IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

In the Name of God

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

FREDERICA LINCOLN RIAHI,

Claimant,

And

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

Correction to Concurring and Dissenting Opinion of Assadollah Noori

The following corrections are hereby made to my Concurring and Dissenting Opinion filed on 18 September 2003 in the above-captioned Case. The relevant corrected pages of the Opinion are attached.

1. Footnote 5, lines 3-4, "The Austin", should read "Austin".
2. Footnote 7, line 5, "Cal-Maine food Inc." should read "Cal-Maine Foods Inc."
3. Footnote 8, line 4, "Decision No. No." should read "Decision No.".
4. Footnote 14, line 4, the date "16 May 1996" should read "15 May 1996"; and in line 6 the date "6 May 1992" should read "6 March 1992".
5. Footnote 15, lines 7-8, "The Islamic Republic of Iran," should read "The Islamic Republic of Iran, et al.,".
6. Footnote 26, line 3, the parenthesis should be deleted; and line 5, "at p 26" should read "pp. 27-28".
7. Footnote 27, line 2, the figure "129,397,193" should be replaced with "129,591,556".
8. Footnote 30, line 3, the date "5 June 1980" should read "29 May 1980"; and in line 4, add "in" before "deposits".

9. Paragraph 25, line 10, "dawn" should read "down".
10. Footnote 45, line 2, "*probandit,*" should read "*probandi.*"; line 3, delete "and."; and line 7, "Publication" should read "Publications".
11. Footnote 48, line 3, "The Islamic Republic of Iran (Order of 15 February 1985)" should read "The Government of Iran (Order of 6 October 1983)".
12. Footnote 49, last line, the date "24 May 1995" should read "24 May 1994".
13. Paragraph 31, line 21, "still being, managed," should read "still, managed".
14. Footnote 60, first line, "155" should read "175".
15. Paragraph 33, first line, "fussed about" should read "fussed over".
16. Footnote 84, line 3, "a unprofitable" should read "an unprofitable".
17. Footnote 95, line 5, parenthesis should be closed after the quotation mark, before semicolon.
18. Paragraph 72, line 6, the date "10 November 1975" should read "11 November 1975"; and in line 9 the date "25 November 1975" should read "26 November 1975".
19. Paragraph 73, first line, the date "18 June 1976" should read "19 June 1976".
20. Paragraph 82, line 2, the date "16 April 1977" should read "5 April 1977".
21. Footnote 165, line 3, "p. 494" should read "pp. 375-376".
22. Footnote 174, first line, "letter" should read "note".
23. Footnote 178, line 2, the word "also" after the word "included" should be deleted.
24. Footnote 179, first line, "another minutes of the" should read "minutes of another".
25. Footnote 194, first line, "speculated" should read "speculate"; line 2, the word "that" should be added after the word "presumed"; and in line 3 both instances of the figure "410" should be changed to "400".
26. Footnote 199, line 3, after the comma add "as a matter of practice"; and in line 4 add "usually" after the word "They".
27. Paragraph 126, line 6, the word "to" should be added after the word "According"; and the word "award" in the last line should read "Award".
28. Footnote 233, the footnote should start with the phrase "Partial Award in".
29. Paragraph 140, line 14, the comma after the word "reliance" should be deleted.
30. Paragraph 155, first line, "Number" should read "The number".
31. Footnote 280, line 7, "principle member" should read "principal members".

