IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

953-174

ORIGINAL DOCUMENTS IN SAFE

Case No. 953 Date of filing: 2/07/1997

** AWARD - Type of Award Award
- Date of Award 2 July 1997
50 pages in English ✓ pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____
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- Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 953
CHAMBER TWO
AWARD NO. 587-953-2

KAMRAN HAKIM,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For the Claimant:

Mr. Kamran Hakim,
Claimant,
Mr. Leonard van Sandick,
Mr. Hamid Sabi,
Mr. Kendall R. Meyer,
Ms. Farkhondeh Sabi
Attorneys,
Mr. Alexander von Franquemont,
Ms. Mary E. Davenport,
Mr. Farhad Eshaghpour
Assistants,
Ms. Parvin Hakim,
Mr. Said Hakim,
Mr. Masud Hakim,
Persons appearing for the Claimant,
Mr. Manoochehr Vahman,
Mr. Thomas Lembo,
Mr. Chris Rosenthal,
Mr. Carl Miller,
Expert Witnesses,
Mrs. Ellen Hakim,
Observer.

For the Respondent:

Mr. M.H. Zahedin-Labbaf,
Agent of the Islamic Republic of Iran,
Dr. Jafar Niaki,
Mr. Seifollah Mohammadi,
Dr. Rahim Davarnia,
Legal Advisers to the Agent,
Mr. Mahmoud Tavana,
Attorney for Respondent,
Mr. Yousof Karimi,
Witness,
Engineer Ahmad Khorassanchian,
Mr. Abolghassem Merati,
Rebuttal Witnesses,
Mr. Jahangir Beglari,
Observer.

Also Present:

Mr. D. Stephen Mathias
Agent of the United States of America.

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I. INTRODUCTION

1. The Claimant, KAMRAN HAKIM, filed a Statement of Claim on 19 January 1982 against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent") seeking compensation for the alleged expropriation of real property and company shares. As finally pleaded, the Claimant seeks compensation in the total amount of U.S.$11,958,930, plus interest and costs.[1]

2. The Respondent disputes the jurisdiction of the Tribunal on various grounds and denies any liability to the Claimant for the claims.

3. In an Order of 3 March 1989, the Tribunal joined all jurisdictional issues, including the Claimant's nationality, to the consideration of the merits of the Case.

4. The Hearing in this Case was held on 12-14 June 1996.

II. LATE-FILED DOCUMENTS

5. On 9 November 1995, while listing the present Case for hearing, the Tribunal stated that no new documents would be introduced prior to the Hearing without the permission of the Tribunal and unless a request for such introduction was filed at least three months before the Hearing. The Tribunal also stated that at the Hearing "new documents may not be introduced in evidence unless the Tribunal so permits, which permission should not be anticipated except for evidence in rebuttal of evidence introduced at the Hearing."

6. At the commencement of the Hearing, the Claimant

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[1] In his Statement of Claim, Mr. Hakim sought U.S.$45,000,000 consisting of U.S.$11,000,000 as compensation for the value of the real estate and U.S.$34,000,000 for the company shares.

submitted a dossier consisting of 33 documents and requested that it be admitted into the record. The Claimant's explanation for his delay in submission was that he had had difficulty in gaining access to the documents and had obtained them only a short time before the Hearing. In response to a question from the Tribunal, the Claimant also argued that most of the proffered documents fell within the category of "public" documents which should be admitted by the Tribunal. Further, he argued that their introduction would not prejudice the Respondent because the documents had always been in the Respondent's possession.

7. The dossier contained numerous documents that the Claimant had submitted to the Tribunal previously and which the Tribunal had previously rejected. Thus, at the Hearing, the Tribunal reiterated its earlier rejection of these documents. The Tribunal went on to admit one document, a judgment of 6 March 1984 by the Islamic Revolutionary Court of Tehran against the Claimant and his siblings. Finally, although noting that it had not received an adequate explanation for the Claimant's delay in presenting the documents, the Tribunal held that it nonetheless would be prepared to admit any of the remaining documents, provided that the Claimant could prove that they were publicly available. The Tribunal concluded that documents that could not be deemed to be publicly available must be rejected as a result of the Claimant's inadequate explanation for the delay and the Tribunal's requirement of orderly procedure.

