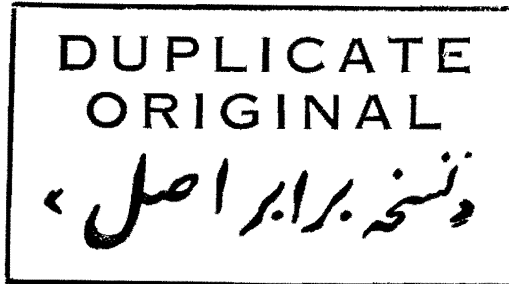


CASE NO. 485

CHAMBER ONE

AWARD NO. ITL80-485-1



FREDERICA LINCOLN RIAHI,
Claimant,
and
THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	10 JUN 1992
	تاریخ ۱۳۷۱ / ۴ / ۲۰

INTERLOCUTORY AWARD

I. PROCEEDINGS

1. On 18 January 1982, the Claimant FREDERICA LINCOLN RIAHI ("the Claimant") filed a Statement of Claim against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran" or the "Respondent") seeking compensation for alleged expropriations in the amount of US\$6,528,116.80.¹ Portions of the Claimant's Claim allegedly arose on three different dates, and may be divided into the following three parts. First, she seeks compensation for the alleged expropriation of: her apartment and its contents located in the ASP Building, Yussefabad Avenue, Tehran; equity interest in several companies (i.e., 20.1% equity interest in Khoshek Fouland Company, 45.33% equity interest in Rahmatabad Company, 45.33% equity interest in Tarvandani Company, 40% equity interest in Gav Daran Company); four horses and two automobiles. The Claimant contends that this part of the Claim arose sometime in March 1980, when the Revolutionary Court of the City of Isphahan allegedly ordered confiscation of the property of the Claimant's husband. She alleges that pursuant to that order, various properties owned by her were also expropriated. Second, the Claimant seeks compensation for the alleged expropriation of her 33,871.7 shares of Bank of Tehran, and of her 500 shares of the Iranian Bohler Pneumatic Company. This part of the Claim allegedly arose on or about April 1979 or in July 1979, when the Bank of Tehran was nationalized by the Decree of the Islamic Revolutionary Council and the Iranian Bohler Pneumatic Company was seized with the Government's approval. Third, the Claimant, referring to the conditions in Iran that forced her involuntarily to leave Iran on 12 September 1979, states that she was compelled to forfeit the entire purchase price paid for an apartment in Farahzad which at that time was still in the process of

¹In the Statement of Claim, the Claimant specified the Judicial Authority and the Executive Authority of the Government of the Islamic Republic of Iran as the Respondents in this Case. Without prejudice to the Parties, the Tribunal will use the name of the Government of the Islamic Republic of Iran as the Respondent in lieu of the Judiciary and Executive Authorities of the Government of the Islamic Republic of Iran.

construction. Likewise, she alleges that pursuant to governmental prohibitions against removing property, she was not allowed to take with her jewellery and silver when she departed from Iran on the above-mentioned date. This last part of the Claim allegedly arose on or about 12 September 1979.

2. In accordance with its practice in similar cases, the Tribunal, citing the decision of the Full Tribunal in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 25 June 1985 that "it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." The Tribunal ordered the Claimant to file by 23 September 1985 all evidence that she wished the Tribunal to consider in determining her dominant and effective nationality. Likewise, the Tribunal requested the Respondent to file by 23 December 1985 all evidence it wished the Tribunal to consider on the issue of the Claimant's nationality.

3. The Claimant submitted her evidence on 23 September 1985. The Respondent was granted two extensions until 27 June 1986. The Tribunal in its Order of 7 July 1986 granted one further extension until 26 September 1986, stating that after that date the Tribunal would make a decision regarding its jurisdiction on the basis of the evidence before it. The Tribunal denied the Respondent's request for a further extension in its Order of 21 January 1987, in view of the procedural history of the Case. The Tribunal indicated that it intended to commence deliberations regarding its jurisdiction on the basis of the evidence before it, unless both Parties informed it that ongoing settlement discussions would call for a postponement of the proceedings.