32. Paragraph 160, first line, comma after the word "ignore" should be deleted.
33. Paragraph 163, line 4, "such transfers" should read "such a conversion".
34. Paragraph 167, last line, "that property" should read "that the property".
35. Footnote 300, the whole sentence after the full stop after "873" should be deleted.
36. Paragraph 175, line 4, "self serving" should read "self-serving".
37. Footnote 315, line 7, "1,750" should read "1,760".
38. Paragraph 180, line 8, the date "18 March 1983" should read "18 March 1984".
39. Paragraph 183, line 6, the word "heavy" should read "major".
40. Paragraph 184, penultimate line, "Particular" should read "particular".
41. Paragraph 186, line 8, "award" should read "awards".
42. Paragraph 188, line 2, after the word "by" add "paragraphs A, B, and C of".
43. Footnote 334, line 4, "a crime" should read "unlawful".
44. Paragraph 199, line 7, "has" should read "had".
45. Paragraph 200, lines 2 and 3, the date "15 March 1980" should read "12 March 1980".
46. Paragraph 201, first line, "179" should read "180"; and in line 3 the date "18 March 1983" should read "18 March 1984".
47. Paragraph 202, first line, "178" should read "179".
48. Paragraph 204, line 4, "attempts" should read "attempted".
49. Paragraph 205, line 16, the dates "5 and 22 June" should read "29 May and 22 June"; in line 17, delete the word "of" after the word "on"; and in line 19 the date "21 June" should read "22 June".
50. Paragraph 209, line 4, the date "7 March 1980" should read "6 March 1980".
51. Footnote 360, line 2, "Reprinted in" should read "reprinted in".
52. Footnote 375, first line, ", et al." after the word "Iran" should be deleted.
53. Paragraph 236, line 2, "SEDCO ITL." should read "SEDCO Inc.".
54. Footnote 396, line 5, the year "1922" should read "1992".
55. Footnote 399, "and 201" should read ", at 201".
56. Paragraph 242, line 11, "Chaleh" should read "Ghaleh".
57. Paragraph 243, line 4, the date "21 January" should read "22 January".
58. Footnote 409, the date "21 January 1979" should read "22 January 1979".
59. Footnote 419, first line, "Banco" should read "Banca".
60. Paragraph 253, the word "to" at the end of line 12 should be deleted.

61. Footnote 426, line 2, "Accounted" should read "Accountant".
62. Paragraph 262, penultimate line, "a prospect of excellent business" should read "an excellent future business prospect."
63. Paragraph 264, line 4, "a prospect of excellent business" should read "an excellent future business prospect."
64. Footnote 454, line 2, the parenthesis should be closed after "1980", before the comma.
65. Footnote 455, line 2, "thread" should read "threat".
66. Footnote 456, penultimate line, add "Award No. 359-10059-1" before the parenthesis.
67. Footnote 483, penultimate line, the date "19 July 1993" should read "6 July 1993".
68. Footnote 494, last line, "uncovered" should read "not covered".
69. Paragraph 290, line 2, "depict rather" should read "depict a rather".
70. Paragraph 303, first line, "U.S. $1,799,812" should read "Rls. 143,985,000"; and in line 2 the figure "143,985,000" should read "1,799,812".
71. Paragraph 315, penultimate line, "Mirza-Hassan" should read "Mirza-Hossein".
72. Footnote 543, line 3, "Universal Painting" should read "United Painting".
73. Paragraph 318, line 10, the figure "234,570,000" should read "234,820,000".
74. Footnote 552, the question mark at the end of the footnote should be replaced with a full stop.
75. Paragraph 330, the figures "39,421,000" and "44,079,000", in lines 14 and 15, respectively, should be replaced with "39,422,000" and "44,078,000".
76. Footnote 568, first line, "principle" should read "principal".
77. Paragraph 333, last line, "Khoshkeh" should read "Tarvandan".
78. Footnote 574, line 2, add the phrase "Dissenting/Concurring Opinion dated" before the date "10 June 1988" in the parentheses.
79. Footnote 575, line 2, add the phrase "Dissenting Opinion dated" before the date "8 January 1990" in the parentheses.

Dated 05 April 2004, The Hague

Assadollah Noori

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

---

[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 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

---

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 Foods 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. 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

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

---

[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 (15 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 March 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, et.al., 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

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

---

[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), pp. 27-28; 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

---

[27] Malek Massoud owed Rls. 100,911,074 to the company and the company owed him Rls. 129,591,556, 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

---

[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 29 May 1980, they both confirm that Tarvandan was the owner of nine million rials in 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.

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 down payment receipts, they

---

[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

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

---

[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 probandi*. 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 Publications, 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.

