain statements added in connection with the Rahmat Abad certificates of deposit, the letter does not add anything of substance to the previous letters claiming that the property at the farm was inventoried and that certain items were taken, for which receipts were given. With respect to the certificates, the letter adds that "on 23 November, exactly a year after when I [Mr. Nabavi] and my wife were discharged, we were called and in the presence of the representative of the Prosecutor and late Hossein Vaghefi, all accounts of the company were reviewed and took delivery of seventeen certificates of deposits... ."[344]

199. Having alluded to the delivery of certificates of deposit, this is a proper place to address the allegation put forth by the Claimant intending to support de facto

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than to a single building -- then this will be a further support for the Tribunal's finding (paragraph 376 of the Award) that, were we to consider that the Claimant owned certain property in the ASP Apartment, evidence is nonetheless wanting that the property was taken by any person for whose action the Respondent might be found accountable.

[343] In paragraph 329, the Award refers to this as Mr. Nabavi's third, undated, letter. The first copy of this letter produced by the Claimant was undated. Another copy produced by the Claimant with her Rebuttal Memorial bears the date of 3 October 1992. However, Mr. Nabavi testified that this and other letters signed by him were transcribed by him based on the texts sent to him by Mr. Riahi. (Paragraph 335 of the Award.)

[344] As will be observed from the Process Verbal to be discussed in the next paragraph, there is no indication that any person representing the Prosecutor's Office had participated in the meeting of 23 November 1980.

expropriation of her interests in Rahmat Abad. The Claimant relies on a Process Verbal signed on 23 November 1980 by two representatives of the Foundation for the Oppressed and Messrs. Nabavi and Vaghefi. This Process Verbal speaks neither of the expropriation of Mr. Riahi's property nor of that allegedly owned by the Claimant. Bearing in mind the fact that around that time, Mr. Nabavi has been removed from his post as the Managing Director of Rahmat Abad and was replaced by Mr. Vaghefi (supra paragraph 197), the Process Verbal mentions, understandably, the handover of certain documents, and beyond that, it only records (in five enumerated items) the amounts owed by, or claimed to have been owed to, Mr. and Mrs. Nabavi for their debts, or for overdue salaries from 1 January 1980.

200. What remains to be discussed is the issue related to the two notes issued by Bank Melli (paragraph 325 of the Award). The first note is a bank transfer notice, dated 15 March 1980, issued to Mr. Nabavi about a transfer of Rls. 3,591,155 from his frozen account to account No. 1414, in the name of the Foundation for the Oppressed, effected pursuant to an order of the Revolutionary Public Prosecutor's Office. The next note, dated the same day, puts Mr. Nabavi on notice that his deposit (Rls. 1,000,000) was transferred to the same account. Whatever the reason for these transfers, they have no bearing on the alleged expropriation of the Claimants shares, if any, in Rahmat Abad. Therefore, I conclude, in sum based on the above evidence invoked by the Claimant, that the Tribunal should have ruled that she has been unable to prove that she owned an outstanding claim prior to the Tribunal's jurisdictional cut-off date, 19 January 1981. Whether or not her interests in Rahmat Abad were affected after that date is neither a mandate of the Tribunal nor my duty to dwell upon.

201. As stated earlier in paragraph 179, paragraph 4 of the Process Verbal signed between the representatives of the Foundation for the Oppressed and the former Bank Keshavarzi (Agricultural Bank) on 18 March 1983 states, with respect to the loan Mr. Riahi obtained by mortgaging the Rahmat Abad farm, that since "measures are about to be taken in order to clarify the legal aspects of the Foundation's share [in the property] ... if the Foundation is considered to be the owner of the whole property, it

[the Foundation] shall repay the related debts ... in 30 installments... otherwise it shall repay the debts proportionate to the Foundation's share in one installment." The Award notes (paragraph 307), as I will note again with respect to the expropriation of Tarvandan and Gav Daran, that it was not until 23 May 1984 that Messrs. Hosseinof and Khabbaz were assigned to find other properties belonging to Mr. Riahi, finding a property located at No. 781 Koucheh Mahtab (at formerly Eisenhower Avenue) pursuant to that assignment on 16 October 1984.

III.F. EXPROPRIATION OF TARVANDAN SHARES

202. As stated under Section III (paragraphs 178, et seq.) and concluded in paragraph 184, based on the precedent established by the Tribunal, including the Award in Vera-Jo Miller Aryeh, et al.,[345] the actual date of expropriation in circumstances such as those that obtain here, differs from the date of the expropriatory decree or law. Expropriation of a discrete property pursuant to a general expropriation decree or law occurs when the measures implementing the decree are carried out with respect to that property. With regard to Tarvandan, and in view of the evidence of control by Messrs. Riahi and Vaghefi over the company, it is hardly conceivable that a taking occurred on any date prior to 19 January 1981, let alone on the alleged date of the expropriation decree, be it 24 or 27 February 1980.

203. Apart from the Claimant's own affidavits and those of her husband, the Claimant's evidence produced to prove her expropriation claim is limited to a number of letters allegedly exchanged privately between Mr. Riahi and Mr. Vaghefi. The only other evidence on file is a letter dated 16 July 1980 by the latter on Tarvandan stationery claiming that Tarvandan was expropriated on 18 March 1980. A very general circular issued on 9 August 1980 by the Revolutionary Prosecutor General is also invoked. As I will discuss below, the same evidence establishes without a doubt that Tarvandan was not expropriated prior to the Tribunal's jurisdictional cut-off date.

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[345] Vera-Jo Miller Aryeh, paras. 189-202, supra note 7, at 326-330,

204. To begin with, the 9 August 1980 general circular was not addressed specifically to any particular company and was not even copied to Tarvandan. To avoid the plunder of the nation's wealth, which was an unfortunate practice at that chaotic time under various pretexts, the circular attempts to prevent the payment of dividends to, and unauthorized transfer of shares of, those who had fled the country. Therefore, payments and transfers with authorization were not prevented. Moreover, the Claimant could not even allege that any action based on that circular was ever taken vis-à-vis her shares. The Award (and this Opinion) are amply clear as to why the Claimant should not be considered the owner of the shares claimed, and nothing suggests that this circular had any impact on the findings of the Award or on this Opinion.

205. Coming to the correspondence between Messrs. Riahi and Vaghefi, a number of letters actually prove that Tarvandan was not expropriated prior to 19 January 1981. This is so even though there is no independent evidence to prove that all of these letters were actually exchanged contemporaneously. However, although a letter dated 25 October 1980 purports that Tarvandan's office (together with those of Gav Daran and Sarhad Abad) was "closed" as of the beginning of the year 1359[346] (the Iranian year starting on 21 March 1980),[347] Mr. Riahi's letter from France dated 13 April 1980, instructs Mr. Vaghefi to take certain actions, in his capacity as the Managing Director of the company, in connection with the company including 1) the transfer of his [Mr. Riahi's] funds from Bank Tehran and Bank Saderaat to Tarvandan's account,

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[346] Paragraph 352 of the Award.

[347] Apart from the fact that the letter speaks of the closure of offices, and not expropriation of the companies, this evidence alone is sufficient to prove that Tarvandan was not immediately affected by the Revolutionary Court's Order of February 1980. The Claimant tries to bolster her expropriation allegation by heavily capitalizing on the 1983 letter of the Foundation for the Oppressed (supra paragraph 179). As observed, that letter states, without any reference to any other company and/or the building itself, that the Rahmat Abad office at the former Eisenhower Avenue was, at that time, under the control of the Foundation. The Claimant alleges that since the office of Tarvandan (a dormant company) and certain files of Gav Daran (another dormant company as we shall see later) were located at that address, those companies must also be considered as expropriated based on the February 1980 Court Order.

2) the payment of salaries of the company's employees, and 3) referral to Iran Böhler, asking the payment of the overdue rents that that company owed Tarvandan. He also mentions that Tarvandan's deposit in the amount of Rls 9,000,000 could have been used upon release (maturity) for these purposes, but instructs Mr. Vaghefi not to disclose this to the Foundation.[348] Evidence shows that more than two months later, on 5 and 22 June 1980, Mr. Riahi and Mr. Vaghefi were still in total control of Tarvandan. Mr. Riahi instructs Mr. Vaghefi, on of 22 June 1980, that "the salary of the employees of Tarvandan and gardeners of Mazandaran villa should be increased by 10% as of the month of Tir [the Iranian month starting 21 June]." He further asks Mr. Vaghefi to provide him with an estimate of Tarvandan's costs for the entire period of that year, which ended 20 March 1981. All these points lead to no other conclusion but that the expropriation of Tarvandan -- even with respect to Mr. Riahi's interests, let alone those allegedly owned by the Claimant -- was not a foregone conclusion on any of those dates. No deprived owner, with the experience and wisdom of Mr. Riahi, would order the transfer of his fresh funds to an expropriated entity.

206. In my view, no weight should have been accorded to Mr. Vaghefi's letter of 16 July 1980, because the Tribunal is perfectly aware that the letter was admittedly asked for by the Claimant and her husband and was transcribed by him based on a draft received from them.[349] However, apart from this clear and undisputed fact, the letter is only probative of the fact that Mr. Vaghefi was still acting at that time as the Managing Director of the Company, using its stationery and stamps. That no expropriation of Tarvandan, in particular of any of the Claimant's interests therein, had occurred until long after 19 January 1981 is supported by other sets of evidence. The 1983 letter of the Foundation asking for interpretation of the February 1980 Court Order does not mention that company's name. The Award also notes (at paragraph 307) that it was not until 23 May 1984 that Messrs. Hosseinof and Khabbaz were assigned the task of finding other properties belonging to Mr. Riahi, finding a property

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[348] See, also, footnote 138 of the Award.

[349] See, also, supra paragraphs 139 and 150 and note 288.

located at No. 781 Koucheh Mahtab pursuant to that assignment on 16 October 1984, which is a reference to the building owned by Tarvandan. Interestingly, unlike the situation with respect to Khoshkeh, evidence of Foundation for the Oppressed participation in any shareholders meeting of Tarvandan prior to 19 January 1981 is wanting, and the evidence of participation produced by the Claimant is dated long after that jurisdictional cut-off date. Notwithstanding the foregoing, I reluctantly joined in the Award's finding of the expropriation date (16 July 1980) for the sole sake of forming a Majority.

III.G. EXPROPRIATION OF GAV DARAN SHARES

207. Although the Tribunal has denied the Claimant's claim for ownership of shares in Gav Daran, in which finding I concur, I will discuss very briefly my reasons why the claim could have been also dismissed for not having been outstanding on 19 January 1981, even if the Claimant could have proved any ownership of shares in this company. As stated earlier, generally in paragraphs 178-184 and specifically in connection with other companies under each pertinent Section, the actual date of expropriation in similar circumstances might differ from the date of the expropriatory decree or law. Expropriation occurs when the measures implementing the decree or law are carried out in connection with the discrete company or property involved. In the situation of Gav Daran and in view of the evidence made available to us, it is hardly conceivable to conclude that a taking occurred on the alleged date of the Court Order, be it 24 or 27 February 1980.

208. It is no secret that Gav Daran was a dormant company that only owned a piece of arid land located in a desert area in the northeast of Gorgan Province, northern Iran. The land had no marked boundary, such that Mr. Riahi (its purchaser and real owner) could not tell which parcel belonged to whom.[350] Moreover, the area was for long the

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[350] From among many pieces of evidence, reference may be made to page 564 of Mr. Riahi's diary, wherein he states: "Despite the fact that we had passed through the lands of

scene of fierce battles between armed rival factions and counter-revolutionaries, and the authorities had no access to and control over the area, let alone the power to find and expropriate Gav Daran's land.[351]

209. Additionally, evidence produced in the form of a couple of private letters allegedly sent by Mr. Vaghefi to Mr. Riahi shows that no particular expropriatory or deprivative measure was taken with respect to Gav Daran prior to the Tribunal's jurisdictional cut-off date. To begin with, Mr. Vaghefi's letter of 7 March 1980 to Mr. Riahi shows that they were on that date still in control, but mindful of prevailing the circumstances and the location of the land, Mr. Vaghefi suggested that nothing in that respect was worth doing.[352] The other letter of Mr. Vaghefi, dated 25 October 1980 and discussed above in connection with Tarvandan (supra paragraph 205), speaks solely of the closure of the offices of the companies, and is short of any statement that the company was expropriated on that date. In analyzing any such evidence, one must not lose sight of the fact that Gav Daran had no office and its only assets in Mr. Riahi's office (that too located at No. 781 Koucheh Mahtab, supra paragraph 206) were probably limited to a couple of files.

210. Similar to situations that were obtained in connection with other companies, the Claimant also refers to a letter transcribed by Mrs. Moalej (ex-Managing Director of Gav Daran) allegedly written on 16 July 1979 based on a pre-drafted text by the Claimant and her husband.[353] The letter itself shows that she was acting as the

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Gavdaran Company, we actually did not know to which company these lands belonged, for, the lands were all dry and similar everywhere."

[351] Fighting and bloodshed at this and a couple of other areas were so fierce that Mr. Riahi feared the disintegration of the country. (Page 838 of his diary.)

[352] This letter was not introduced into evidence until the time of filing of the Claimant's Surrebuttal on 22 March 1999. However, while stating that he awaited "instruction as to what to do" with respect to the land, Mr. Vaghefi added that "considering the status of location and other factors, presently any action in connection with this land will be futile."

[353] See, also, supra paragraphs 139, 150, 206 and note 288.

Managing Director of the Company until the date of that letter using the company's stationery and stamps. In view of the above and the then prevailing circumstances with respect to this item of the Claimant's claim, I am of the opinion that expropriation of Gav Daran and its only property could not have occurred, either de jure or de facto, prior to the Tribunal's jurisdictional cut-off date of 19 January 1981 and that the claim could have thus been dismissed even if the Claimant had been able to prove ownership of any shares.

III.H. EXPROPRIATION OF CONTRACTUAL RIGHTS TO FARAHZAD APARTMENTS

211. The claim for these apartments was found inadmissible based on the application of the A18 caveat. I concurred in this finding. However, I will discuss in the following Sub-sections that the claim, even if it could have survived the A18 caveat, should have been dismissed for lack of any action on the part of the Respondent, and therefore for not being against a proper party, and for not being outstanding.

III.H.1. Claim is not against a Proper Respondent

212. It is not disputed that the contracts for construction of the Farahzad Apartments were concluded with Shah Goli (the seller), an independent company originally controlled by a group of United States companies (the Starrett group), and that construction was not yet finished on 19 January 1981. Further, while it is not disputed that the Tribunal found, in Starrett Housing Corporation et al., that shares and interests of the Starrett group in Shah Goli were expropriated on 30 January 1980,[354] the Tribunal and its appointed expert on the other hand made it clear that the rights of the purchasers remained intact and were not interfered with by the Government of Iran. Indeed, it has neither been alleged here in this Case, nor is there any indication, that

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[354] Starrett Housing ITL, supra note 24, at 156.

the Government of Iran in any way interfered or intervened in those contracts or in Shah Goli's affairs with respect to the construction and/or delivery of the apartments.

213. All parties to those construction contracts kept their rights and commitments even after the expropriation of the Starrett group's interests in Shah Goli, which included, as I shall discuss in the next Sub-section, the provisions of Article 11 of the contracts between the Claimant and Shah Goli. This Article accorded the latter the right of termination of contracts and resale of the apartments in case the buyer defaulted on any installment supported by promissory notes.[355] In fact, the Claimant's own evidence shows that she had defaulted on three promissory notes amounting to Rls. 562,220. The Claimant having failed to correct that, Shah Goli served a default notice upon her in September 1984.

214. In view of this and what shall be seen in the next Sub-section, not only did Shah Goli have every right to terminate the contract, but the claim could not have been properly addressed against the Respondent here, even if the Claimant had been able to prove an act of breach on the part of Shah Goli.[356] Therefore, irrespective of whether or not Shah Goli's termination decision had any merit, this decision was taken

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[355] In Starrett Housing Corporation, et al., the expert indicated that "a number of apartments may possibly be the target for potential resale in the future," and that "Shah Goli had a refund obligation to the original buyers who had failed to pay their promissory notes that had fallen due, and whose agreements would therefore be liable to termination and their apartments resold." Starrett Housing Corporation, et al. and The Islamic Republic of Iran, et al., Award No. 314-24-1, paras. 83 and 94 (14 August 1987) reprinted in 16 Iran-U.S. C.T.R. 112, at 140 and 144 ("Starrett Housing Award").

[356] I should not be expected, nor do I intend here, to defend Shah Goli's action for the reason that that company has not been named as a Respondent. However, the Tribunal in Emanuel Too ruled, in connection with a claim for expropriation of the Claimant's home, that the claim was not attributable to the Government of the United States. The Tribunal found that the bank involved had properly foreclosed upon a mortgage when the Claimant failed to make payment on the underlying loan. Even in connection with the claim against the Internal Revenue Service of the United States ("IRS"), the Tribunal ruled that the IRS properly auctioned the Claimant's liquor certificate after notifying him about a tax levy and his failure to satisfy his debt in that respect. (Emanuel Too and Greater Modesto Insurance Association, et al., Award No. 460-880-2, paras. 24-25 (29 December 1989), reprinted in 23 Iran-U.S. C.T.R. 378, at 387.)

independently and without any influence by the Government of Iran or any person for whose action it might be held liable under applicable rules of international law. The Respondent was not privy to those transactions or any contractual relation between the Claimant and Shah Goli, two independent persons.

215. A number of the awards of the Tribunal support this conclusion,[357] the best example of which is the award in Flexi-Van. In that Case, the Claimant had claimed that the Government of Iran, through the Foundation for the Oppressed, "took control of the Star Line and Iran Express Line not later than 29 February 1980 and caused them to breach and repudiate their contracts with Flexi-Van thereby expropriating Flexi-Van's contract rights" and other properties allegedly within the control of those companies. Star Line and Iran Express Line were not named respondents. Although the Tribunal accepted that those two shipping lines fell under the control of the Government, it ruled with respect to Star Line that:

> The Claimant does not assert that the Government has itself interfered with its contract rights, but rather that it has done so through the Foundation. To give rise to an expropriation claim this would require that, from the time it came under the control of Foundation, Star Line had acted under orders, directives, recommendations or instructions from the Foundation or the Government when it did not pay rentals or return the leased equipment to the Claimant.[358] Even if, as ... stated, representatives of the Foundation were directly involved in decisions not to return containers to the Claimant, this did not constitute the kind of government interference that would amount to expropriation of Flexi-Van's contract rights.... Therefore, the Tribunal cannot find such interference with the Claimant's contract rights *vis-à-vis* Star Line as to engage the Government's responsibility for an expropriation of these rights.[359]

216. With respect to Iran Express Line the Tribunal ruled thus:

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[357] See the awards referred to, supra, in note 15.

[358] See, Schering Corporation and Islamic Republic of Iran, Award No. 122-38-3 (16 April 1984), reprinted in 5 Iran-U.S. C.T.R. 361, at 370 (footnote 14 in the original text of the award).

[359] Flexi-Van, supra note 15, at 349 (emphasis added).