4. On 2 October 1990, the Claimant filed "Claimant's Request For Permission to File Additional Evidence and Brief Concerning Claimant's Dominant and Effective Nationality". The Tribunal

granted the request by its Order of 5 October 1990 and invited the Claimant to file by 15 November 1990 any additional evidence and brief concerning the Claimant's dominant and effective nationality. The Tribunal also invited the Respondent to file by 15 February 1991 any additional evidence and brief in response to the Claimant's submission concerning her dominant and effective nationality. The Claimant filed "Claimant's Brief Concerning Dominant and Effective Nationality" on 15 November 1990. After having been granted four extensions, the Respondent filed, on 29 October 1991, a submission entitled "Respondent's Brief and Evidence in Reply to Claimant's Assertion of Having Dominant and Effective United States Nationality".

5. On 18 November 1991, the Claimant filed "Claimant's Request for Permission to File Claimant's Rebuttal Memorial on Nationality." The Respondent filed a letter on 25 November 1991 objecting to the request. By her submission of 6 April 1992 the Claimant renewed the request. On 13 April 1992, the Respondent filed a submission in which it concurred with the Claimant's request for permission to file a rebuttal memorial and requested that it also be allowed to respond to such memorial. Having regard to the evidence already in the record, and noting also that both Parties have been allowed to file additional evidence, see, supra, para. 4, the Tribunal does not deem it necessary to grant either the Claimant's or the Respondent's request or to request any further filings concerning the issue of the Claimant's dominant and effective nationality.

II. FACTS AND CONTENTIONS

6. The Claimant was born on 23 August 1939 at West Point, New York. Her parents, George Arthur and Frederica Bellamy Lincoln, were both United States citizens. Her father was a Brigadier General who, after retiring from the United States Military Academy at West Point in 1969, served as director of the White House Office of Emergency Preparedness until 1973. The Claimant grew up at West Point, New York and at Fort Myer, Virginia where

she completed her primary and secondary education. Between 1956 and 1960 she attended Bryn Mawr College in Bryn Mawr, Pennsylvania, receiving a Bachelor of Arts degree in 1960. She majored in English and after graduation she became a high school English teacher.

7. In 1961, the Claimant married John F. Stapleton, an American citizen. The couple originally lived in Hawaii where Mr. Stapleton worked until November 1963 when he was transferred to Iran. In Iran, the Claimant's husband worked at Haft Tapeh Sugar Project as assistant project manager of Hawaiian Agronomics, a division of a United States corporation. During this period, the Claimant taught English to Iranian junior staff members. After remaining in Iran for approximately two years, they returned to the United States in 1965. In November 1965, the Claimant obtained a divorce from her husband. She subsequently moved to Colorado where she enrolled in a Master of Arts degree program in English at the University of Denver in January 1966.

8. The Claimant contends that in the summer of 1966 she travelled to Iran where she was offered a two-year teaching contract at the American Community School in Tehran. The Claimant states that she accepted the offer and taught English in that school until 1968 when she moved to the Tehran International School ("Iranzamin"), where she taught English until 1970. According to the Claimant, both schools offered a basic American education curriculum and observed American holidays. Moreover, the Claimant asserts that between 1966 and 1970 she travelled to Colorado every summer for four to twelve weeks. During the summer of 1967, she completed the necessary courses at the University of Denver in order to earn a Master of Arts degree in English in 1968.

9. In June 1970, the Claimant moved to Washington, D.C., where her father was working as director of the White House Office of Emergency Preparedness. In Washington, D.C., the Claimant lived with her parents and worked as an office manager and an assistant

riding instructor. In May 1971, she moved to Colorado where she was employed as an English teacher at the Air Academy Junior High School in Colorado Springs until June 1972.

10. The Claimant contends that in the summer of 1972 she travelled for a vacation to Tehran, and that shortly after her arrival in Iran she accepted an offer by the headmaster of Iranzamin to work in the school. She worked as a teacher in that school between the summer of 1972 and December 1974.

11. On 19 December 1974, the Claimant married her present husband, Manuchehr Riahi, an Iranian national, in a civil wedding ceremony performed in the home of her uncle in Alexandria, Virginia. A week later, a Christian recognition ceremony took place at the Claimant's home in Colorado. A third wedding ceremony was performed by an Iranian notary public at the couple's home in Tehran on 1 March 1975. After the marriage, the Claimant was granted an Iranian passport and an Iranian identity card in or about March 1975.