8. By an Order of 20 November 1996 the Tribunal admitted another document contained in the dossier, a letter dated 22 December 1980, No. 30/9940, from the Office of the Revolutionary Prosecutor of the Islamic Republic of Iran to the Foundation for the Oppressed (the "Revolutionary Prosecutor's letter"), on the ground that the Tribunal had previously requested the Respondent to produce this document in a prior order in this Case.

9. In that same Order of 20 November 1996, the Tribunal

postponed a decision on the admission of two other late-submitted documents: a letter dated 26 November 1980 from the Iranian Ministry of Industries and Mines to Mr. Morteza Khatibi (the "IMIM letter of appointment") and a hand-written document entitled "Notice of Changes in Pars Machine Manufacturing Co.," dated 29 November 1980 (the "notice of changes"). The IMIM letter appointed Mr. Khatibi as a governmental observer of PMMC for a period of three months and specified his functions and powers in that position. See infra, para. 56. The notice of changes, signed by Mr. Khatibi and two other PMMC employees described certain changes which assertedly had been made in PMMC's operation and management. In the same Order the Tribunal gave the Respondent an opportunity to file a response as to (a) the admissibility of the IMIM letter of appointment and the notice of changes and (b) the merits of those two documents as well as the Revolutionary Prosecutor's letter.

10. On 30 June 1997, the Respondent filed its response, annexed to which were 18 exhibits ("June 1997 response"). The Claimant filed a reply to that submission on 15 August 1997, and on 5 September 1997 the Respondent filed an objection to the Claimant's reply.

11. The Tribunal decides on the above three post-Hearing filings as follows. Because the Respondent's June 1997 response was requested by the Tribunal's Order of 20 November 1996, that document, including its supporting exhibits, is admitted. However, the Tribunal did not request the two documents filed in August and September 1997, and it considers it inappropriate to permit their introduction at this late stage of the proceedings. Consequently, the August and September 1997 filings are not admitted into the record.

12. In its June 1997 response, the Respondent argued that the IMIM letter of appointment and the notice of changes were inadmissible because they were late-filed and were not documents of public record. The Respondent argued also that their admission

would be inconsistent with Tribunal practice, would seriously prejudice the Respondent and would disrupt the orderly conduct of the proceedings.

13. The Tribunal notes that the IMIM letter of appointment appears on its face to be an internal government communication. Thus, without further information, one might think it not publicly available. However, in its June 1997 response, which has been admitted by the Tribunal, the Respondent annexed an official Ministry of Justice Notice of Appointment, issued by the Bureau for the Registration of Companies and dated 1 December 1980. This document is an official publication of Mr. Khatibi's appointment as an observer for PMMC, and it refers to the IMIM letter of appointment. That reference shows the public nature of the IMIM letter of appointment. A full understanding of the Ministry of Justice Appointment Notice required an examination of the IMIM letter of appointment, and the Tribunal infers that the Ministry of Justice Appointment Notice would not have referred to the IMIM letter unless it could be so examined. Thus, the Tribunal considers the IMIM letter of appointment to be a document of public nature admissible pursuant to the Order communicated to the Parties at the Hearing.

14. By contrast, whether or not the notice of changes is a publicly available document is not clear. That document is signed by Mr. Khatibi and two other PMMC employees, and it purports to make certain changes in PMMC, including dissolving PMMC's board of directors and cancelling its contracts. However, the above-mentioned Ministry of Justice Notice of Appointment indicates that the three signatories to the notice of changes exceeded in that notice the powers conferred upon them by the IMIM letter of appointment. Consequently, several decisions purported to have been made in the notice of changes were not approved by the Iranian Bureau for the Registration of Companies and presumably were not made available to the public. However, in light of the Tribunal's decision in paragraph 105, infra, a decision on the admissibility of the notice of changes is

rendered moot.