> Once again, convincing evidence in support of these rather specific forms of interference is missing. Star Line and Iran Express, although Government controlled entities, must be assumed to make their own decisions about day to day activities, unless there is evidence to suggest otherwise. It would have been surprising if the fate of containers would have been the main concern of the new Revolutionary Government. In contrast, in the *Foremost Case*, the Tribunal found that it was established by the evidence, that in a controlled company, Pak Dairy, the 'withholding of declared cash dividends for two successive years' was a specific interference attributable to the Government.[360]
> Accordingly, the alternative claim must also be dismissed.[361]

217. The Tribunal treated the alternative claim of contract breaches against Star Line and Iran Express Line in the same vein, ruling that:

> Again what is required for the Claimant to prevail on this alternative ground is to demonstrate and show through which actions the Government forced the two companies to breach their lease agreements with the Claimant. It is also clear from the *McLaughlin Case* that the Government of Iran is not automatically liable for contractual obligations belonging to a company which is considered to be controlled by it within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. However, Flexi-Van has failed to present proof of any action of the Government that caused either of those companies to breach the lease agreements. Absent such proof, the Government cannot be held liable for breaches of the lease agreements by Star Line and Iran Express.[362]

III.H.2. Claim against Shah Goli is not Outstanding

218. As has been alluded to above, Article 11 of the Claimant's contracts with Shah Goli foresaw cancellation of the contract and resale of the apartments involved in case

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[360] Id., at 351. Referring in footnote 16 to Foremost Tehran, Inc. and Government of the Islamic Republic of Iran, Award No. 220-37/231-1 (11 April 1986) Reprinted in 10 Iran-U.S. C.T.R. 228, at 245.

[361] Id. (Emphasis added.)

[362] Id., at 352 (emphasis added), relying, in footnotes 17 and 18, on the awards of Constantine A. Gianopolus and Government of the Islamic Republic of Iran, Award No. 237-314-1 (20 June 1986) reprinted in 11 Iran-U.S. C.T.R. 217 at 221; McLaughlin Enterprises, Ltd. and Government of the Islamic Republic of Iran, Award No. 253-289-1 (16 September 1986) reprinted in 12 Iran-U.S. C.T.R. 146, at 156; and Aeronutronic Overseas Services, Inc. and Government of the Islamic Republic of Iran, Award No. 238-158-1, para. 75 (20 June 1986) reprinted in 11 Iran-U.S. C.T.R. 223, at 247.

of delay or default in payment of any of the promissory notes. The finding of the appointed expert in Starrett Housing Corporation, et al. supports this as well, as indicated above. There, the expert stated that "a number of apartments may possibly be the target for potential resale in the future," and that "Shah Goli had a refund obligation to the original buyers who had failed to pay their promissory notes that had fallen due, and whose agreements would therefore be liable to termination and their apartments resold."[363]

219. That the Claimant defaulted on payment of three promissory notes in the amount of Rls. 562,220 is confirmed by the fact that the Claimant could only prove the payment of 18 out of 21 promissory notes.[364] Based on that default, Shah Goli served a termination notice on the Claimant on 15 September 1984,[365] asking her to "take measures for the payment of arrears so as to help the continuation of the project's affairs as soon as possible." Since she refrained from correcting her default, Shah Goli had no alternative but to terminate the contracts on 28 December 1985, inviting her "to refer to Shah Goli for the restitution of amounts paid in advance."

220. Further, I find the above explained sets of facts to denote that neither the Claimant's expropriation claim nor a claim for the return of advance payments was outstanding on the date the Algiers Declarations entered into force, i.e., on 19 January 1981, the Tribunal's jurisdictional cutoff date. On 15 September 1984, Shah Goli still considered the Claimant as a party to the contract for the sale and purchase of the

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[363] Starrett Housing Award, supra note 355.

[364] Although the Claimant produced evidence that her husband had ordered the payment of 21 promissory notes, she admittedly could not find and produce any evidence proving payment with respect to three of the promissory notes (Nos. 32131, 32138, and 32145), amounting to Rls. 562,220.

[365] That the amount of the arrears is stated in Shah Goli's letter to be Rls. 562,220 is neither a coincidence nor a fabrication after the above admission by the Claimant. This is easily verified by the fact that both the date of the default notice served by Shah Goli (dated 15 September 1984) and the date of its filing with the Tribunal by the Respondent (10 August 1994) fall before the Claimant's admission in her Rebuttal Memorial filed on 30 December 1996.

apartments, its rights unaffected by any interference, or expropriatory or deprivative measures. Indeed, Shah Goli invited the Claimant to settle her "arrears so as to help the continuation of the project's affairs." With the termination letter of 28 December 1985, Mrs. Riahi was invited to refer to Shah Goli for refund of the amounts paid in advance. For whatever reason, the Claimant failed to pay those arrears and refrained from taking any action in order to receive her advance payments. Mrs. Riahi has not even alleged that at any point of time, prior to or after that invitation, she referred to Shah Goli and that despite her application, refund of her payments was refused by Shah Goli or blocked by the Government of Iran.[366]Therefore, it should be assumed not only that no claim ever existed, but also, that even if one did exist it must be taken to have matured long after the Tribunal's jurisdictional cutoff date, at a time after September 1984, or more precisely, after December 1985.

III.I. EXPROPRIATION OF TOYOTA CAR

221. Notwithstanding the fact that the circumstances surrounding the date when the expropriation occurred are tainted with many ambiguities, I agreed with the Award's finding on the expropriation date, because the 14 May 1983 letter of the Foundation for the Oppressed (supra paragraph 179) shows that from a certain point of time the Toyota car had fallen within the control of the Foundation, and the Respondent made no attempt to explain the exact date of such control. The situation, is of course, different from that regarding other items of property listed in the 14 May 1983 letter in that while the letter was demanding the Revolutionary Court of Isfahan to interpret its February 1980 Order, the Respondent has not even alleged that the car belonged to the

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[366] The Claimant later changed position by asserting that she should not have been expected to add -- by paying those installments -- to the amount that she saw no prospect of recovering. This afterthought excuse, raised for the purpose of these proceedings, does not make the Claimant's claim against the Government of Iran (not a party to the contract with Shah Goli) any better because of, inter alia, the known fact that Shah Goli had offered, in 1985, the return of the moneys paid, which could have included payment of the defaulted promissory notes as well.

Claimant and that its expropriation was pending any clarification of the ownership, such as ownership of shares that was still an issue at that time.

III.J. EXPROPRIATION OF HORSES

222. For the reasons stated in Section II.B.9. of this Opinion, I find it unnecessary to discuss here the date of expropriation of the horses including the colt, Pishdad. However, were we to assume that the Claimant was the owner of Tarlon and Pishdad, nothing proves that the expropriation of these horses, allegedly stabled at Rahmat Abad, occurred at any time prior to the taking of Rahmat Abad itself, which in my view had not occurred prior to the Tribunal's jurisdictional cut-off date. The only evidence heavily relied upon by the Claimant is a typed letter dated 8 March 1981 allegedly written by Mr. Nabavi. As stated above (paragraph 197), Mr. Nabavi denied writing the letter and pointed out the fact that he had not, and could not have, typed the letter, and that the signature on it was drastically different from his.

IV. COMPENSATION AND VALUATION

223. In this part of my Opinion, I will follow the sequence adopted by the Award, starting with the valuation of shares in Bank Tehran and ending with the valuation of the Toyota car and the horse, Pishdad. Before doing that I have to express myself in connection with two general issues relevant to the valuation of all companies involved: 1) inapplicability of the Treaty of Amity's standard to dual-national Cases, and 2) the applicable standard.

IV.A. INAPPLICABILITY OF THE TREATY OF AMITY STANDARD

224. Except for the early and controversial awards of the Tribunal in AIG[367] and TAMS-AFFA,[368] the Tribunal has mainly relied on the standard of the Treaty of Amity[369] as *lex specialis*.[370] To this I will soon return.

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[367] AIG, supra note 2 , at 105.

225. However, the first award drew neither the endorsement of the Iranian-appointed arbitrator nor that of the United States-appointed arbitrator, who concurred in the award with the sole intention of forming the majority with the Chairman.[371] Indeed, it received criticism from scholars on different counts.[372] The AIG award is even inconsistent with the same Chamber's recognition in the Interlocutory Award of SEDCO, Inc., delivered about three years later, wherein it acknowledged that the standard of compensation had evolved since World War II towards "appropriate compensation," at least in connection with large-scale nationalizations[373] similar to the nationalization of the banking and insurance industries in Iran, which affected many Iranian and non-Iranian individuals and entities doing business in these fields, American International Group included. The second award (TAMS-AFFA) based its full compensation standard on the finding of the Chorzów Factory Case[374] dealing with an unlawful expropriation, and is thus not a good precedent for the present Case, either.

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[368] Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 (29 June 1984) reprinted in 6 Iran-U.S. C.T.R. 219, at 225 ("TAMS-AFFA"). The Iranian-appointed arbitrator refused to sign the award (see, Dr. Shafei Shafeiei's Reason for not Signing the Award, id, p. 230).

[369] Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran (footnote 154 of the Award.)

[370] See, e.g., INA Corporation and The Government of the Islamic Republic of Iran, Award No. 184-161-1 (13 August 1985), reprinted in 8 Iran-U.S. C.T.R. 373, at 378 ("INA"); Amoco International Finance Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 310-56-3 paragraph 112 (14 July 1987) reprinted in 15 Iran-U.S. C.T.R. 189, at 222 ("Amoco International Finance"); and Phillips Petroleum Company Iran and The Islamic Republic of Iran, et al. Award No. 425-39-2, paragraphs 107 and 116 (29 June 1989), reprinted in 21 Iran-U.S. C.T.R. 79, at 121 and 125 ("Phillips Petroleum Company of Iran").

[371] AIG, supra note 2, Concurring Opinion of Richard M. Mosk, at 111.

[372] See, e.g., Gray, Christine D., Judicial Remedies in International Law (Clarendon Press, 1987), pp. 182-183.

[373] SEDCO, Inc. and National Iranian Oil Company, et al., ITL 59-129-3 (27 March 1986), reprinted in 10 Iran-U.S. C.T.R. 180, at 186-189 ("SEDCO ITL.").

[374] Chorzów Factory Case (Merits) (Germany v. Poland), 1928 P.C.I.J. Ser. A, No. 17, p. 47.

226. The award that based its standard of compensation more specifically on the standard of full compensation contained in the Treaty of Amity and was followed by many other awards is the Phelps Dodge Corporation, et al. award rendered by Chamber Two. This is the leading award professing the applicability of the Treaty of Amity standard irrespective of its validity.[375] I do not have much problem, conceptually, with the Phelps Dodge Corporation, et al. award's distinction between the validity and applicability issues. My problem is that the award misunderstood the concept and applied it mistakenly. This, and another reason peculiar to the so-called dual national Cases, would lead to the conclusion that the Majority has erred in considering the Treaty of Amity standard to be applicable to this Case.

227. First, I will discuss briefly why I consider the precedent established by the award in Phelps Dodge Corporation, et al. to be wrong. To elucidate this, one should recall the crux of the Iranian respondents' arguments in connection with the inapplicability of the Treaty of Amity standard to Cases before the Tribunal. Apart from the doubts expressed about the validity of the Treaty of Amity by the respondents throughout the proceedings,[376] the other essential argument of the respondents[377] was that the CSD (as a new agreement between the two States governing certain claims which arose prior to 19 January 1981) formed a *lex specialis* as opposed to the Treaty of Amity, a *lex generalis*

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[375] Phelps Dodge Corporation, et al. and The Islamic Republic of Iran, et al., Award No. 217-99-2 (19 March 1986), reprinted in 10 Iran-U.S. CTR 121, at 131-132 ("Phelps Dodge Corporation, et al.").

[376] These expressions of doubt appear not to have been officially endorsed by the Islamic Republic of Iran, as it has never taken any official action to terminate the Treaty of Amity. See, e.g., INA, supra note 370, at 376; Phelps Dodge Corporation, et al., supra note 375, at 131 and Amoco International Finance, paragraph 99, supra note 370, at 218-219. Indeed Iran is relying on the provisions of the Treaty of Amity in a Case before this Tribunal (Case A/30, filed on 12 August 1996) and in Oil Platforms Case (Islamic Republic of Iran *v.* United States of America) filed on 2 November 1992 before the International Court of Justice.

[377] See, e.g., SEDCO ITL., supra note 373, at 183; Amoco International Finance, supra note 370, at 214-215; and, also, Phelps Dodge Corporation, et al., supra note 375, at 131.

(covering broader and time-unlimited issues and instances) between the same States. Therefore, the provisions of the CSD, in particular that of Article V requiring the application of "international law ... taking into account ... changed circumstance," must operate as special provisions that derogate that part of the general provisions of the Treaty of Amity (*specialia generalibus derogant*).[378]

228. To tackle this objection by the argument that irrespective of the present validity of the Treaty of Amity, it is applicable to claims that arose prior to the entering into force of the Algiers Declarations is circular or conclusory. This is what the Tribunal has done in Phelps Dodge Corporation, et al. and the awards that have followed its precedent. Thus, I find that the "applicability" argument of the respondent has neither been accurately understood nor properly treated by those awards. In actuality, the Tribunal circumvented the applicability objection by invoking the validity of the Treaty of Amity at an antecedent date. What is, therefore, the consequence? The applicability objection remains unresolved to the present date.

229. Now, I will state the other reason why I dissent from any finding that considers the Treaty of Amity standard to be applicable to the Cases involving so-called dual Iranian/United States nationals. But, before explaining my reason in the next paragraph, I should first emphasize my view that the Majority has erred in its reliance on the Vera-Jo Miller Aryeh award,[379] which was in turn based on the James M. Saghi[380] and Khosrowshahi[381] awards as precedents finding the Treaty of Amity standard applicable to the situations at hand. Although the award in Saghi failed to distinguish between dual and

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[378] Case A/2, reprinted in 1 Iran-U.S. C.T.R. 101, at 104 (with reliance on the Ambatielos Case, ICJ Reports 1952 p. 28). See, also, INA; Amoco International Finance; and Phillips Petroleum Company of Iran, all three referred to, supra, in note 370.

[379] Vera-Jo Miller Aryeh, para. 214, supra note 7, at 323-333.

[380] Saghi, supra note 325.

[381] Faith Lita Khosrowshahi, et al. and The Government of the Islamic Republic of Iran, et al., Final Award No. 558-178-2 (30 June 1994), reprinted in 30 Iran-U.S. C.T.R. 76 ("Khosrowshahi").

non-dual nationals in applying the Treaty standard, the history as developed later in Khosrowshahi revealed that such failure was inadvertent. Apparently with the intention of correcting the unintentional failure in Saghi, the award in Khosrowshahi rendered by the same majority in the same Chamber about eighteen months later, on 30 June 1994) stated that "[i]n this Case, as in the Saghi Case, the Tribunal has used the Treaty of Amity standard of compensation without deciding whether it is applicable to claims of dual nationals whose dominant and effective nationality in the relevant period under A18 has been that of the United States." The Tribunal further confirmed that "[i]n neither case was that question raised or argued by the Parties."[382]

230. There is nothing in the Treaty of Amity expressly extending the definition of the word "national" to dual nationals. Likewise, privileges embodied in the provisions of Article IV (2) are not expressly extended to dual nationals either. On the other hand, it should be noted that general or particular international conventions form the source of international law only by "establishing rules expressly recognized by the contesting states."[383] Thus, since the application of the Treaty of Amity standard contained in Article IV (2) is not expressly extended to dual nationals, it cannot be so extended by the inference that dual nationals have not been denied, or excluded from, such a privilege.[384]

231. It follows that the awards in Khosrowshahi and Saghi were grappling with the applicability or inapplicability of the Treaty of Amity standard. On the other hand, the

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[382] Id., footnote 6, p. 89.

[383] Article 38 (1) (a) of the Statute of the International Court of Justice (emphasis supplied). Paragraph 1 (a) of Article 38 of the Statute reads:

> 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> a. international convention, whether general or particular, establishing rules expressly recognized by the contesting states;

[384] For additional reasons why the Treaty of Amity standard is inapplicable, see, also, Lattanzi Flavia, "I Claims di persone fisiche con doppia nazionalità davanti al Tribunale Iran-Stati Uniti", Rivista dell' Arbitrato, Anno III N. 3 (1993) 538, at 547.

award in Shahin Shaine Ebrahimi, et al.[385] (to be discussed below) established that the international law standard of compensation is the standard applicable to Cases before this Tribunal. Therefore, it is fair and reasonable to conclude that the international law standard, rather than that of the Treaty of Amity, should have been applied by the Majority in the present Cases involving three dual Iranian/United States nationals.

IV.B. STANDARD OF COMPENSATION IN INTERNATIONAL LAW

232. Having found that the international law standard is the applicable standard of compensation in expropriation cases involving claims of dual nationals if admissible before this Tribunal, it is necessary to know what this standard is under the contemporary rules of international law. Fortunately, my task under this Section is very easy because Judge Lagergren in his Separate Opinion in INA and Chamber 3 in Ebrahimi have both very eloquently and succinctly shouldered the bulk of the research.

233. However, prior to drawing attention to those sources, I should point out that the first decision of the Tribunal to refer, generally, to the applicable standard of compensation was the Full Tribunal's Interlocutory Award in Oil Field of Texas, Inc. There, in one of its early plenary awards, rendered in December 1982 under the presidency of Judge Lagergren, the Tribunal ruled that the respondent must be held liable "to pay appropriate compensation taking into account all the circumstances of the case."[386]

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[385] Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran, Final Award No. 560-44/46/47-3 (12 October 1994) reprinted in 30 Iran-U.S. C.T.R. 170 ("Ebrahimi").

[386] Oil Field of Texas, Inc. and The Islamic Republic of Iran, et al., ITL 10-43-FT, reprinted in 1 Iran-U.S. C.T.R. 347, at 362 (emphasis added) ("Oil Field ITL."). It should be further recalled that, except for the Iranian arbitrators dissenting to the so-called de facto successorship finding of the award, no member, including the United States-appointed arbitrators, dissented from or disagreed with the above-cited ruling.

234. Three years later, in August 1985, Chamber One, chaired by Judge Lagergren noted in INA that expropriations for a public purpose "are not per se unlawful." The award went on to state regarding large-scale nationalizations of lawful character that

> international law has undergone a gradual reappraisal, the effect of which may be to undermine the doctrinal value of any "full" or "adequate" (when used as identical to "full") compensation standard as proposed in this case.[387]

To explain why it is not, nonetheless, applying the international law standard, the Tribunal added that it was "in the presence of a *lex specialis*, in the form of the Treaty of Amity, which in principle prevails over general rules."[388]

235. However, in the footnote to the above citation, Judge Lagergren drew attention to his Separate Opinion wherein he elaborated on the other would-be conclusion were the Tribunal not in the presence of a *lex specialis* and were it to find the applicability of the intentional law standard. Restricting the application of the concept of "full compensation" to situations wherein "foreign assets are taken on a discriminatory basis or for something other than a public purpose"[389] and expressing its dissatisfaction with the so-called "Hull doctrine" and the "prompt, adequate and effective" concept, Judge Lagergren concluded that the proper standard is the "appropriate compensation" embodied in Resolution 1803 (XVII) of the United Nations General Assembly.[390] Judge Lagergren also supported this

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[387] INA, supra note 370, at 378 (footnote omitted).

[388] Id.

[389] Id., at 385 (emphasis added). This could also be an additional reason for the conclusion that, between States and their nationals, "full compensation" is in no way an applicable standard under international law. See, also, the practice of the European Court of Human Rights, including its Judgment in Sir William Lithgow and Others, infra note 392.