12. The Claimant contends that her resignation from Iranzamin made her time more flexible. She alleges that from then on her visits to the United States became more frequent and her residence in Iran was not continuous. The Claimant has produced a photocopy of her husband's diary that shows her visits to the United States and to other countries. The Claimant also states that she always used an American passport for travel outside of Iran.

13. The Claimant alleges that beginning in early 1976 she and her husband made plans to leave Iran. They sold their house at 9 Farmanieh Avenue, Tehran on 27 July 1976 and had their household belongings packed for overseas shipment. From October 1976 until spring 1977 the couple stayed in the Hilton Hotel in Tehran. In May 1977, they moved into a rented apartment in the Saman building on Elizabeth Boulevard. Thereafter, they briefly resided from June to September 1979 in the ASP building on

Youssef Abad allegedly in order to avoid leaving their property vacant and susceptible to taking by Iran.

14. In response to a November 1978 recommendation by the U.S. Embassy in Tehran that American citizens leave the country, the Claimant, together with her mother who was visiting at that time, flew to Switzerland on 15 November 1978. The Claimant contends that she returned to Tehran on 6 December 1978 because her husband desperately needed her help, due to the sickness of his ninety-year-old mother and problems of his sons who eventually committed suicide in the spring of 1979. She states that she expected to stay in Iran for only a couple of months, but in view of the revolution in Iran, the death of two of her husband's sons, her husband's arrest and the loss of her Iranian passport, her departure from Iran was delayed until 11 September 1979.

15. The Claimant asserts that her Iranian passport was stolen during her stepson's funeral in March 1979. In support of this, the Claimant has produced an Affidavit by Anne E. Stubbs, a friend of the Claimant's during that period. The Claimant states that she applied for a new Iranian passport in June 1979, but was informed by the Passport Office that she would have to wait six months to receive a new passport unless she obtained a letter of authorization from the Prime Minister's Office. The United States Embassy allegedly assisted her by offering the services of one of its Iranian employees, an Iranian Passport Office expert, who facilitated her case in the Prime Minister's Office. On 2 September 1979, the Claimant was issued a new Iranian passport. After obtaining a Swiss visa to her Iranian passport, she was able to leave Iran on 11 September 1979.

16. After a short stay in Switzerland, the Claimant went with her husband to the United States on 1 October 1979. During their stay, they visited New York, Colorado, Fayetteville, North Carolina and Washington, D.C. In view of his immigration status, the Claimant's husband could not then stay in the United States

as a permanent resident. Therefore, her husband rented an apartment in Nice, France, near his relatives.

17. Between January 1980 and February 1982, the Claimant allegedly travelled back and forth between the United States and France. While in the United States, she resided at her mother's house at Evergreen, Colorado. The Claimant contends that she established French residency with her American passport in order to facilitate her visits to France where her husband was staying, while seeking a U.S. permanent residence visa. During this period, the Claimant was engaged in a search for acquiring real property suitable for residence and investment in Colorado.

18. As to the Claimant's stay in Iran, the Claimant asserts that she made a deliberate effort to maintain her American lifestyle, culture, and ties. In support of this contention, she has produced affidavits of two former U.S. Ambassadors to Iran who contend that she attended social functions with other Americans, and that her style of life in Iran remained predominantly American. She has also submitted photocopies of her American Express Card and of her American driver's license. In addition, she states that she listened to American radio programs as well as read English and American books and magazines. Moreover, she contends that she was a member of the American Women's Club in Tehran, and that her husband's family had many American and international connections. She asserts also that she, her husband, and his three sons always spoke English in their household, and that she never learned to speak Farsi beyond what was necessary for the purpose of shopping and living in Iran.

19. The Claimant contends that while in Iran she did not lose her contacts with and attachment to the United States. Between 1975 and 1979 the Claimant served as Bryn Mawr College's Alumnae Admission Representative in Tehran. In this capacity she interviewed prospective students, visited schools, organized the visits of admissions staff members and organized various gatherings for prospective students and their parents. In

addition, in 1977 or 1978 the Claimant made a donation of U.S.\$1,500 to the Jefferson County Historical Society in Evergreen, Colorado. She explains that the reason why she made this contribution was that she knew that she would be returning to Colorado.