15. In admitting the IMIM letter of appointment, the Tribunal notes that late-filed documents are admitted exceptionally. The factors considered relevant by this Tribunal for the admission of untimely documents were the subject of detailed discussion in Harris International Communications, Inc. and Islamic Republic of Iran, et al., Award No. 323-409-1 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31 ("Harris"). In that Award, the Tribunal stated "[f]ilings containing facts and evidence are the most likely to cause prejudice to the other Party and to disrupt the arbitral process if filed late." Id., at para. 63, 17 Iran-U.S. C.T.R. 47. Because the IMIM letter of appointment contains facts and evidence, the statement from Harris has direct relevance to the Tribunal's decision on the admission of the letter. However, other considerations also come into play, such as the "fundamental requirements of equality between, and fairness to, the Parties, and the possible prejudice to either Party." Id., at para. 61 (footnote omitted). With respect to the concept of prejudice, the Tribunal notes that a party is not prejudiced merely because the contents of late-submitted documents are likely to produce a finding in favor of the party which submits those documents. Rather, the prejudice to which Harris refers arises when the non-submitting party is not afforded the opportunity to respond to the substance of the late-filed documents. See W. Jack Buckamier and Islamic Republic of Iran, Award No. 528-941-3, para. 31 (6 Mar. 1992), reprinted in 28 Iran-U.S. C.T.R. 53, 61.

16. In the present Case there are two reasons why the Respondent is not prejudiced by the admission of the IMIM letter of appointment. First, the Respondent has been given ample opportunity to respond to that document (more than six months). More importantly for the present circumstances, that appointment letter was a publicly available document, see supra, para. 13, and has always been in the Respondent's possession.

III. FACTS AND CONTENTIONS: NATIONALITY

17. The Claimant was born to Iranian parents in Iran on 1 July 1940, so, pursuant to Article 976, paragraph 2, of the Civil Code of Iran, he acquired Iranian nationality at birth.

18. Between 1951 and 1956 the Claimant attended various boarding schools in the United Kingdom. In 1956 he was sent to California and studied at Acalanes High School from where he graduated in 1958. He continued his education at Pasedena City College and then Woodbury College, Los Angeles, and he received an Associate in Arts Degree and a Bachelor of Business Administration in 1961 and 1963, respectively.

19. During his first two years in the United States, the Claimant lived with an American family and was raised, he asserts, "as an ordinary American teenager." It was at this early stage, he contends, that his integration into American society began.

20. In April 1963, at the age of twenty one, he moved to New York where he met Ellen Manoochehrian, a United States national by birth whose father was born in Iran. They were married in the State of New York in a Jewish ceremony.

21. At this juncture, the Claimant commenced his professional career in real estate. He first worked for a New York real estate brokerage firm for two years and thereafter started his own real estate business in New York City. He has submitted several documents and letters of commendation as proof of his business activities. While engaged in his own business, the Claimant also functioned as the United States-based representative for the family business of Pars Machine Company and its affiliates.

22. The Claimant states that he has paid U.S. taxes since 1964. He has submitted copies of his individual income tax

returns for several years between 1972 and 1988, and a copy of a record of his social security payments for the years 1958 through 1988.

23. The Claimant has four children, all of whom were born in the State of New York, are United States citizens and have been educated exclusively in the United States. He asserts that his wife and children have never been to Iran and have no knowledge of the Persian language. The Claimant has tendered affidavits by close friends attesting to his social and family life in the United States. He has also been a longtime active member of Temple Beth El of Northern Westchester in the State of New York.

24. The Claimant maintains that he visited Iran "a few times" between 1951 and 1977 and that his longest visit was for a period of two weeks. His sister, Parvin Hakim Benaresh, states in an affidavit that the Claimant visited Iran in the summers of 1953 and 1959 and once every two years from 1966 until 1978.

25. Unable to produce his original United States certificate of naturalization of 14 November 1973, which he states was lost, the Claimant has submitted a) copies of duplicate certificates of naturalization issued in 1980 and 1981 by the Immigration and Naturalization Service; b) a United States District Court statement; and c) a letter from the Department of State confirming that he was naturalized as a national of the United States on 14 November 1973. The Claimant has produced only his 1981 United States passport stating at the Hearing that he is no longer in possession of his previous United States or Iranian passports.

26. The Respondent disputes the authenticity of the Claimant's evidence relating to his United States citizenship and takes exception to the Claimant's production of two duplicate certificates of naturalization rather than the original. The Respondent alleges that there are a number of discrepancies

between the two duplicate certificates. It further contends that the Claimant has not relinquished his Iranian nationality in accordance with Article 988 of the Civil Code of Iran and asserts that, as a consequence, his only nationality is that of Iran.