[390] Resolution on Permanent Sovereignty over Natural Resources, UN GAOR Supp., No. 17 at 15, UN Doc. A/5217 (1962), reprinted in 2 ILM 223.

conclusion by citing the ruling of the Full Tribunal in the Oil Field ITL.,[391] a number of international precedents,[392] rulings of United States courts,[393] and scholarly writings.[394]

236. The award and Judge Lagergren's Opinion in INA worked as an awakening mechanism. First, the majority in the SEDCO ITL. acquiesced in its second Interlocutory Award that the standard of "appropriate compensation" incorporated by the United Nations General Assembly in Resolution 1803 constituted an opinio juris communis.[395] Next, the majority in the Sola Tiles, Inc. award came to the same conclusion by seeking support from virtually the same authorities and sources invoked by Judge Lagergren in INA and by Chamber Three in SEDCO ITL, though it unwarrantedly tried to equate the standard of "appropriate compensation" with "full compensation."[396]

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[391] Discussed, supra, in paragraph 233.

[392] Such as the awards rendered in Texas Overseas Petroleum Co./California Asiatic Oil Co. and Government of the Libyan Arab Republic ("*TOPCO*"), 17 ILM 3, 20 (1978), 53 ILRR 389 (1979; The Government of the State of Kuwait and The American Independent Oil Company ("AMINOIL"), 22 ILM 976 (1982); and Sir William Lithgow and Others v. United Kingdom, European Commission on Human Rights' Report of 7 March 1984, para. 376.

[393] Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F. 2d 875 (2nd Cir. 1981) at 892.

[394] Oppenheim's International Law, p. 352; Rosalyn Higgins, "The Taking of Property by the State: Recent Developments in International Law", Vol. 176 Recueil des Cours 1982, p. 267 at 294; Burns Weston, "The Charter of Economic Rights and Duties of State and the Deprivation of Foreign-Owned Wealth," AJIL Vol. 75 (July 1981), p. 437 at pp. 453-4; and Oscar Schacter's "Commentary on Article 712 of the Restatement of the Foreign Relation Law of the United States," published in AJIL, Vol. 78 (January 1984) pp. 121-130.

[395] SEDCO ITL., supra note 373, at 185-187. In support of this, Chamber Three referred, inter alia, to the Separate Opinion of Judge Lagergren in INA and sources therein invoked including TOPCO and AMINOIL, referred to, supra, in note 392. SEDCO ITL. referred also to I. Brownlie, Principles of Public International Law (1979), pp. 14-15 and Chilean Copper Case (L.G. Hamburg 1973), reprinted in 12 ILM (1973) 251, at 276. It is, however, surprising that this chairman failed to apply the standard in the AIG award. (See, supra paragraph 225).

[396] Sola Tiles, Inc. and The Government of the Islamic Republic of Iran, Award No. 298-317-1 (22 April 1987), reprinted in 14 Iran-U.S. CTR 223, at 234 et seq. (Sola Tiles). This award's attempts to equate the two standards received criticism by commentators and

237. Finally, on 12 October 1994, Chamber Three chaired by Judge Arangio-Ruiz (the then Special Rapporteur of the United Nations International Law Commission on the topic of "State Responsibility"), sealed the discussions over the standard of compensation in expropriation cases with the "appropriate compensation" standard. In its award rendered in Ebrahimi, involving Cases of dual Iranian/United States nationals similar to those presented here, Chamber Three first analyzed in detail extensive international law sources and authorities and scrutinized the awards of the Tribunal, to most of which I have also referred in this Opinion.[397] Concurring with the view that international law does not, in theory and in practice, support "the conclusion that the `prompt, adequate and effective' standard represents the prevailing standard of compensation," and that "no international judicial or arbitral decision on compensation has adopted" that formula "as a matter of international obligation," and that "customary international law favors the `appropriate' compensation standard",[398] the Tribunal concluded that

> once the full value of the property has been properly evaluated, the compensation to be awarded must be appropriate to reflect the pertinent facts and circumstances of each case.[399]

Despite an apparently heated debate over the applicability of the Treaty of Amity standard and invocation of the award in Saghi (which allegedly applied the Treaty of Amity standard to dual national Cases, supra paragraphs 229-231),[400] Chamber Three

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scholars, inter alia, Amerasinghe, "Issues of Compensation for the Taking of Alien Property in the Light of Recent Cases and Practice," 41 ICLQ (1922), pp. 44-45; Norton, P. M., "A Law of the Future or a Law of the Past? Modern Tribunals and the International Law of Expropriation," 85 AJIL (July 1991) 474, pp. 478, 484 and 502 and Ike Minta, "The Code of Conduct on TNCs: In the Twilight Zone of International Law," 25 The CTC Reporter (Spring 1988).

[397] Ebrahimi, supra note 385 (paragraphs 88-98), 197-202.

[398] Id., (paragraph 88), at 197.

[399] Id., paragraphs 95 and 201 (emphasis added).

[400] Id., Separate Opinion of Richard C. Allison, (paragraphs 40-47) 236, at 255-257.

refrained from even discussing, in its award, the relevance of such an argument to Cases before this Tribunal.

IV.C. VALUATION OF BANK TEHRAN SHARES

238. Against the well-known revolutionary background in Iran, the Claimant attempts to persuade the Tribunal that until the day that banks were nationalized in June 1979, everything was normal in Iran and that bank shares were also transacted at arms-length as usual, even in October 1978.[401] Therefore, I would first start by depicting the revolutionary situation and revolutionary movements prevailing in Iran prior to the nationalization of banks. In so doing, I will try to be brief, because I am confident that all are aware of the then prevailing circumstances in Iran through many articles and books published on the Islamic Revolution in Iran and its aftermath. All that which will be discussed in the next Sub-section in connection with the impact of the revolutionary movements in Iran would generally apply with equal force to the valuation of all other properties involved, in addition to their own specific conditions and circumstances.

IV.C.1. Iran's Socio/Political & Economic Situation

239. Although all socio-political and economic sectors of Iranian society were affected by these revolutionary movements and changes, the Islamic Revolution in Iran had particularly conspicuous impact on the Iranian banking system, as we shall

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[401] The facts to which I will allude in this part of my Opinion contradict the allegation. However, a letter by the Tehran Stock Exchange Organization confirms that except for some 1,150 shares transacted on 10 September 1978, "no transaction, whatsoever, has been made with respect to the said Bank's shares." Moreover the evidence referred to by the Claimant shows that the quantity of shares allegedly reported as transacted in October (identical to the number of shares stated in the above letter) was nothing but a statistical report carried over from previous months. The same number of shares with the same sale price are also reported in the sheet covering transactions carried out in September 1978.

observe here, so much so that the Revolutionary Council had to make the nationalization of banks a priority and to take measures accordingly in the span of less than 4 months after the success of the Revolution.[402] In this respect, I will limit my references to a few out of many sources, including contemporary newspapers.

240. In his book, extracts from which were provided in evidence, Sir Anthony Parsons (the then British Ambassador in Tehran) speaks of the revolutionary movements since before the year 1978. He states, however, that the trouble got worse in 1978, so much so that in August martial law was proclaimed in certain cities in Iran. Then he speaks about the infamous massacre on 8 September 1978, in Jaleh Square, Tehran:

> Whatever the truth, a bloody confrontation took place between the Imperial Guard and the demonstrators at Jaleh Square in southeast Tehran. The death toll will never be known for certain, but there is little doubt that hundreds fell to the automatic fire of the troops. Another turning point had been reached.[403]

241. He further writes about the deployment of tanks and soldiers in Tehran on 13 September, closure of the Bazaar in protest on 29 September and 1 October; and strikes in the pubic and private sectors.[404] With respect to 4 November, he writes: "It had been a bad day in the city and elsewhere in the country. Large and violent demonstrations had taken place in many areas of Tehran; cars had been burnt and there had been more civilian casualties at the hands of army.... I could see little or no hope

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[402] Loss of trust in the banking system at the time of the Revolution and thereafter, coupled with the withdrawal of moneys by the people and plundering of funds by wealthy persons who fled the country, was so enormous that the Government and Central Bank of Iran had to release billions of dollars of banks' reserves and to postpone billions more of their debts in order to regain such loss of trust, which would have otherwise drastically increased had the people learned that the banking system was insolvent at the time and on the verge of bankruptcy. To keep the nationalized banks on their feet after their nationalization, the Government had to inject fresh funds into the system. The Claimant's valuation expert inappropriately capitalized on this post-nationalization assistance to conclude that the banking system could successfully weather the Revolutionary typhoon.

[403] Anthony Parsons, The Pride and the Fall: Iran 1974-1979 (Published by Jonathan Cape), at 69-70.

[404] Id., at 70 and 77-78.

for the future."[405] Describing the situation at 2 p.m. on 5 November 1978, he writes that young men and groups of people were

> on the rampage, burning and destroying buildings which had any connection with the hated regime and its policies - banks (money was being piled in the streets and burnt, not looted), insurance companies, the office buildings and major state province enterprises, shops selling liquor, etc. ... When we emerged into the main street, I found myself faced by a scene such as I had not experienced since the end of the Second World War. Fires were burning everywhere, furniture and office equipment had been piled in the middle of the street and set alight, burning cars and buses littered the roadway. ... The Customs Services closed, ... [t]he strike in the Central bank and in Iranair made it impossible to move cash to the provinces.[406]

242. Contemporaneous newspapers depict an even more detailed and gloomy picture of the situation in connection with economic and commercial activities, banking in particular. Kayhan newspaper on 26 October 1978 bore the headline, "DEMONSTRATORS SET ON FIRE TENS OF BANKS AND FIRMS IN RASHT," a city in the far north of Iran. The paper continues, stating that people there "attacked banks, cinemas, etc. ... On their way back, the demonstrators broke the windows of Saadi Cinema, Melli Shoe Store on Shahbaz Ave, Bank Shahriar, Bank Omran... [t]hey attacked also Iran-Dutch Bank, Radio City Cinema... the Tehran, Iranshahr, and Saderat banks.... In two hours, ten locations were set on fire: Bank Melli Ahmad Abad, Touristic Residence in Kasra Ave. ... Other buildings, which were set on fire, were also ... Bank Saderat on Malek Ave., Bank Saderat on Chaleh Tabarok, Bank Melli on Malek Ave, Municipality of Dist. 3, the American Hotel on Takhte Jamshid Ave. ... Bank Bazargani's Shahpour Branch." On 30 October 1978, Kayhan reported similar events in Yazd, a central city in Iran. It stated that demonstrators set on fire several Banks and cinemas, including four branches of Bank Melli, Bank Sepah, and Bank Saderat as well as the Shahre Farang Cinema. The same is reported from the city of Khoramshahr, then one of the major ports in the south of the country, at the border with Iraq. On 8 January 1979 Kayhan reported: "Yesterday, about 6 p.m. Bank Melli,

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[405] Id., at 92, emphasis added.

[406] Id., at 93-94, and 105 (emphasis added).

Ferdowsi Branch, Bank Bazargani, Petrol Station Branch, and Bank Iran & Japan were set on fire."[407]

243. As reported in newspapers, the then Minister of Finance spoke of the run on the banks, which resulted in the weakening of the national economy. He also pointed to rumors that banks were unable to meet their obligations.[408] Because of the serious problems faced by banks in Iran, a parliamentarian deputy suggested on 21 January 1979 that the maturity of bank debts be extended for one year, "due to the national uprising of the people, the inactivity of the banks, and the stagnation of the market."[409]

244. The above evidence corroborates the independent Expert Opinion and testimony of Dr. Farhang and the Auditing Report of Mr. Ghorbani-Farid. Dr. Farhang, providing his independent Opinion for the Tribunal in the Starrett Housing Case in the capacity of a scholar at the Stockholm School of Economics, Institute of International Business, concluded regarding banking operations in Iran:

> With the banks becoming one of the targets of the revolutionary tide of events and rumors spreading, the public's confidence in the banking system eroded and there was a rush to withdraw all deposits, which in turn led to a stop on bank's credit facilities. In the height of the revolution in late 1978, the banking system failed to operate normally.[410]

245. Dr. Farhang also appeared as a witness before Chamber Two in Aram Sabet After providing a picture of the chaotic Iranian socio-economic conditions during the revolutionary movements that brought "the country to its knees" and put it "on the verge of ethnic civil war," he pointed out the fact that the banking system "appeared to be near collapse. Anxious depositors had withdrawn funds from banks on a massive

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[407] Many of the newspapers produced in evidence reported similar events in Tabriz and other cities.

[408] Kayhan, of 23 January 1979, page 2.

[409] Kayhan, of 21 January 1979, page 4.

[410] Page 10 of Dr. Farhang's Opinion. A copy of this Opinion, entitled "Economic and Investment Climate in Iran 1977-1980," was filed in this Case by the Respondent.

scale, either to transfer to abroad or to stuff it in their mattresses at home. The flight of capital, which had begun in the months leading up to the revolution continued in the early months of the provisional government. In the five months between September '78 and January '79 the outflow of the bank deposits topped $4 billion."[411]

246. Mr. Ghorbani-Farid's Report covers, in some detail, the turns experienced by Iranian Banks from 1978 through 1980. In his narration of the prevailing circumstances he concludes that:

> [I]n the middle of the year 1357 (the second half of the year 1978) as soon as the first of political unrest started to take effect, they verged on dissolution and bankruptcy.
> Around the end of the first half of the year, ... as most banks faced unusual withdrawals, it was decided, in order to prevent the dissolution and bankruptcy of [the] banking system, that part of banks deposits with Bank Markazi would be returned to them. ... At the time of the triumph of the Islamic Revolution (February 1979), [the] banking system was destroyed and dissipated. Factors such as transfer of capital investment abroad by satellite investors who were the founders or major shareholders of private banks, distrust of people to the banks and their rush thereto for withdrawal of their deposits, non-collectibility [sic] of banks receivables and finally decrease in value of assets caused many private banks to be placed in such a position that their operations were discontinued or that they were threatened with bankruptcy, notwithstanding Bank Markazi's aids to them. They were, indeed, not even able to honour petty checks.

247. It was under these circumstances, and because the revolutionaries considered the then banking system in Iran to represent a purely usurious business, that the Revolutionary Council had to accord priority to the nationalization of the banking and insurance sectors by placing it on the top of its agenda and nationalizing those sectors in a span of less than 4 months, in June 1979.[412] Being a purely privately owned

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[411] The pertinent part of the Hearing Transcript of this expert testimony was produced in evidence by the Respondent.

[412] In the words of Dr. Farhang in his Independent Report: "One of the new government's first economic announcements was that of nationalization of all private banks and the merger of others (The revolutionary Council's Decree of 7 June, 1979)." Mr. Ghorbani-Farid's Report states that under "these circumstances, the Revolutionary Council was forced to adopt on ... 7 June 1979 ... the Bill of Nationalization of Banks, one of the

institution (with no support or involvement of the Government) and having foreign shareholders and directors who had to hurriedly leave the country with the advent of the revolutionary movements, Bank Tehran's position was even worse than that of other banks.

248. Although the Claimant first alleged that she had bought shares in Bank Tehran after 1976,[413] her own evidence shows that the bulk of the shares were bought -- admittedly with her husband's money -- at this very particular juncture when Iran's economy, including the Tehran Stock Exchange, was at standstill because of revolutionary turmoil.[414] The valuation date also falls at the height of this turmoil.

IV.C.2. Valuation of Shares

249. Before starting with actual valuation of the Bank Tehran shares, I would sum up, in view of what I have discussed under the previous section, that the shares purchased were not transacted at arms-length at the Tehran Stock Exchange. Rather, they were purchased by Mr. Riahi in the name of his wife, in closed markets directly from individuals, at a time when people were fleeing the country and offering their property at very low prices.[415] Additionally, as explained above, the evidence produced by the Parties shows that Stock Exchange activities in Iran had experienced stagnation as

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measures taken by the Government and approved by the whole Iranian nation, in order to prevent the banks from going bankrupt...."

[413] Later the Claimant alleged that her "husband purchased nearly all of these shares for [her] on various dates, in 1977 and 1978."

[414] Copies of share certificates produced by the Claimant demonstrate that many transactions were effected even in October 1978. Mr. Abedini (a banking official formerly with Bank Tehran) testified in writing that out of a total 33,871.70 shares allegedly owned by the Claimant, 10,000 were bought in January and February 1978 and the rest during the period from 2 August to 27 September 1978.

[415] Mr. Abedini testified to all of the foregoing in his Affidavit.

from mid-1978 and came to a standstill as from September of that year.[416] Therefore, any attempt to value the Claimant's shares based on the value of shares transacted at the Stock Exchange in September or October 1978 is unwarranted. The discrete exchange of a few shares in 1978 is not a good basis for the valuation of these shares.

250. Notwithstanding the difficulties that brought the banking and other financial institutions to their knees, the Provisional Revolutionary Government decided to value favourably the shares of all nationalized banks in order to i) safeguard the interest of ordinary Iranian small shareholders,[417] and ii) to secure, in general, the confidence of foreign investors and, in particular, the international banking system, in Iran's new economy. Because of this, the reputable auditing firm of Coopers and Lybrand and later its successor, Agahan, were appointed to value the shares of each private bank separately, based on the value of their assets and the viability of their activities at the valuation date (June 1979). Evidently, the value attributed to the shares of various banks varied, as was also evidenced by contemporaneous official documents issued by the Central Bank of Iran and the Banks' High Council, produced by the Respondent. However, bearing the above two considerations in mind, the Banks' High Council decided to add Rls. 33 to the value of each share arrived at by the above auditing firms.[418] The value allocated to each Bank Tehran share was Rls. 717.096, and the Respondent has repeatedly stated that the amount of Rls. 24,289,261 (33,871.70 shares x 717.096) has been available for payment in rials.

251. The Respondent also produced contemporaneous evidence showing that the above value was paid to and received by all shareholders of Bank Tehran, Iranians and foreigners alike. As a matter of fact, documents produced demonstrate that all five

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[416] See, also, supra note 401.

[417] Any unhappiness or dissatisfaction of ordinary people would have entailed, at that crucial point of time, street demonstrations and some sort of upheaval.

[418] This was testified to by Mr. Abedini in his Affidavit and by Mr. Salami during the Hearing, though the Hearing Transcript reports the latter testimony ambiguously. (See, footnote 153 to the Award).

international banks involved asked for and received compensation for their nationalized shares on the basis of the same valuation.[419] There is no reason why the Claimant should have been treated differently.

252. Moreover, a telex sent to the Iranian authorities in 1981, read to the Tribunal during the Hearing, and made available to it after the Hearing, shows that the Claimant had demanded $532,270, allegedly representing the "MARKET VALUE AT TIME OF LOSS" as full compensation of her interests in Bank Tehran.[420] At the hearing, the Respondent informed the Tribunal that, unfortunately, the telex was incomplete and invited the Claimant to file a complete copy of the same. The Respondent also promised to file a complete copy of the telex should it be able to get hold of it. Except for certain procedural objections put forth, the Claimant did not deny the authenticity of the telex and the veracity of its content at the Hearing. As stated, the Respondent filed the incomplete copy of the telex after the Hearing, but the Claimant refrained from filing a complete copy, not even alleging that it could not find the telex.