20. The Claimant further argues that while living in Iran her economic ties were to the United States. She was a beneficiary of a trust established by her grandmother, Frederica Lef. Belamy and future beneficiary of two other family trusts - the George A. Lincoln Trust and the Frederica B. Lincoln Trust. The Claimant also had bank accounts in Evergreen, Colorado. In addition, she has submitted evidence showing that, from 1971 through 1981, she filed U.S. tax returns as an American citizen residing abroad, and that she held stocks in U.S. corporations.

21. Iran argues that the Claimant has failed to establish that during the relevant period she had dominant and effective U.S. nationality. First, Iran points out that the Claimant's financial ties to the United States were weak. Iran states that the Claimant did not actively acquire financial interests in the United States, but merely received three family trusts as gifts. Iran asserts also that the Claimant's ownership of a number of stocks in U.S. Corporations reflect commercial decisions, not ties to American society. Furthermore, Iran observes that the Claimant paid only a small amount of taxes to the United States between 1970 and 1978. Finally, Iran contends that the Claimant's financial interests in the United States are trivial when compared with the U.S.\$6.5 million that she claims to have held in movable and immovable properties in Iran.

22. Iran states that the Claimant has not produced evidence concerning her alleged travels outside Iran using her U.S. passport. Iran asserts that even if the Claimant's contention is accepted as true, it has no relevance to the issue of the Claimant's dominant and effective nationality. Iran argues that the use of a U.S. passport is understandable because of the

convenience that holding a United States passport provides, such as excusing the holder from securing visas to enter various countries.

23. As to the Claimant's U.S. credit card and driving license, Iran contends that anyone, regardless of his or her nationality, may obtain such documents. In addition, Iran points out that the Claimant held similar licenses and credit cards in Iran. Iran also argues that the Claimant's relationship with Bryn Mawr College was maintained because of the Claimant's educational background and not because of national considerations. Likewise, Iran states that the Claimant's charitable help to Jefferson County Historical Society does not have any connection to the issue of the Claimant's nationality.

24. Iran disputes the Claimant's statement that after 1974 her residence in Iran was not continuous. Iran points out that the Claimant made her trips to the United States on vacation, and that travelling outside of Iran cannot at any rate outweigh her permanent residence in Iran. As to the Claimant's evidence concerning her relations with her American friends and relatives, Iran argues that those relations are overshadowed by the connections that she and her husband had with Iranian relatives and friends, as proven by entries in her husband's diary. Furthermore, Iran contends that the Claimant's alleged American lifestyle does not have any probative value with respect to her nationality. According to Iran, many people in the world read English books, enjoy western music, listen to English broadcasts, but that does not mean that they are attached to American society.

25. Also, Iran disputes the Claimant's contention that her intention to leave Iran began in early 1976. Iran argues that this contention is not relevant because the Claimant has to prove her attachment to American society, and not her non-attachment to Iranian society. Iran also asserts that the Claimant's alleged intention is not supported by the facts. For example,

Iran points out that after the Claimant and her husband sold their house at 9 Farmanieh Avenue in July 1976 the Claimant purchased an apartment in the ASP residential complex on 19 September 1976. Moreover, Iran notes that the list of the packed items from their house at Farmanieh Avenue was limited, and that there is no proof of the shipment of those items abroad. In addition, Iran states that in her U.S. passport application form dated 29 November 1977, the Claimant contended that her residence was Eisenhower Avenue No. 781, Tehran, and that the purpose of her travel was a visit.

26. As to the Claimant's political activity, Iran refers to the Claimant's Iranian passport application form of 1979 in which the Claimant stated that she lost her passport while casting a vote in favor of the Islamic Republic. According to Iran, the Claimant's participation in the referendum of the Islamic Republic of Iran after the Revolution establishes her attachment to Iranian society. Iran points out, by way of contrast, that the Claimant has not argued that she participated in comparable political activities in the United States.