27. Alternatively, the Respondent argues that, if the Tribunal decides that the Claimant is a United States-Iranian dual national, his United States nationality is not sufficiently dominant and effective for the Tribunal to assume jurisdiction over the Case. The Respondent asserts, inter alia, that the Claimant's inability to produce a copy of his original certificate of naturalization issued in 1973 as well as any U.S. passport which he might have been issued prior to 1981 is proof of the fact that the Claimant obtained United States citizenship and a United States passport only in 1981. The Respondent further maintains that the Claimant's business activities in the United States were for the purpose of contacting United States companies for trade based in Iran, and that the Claimant conducted his business in the United States as an Iranian national.

IV. FACTS AND CONTENTIONS: PROPERTY AND COMPANY INTERESTS

1) The Velenjak Property

28. In his Statement of Claim, Mr. Hakim sought compensation for four parcels of land in Velenjak, Iran. In later pleadings, an additional 3,000 square meter parcel in Velenjak was claimed. The Claimant has submitted title deeds in his name for all five properties. He asserts that the aggregate area of the five parcels measured approximately 8,500 square meters and that they were purchased at different times by his father, Isaac Hakim.

29. The Claimant contends that he made various improvements to the properties, and he submits a letter and an affidavit by

Mr. Ralph Sassouni in support of this contention. Mr. Sassouni asserts that he owned land and lived in the Velenjak area for over 25 years. He confirms the existence of brick walls, water wells, planted trees and shrubs, a hot house, and a small cottage on the Claimant's Velenjak property. A similar description of the improvements is outlined in a protest letter of November 1985 from the Claimant's tax attorneys to the United States Internal Revenue Service. In a supplemental affidavit, Mr. Sassouni states that despite the presence of planted trees and a cottage, the Velenjak lots were undeveloped. The Claimant contends that $857,000 was spent on purchasing the land, on various taxes and on the improvements.

30. The Claimant maintains that the property was expropriated by the Respondent pursuant to the Act Concerning Abolition of Ownership of Mawat [Undeveloped] Urban Lands and the Method for Development of Such Lands of 1 July 1979 (the "1979 Abolition Act") and its implementing Regulations.

31. The Respondent asserts, by contrast, that the 1979 Abolition Act was not applied and was not applicable to the Velenjak property in light of the Claimant's admission that various improvements had been made to the property.[2] The Respondent has tendered a document from the Department General for Urban Land, Tehran Province which states that the Velenjak property was not affected by the 1979 Abolition Act or any related by-laws and a statement by Mr. Hamid Mahdi Damavandi, manager of the Gandi Housing Agency, Tehran, who says that the lands of the Velenjak area "have never been considered as unutilized lands and that in [1979-1980 the Respondent had] not declared the land . . . as unutilized lands."

32. As for the additional 3000 square meter parcel, the

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[2] The Respondent, however, has also submitted an affidavit by Mr. Paryab, the former accountant for the Hakim family, who states that he has no knowledge of the amount of $857,000 having been spent in relation to the Velenjak property.

Respondent presented an expert at the Hearing, Mr. Yousof Karimi, who testified that he had consulted the relevant Iranian land registration records and found that the additional parcel, which was part of the original parcel of land purchased by the Claimant's father, had subsequently been fully subdivided and became the other four parcels claimed by Claimant, and so no longer existed.

33. As finally pleaded, the Claimant values the Velenjak property at U.S.$2,753,412, or approximately U.S.$325 per square meter, as of the expropriation date. The Respondent values the Velenjak lands during 1979 - 1981 at 1000 to 1500 rials, or approximately U.S.$14 to U.S.$21, per square meter.

2) 77 Pirasteh Street

34. The Claimant alleges the expropriation of a residential property located at 77 Pirasteh Street, Tehran, that measures 1,534 square metres. The title deed he submitted indicates that the property was registered in his name in 1947.

35. The Claimant asserts that when his mother, Mrs. Touba Hakim, moved out of 77 Pirasteh Street in late 1978, the former servants of the family remained living there and took control over the property. Affidavits by Mr. Hessam Nourmand, the Claimant's cousin and accountant of the Hakim family from 1948 through 1980, and Mr. Samuel Talmud, who acted as caretaker of the house after Mrs. Hakim left, describe how they observed people apparently associated with the Revolutionary Guards occupying the house. Ms. Parvin Hakim, the Claimant's sister, and Mr. Ralph Sassouni, a former Pirasteh Street neighbor, allege observing the same.

36. Mr. Talmud contends that some of the occupants had told him in 1979 that they were paying rent to the government. He states that when he visited the house in 1988 he noticed that the

garage in front of the house had been turned into an auto repair shop and the "remainder of the house has become the residence for one of the high officials of the Revolutionary committee."