253. To my regret, the Majority opted to consider the above evidence, with important impact on the valuation, inadmissible, considering it to be a post-Hearing filing and part of a settlement negotiation,[421] notwithstanding the fact that the offer was made as representing the market value of the shares at the expropriation date and, in a letter

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[419] In connection with its 544,451.50 shares, Banco Nazionale del Lavoro asked, through its letter of 11 November 1982, for payment of Rls. 390,423,992 "representing the 71.7096% of the nominal value of the shares above indicated." Other Banks, including Paris Bas Swiss, Paris Bas Luxembourg, and Paris Bas International, received the value of their respective shares calculated on the basis of Rls. 717.096 per share. The same documents show that a number of Iranians -- including Mr. Naraghi (apparently a director of the Bank) and Mr. Noori (an employee of the Bank) -- had accepted and received compensation on the basis of the same valuation.

[420] It is inconceivable that the compensation demanded in the telex should not be taken into consideration because it was proposed in the spirit of an out of court settlement. Any such argument fades in the face of the fact that the compensation was said to represent the market value of the shares. Nothing was deducted from the proposed market value in that alleged spirit.

[421] Paragraphs 51-53 of the Award.

filed after the Hearing, the Claimant joined the Respondent agreeing with its filing. The value proposed by the Claimant as representing the market value of the shares at the expropriation date forms an integral part of the evidence before the Tribunal. In view of this, I am of the opinion that the telex was, in the Claimant's contemporaneous understanding, representative of the alleged full market value of the Bank Tehran shares, and the Tribunal should have considered the offer as a basis from which it should have deducted the effects of the then prevailing revolutionary situation and its ensuing socio/politico and economic changes (to be discussed below), and reached to an appropriate level of compensation consistent with Ebrahimi (supra paragraph 237). Not only does the Award not do this, it instead compensates the Claimant by an amount (U.S.$ 789,220) much higher than that which she considered to be the full market value of her shares.

254. In reaching the above figure, the Award starts from the so-called last-traded price of Bank Tehran shares, Rls. 2,350,[422] and deducts 30 percent from that value to ostensibly reach the value of those shares at the time of valuation in June 1979.[423] In applying the 30 percent reduction, the Award relies heavily on Khosrowshahi, wherein the Tribunal based the valuation of the shares of Development and Investment Bank of Iran ("DIBI") on the last traded shares in the Tehran Stock Exchange, discounting the traded value by 30 percent to reach the valuation on the valuation date.[424] In my view the award in Khosrowshahi should not have been considered to be a proper precedent for our Case for a number of reasons.

255. To begin with, unlike here, in Khosrowshahi, the Respondent could not show that transactions at the Stock Exchange had experienced stagnation since mid-1978 and a complete halt in September 1978. Further, the Khosrowshahi family was very famous in Iran and contributed a great deal to the country's economy through investments in

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[422] See supra note 401.

[423] Paragraph 401 of the Award.

[424] Khosrowshahi, supra note 381, para. 78 at 100-101.

various basic industrial and commercial sectors. Unlike our Claimant here, who had acquired her shares for Mr. Riahi with a certain ill intention and at low prices from desperate persons at the peak of the revolutionary movements by circumventing the process of the Tehran Stock Exchange, members of the Khosrowshahi family were among the promoters of certain private banks in Iran and had acquired their shares through transactions carried out in normal circumstances at the Stock Exchange. Therefore, unlike the present Case, no malicious behaviour or misconduct could have been found to be present in the Khosrowshahi Case.

256. Nothing was introduced in Khosrowshahi to prove that DIBI's shareholders, Iranians and foreigners alike, had accepted the compensation offered by the Banks' High Council. More importantly, in our Case here, the Claimant herself had fixed the market value of her shares at about $530,000 in a telex sent to the Iranian authorities not long after the nationalization date of the banks. Such important evidence was wanting in the Khosrowshahi Case. Another fact that distinguishes substantially these two Cases is that the value of IDBI's shares was fixed nearly 20 percent higher than that fixed for shares of Bank Tehran by the auditors appointed for that purpose (Coopers & Lybrand and Agahan) and by the Banks' High Council (supra paragraph 250). This reason alone should have supported a larger reduction in comparison to the 30 percent applied by Chamber Two in Khosrowshahi, because it shows that Bank Tehran shares were, inter alia, less attractive to the market at the time of the Revolution and that socio-political and economic storm had struck this bank's shares more severely.

IV. D. VALUATION OF IRAN BÖHLER SHARES

257. Here, with respect to Iran Böhler, I do not need to enter the discussions concerning going concern valuation. This is because the Claimant has valued the company based on the face (nominal) value of this company's shares[425] and because

[425] Paragraph 402 of the Award.

Iran Böhler had a record of loss making throughout its life, as evidenced by that company's audited financial and accounting statements.[426] Because of its past performance, which brought the company to the brink of bankruptcy, and its continuous bleak prospects close to the valuation date, I cannot convince myself to propose any value for Iran Böhler. That the company was not dissolved despite its insolvency and huge debts and whether or not it could survive in the long run (at exorbitant costs to its shareholders) are irrelevant to the situation that prevailed at the valuation date. Notwithstanding these, the Award fully compensates the Claimant by awarding full relief to her (paragraph 419 of the Award).

258. To discuss considerations seriously affecting Iran Böhler's future prospects or positive value, I would start with the entry in Mr. Riahi's diary for 18 April 1977, when the revolutionary movements had not yet affected the company and the foreign shareholders and directors of the company were in control and at their managerial places. He states that the "critical financial situation of the Company was discussed at the sessions dated April 16-17, 1977, of the Company's Board of Directors comprising Messrs. Dr. Adolf Bayer, Theo M. Trammer and Alfred Neumaister, representatives of Austrian shareholders." At the time, shareholders had to pour another Rls. 100,000,000 into the company in the form of a capital increase.[427] But it appears that this did not help either, and the situation on 13 September 1977 got even worse. He writes that, since "the situation of joint Iran-Böhler Pneumatic (IBP) Company, on account of the mistakes made by its Austrian partners, that is former Böhler Company or VEW, has

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[426] Mr. Glover (the expert appointed by the Respondent) concluded, based on the financial statements of the company, as did Mr. Ghorbani-Farid (a Chartered Accounted who produced two valuation opinions for the Respondent), that the company was a loss-making entity from the date of its incorporation. In addition to the financial statements of the company, Mr. Glover reached this conclusion relying, inter alia, on Mr. Riahi's statement in para. 23 of his Affidavit, the company's shareholders meeting in March 1978 (para. 4), and Mr. Khajeh-Nouri's letter of 16 January 1980.

[427] Page 548 of Mr. Riahi' diary.

now been endangered, the Company is on the verge of insolvency and bankruptcy."[428] The situation in 1978 was not any better. Mr. Riahi reports that in April 1978, the "situation of IBP Company and misunderstanding with VEW [are] still not good,"[429] and that on 13 December 1978, "Iran-Bohler Pneumatic was on the verge of bankruptcy."[430]

259. This trend of a worsening situation and bleak prospects followed the company into the years 1979 and 1980. The company had to lay off some of its personnel, including high-ranking officials, in February 1979. In his diary, Mr. Riahi states that because "of decrease in income and the need for further economization, the service of Dr. Parviz Khabir, Chairman of the Board of Directors; Tom O'Leaky, Sales Director; Novaeen, head of the Accounting Department; Ms. Giti Afshar, head of the Administration Department; and a lady archivist and a lady typist of Iran-Bohler Pneumatic Co. were terminated."[431] Mr. Riahi qualifies the company as being actually bankrupt, although such bankruptcy had not been officially announced.[432] To be able to stand on its shaking feet, the board of directors of Iran Böhler had no choice but to consider "asking for a loan of 5 million tomans [Rls. 50,000,000] to buy raw materials and parts, attempting to continue the factory's work,"[433] increasing its already huge debts, as will soon be seen.

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[428] Id., page 578. The word "insolvency" is a proper technical translation of the word "*tavaghof*" used by Mr. Riahi in his diary.

[429] Id., page 647.

[430] Id., page 734.

[431] Id., page 800.

[432] Id., page 807. In Mr. Riahi's own words: "Iran-Böhler Pneumatic Company has become bankrupt without any announcement, and forty workers of the factory caused worry to me in my office." Mr. Khajeh-Nouri's reference (in his letter of 16 January 1980, supra note 426) to concerns of Khoshkeh's personnel and their awareness of the fate of IBP's personnel was a reference to these problems and situations.

[433] Id., Mr. Khajeh-Nouri's letter, page 1.

260. As we shall also observe in connection with Tarvandan, Iran Böhler was unable to pay even the rent for its office to Tarvandan.[434] The audited accounts of the company for the fiscal year ending 20 March 1980 (a time close to the valuation date), show that the company's property and its machinery and equipment were placed as security for a 100,000,000-rial loan (with an interest rate of 8%) received from an Iranian bank. The company also owed Böhler of Austria a sum of Rls. 229,600,000 for machinery purchased, which should have been paid within 8 years starting from November 1980.[435] Inability of any merchant or commercial entity to pay any installment of any of its liabilities (including, as stated, the salary of its personnel and outstanding rent) entails a demand of insolvency and possible bankruptcy and liquidation of that person's business.[436] Long-term liabilities would be considered as matured in such situations. Iran Böhler was not an exception to any of those consequences.[437]

IV. E. VALUATION OF KHOSHKEH SHARES

261. Similar to what I will do with respect to Rahmat Abad's valuation, I will demonstrate here first that Khoshkeh could not have been a going concern on the expropriation date and that in any event, the going concern valuation is inapplicable in its case. Then, I will demonstrate how wrong and unrealistic the Claimant's methods of valuation and their underlying parameters are. Finally, I will provide my own conclusion on Khoshkeh's value. Before starting with these, I will discuss the meaning of going concern and going concern valuation, as understood and applied by this Tribunal.

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[434] Id., page 2.

[435] Mr. Ghorbani-Farid's valuation report, by references to notes 12-7-1, 12-7-2, and 13-3 to the audited accounting statements of the company.

[436] Iranian Commercial Code, Articles 412-426.

[437] Id., Articles 421-422.

IV.E.1. What is a Going Concern, and Going Concern Valuations

262. As has been properly stated by the award in Amoco International Finance, the notion of "going concern" valuation relates to the status of an enterprise, which status must have been achieved before the expropriation date. To show such a status, the enterprise should demonstrate that i) it had a historical "ability to earn revenues," and ii) could keep "such an ability in future."[438] These requirements are also confirmed by many other awards, such as those rendered in Thomas Earl Payne,[439] Sola Tiles Inc.,[440] CBS Inc.,[441] and Phelps Dodge Corporation.[442] As a matter of fact, the Tribunal found a historical profit record of an entity insufficient for the finding of the "going concern"

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[438] Amoco International Finance, supra note 370, at 250, 253 and 270. To satisfy itself about the future continuation of *Khemco*'s going concern status, the Tribunal noted that it had to find that despite the continuation of "the troubled situation in Iran... Khemco remained a going concern." (Id., para. 263, p. 270.)

[439] Thomas Earl Payne and The Government of the Islamic Republic of Iran, Award No. 245-335-2, para. 36 (8 August 1986), reprinted in 12 Iran-U.S. C.T.R. 3, at 15, wherein the Tribunal found that "the effect of the Revolution in Iran seriously discounted the reliability of past performance as an indicator of likely future profitability for the two companies" involved (emphasis added).

[440] Sola Tiles, supra note 396, paras. 62-64, at 240-242, wherein, knowing that the relief sought depended on the status of Simat (the entity involved), the Tribunal ruled that it had first to "determine whether Simat qualified as a `going concern.'" Although the Tribunal found that Simat's business prospects in 1978 were clearly favourable, it nonetheless ruled that in light of changes experienced by the time of the Islamic Revolution, such prospects faded during the course of that event and Simat could not have been expected to continue as a going concern.

[441] CBS Incorporated and The Government of the Islamic Republic of Iran, et al., Award No. 486-197-2, paras. 50-53(28 June 1990), reprinted in 25 Iran-U.S. C.T.R. 131, at. 147-149, ruling that "[n]ot only did the CBS Iranian companies have no history of past profits, but they also lacked reasonable prospects to achieve profits in the future." (Emphasis added.)

[442] Phelps Dodge Corporation, et al., supra note 375, paras. 29-30, at 132.

status of that entity unless "a prospect of excellent business" could have been found to be existing.[443]

263. It is only when the "going concern" status of the enterprise is established by applying the above tests that going concern valuation would find a role to play. In Amoco International Finance, the Tribunal found, relying on AMINOIL and quoting from that award, that in connection with such an "ongoing enterprise... the value of the enterprise as a whole" rather than the value "of the discrete elements which constitute it must be determined."[444] To value a "going concern" in its "organic totality" and "as a unified whole,"[445] it has been the practice of international tribunals to add a "premium"[446] to the book value of the entity.[447] Where applied, this premium

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[443] Motorola Inc. and Iranian National Airlines Corporation, et al., Award No. 373-481-3, paras. 66-68 and 77-78, (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 73, at 88, finding that Milcom was admittedly a going concern at the time of taking but concluding that it "is not satisfied that irrespective of any expropriatory action on the part of Iran, Motorola would have been able to maintain any significant part of the market," and that under those "conditions, and at the times here relevant, Milcom cannot be considered to have had any going concern value." (Emphasis Added.)

[444] Amoco International Finance, supra note 370, paras. 228, 231 and 265, at 258, 259 and 270. See, also, AMINOIL, para. 178 (1), supra note 392, at 1041.

[445] Id.

[446] Banco Nacional de Cuba, supra note 393, p. 893, (stating: "going concern value generally refers to the proposition that the prospective buyer of a business will be willing to pay a premium over the book value of the assets in the expectation that the earning of the business will continue and that the new owner will receive the stream of earnings"). See, also, Asian Agricultural Products Ltd. and Republic of Sri Lanka, reprinted in 30 ILM 577 (1991) para. 102, p. 623; AMINOIL, supra note 392, para. 178, p. 1041; AIG., supra note 2, at 109 (stating that in valuing a "going concern" it must take into account not only "the net book value of its assets but also such elements as goodwill and likely future profitability"); and Amoco International Finance, supra note 370, para. 228, at 258.

[447] To my knowledge, except for the award in Aram Sabet et al., to be discussed shortly here, no other award of the Tribunal added any percentage for that premium, probably because of the then prevailing socio-political and economic situations in Iran, though a number of them referred to the going concern status of the entities involved and the appropriateness of the going concern valuation method. For example, although in Saghi, the Tribunal ruled that "valuations that merely calculate the net value of assets and liabilities of a company ... are an inadequate method of valuation of a going concern", because "such

was on the order of 10 percent[448] or if more it was added to the net book value of the entity as reflected in its books, and not to its net adjusted book value,[449] which is a valuation wherein the assets are re-evaluated according to their market value as we are doing with respect to Khoshkeh and Rahmat Abad in this Case.

IV.E.2. Khoshkeh was not a Going Concern

264. To sum up the law discussed above, for an entity to be qualified as a going concern, the enterprise should demonstrate that i) it had a historical "ability to earn revenues," and ii) could keep "such an ability in future."[450] Furthermore, a historical profit record is insufficient for a finding of "a prospect of excellent business."[451] Applying the law to Khoshkeh, it is not difficult to establish that company's future prospects were not promising, but gloomy, at the time of valuation.

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valuations ignore the future prospects of a going concern and therefore fail to indicate the price that a potential buyer would pay for the company, the Tribunal added nothing to the value of tangibles (assets and liabilities) for future prospects of the concerns involved (N.P.I. and Novin). Instead, the Tribunal took the price offered in 1975, five years earlier than the expropriation date (September 1980), and adjusted the offer downward to reflect changes, including those brought about by the Iranian Revolution in 1979. (Saghi, supra note 325, paras. 90-91 and 99-103.)

[448] AMINOIL (supra note 392), adding only 10 percent over the value of the company's tangible assets notwithstanding the fact that Aminoil was engaged in the very profitable petroleum production business.

[449] The Final Award in Aram Sabet, supra note 2, appears to be the only award of the Tribunal that has actually applied a percentage to take care of that premium. It is interesting to note, however, that this award applied a higher percentage (over 50%) with respect to ICC, because it based its valuation on that company's net book value (assets and liabilities as reflected in the books), and not on the adjusted book value of the assets and liabilities.

[450] Supra note 438.

[451] Motorola Inc., supra note 443.

265. Contemporaneous accounting and financial statements and tax returns of the company, produced with the valuation reports of the Respondent's experts,[452] demonstrate that Khoshkeh's imports and gross sales revenue substantially declined since 1977. This decline was 20% in 1978 and nearly 50% in 1979 as compared to 1977, bringing the gross sales revenue down to Rls. 231,500,000 in 1979 from Rls. 533,000,000 in 1977. The figure for 1979 was further reduced to the level of Rls. 132,800,000 in 1980. It is noteworthy that these declines were experienced while the company was under the total control of its own managers and shareholders.[453] Mr. Riahi's understanding of the situation, as reflected in his diary, confirms the above. In his diary entry for 13 December 1978, he speaks of a drastic decline in Khoshkeh's sales, though its monthly expenditures were estimated to be about Rls. 100,000,000.[454]

266. Mr. Khajeh-Nouri, a long time shareholder and manager of the company, confirms in his letter of 16 January 1980 (a date very close to the alleged expropriation date) that the loss-making process of the company was such that the company had decided to deduct the Rls. 100,000,000 loss from the capital of the company, reducing the value of its shares by half.

267. The revolutionary situation in Iran at times prior to and after the valuation date, coupled with uncertainties about Khoshkeh's future, reduced the company's prospects substantially further. Many other companies operating in Iran faced similar

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[452] The Claimant refrained from making these documents available to her valuation experts and did not address herself to any of them, even though she was accorded the opportunity to file a Surrebuttal. (See, paragraphs 439, 447, and 457 of the Award, and supra paragraph 34.) Mr. Reilly, the Claimant's main valuation expert, stated at the Hearing that he had not seen this evidence prior to that date.

[453] Except for Mr. Riahi, whose shares were expropriated, the shareholders of Khoshkeh remained the same even after the Islamic Revolution, apparently until the present day.

[454] Page 734 of Mr. Riahi's diary. Based on the annual accounting of the company for the years 1354-1358 (21 March 1975 to 20 March 1980, which were attached to his expert opinion, Mr. Glover also noted significant increase in operating expenses. From these documents, he concluded that "Khoshkeh's prospects at the valuation date were shrouded in uncertainty." (Paragraph 439 of the Award.)

uncertainties, but uncertainty about the possible continuation of Khoshkeh's trade relations with foreign companies and suppliers, which under normal circumstances provided its needed raw materials, necessary equipment, and know-how, aggravated the adverse conditions of this company even further, leaving no prospect of future profitability at the valuation date. Once again, Mr. Khajeh-Nouri's letter, discussed above, becomes pertinent. He refers to the fact that in January 1980, "Khoshkeh [was] confronted with a lack of supply and sales." He says that the gloomy prospects of the company cannot be hidden and that the employees "are aware of the problems and they are sitting tight with our support, so that situation does not become like IBP." He further refers to government controls over pricing policies including "the sale prices of Khoshkeh," which will force the company "to adjust to the new prices," and notes that the Government of Iran was "talking regularly about nationalization of foreign trade."[455] These would not only affect the future profitability of any company involved, but would also put into question the viability and wisdom of any investment, considering the risk that the government might disallow future private import of certain materials and goods. It should be recollected that Khoshkeh's business was dependent mainly on its relation with Austrian manufacturers (Böhler) and imports from that country. Putting ourselves in the shoes of a would-be buyer, we would have no choice but to take these facts seriously.