27. Iran has produced a certificate by a Notary Public Office dated 1 March 1975 which demonstrates that the Claimant converted to Islam, in connection with her marriage. Iran denies the Claimant's assertion that she was obliged to undergo the Islamic marriage process. In this respect, Iran refers to Article 1059 of the Civil Code of Iran which provides only that a non-Muslim man must convert to Islam in order to marry a Muslim woman. Iran notes that there exists no comparable legal requirement that a non-Muslim woman convert in cases where she marries a Muslim man.

28. Iran points out that the Claimant has enjoyed benefits from her Iranian nationality. Iran has produced an affidavit by Mr. S.A. Mortazavi, Director General of the Foreign Investment Office, stating that the documents in the Iran Organization for Investment and Economic and Technical Assistance show that the Claimant held a position as an Iranian shareholder in Iran Bohler

Pneumatic Co., and that her name appears among Iranian shareholders and partners. Moreover, he contends that based on the records in that Organization she used solely her Iranian nationality in managing her economic affairs in Iran.

29. In addition, Iran has produced an affidavit by Mr. S.J. Tabatabaei, the Managing Director of the ASP Company, concerning the Claimant's apartment in the ASP building. He states that in 1976 the Claimant's husband held negotiations with ASP to purchase an apartment for his wife. According to Mr. Tabatabaei, during her visits to ASP the Claimant explicitly introduced herself as an Iranian national by showing her Iranian I.D. card. He also asserts that if the Claimant had not been Iranian, his company would not have sold the apartment to her without necessary authorization by the Council of Ministers or the Foreign Ministry. In addition, he asserts that the Claimant spoke Persian fluently.

30. Furthermore, Iran has submitted an Affidavit by Mr. A.A. Mivei, Deputy Manager of Bank Mellat. He states that a number of accounts at Bank Tehran were opened for the Claimant as a national of Iran. According to him, if the Claimant wished to open an account as a national of the United States, she had to fill in a different application in English. He states also that the Claimant spoke Persian fluently and never mentioned her U.S. nationality.

31. Iran argues that even after the Revolution, the Claimant initially had intended to continue to live in Iran. To support this contention, Iran points out that the Claimant stayed on in Iran until September 1979 and participated in the referendum of the Islamic Republic of Iran. As to the Claimant's decision to leave Iran in September 1979, Iran emphasizes that the Claimant's decision was prompted by the post-revolutionary developments in Iran. Thus, according to Iran, her departure cannot be proof of the Claimant's attachment to the United States.

32. Finally, Iran states that the Claimant and her husband after leaving Iran did not intend to reside permanently in the United States. Referring to the Claimant's husband's diary, Iran states that while staying in France the Claimant and her husband observed closely the conditions in Iran in order to return there at the earliest favorable opportunity.

III. REASONS FOR THE AWARD

33. In order to determine whether the Claimant has standing before this Tribunal, the Tribunal must establish whether the Claimant was a citizen of Iran, of the United States, or of both Iran and the United States during the relevant period from the date the Claim arose until 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If the Claimant was a citizen of both Iran and the United States, the Tribunal must determine the Claimant's dominant and effective nationality during that period. See Case No. A18, *supra*, para. 2, 5 Iran-U.S. C.T.R. 251. In this Case, the relevant period commenced when the Respondent allegedly expropriated the property for which the Claimant seeks compensation. The relevant periods for her various Claims thus began between April 1979 for the earliest Claim and March 1980 for the latest Claim.

34. The Tribunal notes that there is no dispute that the Claimant, by virtue of her marriage to an Iranian national, is an Iranian national. The Tribunal is also satisfied that the Claimant acquired her United States citizenship at birth, as evidenced by her birth certificate and her United States passport. There is no evidence in the record that the Claimant has relinquished either her Iranian citizenship in accordance with Iranian law or her United States citizenship in accordance with United States law. Consequently, the Tribunal finds that during the relevant period, the Claimant was a citizen of both Iran and the United States.