37. The Respondent denies expropriating the property and submits affidavits by Ms. Shahrokh (Fatima) Zabihi Fard, wife of the late Hakim family gardener, Reza Hashemi, and her son, Abbas Hashemi. Ms. Zabihi Fard says that she currently resides at 77 Pirasteh Street. She states that after her husband's death in October 1980, Mrs. Touba Hakim asked her to be the janitor at 77 Pirasteh Street and that subsequently, Mrs. Hakim consented to Abbas Hashemi's use of part of the house as a shop. Ms. Zabihi Fard attests that she and her family resided in the house during the period 1978 to March 1981 and that none of her family members belonged to the Revolutionary Guards or other such bodies. Ms. Zabihi Fard adds that she is waiting for the day when the Hakims "return to Iran and settle down in their home." Abbas Hashemi makes a similar statement.

38. The Respondent also submits a letter from the Chief Justice of the Islamic Revolutionary Court of Tehran which states that "after examination of the records and judgments rendered until the end of 1360 [20 March 1982], no order of expropriation was issued with respect to the properties belonging to Kamran Hakim . . . by the Islamic Revolutionary Courts of Tehran up to the above date." Mr. Hassan Paryab has also stated that, as an accountant who had supervised the financial affairs of the Hakim family, it is his understanding that the Claimant "did not have a residential house in Pirasteh Ave."

39. As finally pleaded, the Claimant values 77 Pirasteh Street at U.S.$1,357,143. Mr. Damavandi, for the Respondent, estimates that the value of land on Pirasteh Street from 1979 till the end of 1980 to be between 1700 to 2000 rials per square meter and the value of each square meter of building between 3000 and 5000 rials. At the Hearing, the Respondent's expert witness, Engineer Khorassanchian, valued the land at 2500 rials per square

meter and considered that the building, having spent its useful life, possessed no value. Mr. Khorassanchian testified that he visited the Pirasteh Street property.

3) The Vanak Property

40. The Claimant alleges ownership in five parcels of real estate located in the Vanak district. He submitted no title deeds to the property, however, and asserts that all the relevant documentation proving his ownership of these parcels was in the possession of his maternal uncle, Mr. Yaghoub (Jack) Hay, who was forced to leave it behind when he fled from Iran. At the Hearing, Counsel for the Claimant conceded that the Vanak properties were not registered in the Claimant's name.

41. Affidavits and statements by Mrs. Touba Hakim, the Claimant's mother, Mr. Hassam Nourmand and Mr. Hay have been submitted in support of the assertion that the Claimant's mother and father invested the equivalent of U.S.$2,400,000, on the Claimant's behalf, in real estate in Mr. Hay's residential development project in the Vanak area sometime in the early 1970's.

42. The Claimant maintains that the Vanak property was expropriated by means of a decree by the Iranian Prosecutor General, announced by the Public Relations Office of the Deeds and Real Estate Registration Department and published in Iran News of 22 February 1980. That newspaper report, as translated by the Tribunal's Language Services Division, states that the assets of Mr. Hay "and his close relatives" were expropriated by the above decree. Additionally, the Claimant relies on the 1979 Abolition Act to substantiate this expropriation claim.

43. The Respondent denies the Claimant's ownership of the Vanak property. Mr. Hassan Paryab states in his affidavit that, during his employment as the Hakim family accountant, he would

have been aware of any substantial investment made by the Claimant, or on his behalf, but that he did not have knowledge of a U.S.$2,400,000 payment to Mr. Hay for the purchase of Vanak land on behalf of the Claimant.

44. At the Hearing, the Respondent's expert witness, Mr. Karimi, stated that he had searched the files which concerned the Vanak property in the Iranian Bureau for the Registration of Land. According to his testimony, his investigations revealed that four of the five parcels of land were transferred to Mr. Hay for the benefit of his children at various times between 1967 through 1974 and that the fifth was transferred in 1974 to an individual unconnected to the present Case.