268. Iran's adoption, as an Article XIV member of the International Monetary Fund ("IMF"), of "restrictions on payment and transfer for current international transactions" in 1979 (which were only relaxed for a short period prior to the Iranian

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[455] The possibility of nationalization of foreign trade is different from the threat of nationalization of a company, though the general thread of nationalization cannot be discarded either. Such policies and measures are prerogatives of States, and "injuries to foreigners resulting from these measures do not afford a basis for claims." Sea-Land, supra note 15, at 165, quoting a passage from the international award in Car Wheel Co., UN R.I.A.A., vol. 4, 669, at 681-682. While agreeing that the threat and the consequences of expropriation must not affect the compensation, the award in Amoco International Finance considered that "the risk of such expropriation, to be sure, would have constituted a deterrent for any prospective investor, especially if such a taking might occur in the near future." (Supra note 370, paras. 242 and 247, at 263, 264-265.)

Revolution), is another factor that should be taken into consideration in valuing the future prospects of Khoshkeh,[456] particularly in view of the fact that its work and revenues depended on its imports of raw or manufactured materials from abroad.

269. Despite the Claimant's contention, since 1977 Khoshkeh could no longer enjoy its alleged monopoly inside Iran because many steel companies (including large governmental steel manufacturing factories) went, or were going, into production prior to or during those years. Huge manufacturing companies like the Kavian and Mobarekeh steel mills were already productive and the Khozestan steel mill was starting production. That was probably another reason for the decline of Khoshkeh's imports and revenues after 1977, as noted in paragraph 265, above.

270. As the Tribunal also noted (paragraphs 454 and 459 of the Award), Mr. Riahi's absence from Iran and the company clouded even further Khoshkeh's future because the relation between this company and the Austrian Böhler was based mainly on Mr. Riahi's personal relation with the latter company. Actually, the evidence proves that Mr. Riahi, and not Khoshkeh[457] or any other person or company, was the direct party to the contract with Böhler of Austria, which provided for payment of a 5.5% commission from each sale of the Austrian Böhler steel company to other entities within Iran (including the Iranian Army). No financial or accounting statement of Khoshkeh reflected any payment received by it in that respect.

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[456] See, e.g., the awards in Mark Dallal and The Islamic Republic of Iran, et al., Award No. 53-149-1 (10 June 1983) reprinted in 3 Iran-U.S. C.T.R. 10 ("Dallal"); Hood Corporation and The Islamic Republic of Iran, et al., Award No. 142-100-3 (13 July 1984) reprinted in 7 Iran-U.S. C.T.R. 36); Grune and Stratton, Inc. and The Islamic Republic of Iran (15 April 1988), reprinted in 18 Iran-U.S. C.T.R. 224; and Ali Asghar, supra note 16.

[457] This is a mistake committed, but later corrected, by Mr. Glover in basing his valuation on that prospect (pages 104-105 of the Hearing Transcript for 26 May 2000), which explains why his valuation was higher than that proposed by Mr. Salami.

IV.E.3. Claimant's Methods of Valuation were Wrong

271. Apart from what I have stated, which renders the application of the going concern valuation inapplicable, there is not even a single precedent established during the more than 20-year life of this Tribunal where any of Mr. Curtis's or Mr. Reilly's (Claimant's experts') valuation methods (Capitalization of Earnings, Capitalization of Excess Earnings, and/or DCF) was found to be applicable, even with respect to those entities that the Tribunal found to qualify as "going concerns."[458] All the above so-called valuation methods are based on a highly uncertain conjecture regarding future productivity, future prices of products, and future costs, as admitted by Mr. Reilly himself.[459] In my view the Award rendered in this Case is one of the many nails that have sealed the coffin of the so-called Discounted Cash Flaw method of valuation. Even if probably applicable as a method in the situations where an owner desires to know the hypothetical value of his property to himself, I agree with the Award that this method of valuation, if relevant at all, can solely be used as a means to aid other valuation methods and has no independent application. (Paragraphs 454 and 502 of the Award.)

272. In Amoco International Finance, the Tribunal ruled, after qualifying Khemco (the company involved) as a going concern, that:

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[458] Mr. Reilly admits that the awards of the Tribunal, including those rendered in Sedco, Inc. and Harold Birnbaum, have followed the practice of adopting the "asset-based" valuation method. Apart from disagreeing with the DCF method of valuation, Mr. Salami opined in his written and oral expert presentations that farms and gardens are valued on the basis of their assets (the land) and not on the basis of their future profitability (see, e.g., page 48 of the Hearing Transcript for 27 May 2000). This view was shared and defended persistently by Mr. Glover, who, responding to the panel's questions, repeatedly stated that DCF valuation cannot be applied with any degree of certainty and it is wrong to value a farm based on any future profitability or future earning valuation methods (pages 129-130, 133-135, and 140 of the Hearing Transcript for 26 May 2000).

[459] Pages 64-65 of the Hearing Transcript for 22 May 2000.

> going concern value which includes the value of tangible plus a premium for intangible assets is different from capitalization of alleged future revenue of the company which is only lucum cessans....[460]

Actually, the Award in Phillips Petroleum Company of Iran, on which the Claimant has relied heavily in support of her DCF valuation, did not agree that the method could result in a proper estimate of market value and the majority denied that it ever performed a DCF analysis.[461] The most recent Award of the Tribunal, Aram Sabet, took up and rejected all valuation methods based on capitalization of future earnings and cash flows -- even in connection with entities found to be going concerns -- which incidentally, had been suggested in that Case by Mr. Reilly.[462]

273. Having stated the above, I will now focus in this Section only on the particular problems related to the application of the Claimant's valuation methods to Khoshkeh (based on future earnings), treating them separately from those related to the valuation of immovable properties. I will not discuss the mistakes committed by the Claimant's expert with respect to discount rate and the P/E ratio of the capital, which greatly affected the outcome of his future earning or DCF valuation, because I will discuss the

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[460] Supra note 370, paras 87, 229-231 and 261. The quotation is an amalgamation of the findings in the cited paragraphs.

[461] Supra note 370, paras. 113-114 and 138, at 124 and 134. In answering Judge Khalilian disclosure of a mistake in the application of a formula in the DCF calculation contained in a Memo that he claimed to have been exchanged behind the scenes (id. at 239-256), Judge Aldrich, who formed the Majority with Judge Briner in Chamber Two, reiterated that the relief awarded in Phillips Petroleum Company of Iran was not based on the DCF valuation method.

[462] Supra note 2, Final Award, paras. 12, 24, 26-30 (with respect to Nownahallan, basing the valuation of the company on its net book value, as reflected on the books, and not on its adjusted book value); paras. 37 and 43 (with respect to ICC, basing the valuation on the company's net book value, as reflected in the books, and not on adjusted book value, but increasing the net book value to take into account the going concern status of the company); paras. 54-72 (with respect to Mina Glass, basing its valuation on the value of assets minus liability); paras. 76-78, 84, 92 (placing more weight on Dr. Pooya's valuation, with respect to GTR, and valuing its shares "only slightly above their par value."); paras. 105-109 (with respect to TRR); paras. 125-127, 130, 136-140 and 147 (with respect to Zamzam).

wrong application of these to Rahmat Abad. However, these observations apply equally to the valuation of Khoshkeh. As my conclusions there will show, based on the Opinions of Messrs. Salami and Glover, those rates should have amounted to 25% or 32%, if proper criteria had been employed (Section IV.F.2., infra). Other problems specific to the valuation of Khoshkeh will thus be discussed here.

274. Rather than basing their valuations on real figures reflected in the audited financial and accounting statements of Khoshkeh for the years close to the valuation date, Messrs. Curtis and Reilly rely exclusively on figures related to the years prior to 1970, taken from Attachment C to Mr. Riahi's Affidavit, allegedly extracted from his diary, and in support of which no independent evidence is produced. For example, both of the Claimant's experts hypothesized the results for the period 1971 to 1979 and for another decade to follow, relying on the figures provided by Mr. Riahi for the years 1965-1969. This was done, and has not been corrected, notwithstanding the fact that audited financial and accounting statements together with contemporaneous tax returns for the years 1976 to March 1981 and other accounting information for previous years were attached to the Opinions of Messrs. Salami and Glover and that the Claimant was accorded an exceptional additional opportunity to file a Surrebuttal.[463]

275. In addition to the above wrong approaches, both of the Claimant's appraisers increased the gross revenue reported by Mr. Riahi for fiscal year 1969-1970 (Iranian year 1348), applying high percentages in reaching their speculative figures of gross revenue (sales) of Khoshkeh for 1971 and onward. They did this disregarding the trend of the increases reported by Mr. Riahi for the previous years. Setting aside Mr. Curtis's

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[463] The excuse put forth by Mr. Reilly was that he had received the actual audited figures from the Claimant's counsel in late 1998 or early 1999 (page 90, Hearing Transcript for 22 May 2000). He could not, however, provide any explanation during the cross examinations as to why he had not corrected his valuation prior to, or for that purpose, during the Hearing -- as he had after being criticized by Messrs. Salami and Glover in connection with the valuation of Rahmat Abad and in connection with Khoshkeh for having relied on some of Mr. Vahman's mistakes, which were pointed out by Dr. Pooya (id, pages 194-197).

valuation, which was not relied upon after the filing of Mr. Reilly's valuation,[464] the latter adds a 30% compound to the alleged gross revenue for each of the previous years from 1970, in contradiction to the 16% increase reported by Mr. Riahi for fiscal year 1969-1970 in comparison to the year prior, 1968-1969, and the 1.4% increase reported for the latter fiscal year over 1967-1968. Coming to gross revenues for the fiscal years ending 20 March 1978, 1979, and 1980, Mr. Reilly considers a constant figure of $5,022,000 in revenues for each year, even though the actual figures show drops in sales of about 25% and nearly 50% for the years ending 20 March 1979 and 1980, respectively, in comparison to the sales reported during the fiscal year ending 20 March 1978.

276. Mr. Riahi's diary further reports an income (profit) of Rls. 30,432,000 (U.S. $431,000) before tax for Khoshkeh for the fiscal year 1969-1970,[465] down about 5% in comparison to the previous fiscal year. Similarly, comparing the figures given for the fiscal years 1968-1969 and 1967-1968, a decline in income of nearly 7% is noted. Notwithstanding this, Mr. Reilly doubled Mr. Riahi's figure for fiscal year 1969-1970 to reach his alleged actual pretax income for 1970.[466] From there, he hypothesizes compound annual increases of 37.50% for each year until 1972, 35%, 32.5%, and 30%

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[464] Mr. Curtis provided two valuation opinions, one for Khoshkeh and another for Rahmat Abad. Both his valuations were subject to many identical qualifications. For example, he stated in his opinions that he had based his valuations on the information provided by Mr. Riahi in his Affidavit, certain other information and statements provided by him or the Claimant, and also "on representations made by the Claimant about the background, history and potential performance of the business." He admittedly "accepted the financial information of [the companies as provided to him], without additional, independent, verification," adding that "no responsibility is assumed for [the] accuracy" of those representations. However, since Mr. Curtis's valuations are based mainly on the same evidence and valuation methods as are Mr. Reilly's valuations, his valuations suffer from the same flaws as do Mr. Reilly's valuations, though the latter's valuation skyrocketed the figures even higher.

[465] It is not clear from where the gross revenues (sales) reflected in Mr. Riahi's diary are taken and with which gross expenditure they are netted to reach the alleged pre-tax incomes (profits). No document proves any of the figures cited.

[466] Mr. Reilly estimates an income of $862,000 for 1970 as against Mr. Riahi's alleged Rls. 30,432,000 (about U.S.$ 431,000).

from 1973 through 1975, respectively, and 25% for each year falling thereafter until 1981. He also allows a 27.5% compound annual increase for the years 1982-1983 and 30% for each year up to 1989.

277. By applying the above wrong, speculative, and extravagant figures, Mr. Reilly reaches a pre-tax income of U.S. $1,255,000 for the year 1979 (as against the $300,800 reported in the accounts).[467] Carrying that amount into 1980 (the first valuation year in his DCF method) and increasing the figures for each year until 1989 by applying the compound percentages discussed above, he arrives at a total pre-tax revenue of $33,138,000 which is discounted to $13,929,000, applying a 16% discount rate.[468] Hypothesizing the 1990 pre-tax value at $7,075,000, Mr. Reilly's valuation yields a discounted extra $9,047,000 value as "terminal value." Adding these two figures, Mr. Reilly fixes the end value of the Khoshkeh shares at the extravagant figure of $22,976,000 to which $3,120,000, as the value of the unused land, is mistakenly added,[469] and from which only $2,375,000 is deducted as debts. Mr. Reilly deducts only $2,375,000 as Khoshkeh's debts, though the evidence, including the audited financial and accounting statements of the company, together with its balance sheets, show a total debt of Rls. 469,000,000 ($5,700,000).[470]

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[467] See, also, pages 12-17 of the Hearing Transcript for 23 May 2000.

[468] As mentioned above, a discount rate of 32% would have been appropriate. It should be recalled that the market interest rate around the valuation date stood at over 20%, and it is therefore inconceivable to speculate that an investor would have been ready to invest in the volatile market of Iran at a return rate less than that which he could have easily and securely acquired by depositing his money in any bank.

[469] As we shall observe, the $3,120,000 figure is the value given by Mr. Vahman to all the company's lands, buildings, and key-money, which should not have been added to the value of the company in a DCF valuation method. Mr. Vahman appraised the unused land at $436,600 as against the Rls. 15,236,000 (about $215,807) reached by Dr. Pooya.

[470] While the Award accepts (at paragraph 457) a larger figure as Khoshkeh's liability (Rls. 421,856,631), it ignores the company's liabilities for tax and severance pay. No buyer would be prepared to pay the full value of a property to the seller without taking account of such liabilities that would have to be paid sooner or later.

278. The Claimant's valuation of the landed properties was also replete with errors. To avoid an unnecessarily long list of problems associated with properties, I will provide a summary of a few of them, without intending to play down the importance of the others. As alluded to above, except for the value of the unused land located on the road to Karaj, the value of Khoshkeh's real estate (owned lands and buildings plus key-money for the landed properties rented) should not have been added to the outcome of any of Mr. Reilly's valuation methods based on capitalization of future earnings, or DCF. Such an addition would amount to double counting, because the so-called discounted future earnings of any entity must be considered as having taken into account all the properties of that company used to generate those earnings. Nonetheless, Mr. Reilly and the Claimant wrongly add $3,120,000, the total value of Khoshkeh's landed properties and key money, as if that figure represented only the value of the unused land located at Karaj road.[471]

279. Following in the footsteps of many dual national claimants, the Claimant here has used the services of a Mr. Vahman, who is now well-known to the Tribunal, and was at a time prior to the Iranian Revolution in 1979 a certified appraiser in Iran. Mr. Reilly, too, relied on Mr. Vahman's appraisals in his valuations. The record shows that Mr. Vahman left Iran upon the success of the Islamic Revolution and ever since has not returned or worked there as an official (certified) appraiser, or in any other capacity. Therefore, it must be concluded that he could not have seen the lands and buildings involved in this Case, which also explains the reason why he made mistakes in connection with the locations, measurement, and age of the properties (paragraph 281, below). For similar reasons, in one of its latest awards, in Aram Sabet, the Tribunal could not rely on Mr. Vahman's valuations, preferring in instances Dr. Pooya's valuations as accurate and reliable for that purpose.[472] In addition to the above disqualifying factors, another fact that discredits Mr. Vahman as an independent appraiser is that he implicated himself as having appraised real estate below its actual

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[471] See, e.g., the Claimant's Rebuttal Memorial at 83, and Mr. Reilly's Valuation Report, at 34 and Table V-4, thereto.

[472] Aram Sabet, supra note 2, paras. 55-56 and 91-92.

market value when working for Iranian banks in an apparent attempt to satisfy his clients (the banks). Any such inflating or deflating of values at the whim of a client is against the oath taken by certified appraisers, and would subject the violator to severe sanctions under Iranian law.

280. Moreover, Mr. Vahman has not taken into account the socio-political and economic situations in Iran, explained by Dr. Pooya (the independent appraiser introduced by the Respondent) in his opinions based on contemporaneous documentary evidence. The crisis, correctly described by Dr. Pooya, was so bad, particularly in connection with landed properties, that for tax collection purposes, the Government even had to reduce the transaction value of real estate in 1978 by 40% compared to 1977. Of parallel importance is the fact that Mr. Vahman took no notice in his valuation of the Iranian laws and regulations abolishing ownership of never utilized or abandoned (mawat and bayer) lands, abundantly noted and discussed in the awards of the Tribunal, including but not limited to, Karubian[473] and Jahangir Mohtadi, et al.[474]

281. Mr. Vahman also erred, in a number of instances, on the location and measurement of the properties involved. First, he erred with respect to the location and measurement of the warehouse located in Tehran-No and had to correct himself on both counts after being informed of those mistakes by Dr. Pooya. Second, Mr. Vahman also erred in connection with the measurement of a property located at Makhsous Avenue and had to correct his mistake in accordance with Dr. Pooya's Opinion.[475] By contrast, Dr. Pooya's valuation was based on his observation of the lands and buildings and their locations, using their accurate measures, and full information about the market and prevailing circumstances at the time of valuation.

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[473] Karubian, supra note 44.

[474] Jahangir Mohtadi, et al. and The Government of the Islamic Republic of Iran, Award No. 573-271-3 (2 December 1996), reprinted in 32 Iran-U.S. C.T.R. 124 ("Mohtadi").

[475] Such facts further discredit Mr. Vahman's valuation. See, supra paragraph 279 and note 472.

IV.E.4. Conclusion on Khoshkeh Valuation

282. The settled practice of the Tribunal, including one of its latest awards, Aram Sabet, considers asset-based valuation (which takes into account the adjusted book value of the assets and liabilities of the entity involved) to be the most reliable and applicable valuation in these situations. Thus, taking Mr. Salami's valuation as a basis, and subject to what I have stated in the previous Sub-sections, I am of the opinion that the gross value of Khoshkeh should not have exceed the amount calculated hereunder (in rials):

Fixed Assets:		**Liabilities:**	
- Lands and Buildings:[476]	111,396,000	Debts:	421,875,000
- Other assets:[477]	6,103,000	Tax Reserves:[478]	5,800,000
- Key-Moneys:[479]	29,000,000	Severance pay Res.:[480]	49,300,000
Sub Totals:[481]	146,499,000		476,975,000
Current Assets:	619,715,000		
Total	766,214,000		476,957,000
		Result:	289,257,000[482]

[476] Dr. Pooya, who has long been an experienced certified appraiser and has been living and working in Iran, provided his opinion by actual observation of the properties involved. The figure also includes the value of the unused land at Rls. 15,236,000.

[477] As reflected in the books of the company.

[478] As reflected in the Company's audited accounts.

[479] Dr. Pooya's valuation. The book value is Rls. 585,000.

[480] The amount of Severance Pay Reserves is foreseen by the audited accounts of the company.

[481] Total value of the assets in the books is Rls. 42,269,273.

[482] Even ignoring other necessary deductions, applying the Claimant's proposed exchange rate of Rls. 70.6 for each dollar, the gross value of the Claimant's alleged 1,500

283. There is no doubt that Khoshkeh, being an Iranian entity, is subject to Iranian law, including Iranian taxation law. In the Starrett Housing Award, the Tribunal accepted its expert's application of a 10 percent corporate tax and a 15 percent withholding tax to Shah Goli's gross profit.[483] Therefore, the value of Khoshkeh is substantially lower than that estimated by the Award in paragraph 461 (Rls. 360,000,000). This is so irrespective of deductions that should have been made on account of applicable taxes on 1) income earned by donation,[484] 2) proceeds of sale of real estates (particularly the unused land) and key money,[485] and 3) capital gains for appreciated value of the assets,[486] and also irrespective of the impact of the minority shareholding on the valuation of Khoshkeh.