35. Having found that during the relevant period the Claimant was a citizen of both Iran and the United States, the Tribunal proceeds to determine her dominant and effective nationality during that period. For that purpose, the Tribunal must establish the country with which the Claimant had stronger factual ties. The Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Case No. A18, supra, para. 2, p. 25, 5 Iran-U.S. C.T.R. 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between the dates the Claim arose and 19 January 1981, events and facts preceding that period remain relevant to the determination of the Claimant's dominant and effective nationality during that period. See Reza Said Malek and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

36. As noted above, the Claimant is a native United States citizen who lived in the United States until the age of twenty-four; that is, from 1939 to 1963. Thereafter, the Claimant resided in Iran from 1963 to 1965, from 1966 to 1970 and from 1972 to September 1979, and in the United States during the years 1965-1966 and 1970-1972. Thus, between 1939 and 1981 the Claimant resided twenty-seven years in the United States and thirteen years in Iran. In light of the above, the Tribunal points out that the pertinent issue in this Case is to determine whether the circumstances of the Claimant's life in Iran outweigh the fact that she lived more than twice as long in the United States.

37. Turning, therefore, to explore the years the Claimant lived in Iran, the Tribunal first notes that between 1963 and 1965 the Claimant lived in Iran because she was accompanying her ex-husband, John F. Stapleton, a United States citizen. Thereafter, during the years 1966-1970 and 1972-1974 the Claimant was working

in Iran as a teacher. In this context, the Tribunal also observes that the Claimant's work at the American Community School obviously had American elements. Thus, it was only after December 1974 that the Claimant apparently integrated more into Iranian society as a result of her marriage with Manuchehr Riahi, an Iranian national. The Tribunal also notes that it is undisputed that the Claimant, at least to some extent, learned to speak Persian while staying in Iran. At the same time, however, the Tribunal finds that the evidence in the record does not warrant the conclusion that the Claimant fully and deliberately integrated into Iranian society. In this respect, the Tribunal observes that there is evidence showing that the Claimant's lifestyle in Iran was predominantly American. The Tribunal notes that it does not possess any evidence suggesting that the Claimant adopted an Iranian lifestyle. Rather, the Tribunal finds that the Claimant maintained her American family ties after she was married with her Iranian husband and continued to hold some financial interests in the United States.

38. The Tribunal will now examine the remaining evidence in the record concerning the Claimant's national attachments. First, the Tribunal will explore evidence concerning the Claimant's participation in public life in Iran. The Tribunal notes that the Respondent has produced a photocopy of the Claimant's application form for issuance of a new Iranian passport in place of the lost passport. It appears from the application that the Claimant has explained the loss of her previous passport by stating that she lost the passport while voting in the referendum of the Islamic Republic. The Tribunal, however, also notes that in her affidavit the Claimant asserts that her passport was stolen at her stepson's funeral. To support the latter contention, she has produced an affidavit by Anne E. Stubbs who makes the same statement about the loss of the passport. The Tribunal need not draw a firm conclusion about the matter. Even if the Tribunal were to hold that the above-mentioned application demonstrates that the Claimant voted in the referendum of the Islamic Republic of Iran, this evidence does not acquire

predominant importance when it is seen in the whole context of events at the time and against the other facts of this Case.²

39. Next, the Tribunal considers Iran's arguments concerning the Claimant's intention to live in Iran. In the first place, Iran argues that the Claimant's intention to leave Iran was prompted by post-revolutionary developments, and that her departure in those circumstances cannot outweigh her choice to center her life in Iran. To begin with, the Tribunal notes that in 1976 the Claimant purchased the apartment in the ASP building, but that she lived there only a short period between June and September 1979, allegedly in order to avoid leaving the property vacant and thus vulnerable to taking. The Tribunal also observes that in 1976 the Claimant and her husband sold their house in Tehran and packed their household belongings for overseas shipment. The Tribunal does not see any evidence suggesting that the Claimant intended to live in Iran permanently. Accordingly, the Tribunal is not persuaded by Iran's first argument. As to the Respondent's argument concerning the Claimant's alleged intention to return to Iran at the earliest favorable opportunity, the Tribunal points out that the fact that the Claimant's husband may have been observing the political situation in Iran while residing in France does not demonstrate that either he or the Claimant intended to return to Iran. Thus, in the absence of persuasive evidence concerning the Claimant's intention, the Tribunal finds Iran's arguments unconvincing.