---

[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 Goverment of Iran (Order of 6 October 1983); 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 1994).

[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.

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, 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 until the

---

[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.

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]

---

[59] See, supra paragraphs 12 and 14.

[60] See, paragraphs 175, 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 over 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]

---

[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).

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

---

[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 an unprofitable company, Iran Böhler, other alleged transfers of shares to Mrs. Riahi were fictitious (soori, as he has put it in Persian).

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

---

[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

Page 432 reports another of Jahan Shahriar's violent outbursts on 11 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 26 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 19 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

---

[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.

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 5 April 1977, was

---

[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.

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:

---

[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, pp. 375-376.) See, also, Professor Nasser Katouzian, Civil Law: Specific Contracts, Vol. III (1990), pp. 42-43.

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,

---

"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 note 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

---

[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 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

---

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 minutes of another 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.

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

---

[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 speculate further, were we to presume the accuracy of the Claimant's ownership of 2,010 shares, we should have also presumed that on 24 February 1980, she could not have owned more than 400 (400+1,610=2,010) shares.

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

---

[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, as a matter of practice a few shares are formalistically allocated to persons who are appointed as directors. They usually 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.

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 to 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]

---

[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.

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

---

[231] See, supra paragraph 109.

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

[233] Partial Award in 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.

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

---

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

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. The 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.

---

[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]

---

[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 principal members 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

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

---

[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."

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 a conversion 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

---

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

[290] Supra, paragraph 33.

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 the 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]

---

[300] Id., page 873.

[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.

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

---

[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.

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]

---

[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 1,760 (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.

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 1984, 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 major 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]

---

[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 shares (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

---

[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 awards 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

---

[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 paragraphs A, B, and C of 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

---

[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.

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

---

[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 unlawful 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."

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 had 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 12 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 180, 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 1984 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 179, 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.

---

[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 attempted 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,

---

[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 29 May and 22 June 1980, Mr. Riahi and Mr. Vaghefi were still in total control of Tarvandan. Mr. Riahi instructs Mr. Vaghefi, on 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 22 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

---

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

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

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 6 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

---

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.

> 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

---

[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.

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*

---

[375] Phelps Dodge Corporation, et al. and The Islamic Republic of Iran, 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.

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 Inc. 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]

---

[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

---

scholars, inter alia, Amerasinghe, "Issues of Compensation for the Taking of Alien Property in the Light of Recent Cases and Practice," 41 ICLQ (1992), 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, at 201 (emphasis added).

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

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 Ghaleh 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,

---

[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 22 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

---

[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 22 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.

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

---

[419] In connection with its 544,451.50 shares, Banca 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 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

---

[422] See supra note 401.

[423] Paragraph 401 of the Award.

[424] Khosrowshahi, supra note 381, para. 78 at 100-101.

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

---

[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 Accountant 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.

status of that entity unless "an excellent future business prospect" 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

---

[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 "an excellent future business prospect."[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.

---

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

---

[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

---

[455] The possibility of nationalization of foreign trade is different from the threat of nationalization of a company, though the general threat 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.

---

[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 Award No. 359-10059-1 (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.

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

---

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 (6 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.

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]

---

[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 not covered 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 a 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]

---

[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.

303. To reach his projected revenue of Rls. 143,985,000 for 1980, Mr. Reilly accepts the unsupported price of Rls. 80 per kilo of quince (1,799,812 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

---

[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.

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-Hossein 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,

---

[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 ("United 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.

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	234,820,000		
- Dormant Properties[552]	13,750,000		
Total Assets	248,570,000	Total Liabilities	40,500,000

Gross Result: 208,070,000

---

[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.

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]		39,422,000
	Gross Result: 44,078,000		

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

---

[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 principal 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.

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 Tarvandan.

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

---

[574] Agrostruct International, Inc. and National Cereals Organization, The Islamic Republic of Iran, Award No. 358-195-1, paragraphs 44-48 (Dissenting/Concurring Opinion dated 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 (Dissenting Opinion dated 8 January 1990), reprinted in 22 Iran-U.S. C.T.R. 257, at 336.