IV. F. VALUATION OF RAHMAT ABAD SHARES

284. I have already discussed, with respect to Khoshkeh under Section IV.E.1., above, what "going concern" means and how a going concern entity is valuated. Therefore, with respect to Rahmat Abad, I will limit myself to the discussions to show that

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shares should have been at most U.S. $614,568.70, and not U.S. $764,873 as awarded. It should also be recalled that the maximum number of shares owned by the Claimant could not, in my view, exceed 250. (See, supra paragraphs 102 and 116.)

[483] Supra note 355, paras. 207-214 and 345, at 178-180 and 223-224. Although the award in Harold Birnbaum did not deduct such taxes from the relief awarded, it had, however, have this to say: "[o]f course, taxes that may be anticipated with a reasonable certainty may affect a firm's future profitability. Thus they may be relevant when valuing a going concern." Harold Birnbaum and The Islamic Republic of Iran, Award No. 549-967-2, para. 131 (19 July 1993), reprinted in 29 Iran-U.S. C.T.R. 260, at 290 ("Harold Birnbaum").

[484] See, e.g., Articles 46-48, 134-35, and 146-147 of the Iranian Direct Taxation Law of 1967.

[485] Id., e.g., Articles 19, 23, 32, 36, and 134.

[486] Id., e.g., Articles 80 and 134.

Rahmat Abad was not a going concern, and that the Claimant and her experts committed a host of gross mistakes in their valuation approaches. After these discussions, I will provide my own view as to the value of Rahmat Abad and the Claimant's interests in that company, if any.

IV.F.1. Rahmat Abad Was Not a Going Concern

285. Before analyzing the evidence to see whether Rahmat Abad would, in any likelihood, satisfy the rudimentary requirements for being qualified as a going concern and for being subjected to going concern valuation, two points are to be recalled. First, as testified to by Mr. Glover, an independent authority in the field, no goodwill can be imagined in connection with farmland, in particular the Rahmat Abad farm, because a farm is valued based on its land, and there is no such trademark as "Riahi's quince," as put by Mr. Glover.[487] Second, Mr. Reilly claimed that Mr. Vahman and his valuation had influenced his consideration of going concern value. It has been further alleged that Mr. Vahman, not an expert on the matter,[488] had prepared a valuation that had been delivered to Morgan Lewis, from which the latter had extracted some information provided to Mr. Reilly.[489]

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[487] Pages 129-130, 133-134, and 140 of the Hearing Transcript for 26 May 2000.

[488] Until his departure from Iran after the success of the Islamic Revolution in 1979, Mr. Vahman was an appraiser of landed properties. Ever since, his license as an authorized appraiser has not been renewed, and he has performed no on-site valuation in Iran. Evidence produced by the Respondent and confirmed by Dr. Pooya proved the fact, based on the regulations governing the work of certified appraisers, that Mr. Vahman was not a qualified appraiser for, and lacked the expertise to appraise, farmlands. Even more so, Mr. Vahman had no knowledge and expertise, including any accounting or auditing background, to qualify him for carrying out, or to provide opinion on, the going concern status or going concern valuation of an entity.

[489] This valuation report has not been made available to the Tribunal.

IV.F.1.a. Rahmat Abad had a Loss Making Record

286. Rahmat Abad lacked the economic/financial and production ability to qualify it as a profit making entity and lacked records of historical profit earning. To the contrary, as Mr. Glover demonstrated based on documentary evidence, the company was a loss making entity, and its expenditures consistently and substantially outweighed its income during the whole period of its existence (1956-1979), both prior to and after its formation as a company. The very meager income of the company was insufficient to meet a tiny fraction of its expenditures. The Claimant has failed to provide even a single contract concluded for the sale of the farm's products, to show that the company had, at any point of time during the past, regular customers who were interested in its products.

287. In addition to what was provided by Mr. Glover demonstrating Rahmat Abad's loss making trend since 1956 -- to which a reference has been made herein above -- and with the intention to cut short a long list of evidence showing Rahmat Abad's historical losses, reference may be made briefly,[490] first, to Rahmat Abad's Financial/Accounting Statements produced by the Respondent showing losses of Rls. 2,156,037 for the year 1355 (ending 20 March 1977) and 6,074,932 for the year 1356 (ending 20 March 1978). Additionally, Financial/Accounting Statements produced separately and as attachments to the opinions of Messrs. Salami and Glover report a loss of Rls. 6,731,746 for the year ending 20 March 1979.[491] Rahmat Abad's Financial Statements for the months of August through December together with the Trial

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[490] Mr. Reilly admitted that, in coming up with any of his valuation methods, he had not relied on any of these Accounting Statements. However, he accepted during the Hearing that, based on the evidence, Rahmat Abad was historically a loss making entity. (Pages 133-134, and 148 of the Hearing Transcript for 22 May 2000.)

[491] The Respondent refers to Rls. 5,874,000, see, e.g., paragraph 491 of the Award. However the evidence shows a total income of Rls. 7,017,854 and a total expense of Rls. 13,749,600 resulting in a 6,731,746 rials loss. Mr. Glover reaches the same conclusion based on the Tax Return Declarations produced as Attachment 1 to his opinion.

Balance Sheet covering the period from 21 March through 21 December 1979[492] coupled with Mr. Vaghefi's letter of 2 June 1980 and Mr. Nabavi's testimony prove the fact that the gross income of the company for the year ending March 1980 was Rls. 5,500,000 (about US. $78,000) of which Rls. 4,850,000 ($68,700) could be cashed, while the costs for that period exceeded $100,000 (about Rls. 8,289,000).[493] This results in a minimum loss of Rls 2,789,000 to which expenditures for the remaining period of the year (from 21 December 1979 until 20 March 1980) should be added.[494]

288. Further, Rahmat Abad was unable to pay the Iranian new-year's bonus (March 1980) to its personnel[495] and was planning in 1979, at a time close to the alleged expropriation date, to acquire long-term loans (including one for Rls. 15,000,000), in order to be able to continue with its operations.[496] The farm was also suffering from lack of proper management and a shortage of manpower, with work remaining partly undone.[497] Actually, the farm had never had professional management and was always run by non-professional relatives of Mr. Riahi (Mrs. Jazani and Mr. Nabavi). Mr. Riahi admits in many places that the farm management was for seven years in the hands of Mrs. Jazani, who was fired because she was considered by Mr. Riahi to have been incompetent and dishonest.[498] This meant that seven years of the farm's life and activities were lost at her hands. The equipment, including tractors, were worn out and suffered from a shortage of spare parts.[499]

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[492] The closing date of the Trial Balance Sheet is mistranslated by the Claimant.

[493] See, also, Mr. Glover's opinion, at 31.

[494] Gross income for the year is reflected in the cover page of the Trial Balance provided by the Claimant as her Exhibit 156. This is further supported by the fact that gardens produce fruit once a year, while the expenses do not stop for the remaining portion of the year uncovered by the Trial Balance.

[495] E.g., page 800 of Mr. Riahi's diary.

[496] Id., e.g., pages 846-847.

[497] Id., e.g., pages 883, and 877-878, entries for July 1979.

[498] Id., e.g., page 436.

[499] Id., e.g., pages 847, 877-878, and 883 entries for July 1979.

289. Mr. Nabavi testified to the loss making and unsatisfactory conditions of the farm, and to the fact that continuation of operation would not have been possible were it not for Mr. Riahi's personal love, passion, and desire to keep the inherited farm in the family.[500] It is not secret either, that Mr. Riahi used the farm for leisure, horse riding, and entertaining guests. Indeed, photos produced by the Claimant also show that Rahmat Abad was long later used as a recreational center by the Foundation to entertain martyrs' families.[501]

290. Notwithstanding the above facts that confirm the history of poor performance right up to the date of valuation, Mr. Riahi tries to depict rather satisfactory performance by Rahmat Abad, alleging (by entries in his diary during his stay outside Iran, long after his departure) a speculative gross revenue of Rls. 22,100,000 ($313,000) for the year 1359 (ending March 1981), not even netted by costs.[502] No proof is produced to support this figure. Nonetheless, even this exaggerated figure is far below the astronomical figure of Rls. 143,985,000 in gross revenue used by Mr. Reilly for the year 1980 in his DCF valuation method.

IV.F.1.b. Rahmat Abad had no Prospect of Profitability

291. Not only does the poor performance of Rahmat Abad during the past demonstrate that company's lack of historical profitability, but it also puts in serious question its future profitability. It should be recalled that the farm had a workforce of only about 15-16 local peasants and workers and was managed and run based on traditional, simple, primitive, unsystematic, and non-mechanized methods of gardening.[503]

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[500] Pages 35-39 and 46-48 of the Hearing Transcript for 26 May 2000.

[501] See, also, paragraph 330 of the Award.

[502] Page 1092 of Mr. Riahi's diary, covering the date.

[503] Pages 8 and 35-38 of the Hearing Transcript for 25 May 2000.

Moreover, the following additional facts prove beyond any doubt that Rahmat Abad could have no prospect of making profits in the future, either.

292. In view of the existence of abundant proven facts (to some of which the Award has referred to at paragraphs 477and 484-489), it is unnecessary for me to expound upon the variety of important gardening problems faced by the Rahmat Abad farm, such as the lack of proper distance between trees, the very primitive and old fashioned/traditional method of gardening, many specific climatic problems, geographical placement of the farm (at about 1,800 meters above sea level), *etc.*[504] However, one cannot ignore the fact that the gardens were prone to severe cold temperatures during the blooming months in the spring that could, and did, damage up to 90% of the products.[505] At times, they had to cut the vines and pomegranate trees near the roots because of frost.[506] It should be further borne in mind that any such frost would delay productivity of the trees affected for at least another 2-3 or more years, depending on the kind of tree and the amount of damage inflicted. In addition to the spring frost, Rahmat Abad's gardens were subject to hailstorms during the months of April and May, the blooming period.[507]

293. The gardens were located in such a harsh and unfriendly environment that Mr. Riahi changed his plans for gardening on several occasions, ultimately considering seriously, in 1979, the possibility of abandoning gardening and shifting to animal husbandry, such as herding sheep, or adding it to the farm's gardening activities.[508] The unsettled climate of Iran and the high possibility of drought -- particularly in and

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[504] Nearly ten expert opinions and independent reports, supported by other evidence including a very detailed independent report by a private firm (Parsab Consulting Engineers), confirmed most of the problems of the farm and its location.

[505] From among a host of such evidence, reference may be made to pages 846-847 and 436-437 of Mr. Riahi's diary.

[506] Id., pages 35-37.

[507] In addition to written expert opinions produced by the Respondent, reference may be made to page 52 of the Hearing Transcript for 27 May 2000.

[508] Page 854 of Mr. Riahi's diary.

around the central desert of the plateau, where Natanz and Rahmat Abad are located -- contribute to the uncertainties for productivity of any fruit garden. Iran has always experienced cyclical drought during the past and at the present time.[509]

294. In addition to general and common problems with pests and plant diseases, the Rahmat Abad farm was facing certain other specific problems because of the existence of two kinds of worms: one that damages the xylem and phloem of trees and plants (Kharat worms) and another that eats their roots.[510] As Mr. Nabavi testified, no cure has been found, even todate, to fight these worms.[511]

295. The Rahmat Abad farm's soil was very poor and lacked the necessary nutrients for the trees. The soil was mostly sand and gravel, with a high quantity of lime and potash. Such poor quality soil substantially increased expenses because a huge amount of chemical and animal fertilizers would have been required to make each inch of the farm fit for plantation. As also pointed out by almost all experts, such high costs put into question the viability and profitability of the farm. Those who have the slightest familiarity with gardening and farming in Iran also know that no garden or farm (wheat farms included) is able produce adequate yields every year, no matter how well placed and managed. Mr. Damavandi does not deny this. However, he tries to avoid making a full admission by alleging that trees may produce fruit every year without interruption, if they are regularly and properly fertilized. This is a very unprofessional

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[509] This recently prompted the United Nations to consider measures for assisting Iran in saving its agricultural, natural, and wilderness resources, efforts which have been unsuccessful in many respects.

[510] This was reported by a number of experts appointed by the Respondent and in their supporting documents. E.g., page 6 and Attachment 11 of Dr. Arzani's Expert Opinion, and in particular the long list of significant pests and plant diseases affecting the gardens in the area produced as Annexes XIII and XVIII to the joint Expert Opinion of Engineers Darbani and Mortazavi. Reference may also be made to pages 877-878 of Mr. Riahi's diary.

[511] Page 9 of the Hearing Transcript for 26 May 2000.

opinion. Even if true, it would, likewise, substantially increase expenditure, particularly in view of the poor quality of Rahmat Abad's soil.

296. The farm was situated at the wash way of a very steep mountainous area and at the floodway of seasonal rivers, mainly the Torgh.[512] Because of these problems, the complex traditional irrigation system of the area -- made of hand-dug open wells connected to each other by subterranean canals (Ghanats) -- was continuously prone to becoming clogged with mud and other detritus, causing irrigation problems and huge loss of time and money to reconstruct and revive that complex system.[513]

297. Contributing to the complication created by the above problems that are pertinent to the nature of any farm in the area (Rahmat Abad included), two other particular facts, peculiar to Rahmat Abad, must be borne in mind in all approaches to the viability of the future activities of the farm. One, the fact that the farm was under mortgage for a loan secured from an Iranian bank.[514] Thus, it was at all times subject to foreclosure in view of its loss-making record and the problems it faced to meet its costs and expenses. Two, the fact that all possible rights to the farm were reserved by Mr. Riahi for life, and he could at any point of time decide to change the purpose of the farm, even by changing its activities and eradicating all plants and trees thereon planted. To both of these, I will return later.

IV.F.2. Claimant's Methods of Valuation were Wrong

298. Discussions under previous Sub-sections render the going concern valuation inapplicable to the Rahmat Abad farm. Moreover, based on that which I have mentioned in paragraphs 271-272 above, and for the additional reason that Rahmat

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[512] The fact that the farm is located at the floodway of seasonal rivers and a steep mountainous area is also reflected in the official ownership and transfer deeds of the land.

[513] An example of such an actual damage is reported at page 344 of Mr. Riahi's diary.

[514] The fact that the land was mortgaged as security for loans obtained is also reflected in the official ownership and transfer deeds of the farm.

Abad was a farm operation totally fraught with risks, I find Mr. Reilly's valuation methods (Capitalization of Earnings, Capitalization of Excess Earnings, and/or DCF) irrelevant and without foundation. Nonetheless, I will briefly discuss the flaws in and mistakes of Mr. Reilly's valuation in the following paragraphs. [515] These are additional reasons that render Mr. Reilly's valuation unreliable, even if we were to find his methods of valuation appropriate and applicable. Each of these flaws and mistakes has a very substantial impact on the outcome of Mr. Reilly's valuations, similar to that which we experienced with respect to his using the wrong figure for the P/E ratio of the capital of the company, which necessitated the lowering of his valuation by about $14,000,000 during the Hearing.[516]

299. Mr. Salami pointed out Mr. Reilly's mistakes in calculating the discount rate and P/E ratio of the capital, with substantial negative impacts on his valuation of Rahmat Abad (and for that matter, that of Khoshkeh). To reach the P/E ratio, the appraiser should have applied the real value of the capital paid by the purchaser and not the nominal value of the shares. Thus, if correctly applied, the discount rate -- increased by the Claimant (Mr. Reilly) at the Hearing from 11% to 17% -- would have reached 32%, applying the Starrett Housing Award's standard.[517] It is worth mentioning that

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[515] For the reason stated above in paragraph 275, Mr. Curtis' valuation will not be taken up and studied here. However, in addition to that which is observed in connection with Khoshkeh (supra note 464), huge gaps between Mr. Curtis's offered values for Rahmat Abad under his different methods, ranging from U.S. $ 1,303,142 to $ 24,415,917, attest even more to the invalidity of his valuation techniques.

[516] Using the figure of Rls. 3,500,000 as the capital of the company instead of the actual figure of Rls. 35,000,000, Mr. Reilly had arrived at an 11% rate of discount in his DCF valuation method. The effect of correcting that single mistake increased the rate of discount to 17%, decreasing that valuation by $14 million.

[517] We should bear in mind that in the Starrett Housing Award (supra note 355, paras. 195-200 and 336, at 175-177, and 220) the Tribunal was discounting the value of certain contracts which were in place for the sale of certain apartments that should have been completed in the span of about 2 years. Nonetheless, the Tribunal discounted the value of the contracts by 28%, though none of the uncertainties present in our Case (such as the risks involved, the quantity and quality of future products in view of a large number of factors, the market value of the products, and the costs involved) could have been taken to affect its valuation. It should be recalled that the Starrett Housing Award finally

the rate initially applied by Mr. Reilly (11%) and the rate accepted later (17%) are both far below the rate of interest that prevailed in the early 1980s (ranging from 18 to 25%). In this way, Mr. Reilly wanted the Tribunal to believe that, even in the then volatile situation in Iran, an investor would have been prepared to take the risk of investing in Iran with a return rate of 11% even though he could have simply placed his money in any bank and acquired a much larger profit through a higher rate of interest.

300. Mr. Reilly admits that he has based all his future earning valuation methods on Mr. Damavandi's opinion, which in turn was constructed on the allegations of Mr. Riahi in his Affidavits. Mr. Reilly's contribution was limited to doing the arithmetic.[518] The figures and data applied by Mr. Reilly are, thus, speculative and not based on actual facts. They are riddled with mistakes that one need not be an auditing expert or accountant to recognize. Based on Dr. Damavandi's Opinion, Mr. Reilly starts with a production level of 1,799,812 kg of quince for 1980. To show how unrealistic and speculative that figure is, with the help of Mr. Reilly, the Respondent used at the Hearing the same figures and calculations employed by Messrs. Reilly and Damavandi and reached the figure of 1,458,000 kg as the hypothetical quince production for 1979.[519] Based on the same method applied by Mr. Reilly, this would have yielded revenue of Rls. 116,648,000. Actual figures are nowhere near these speculative and astronomical figures. Mr. Riahi himself had anticipated the quince product for 1979 at 350,000 kg, had the crop not been destroyed by frost.[520] Comparing Mr. Reilly's

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resorted to approximation value and greatly reduced the figures arrived at by the Tribunal-appointed expert. In arriving at its final valuation, the award found, inter alia, that the expert's total profit of Shah Goli should be reduced from Rls. 377 million to Rls. 27 million. (Id., para. 342, at 223.)

[518] Pages 24-25 of the Hearing Transcript for 23 May 2000.

[519] Pages 162-172 of the Hearing Transcript for 22 May 2000.