²See Shahin Shaine Ebrahimi, et al. and Government of the Islamic Republic of Iran, Award No. ITL 71-44/45/46/47-3, paras. 29-30 (16 Jun. 1989), reprinted in 22 Iran-U.S. C.T.R. 138, 144-145; Albert Berookhim, et al. and Government of the Islamic Republic of Iran, et al., Award No. 499-269-1, para. 16 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 278, 286.

The Tribunal notes that during the interval between the close of the deliberations and the filing of this interlocutory award the Claimant filed a submission on 6 April 1992, see, supra, para. 5, in which she admitted that she participated in the referendum of the Islamic Republic of Iran.

40. Finally, the Tribunal examines Iran's argument concerning the Claimant's financial interests in Iran. First, Iran argues that the fact that the Claimant is seeking compensation in the amount of U.S.\$6.5 million is alone sufficient proof that the Claimant's financial interests were in Iran. The Tribunal notes that in raising this argument Iran does not, in fact, admit that the Claimant's allegation to the effect that she owned property with the claimed value or that her property rights were expropriated is correct. At any rate, Iran's argument concerns the Claimant's alleged ownership of property interests in Iran which issue relates directly to the merits of this Case.³ Since Iran's argument is thus not of an exclusively preliminary character, the Tribunal does not take it into consideration in determining the Claimant's dominant and effective nationality.

41. Iran also argues that the Claimant has acquired and invested capital in Iran as a national of Iran. To support this argument, Iran has produced three affidavits to show that the Claimant has on three occasions identified herself as an Iranian rather than as an American, see, supra, paras. 28-30. With respect to this argument, the Tribunal notes that the affidavits submitted by Iran concern the way in which the Claimant obtained such property for which she is seeking compensation in the present Case. The Tribunal also notes that the issue of whether the Claimant concealed her American nationality in order to get benefits available only to Iranians in obtaining those property rights may be relevant as far as the merits are concerned.⁴ Hence, Iran's argument touches the actual merits, and does not relate to the preliminary issue of the Claimant's dominant and effective

³See Lilly Mythra Fallah Lawrence and Islamic Republic of Iran, Award No. ITL 77-390/391/392-1, para. 12 (5 Oct. 1990), reprinted in 25 Iran-U.S. C.T.R. 190, 194-195.

⁴See Case No. A18, supra, para. 2, p. 26, 5 Iran-U.S. C.T.R. 265-66, in which the Full Tribunal added to its conclusion the following caveat: "In cases where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim."

nationality. Consequently, the Tribunal merely concludes that this issue, which has not been fully briefed, forms a part of the merits of this Case, and that it cannot be considered at this stage of the proceedings.

42. In these circumstances, the Tribunal finds that the evidence concerning the Claimant's attachment to Iran is not such as to outweigh her attachment to the United States. Consequently, the Tribunal determines that during the relevant period the Claimant's dominant and effective nationality was that of the United States.⁵

43. The subsequent proceedings in this Case remain subject to the caveat of the Full Tribunal in Case No. A18, supra, para. 2, p. 26, 5 Iran-U.S. C.T.R. 265-66, that "where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim."

IV. AWARD

44. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- a) The Claimant FREDERICA LINCOLN RIAHI has standing before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.

⁵The Tribunal recalls that the determination of the Claimant's dominant and effective nationality, which is a preliminary determination, cannot prejudice the remaining jurisdictional issues or the Tribunal's decision on the merits. See Hooshang and Catherine Etezadi and Government of the Islamic Republic of Iran, Partial Award No. 497-319-1, para. 19 (15 Nov. 1990), reprinted in 25 Iran-U.S. C.T.R. 264, 271.

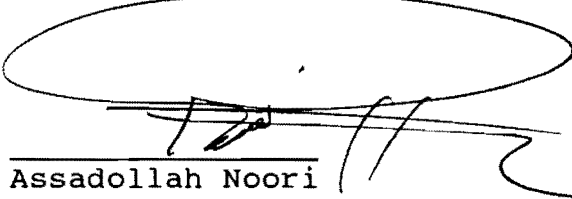
- b) The remaining jurisdictional issues are joined to the merits.