[520] Page 846 of Mr. Riahi's diary.

applied product figure of 1,458,000 kg with i) the actual product of 26,116 kg,[521] ii) the hypothetical figure of 261,160 kg, which would have been reached based on the hypothesis that the actual product represented only 10% of the potential product,[522] and iii) Mr. Riahi's hoped-for product of 350,000 kg for that year, shows how unreasonable and unrealistic Mr. Reilly's starting figure with respect to the quince production is. Having been provided with the difference between the above production figures and the estimates provided by Dr. Damavandi for the production of quince in 1979/1980, Dr. Fallahi, the Claimant's expert, qualified the difference as "outrageously high."[523]

301. As stated above, the revenue figure for 1979 would have reached Rls. 116,648,000, were Messrs. Damavandi's and Reilly's conjectures to be taken as correct. Against this, actual gross revenue for 1979 was Rls. 5,500,000, of which only Rls. 4,850,000 was cashed.[524] To support that this level of revenue was not an exception but one to be expected in view of the company's performance, reference may be made to Mr. Riahi's diary. There, for the year 1976, Mr. Riahi states:

> This year we harvested the pomegranates and quince crops of Rahmat Abad together with the purchasers, who come from Isfahan, on a half and half partnership basis in order to acquire the necessary experience so that, in the future, we would be

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[521] Rahmat Abad's Managing Director's letter of 1 January 1980 to Mr. Riahi, enclosing the Trial Balance Sheet of the company for the period ending 21 December 1979.

[522] Actual figures are the actual figures. Nothing would guarantee that actual production for the years to come would have been any better than the 26,116 kg for 1979. Frost, pests, disease, floods, drought and other probable damaging elements and events are inherently related to the business of gardening. Thus, any estimation of production must take all these possibilities and problems into consideration. Rahmat Abad's gross revenue for 1978 shows the fact that the Rls. 5,500,000 gross revenue for the year ending 20 March 1980 was not exceptional. Although apparently unaffected by any special adverse phenomena, the gross revenue of Rahmat Abad for the year ending 20 March 1979 stood at Rls. 7,017,854, which, considering a total expenditure of Rls. 13,749,600, generated a loss of Rls. 6,731,746 for that fiscal year.

[523] Pages 19-20 of the Hearing Transcript for 27 May 2000.

[524] Supra note 521.

able to act independently. Half of the crop was sold for a lump sum amount of rials 800,000.[525]

302. This means that 1) the total gross revenue for that year could not exceed Rls. 1,600,000 (less than U.S. $23,000), even if Rahmat Abad could independently harvest and transfer the fruit to the market and had the ability to act in the capacity of a wholesale dealer, and 2) the wholesale price of fruit is twice as high as its price prior to being transferred to and offered in, the wholesale market. Rahmat Abad has never had the benefit of a wholesale or retail network, has had no cold storage facility or other appropriate warehouses, and no means for transporting products to distant markets.[526] Thus, unless enough capital in the form of new investments were poured into the company, Rahmat Abad would have had to sell its products on site at half-price, giving the remaining half of the value to purchaser(s) who would have had to shoulder the rest of the costs. Not only do Dr. Damavandi and Mr. Reilly fail to take into account these costs that actually reduce the prices to less than the wholesale price, they have further lost sight of those costs when they come to estimating the farm's yearly expenses by limiting the total operating cost of the farm to only 15 percent of its annual revenue.

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[525] Page 512 of Mr. Riahi's diary. As stated during the Hearing, no one is better aware of one's property than the owner (page 176 of the Hearing Transcript for 22 May 2000). Unlike his other contradictory allegations, these statements represent Mr. Riahi's contemporaneous reporting of facts and figures, independently from the proceedings in this Case. Dr. Fallahi, the Claimant's expert, testified that actual is actual and estimation is only estimation. (Pages 168 and 184 of the Hearing Transcript for 26 May 2000.) See, also, supra note 522.

[526] See, e.g., supra note 525; Mr. Riahi's Affidavit of 18 December 1996, at para 36; and Dr. Damavandi's Second Affidavit at para. 10. Though Dr. Damavandi acknowledges the fact that Rahmat Abad possessed no such facilities and potentials and states that such costs were to be borne by the buyer (wholesale seller), he nonetheless applies the wholesale prices in his valuation which include these costs absorbed by the wholesale dealer, and not Rahmat Abad.

303. To reach his projected revenue of U.S. $1,799,812 for 1980, Mr. Reilly accepts the unsupported price of Rls. 80 per kilo of quince (143,985,000 X 80).[527] To start with, Mr. Damavandi's Opinion (at page 4 of Appendix P) shows that the price of Rls. 80 per kilo was for the wholesale price of quince in December 1983, and not in February or March 1980. The same Appendix shows (pages 2-3) that the wholesale price for quince in November 1982 was Rls. 50 instead. Thus, the simple conclusion is that the wholesale price for each kilo of quince in 1980 must have been below Rls. 50 or even less than Rls. 30 per kilo (Eng. Darbani's Opinion shows that the wholesale price for a kilo of quince in December 1982 was about Rls. 30) from which the costs for harvesting and transportation of the products to the wholesale market and the profits of the wholesale dealers should admittedly be deducted.[528]

304. Now, the actual price for each kilo of quince on or around the valuation date is easy to find in the contemporaneous evidence introduced by the Parties. First, Mr. Riahi states at page 846 of his diary that he had hoped for a harvest of about 350,000 kilos of quince in 1979, which would have generated a gross revenue of about Rls. 14,000,000. Taking this speculation and conjecture as granted for the moment, the price for each kilo of quince would be Rls. 40 (14,000,000: 350,000). Second, Rahmat Abad's Trial Balance covering the period until 21 December 1979, and for the purpose of gross revenue covering the whole fiscal year ending 20 March 1980, shows that the total 191,112 kilos of products for the year (26,112 kilos of quince and 165,000 kilos of pomegranates) were sold at an average of Rls. 28 or 25 per kilo, depending on

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[527] Whatever criticism raised here in connection with the quince produce applies identically to other fruits. The reason for concentrating more on the quince valuation is because the Claimant and her experts heavily capitalized on this fruit that in their view formed the main and the single largest produce of the farm. Moreover, most of the other trees (such as apples and vines) were not producing fruits at the valuation date (see, e.g., infra paragraphs 305-306.)

[528] Id.

whether one takes into account the Rls. 5,500,000 sale price or the cashed amount of Rls. 4,850,000.[529]

305. To estimate Rahmat Abad's revenues for the first and subsequent years covered by the Claimant's DCF valuation method, Dr. Damavandi, and for that purpose, Mr. Reilly, rely solely on the plantation dates provided by Mr. Riahi in Appendix B to his Affidavit of 18 December 1996, which was prepared for these proceedings. Based on that Appendix, all 3,000 apple trees were planted in 1965. Contrary to this allegation, Mr. Riahi had himself stated at page 589 of his diary, as confirmed also by Mr. Nabavi's testimony during the Hearings, that these trees were planted in December 1977,[530] resulting in a difference of 12-13 years in the trees' age. Notwithstanding this and despite the fact that the company's last Trial Balance reflected no income for the apple trees in the year ending 20 March 1980, Dr. Damavandi and Mr. Reilly take into account a production of 120,000 kg of apples for the year 1980.

306. Similarly, 90,000 quince trees and all 14,000 of the vines are alleged to have been producing fruit on the valuation date, though, as Mr. Nabavi testified, 70,000 quince trees and all of the vines were not productive on the valuation date because they were planted in December 1977 or in 1978, respectively.[531] Finally, Dr. Damavandi and Mr. Reilly consider 285,000 quince trees as productive in 1990. Except for unsubstantiated allegations, no evidence is produced to accord any credence to such speculation. The historical performance of Rahmat Abad and its prospects contradict such an allegation. First, Rahmat Abad had neither the financial resources

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[529] Irrespective of the inaccuracy of the prices cited by Dr. Damavandi, Appendix "P" to his Opinion and Tab. 7 to Eng. Darbani's Opinion show that the price for each kilo of pomegranates in any given year was much higher than the price quoted for each kilo of quince.

[530] See, also, pages 589 and 854 of the same diary. Dr. Grigorian, an experienced independent expert appointed by the Respondent, confirms that during his visit to the farm he observed no apple trees.

[531] Pages 18 and 40 of the Hearing Transcript for 26 May 2000, and page 589 of Mr. Riahi's diary.

nor the manpower and technical ability to afford that bold an expansion.[532] Second, the major part of the less poor and harsh lands of the area had already been used. Third, as late as in 1979, Mr. Riahi had considered changing the purpose of the farm, envisaging its use for herding sheep.[533] Fourth, there has been no indication of such a project, and no plan was ever put forth for the approval of the Board of Directors or at any of the shareholders meetings.

307. Without carrying out an independent investigation or even consulting the documents on file, Mr. Reilly accepts (as unfortunately the Award also does in paragraph 495) the Claimant's and her husband's allegations that Rahmat Abad owned 5,001 shares in Bank Tehran. A cursory look at the Trial Balance of the company covering the period up to 21 December 1979 reveals that the balance of the value of Rahmat Abad's shares in Bank Tehran amounted to Rls. 500,100 (71,312,600-70,812,500), which equals 500.1 shares with par value of Rls. 1,000 per share. Moreover, Mr. Vaghefi's letter of 7 March 1980 clearly states that the company owned 500.1 shares. In the presence of this hard and contemporaneous evidence, I find the Majority's expectation that the Respondent should have come up with further "information as to any transfer with respect to these shares" to be inconceivable.

308. In his valuation, Mr. Reilly further fails to take into account the well-known social, political, and economic situations that prevailed in Iran in 1979-1980, which are amply reflected in many awards of the Tribunal and in the documents before us in this Case.[534] In practice, Mr. Reilly's assistance has been sought by claimants before this Tribunal in situations where other appraisers refused to inflate the relief sought, as

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[532] See, e.g., supra Section IV.F.1.a., and paragraphs 291 and 302.

[533] Page 854 of Mr. Riahi's diary.

[534] See, e.g., Section IV.C.1. and paragraph 280, above. As stated there, the value of real estate in Iran was so badly affected by the revolution and post revolutionary changes that for tax purposes, the government decided to fix the transaction value of such properties at 1977 levels minus 40 percent. (In support of this, the Respondent produced official letters and decisions of the Natanz Branch of the Ministry of Economic Affairs and Finance.)

was the case in Aram Sabet.[535] There, Mr. Reilly tried to prove that the situation in Iran in 1979 (prior to the Embassy event in November 1979) was very good but deteriorated after that and later during the years 1980-1981. For example, he depicted the situation after the November event as follows:

> It was only after the events later in 1979 and economic decline in 1980/1981 that the initial optimism of the revolution had faded and negative effects were evident and felt by all sectors of the economy.... The economy appeared weak to potential investors in 1980, when many other companies in Iran were expropriated.

309. As has been his *modus operandi* in other Cases, Mr. Reilly, in this Case too, took upon himself the task of increasing the total 6,000,000-dollar relief originally sought by the Claimant to the range of 60,000,000 or 70,000,000 dollars.[536] To achieve this, he took positions that would suit his client most, no matter how far from reality or his own previous position this newly adopted position might be. Now, because the valuation date in these proceedings falls on or around March 1980, he espouses the opposite position and tries to convince the Tribunal that the situation was much better in 1980 as compared to 1979.[537]

310. Mr. Reilly has further ignored four other crucial factors with substantial consequences for his valuations. Unfortunately, little heed is paid to some of these factors in the Award. The first factor, alluded to earlier, which has a huge impact on the outcome of any valuation, is the fact that Rahmat Abad acquired a hollow title to the lands involved. As we all know, the lands were owned by Jahan Shahriar prior to

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[535] The Respondent produced a copy of transcripts of a deposition filed in Aram Sabet, supra note 2, showing, borrowing the Respondent's words, that in that Case, "Willamette [Mr. Reilly] entered the scene ... [because] [a]fter finding [that] Cooper & Lybrand's valuation [was] too low... the Claimants... turned to Willamette for help. And Willamette was prepared to fulfill by producing an overstated and highly manipulative valuation."

[536] Page 32 of the Hearing Transcript for 27 May 2000.

[537] Mr. Reilly's Valuation Report at pages 15-30. See, also, discussions during the Hearing, at pages 28-39 of the Hearing Transcript for 27 May 2000.

their transfer to the Rahmat Abad Company. In transferring title of the farmlands to Jahan Shahriar, the official deed stipulated that:

> the benefits of the object of transaction whatsoever, including the benefits arising from farming, and the lands, and cutting-off and eradicating trees, and changing and converting them in any manner and quantity and quality, belong to the Transferor for his long life and the Transferee will have no benefit so long as the transferor is alive.

311. When transferring the farm to the Rahmat Abad Company, Mr. Riahi did not transfer any of those rights and benefits he specifically reserved for himself. Therefore, the company received no better title than that which had been transferred to Jahan Shahriar. Such a hollow transfer of title would be worth nothing in the face of the rights reserved by Mr. Riahi, and no purchaser would be willing to risk buying the farm. The Award does not agree (paragraph 496) that "Mr. Riahi retained a life estate in the property."

312. The second factor is the fact that the farm was mortgaged in its entirety as a security against a loan obtained from Bank Bazargani Iran. In view of the financial condition of the company (its inability to pay even the salary of its personnel including their new-year bonus), the farm could have been subjected to foreclosure had the Government of Iran not intervened by means of the expropriation decree, which intervention and help should not be legally considered when valuing the company.

313. The third factor not taken into consideration by Mr. Reilly is the fact that the farm was not in reality a commercial institution but a private recreation place for the Riahi family, who also used it for entertaining guests -- as also pointed out by the Respondent's experts.[538] Because of that the supervision of the farm was always entrusted to Mr. Riahi's professionally low-profile relatives, and the farm had never been placed under the management of qualified agricultural engineers. Mr. Riahi and

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[538] E.g., Mr. Glover, Engineers Darbani and Mortazavi, and Dr. Arzani. See, also, supra paragraph 289, and paragraph 503 of the Award.

his then young wife, accompanied at times by guests, would every now and then take refuge in the silence and tranquility of the farm in the countryside and ride horses. Moreover, despite Mr. Reilly's approach and the Majority's position (paragraphs 496 and 504 of the Award), the buildings constructed on the farmlands -- for the Riahis' leisure, entertaining guests, and other purposes irrelevant to gardening[539] -- were not registered in Rahmat Abad's name and they should not have formed an item of the valuation.[540] This applies identically to the moveable property in those buildings which, admittedly, belonged to Malek Massoud.[541]

314. The fourth factor is the admission by Mr. Reilly himself that he did not take account of taxes or other deductibles for reserves because it was, allegedly, difficult for him to estimate and calculate such taxes and other deductibles.[542]

IV.F.3. Valuation of Rahmat Abad based on Comparable Sales

315. Comparable sale is a method of valuation that has been applied to some extent by a number of the awards of the Tribunal[543] and has been considered, at times, to be a

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[539] See, e.g., page 825 of Mr. Riahi's diary, wherein he points out that he intended to turn the dome into a public library upon the completion of the residence building. As to the purpose for constructing the guesthouse, he states, at page 649 of the same diary, "I intend to construct a summer resort building for use by my sons and guests at Rahmat Abad." He reiterates the same intention at page 675.

[540] Ghorbani-Farid and others reported in their expert opinions that none of the buildings constructed on the farmlands were registered in the company's name.

[541] In his letter sent on 2 July 1980 from Nice, France, wherein Mr. Riahi had asked Mr. Nabavi to transcribe its content with respect to his wife's alleged ownership of shares and their expropriation, Mr. Riahi adds that "since the furniture and rugs belong to my son Malek Massoud, there is no need to mention them." The Majority pays no heed to this. Rather it considers moveable property located at the farmlands as "actually belonging to the company." (Paragraph 504 of the Award.) In an entry for 15 April 1979, at page 834 of his diary, Mr. Riahi also adds that upon their arrival at Rahmat Abad he learned that, after learning about his arrest, Mr. Nabavi had moved the carpets and a number of paintings and miniatures to a safe place.

[542] Willamette's Valuation, at 12-14.

good yardstick with which the value of a given property can be measured. Mr. Nabavi testified, in writing in an Affidavit produced together with his wife and orally at the Hearing, that it would have taken a long time to find a buyer for the Rahmat Abad farm because of the revolution and its aftermath, and that its value in the years 1979/1980 could not have been greater than 10 to 20 million tomans (Rls. 100 to 200 million).[544] Mr. Nabavi further testified, in writing with his wife, and orally at the Hearing, that in 1987, some 7-8 years after our valuation date, Mr. Riahi's uncle (Mr. Mirza-Hassan Riahi) transferred his 40-hectare farm in the same area for a value of Rls. 40,000,000, which would yield a price of Rls. 1,000,000 per hectare.[545]

316. In addition, the Respondent produced an advertisement published in the Iranian newspaper Kayhan, wherein a 105-hectare farm (near the Rahmat Abad farm, with water and electricity) was offered for sale in 1999 at a basic price of Rls. 1,566,635,150, 25% percent of which could have been paid in cash and the rest in three installments.[546] As calculated at the Hearings, applying the 1999 rate of exchange (about Rls. 8,000 per dollar), a hypothetical foreign investor would have been required to pay $195,830 for acquiring the farm. Applying the favourable rate of exchange made available solely to governmental entities by the Iranian Government,

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[543] See, e.g., the awards in United Painting Company, Inc. and The Islamic Republic of Iran, Award No. 458-11286-3, para. 73 (20 December 1989) reprinted in 23 Iran-U.S. C.T.R. 351, at 373-374 ("Universal Painting") wherein the Tribunal based its valuation on the value previously paid by Lapco for the purchase of certain other equipment of the Claimant); SEDCO, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3, paras. 38-40 and 76 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, at 37-40 and 50 ("SEDCO Award"), finding the comparable sale "a useful but only approximate guide" and accepting that the sale price of a transaction effected about one year before the expropriation date was a reasonable basis for the valuation of SEDIRAN's land located in Ahwaz (id., paras. 303 and 313, at 112 and 113); and Khosrowshahi, supra note 381, paras. 47-52 and 76-78, at 92-94, and 100-101.

[544] Mr. and Mrs. Nabavi's Affidavit presented by the Respondent as Exhibit 121; and Mr. Nabavi's oral testimony, pages 44-45 of the Hearing Transcript for 26 May 2000.

[545] Id., and page 49 of the Transcript.

[546] Kayhan, 4 October 1999, page 13. See, also, pages 186-191 of the Hearing Transcript for 22 May 2000.

the consideration for that land would have been $894,000. This would yield a price of about $745 or $3,450 for each acre of the farm, as the case might have been, which is no where near the extravagant value of $52,000 per acre accorded by Mr. Reilly to the Rahmat Abad farm, that too in 1980, some 19 years earlier, at a time shortly after the revolution.[547]

317. The Respondent and its experts, including Mr. Glover, also compared the value accorded by Mr. Reilly to the Rahmat Abad farm with the value of a farm that changed hands in England, though in no way could such lands be compared with the much poorer agricultural lands in any part of Iran, let alone that located in the area of the Iran's central desert, where Rahmat Abad was situated.[548] They specifically directed the Tribunal's attention to a transaction that took place with respect to a farm in England in 1996, some 16 years after our valuation date. In that transaction, a farm had changed hands at a value of £7,744 per hectare or £3,134 (less than $5,000) per acre. Based on the evidence (a report compiled by the Financial Times), the Respondent showed that the price of land in England had experienced a 54% increase in 1996 compared to the year prior.[549] Were we to decrease the 1996 value by only 50%, the value of the English farmland in 1995 would be about $2,500 per acre. Reducing that price by only another 50% to take account of increases in value from 1980 to 1995, the value of each acre of farmland in that country will reach at about $1,250 per acre. Any of these figures demonstrate how exaggerated the value of $52,000 per acre applied by Mr. Reilly to the Rahmat Abad farm is.

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[547] Same pages of the same Transcript. There are other certificates and written testimonies, filed with the joint Affidavits of Engineers Darbani and Mortazavi, showing that the value of good quality farms in Rahmat Abad was some Rls. 900,000 per hectare in 1979.

[548] These comparisons would, as stated by Mr. Glover, at least provide some comfort for the appraiser and the court. The fact that the farm in England was not owned by a company, in contradistinction with the Rahmat Abad farm, does not reduce the ingenuity of such comparisons because, inter alia, what counts is the value of land in both situations (Mr. Glover's answers to Judge Brower's series of questions, pages 56 and 180 of the Hearing Transcript for 22 May 2000).

[549] Id., pages 186-188

IV.F.4. Conclusion on Rahmat Abad Valuation

318. The Tribunal has valued Rahmat Abad at Rls. 350,000,000 or U.S. $ 4,957,507 (paragraph 505 of the Award). As I will show below,[550] this value is far higher than the gross value that could have been imagined for Rahmat Abad, even if we were to ignore the substantial impacts of comparable sales and the factors discussed, supra, in paragraphs 311-314:

Assets:[551]		**Liabilities:**	
- Land and water sources	73,000,000	Loans	40,500,000
- Trees	140,000,000		
- Buildings, etc.	21,820,000		
Sub-total	234,570,000		
- Dormant Properties[552]	13,750,000		
Total Assets	248,570,000	Total Liabilities	40,500,000

Gross Result: 208,070,000

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[550] To test the reasonableness of the valuation to be offered and the unreasonableness of those of Mr. Reilly (68 or 54 million dollars), one should remember that the total investment of Mr. Riahi, as admitted to by himself, was either Rls. 90,000,000 or slightly over Rls. 100,000,000. (See, e.g., Mr. Riahi's diary at pages 679-680 and the latter's Affidavit of 7 February 1993, prepared for the purpose of this litigation, at page 2. See, also, Mr. Salami's Opinion at page 19; and Mr. Glover's Opinion at pages 29-30.) Rls. 40,000,000 of his investment was secured through a loan by mortgaging the farm, and most of the Rls. 90,000,000 must be taken to have been non-capital expenditures (spent for the salaries of the workers, recreational facilities, and guesthouse building). Thus Mr. Reilly's allocation of a dollar value of 68 or 54 million to a maximum investment in the range of $1,200,000 (or $700,000, if the loan is deducted), or a book value of $300,000, is not apprehensible.

[551] Engineer Darbani's valuation. He is the expert most familiar with the farm and has lived and worked in Iran as a certified appraiser of farms and orchards.

[552] Which includes investment in Bank Tehran and Pars Paper Company, through purchase of shares?

319. However, since 1) this gross result is arrived at without considering the factors discussed with substantial impacts and includes items of property that were not owned by Rahmat Abad (supra paragraphs 311-314), 2) no reserve for severance pay of the company's personnel has been allowed, and 3) taxes on income earned by donation, proceeds of sale of real estates (uncultivated and cultivated lands, and buildings), and capital gains on appreciated value of the assets, have not been deducted (see supra paragraph 283), I find a 50 percent reduction appropriate for taking those factors into account. Therefore, apart from the impact of the minority shareholding on the valuation of Rahmat Abad, I would have arrived at a value of Rls. 104,035,000 for the company.

IV.G. VALUATION OF TARVANDAN COMPANY

IV.G.1. Tarvandan's Value equals the Value of its Land

320. Here, I do not need to enter into a discussion of going concern valuation because both parties have adopted an asset-based valuation method in appraising Tarvandan by adjusting the book value of its assets and liabilities. However, no one has doubted the fact that the company had no activity other than owning 4,260 m^2 of land.[553] Neither of the two buildings was an income-generating property at the expropriation date, because Iran Böhler was unable to pay its rent and there was no prospect that it would become able to pay its accumulated debts in that respect in the near future.[554] Mr.

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[553] The land was originally 4.710 m^2, of which 450 m^2 was sold to the municipality in 1974. On this land the company had two buildings. The old building of 250 m^2 (aged 30 years, which under Iranian standards is considered old and demolishable, not able to generate any value), had been rented to Iran Böhler and the other (newer building, of 120 m^2), was used as the personal office of Mr. Riahi.

[554] With the financial statements and balance sheets of the company for the year 1358 (21 March 1979 to 20 March 1980), Mr. Vaghefi's letter of 19 April 1980 addressed to Iran Böhler is also produced. The letter states that the rent for the building has not been paid since Aban 1358 (October 1979) and that since "expenses including gardening, in-keeping, water, electricity, and telephone are paid from the above [the rent], it is requested that, with the information that you have from the financial situation of the

Riahi was using the other building as his personal office and had not been paying any rent for that use.

321. The company had a historical loss making record right until the valuation date, as is also evidenced by the accounting and financial statements of the company for the years 1979 and 1980.[555] Although there has been a passing, but not sought after, allegation that an embryonic project for constructing a residential tower was considered at an unknown time, there has been no indication whatsoever during the 12-year life of Tarvandan (1968-1980), that the slightest move had ever been made towards that goal. No building was ever constructed on the land except for the 120 square meter one to which I have referred above. Therefore, it must be concluded that the company had no short or long-term prospect of generating any income that could help it to meet even a part of its expenses,[556] including paying the salaries and wages of its 7 workers, who also served Mr. Riahi.[557]

322. The fact that the company's shares could have no value beyond the value of its real estate (land) is further supported by the fact that Mr. Riahi himself had always valued and purchased the shares of other shareholders on the basis of the value accorded to that land.[558]

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company, you order that arrangement be made with respect to the payment of the monthly rent." Replying to an inquiry by Mr. Riahi, Mr. Khajeh-Nouri states in his letter of 16 January 1980 that, according to information, Iran Böhler had not been paying the rent.

[555] These documents were introduced as attachments to the Respondent's expert's (Mr. Ghorbani-Farid's) Opinion.

[556] Supra note 554, and Mr. Glover's Expert Opinion.

[557] Mr. Riahi reports, at page 800 of his diary, that decisions were taken to refrain from paying Now-Rooz bonuses for the year 1358 (1979) to Sarhad Abad, Tarvandan, and Rahmat Abad personnel.

[558] Mr. Riahi confirms at page 517 of his diary that on 30 November 1976, he bought Mr. Khajeh-Nouri's 26% shares of Tarvandan, together with shares owned by others, based on the value of Rls. 15,000 he accorded to each square meter of Tarvandan's land, which meant that the price also included the value of the buildings.

IV.G.2. Problems Related to the Valuation of Tarvandan's Real Estate

323. Before starting with Mr. Vahman's valuation of the real estate involved, I must note at this juncture that Mr. Reilly's contribution to the valuation of Tarvandan would suffer from all the flaws that I would cite in connection with Mr. Vahman's valuation, because Mr. Reilly has based his valuation entirely on Mr. Vahman's Opinion. However, another criticism going specifically against Mr. Reilly's valuation is the fact that he has not taken into account the Rls. 21,421,602 debt the company owed to Mr. Riahi, admitted by the Claimant through her filing of Mr. Vaghefi's letter. The Claimant and Mr. Reilly have also failed to address themselves to the financial statements of the company produced in evidence by the Respondent's expert, Mr. Ghorbani-Farid.

324. Having made those points, I must call attention to the points I made about Mr. Vahman and his valuation when treating the Claimant's claim related to the immovable properties of Khoshkeh. As stated there, Mr. Vahman has spent nearly the past 22 years of his life outside Iran, since the Iranian Islamic Revolution in 1979. Thus, he has long been out of touch with Iranian society, including its political and economic conditions. He could not observe the lands and the buildings involved, and the circumstances within which he should have valued them. In view of this and what was discussed at paragraphs 278-281, above, Mr. Vahman's valuation should not be accorded any weight, and he cannot be considered a qualified and certified appraiser.

325. Additionally, Mr. Vahman's Opinion also suffers from a number of specific flaws. Here too, Mr. Vahman has erred in connection with the measurement of buildings. He had initially assumed Mr. Riahi's personal office to be 200 m^2, but later corrected his mistake to 120 m^2 based on Dr. Pooya's Expert Opinion. Mr. Vahman further fails to consider the fact that the newer building of 120 m^2 was constructed for the sole use of Mr. Riahi, with no benefit for the company, and that the other building was, at the valuation date, 30 years old and was occupied by Iran Böhler, which could

not pay its rent. Mr. Vahman accords no adverse impact for these factors, nor for the fact that any would-be buyer should have thought of having the buildings evacuated through costly legal processes and that at least the older building should have been demolished and reconstructed.

326. Valuing the land and the old building at Rls. 80,000 per square meter (Rls. 55,000 and 25,000 for each square meter of the land and the older building, respectively), Mr. Vahman reached his total value of Rls. 240,566,500 in those respects. He accorded Rls. 20,000 per square meter to the 120 m^2 building. We have a number of touchstones and yardsticks with which his unreasonable and unjustified valuation could be measured.

327. To begin with, Mr. Riahi had bought all the land, with the old building already on it, in 1968, paying a consideration of Rls. 2,800,000.[559] As pointed out by Mr. Glover, Mr. Vahman's valuation purports to increase the value of that property by a factor of nearly 90 in a span of about 11 years, a compound increase of about 49% per year. Comparing Mr. Vahman's valuation (Rls. 55,000 per square meter of land) with the prices actually paid in a transaction concluded between Tarvandan and the Tehran municipality (Rls. 2,874 or 3,624 per sq. meter),[560] Mr. Vahman's valuation will show an increase by a factor of about 20 during a span of 6 years (from 1974 to 1980), even though real estate prices had declined since 1978.

328. In October 1976, Mr. Riahi had "fixed the price of Tarvandan Company's land ... for 12,000 rials per square meter."[561] In November 1976, he valued each share of the

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[559] This price is confirmed by both the transfer deed of September 1978 and the ownership deed of the property.

[560] If the price of Rls. 1,293,500 paid by the Tehran municipality is considered, the price per square meter would be Rls. 2,874 (1,293,500 : 450 m^2). But if the price is considered without deducting Rls. 337,500, then the price per square meter would be Rls. 3,624 (1,631,000 : 450 m^2).

[561] See, inter alia, page 510 of Mr. Riahi's diary also quoted by Dr. Pooya in his Expert Opinion.

company at Rls. 15,000, representing the value of the company's land and buildings,[562] and bought the shares of other shareholders, Mr. Khajeh-Nouri included, based on that price.[563] Comparing either of the above prices with the Rls. 55,000 value accepted by Mr. Vahman for Tarvandan's land and the Rls. 100,000 value accepted for its land and buildings shows how unrealistic Mr. Vahman's valuation is. The March 1980 prices accorded by Mr. Vahman to that land and the buildings constructed on it are more than 5 or nearly 7 times higher than the actual prices in 1976, though overall, market prices had fallen drastically at least since 1978 because of the revolution.

329. Mr. Vahman also fails to take note of the fact that the 120 m^2 building was constructed without obtaining the required authorization from the municipality and that no certificate authorizing its sale would be issued to any would-be buyer. A potential buyer would have had to consider the payment of a large fine or the demolition costs of the building.[564]

IV.G.3. Conclusion on Tarvandan's Valuation

330. Contrary to what Mr. Vahman has done, Dr. Pooya's valuation is based on the actual facts and figures and on his personal knowledge acquired as an active certified appraiser who has lived continuously in Iran. He valued the properties by seeing them. Although Mr. Vahman tried to satisfy the Claimant to the maximum extent possible, Dr. Pooya appeared before us, through his written Opinions, as an independent and unbiased appraiser. In many places in his Opinion, Mr. Glover considers Dr. Pooya's valuation to be overstated by any standard. Nonetheless, he adopted Dr. Pooya's

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[562] There is no doubt that the old building was on the land in November 1976. For evidence that the 120 square meter building was also there on the date of the purchase of other shareholders' shares, see, e.g., page 518 of Mr. Riahi's diary; and the Affidavits of Mrs. and Mr. Riahi dated 18 December 1996, paras. 27 and 63, respectively.

[563] See, e. g., pages 517-518 of the same diary.

[564] Dr. Pooya's Expert Opinion at page 5, based on page 518 of Mr. Riahi's diary.

figures and applied them in his valuation. I share Mr. Glover's view and would explain briefly the reasons why I take Dr. Pooya's appraisal to be too generous -- albeit much more reliable than that of Mr. Vahman -- after citing Mr. Glover's valuation below:

Assets:			**Liabilities**
- Land and Buildings:[565]	75,500,000	Owed to MR Riahi	21,422,000[566]
- Bank Deposits	9,000,000	Owed to others	18,000,000[567]
Total:	83,500,000[568]		39,421,000
	Gross Result: 44,079,000		

331. However, for a number of reasons, the value of Tarvandan should have been substantially lower than the above gross revenue. To begin with, as I have stated above, I share Mr. Glover's view that Dr. Pooya's valuation is generously high. Comparing the value of Rls. 16,901 accorded by Dr. Pooya to each square meter of land for the year 1980 with the transaction executed for the same land between Tarvandan and Tehran municipality in 1974 (Rls. 2,874 or 3,624 per square meter, depending on which consideration is taken into account),[569] Dr. Pooya's price shows an increase by a factor of about 5-6 in a span of less than 6 years. This would represent a compound price increase in the range of 32% per year since 1974, though it is the established knowledge of this Tribunal that the value of real estate declined

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[565] Dr, Pooya's valuation (land 72,000,000 + buildings 3,500,000). One of the buildings was 30 years old and the other was constructed without permission.

[566] Mr. Vaghefi's letter of 16 July 1980. (The figure is rounded up from Rls. 21,421,602.)

[567] As stated earlier (paragraphs 19-21) Tarvandan, and not the Claimant, was the owner of the deposits, which did not exceed Rls. 9,000,000 in total. On the other hand, the Claimant claims that the company owed her and Malek Massoud 18,000,000 in total (see also paragraph 520 of the Award). Therefore, these debts must be considered in the valuation of the company.

[568] To treat them alike, nothing is added to the principle amounts of debts and credits for interest, though Tarvandan's debts to others are much higher (Rls. 39,721,000 in comparison to Rls. 9,000,000), and adding interest on them could have yielded a higher deduction from the valuation result.

[569] Supra note 560.

substantially after 1977 because of the revolutionary movements in 1978 and changes brought by the revolution after its success. Moreover, Mr. Riahi had valued the land and its building at Rls. 15,000 per square meter when he bought the shares belonging to other shareholders in 1976.[570] Bearing in mind the fact that the new building (the 120 sq. meter office) had already been constructed at the time of the above transactions,[571] and considering an increase in the value of the property for the year 1977 and decreases for the years 1978-1980, the generosity of Dr. Pooya's valuation, which accords a value of Rls. 16,901 for each square meter of the land (or 17,723 per square meter of the land and its buildings), becomes even more apparent.[572]

332. Thus, Dr. Pooya's proposed value of Rls. 75,500,000 for the land and its buildings (Rls. 17,723 per square meter) shows an increase by a factor of 27 compared with the purchase price paid by Mr. Riahi in 1968 for the land and the old building on it. This represents a 32 percent compound increase for each year since 1968. Moreover, the above value represents an increase of 19% compared to the actual sale price in November 1976 (Rls. 15,000 per square meter), though taking into account the increase in prices for one year (1977) and the decreases for more than two crucial years (1978-1980), the value accorded by Dr. Pooya for March 1980 should have been below the 1976 price of Rls. 15,000.[573]

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[570] Supra Paragraph 328, and the notes thereto.

[571] Supra note 562.

[572] Mr. Glover's presentation, pages 107 and 131 of the Hearing Transcript for 26 May 2000.

[573] In its award rendered in Harold Birnbaum (supra note 483, paras. 62-64), the Tribunal increased the 1974 value of a commercial property (land and its building) by 25% to reach its value in July 1979, though that property was located in the best area in Tehran, the former Takht-e-Jamshid Avenue, wherein central offices of the National Iranian Oil Company, Iran Air, and many other large entities and banks were and are located. It should be further noted that in its 25% increase, the Tribunal had to consider increases in prices for a period of about four years (1974-1977) and decreases only for one-and-a-half years (1978 up to July 1979). Furthermore, the land and building involved in the Harold Birnbaum Case are not comparable with those involved here in many respects, not only in terms of location, but also the size and quality of the buildings.

333. Additionally, as discussed in connection with Khoshkeh (supra paragraph 283), any amount arrived at should have been subjected to a deduction for the applicable corporate tax and taxes on 1) income earned by donation, 2) proceeds of sale of real estates, and 3) capital gains for appreciated value of assets, again irrespective of the impact of the minority shareholding on the valuation of Khoshkeh.

IV.H. VALUATION OF THE TOYOTA AND THE HORSE

334. In view of the fact that the Respondent provided no alternative to the Claimant's valuation and failed to provide information on which a concrete valuation could have been based, I joined the Tribunal in its finding on the valuation of the Toyota car and the horse, though as stated earlier I disagree with the finding that the Claimant owned the horse and that the Government of Iran expropriated it.

V. INTERESTS AND COSTS

335. I have previously expressed my view with respect to the Tribunal's awarding of interest, as well as the methodology by which interest is computed, in my Dissenting/Concurring Opinion in Agrostruct International Inc.[574] I will therefore refrain from repeating my view here.

336. I also have objections to the Majority's awarding U.S. $ 70,000 as costs to the Claimant. To the contrary, the Award should have compensated the Respondent for the costs unnecessarily imposed on it. As with the issue of interest, I do not intend to reiterate my general and basic reasons for disagreement here, because I have previously stated them in my Dissenting Opinion in Watkins-Johnson Company, et

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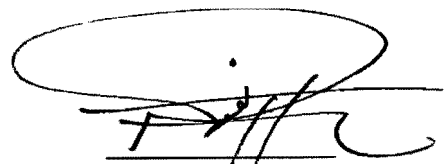
[574] Agrostruct International, Inc. and National Cereals Organization, The Islamic Republic of Iran, Award No. 358-195-1, paragraphs 44-48 (10 June 1988), reprinted in 18 Iran-U.S. C.T.R. 198, at 216-219.

al.[575] I consider, however, that in the particular circumstances of this Case, the Respondent should have been compensated for costs that it was forced to bear to defend against these types of claims. In our Case, the Claimant has brought forward a large number of claims that were not owned by her, and claims that failed to satisfy the Tribunal's jurisdiction or admissibility tests. She nonetheless pursued them to the end and added to them new, late claims taking a great deal of time, practice and energy of this Tribunal and of the Respondent. A number of times in the course of the proceedings, the Claimant changed her original relief sought (which was about six million dollars), exorbitantly raising it, forcing the Respondent to each time employ new independent experts to treat those inflatory valuation tactics. In this way, the Claimant burdened the Respondent with huge amounts of effort, time, and money for filing voluminous briefs and documents and producing tens of opinions and affidavits. Further, these burdens of the Respondent were made heavier by the Claimant's dilatory tactics, protracting the proceedings through tactical changes of counsel and other pretexts, entailing even the filing of Surrebuttals and postponing the Hearing scheduled. These are but some of many specific reasons that make me believe that the Respondent, not the Claimant, should have been compensated for its arbitration costs.

Dated, The Hague
18 September 2003



Assadollah Noori

[575] Watkins-Johnson Company, et al. and The Islamic Republic of Iran, et al., Award No. 429-370-1, para. 97 (8 January 1990), reprinted in 22 Iran-U.S. C.T.R. 257, at 336.