Dated, The Hague,
10 June 1992

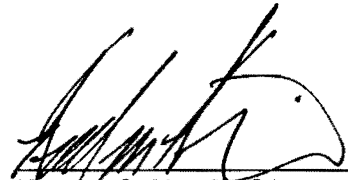


Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori



Howard M. Holtzmann

In my opinion, the Tribunal does not, in principle, have jurisdiction over the claims of Iranians with dual United States nationality, either according to the Claims Settlement Declaration or pursuant to recognized principles of international law, particularly the principle of sovereign equality, which is rightfully the applicable principle with regard to the claims of dual nationals. The action taken by the majority of the Full Tribunal in its Decision issued in Case A/18, wherein it resorted to the theory of dominant and effective nationality, constitutes, so far as the Algiers Declarations are concerned, a disregard for both the letter and the spirit of those Declarations. And insofar as the principles of international law, especially the principle of the sovereign equality of States, are concerned, that action is tantamount to a disregard for the fundamental principles of international law. It is my opinion, just as the Iranian arbitrators have stated in their Dissenting Opinion in Case A/18, reprinted in 5 Iran-

U.S. C.T.R. 275-337, that the Tribunal should rule that it lacks jurisdiction, and discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.

In addition to the foregoing considerations, I also dissent to the present majority's decision whereby it finds that Mrs. Frederica Lincoln Riahi's dominant and effective nationality is that of the United States. In my opinion, the majority has ignored at least two crucial facts in this Case. First, it has failed to take into account the fact that in the years prior to the relevant period and in that period as well (i.e. from the date when the claims arose until 19 January 1981, the date on which the Algiers Declarations were adhered to by the two Governments), the Claimant had no real or significant attachment (whether social, economic or cultural) to the United States, such as could lead to the conclusion that her United States nationality was her dominant and effective nationality during the relevant period. As the record in this Case shows, after leaving Iran on 12 September 1979, the Claimant lived in France until 1982 with her husband, a solely Iranian national, under French permanent resident visas. The second fact disregarded is that the Claimant bears the burden of proving that her dominant and effective nationality is that of the United States. Thus it is unclear why the majority has implicitly and unwittingly placed upon the Respondent the burden of proof that the Claimant's dominant and effective nationality is that of Iran, or in other words, why it has required the Respondent to prove a negativity -- viz. that the Claimant's United

States nationality is not her dominant and effective nationality. In my view, in this decision the majority has neglected to take note of both the social life of Mrs. Riahi, who was fully integrated into the elite Iranian society, and the severance of her ties with the United States society. In this respect, the majority's decision is palpably inconsistent with its previous finding in Lilly Mythra Fallah Lawrence and Islamic Republic of Iran, Award No. ITL 77-390/391/392-1 (reprinted in 25 Iran-U.S. C.T.R. 190). In that Case, although Mrs. Fallah participated in gatherings of American elite circles because she was the daughter of a high-ranking official of the National Iranian Oil Company - and not because she was the wife of an ordinary American citizen - the majority considered those elements as evidence that her dominant nationality was that of the United States, and did not take into account the decades-long family ties and privileged status of Mrs. Fallah and her father in Iran. In the present Case, however, despite the fact that the Claimant was herself a quite ordinary individual in her American life (see, inter alia, paras. 7-10 of the majority's Award), and, conversely, became integrated into elite Iranian circles through her marriage to a wealthy Iranian of aristocratic birth and thus mingled with members of the former ruling class in Iran, the majority has resorted to dusting off the Claimant's family history and belaboring the fact that her father had been a general (one of hundreds) in the United States Army, while disregarding the overwhelming weight of the Claimant's ties with Iranian society, and in so doing the majority has found that the alleged background of the

Claimant's family constitutes evidence pointing to her stronger ties to the United States society. Among other things, in order to establish that the Claimant had economic ties to the United States, the majority has exaggerated the importance of the paltry income realized by Mrs. Riahi from her family trusts, in the creation of which the Claimant played no part and which cannot be considered as confirmation of her social/economic links and ties to the United States. Yet, at the same time, the majority facilely passes over the great wealth and the profound social, political and economic ties of Mr. Riahi, the head of the family, as well as the admission implicit in the Claimant's assertion that she had personal economic/financial interests in Iran amounting to millions of dollars, by virtue of her possession of various movable and immovable property and shares.