45. Assuming, for the sake of argument, the Claimant's ownership of the Vanak property, the Respondent denies its expropriation. The Respondent first points to an Etela'at newspaper report of March 1980, which, the Respondent contends, announced that the property of Mr. Hay only, and not that of his relatives, had been expropriated. The Respondent, however, did not submit a copy of the report to the Tribunal. The Respondent further asserts that the 1979 Abolition Act did not apply to the Vanak property, and it submits a letter from the Department General for Urban Land, Tehran Province, which states that the 1979 Abolition Act or related by-laws, were not applicable to the specific land parcels identified by the Claimant. Finally, the Respondent submits a statement by Mr. Damavandi who opines that the Vanak property claimed by Mr. Hakim has "never been considered as unutilized lands . . . ."

46. As finally pleaded, the amount allegedly invested on behalf of the Claimant, U.S.$2,400,000, is the amount he claims for the Vanak property. The Respondent's expert, Mr. Damavandi, considered that each square meter of land in the Vanak area during 1979 through 1980 had a value of between 1,200 and 2,000 rials, and its expert witness at the Hearing, Mr. Ahmad Khorassanchian, stated that a square meter of Vanak land during

the same period would range from 1,500 to 1,800 rials.

4) Pars Machine Manufacturing Company ("PMMC")

47. Pars Machine Manufacturing Company ("PMMC") was incorporated pursuant to the laws of Iran in 1964. The shares of PMMC were converted from their original bearer form into registered shares in 1971. The Claimant initially asserted ownership in 7,500 out of 10,000 PMMC registered shares, and he submitted 75 certificates of stock each representing one hundred shares. Of the submitted shares, 2,000 are in his name. The remainder do not identify an owner. At the Hearing, the Claimant reduced his claimed ownership in PMMC to 20 percent of that company.

48. PMMC was located in the vicinity of Azadi Square to the west of Tehran. The Claimant's elder brothers, Masud and Said Hakim, were responsible for its daily management because they were residing in Iran. The Claimant acted as PMMC's representative in the United States.

49. Masud left Iran for the United States in 1978. Said Hakim asserts that he left Iran after the Revolution, returned in September 1979 but left again around the end of November 1979 after he became aware that an order for his arrest was being prepared. He maintains that after leaving Iran he made a number of telephone calls from New York to his office in Tehran. He adds:

> During the earlier calls I spoke with my employees, but later representatives of the [workers' committee] picked up the phone. I was told that they had taken control and I should only speak with them. They asked me why I called. They said I had no right anymore. When I said that I wished to come over I was told not to do so. If I came, I would be in real big trouble. It was my understanding that they meant that I would be put in prison. There were two or three of such calls. This was towards the end of 1980.

50. It appears that by the end of 1979 all the Hakim brothers had left Iran. The only member of their family that remained was their sister, Parvin Hakim. She asserts that because her brothers had left the country, she for the first time became involved in the management of their business interests, together with Mr. Nourmand and Mr. Paryab. She contends that as time passed, the workers' committee representatives acquired more and more control of the business, and by the time she left Iran in August 1980 "it was clear there was no way to exercise the ownership rights of my brothers any longer." At the Hearing, she stated that as long as she remained in Iran neither the Government nor its agencies exercised control over PMMC.

51. The Claimant asserted at the Hearing that PMMC was taken as of November 1980 and to this day remains managed by representatives of the Government of Iran. He submits that he has not been able to influence them in any way, that those representatives control PMMC's bank accounts, that he has not been paid any dividend, and that no shareholder meetings have ever been called by the new management.

52. The Respondent denies interfering with the affairs of the company between 1979 and early 1981. It asserts that the Claimant and his family abandoned the company and left Iran because their mismanagement pushed PMMC to the verge of bankruptcy, and that the company could not pay its employees' wages. The Respondent asserts that, consequently, the workers took over the management of the company. In its post-Hearing submission of June 1997, the Respondent maintains that the appointment of Mr. Khatibi on 26 November 1980 as an observer was neither an expropriation nor an interference with the Claimant's property rights.

53. The late-filed documents admitted into the record by the Tribunal contain, inter alia, the letter dated 22 December 1980 from the Office of the Revolutionary Prosecutor addressed to the Bonyad Mostazafan. That letter states:

> In view of the report received in connection with Pars Machine, Emerson Electric and affiliated companies belonging to the Hakim family, who are fugitives, it is appropriate to take measures in regard to the supervision and reactivation of these companies and to provide this office with a report of your activities as soon as possible.

54. In its June 1997 response, the Respondent explained that this letter was dispatched by the Revolutionary Prosecutor only after the PMMC workers had repeatedly asked in 1979 and 1980 for government representatives to assume the management of the company due to the absence of PMMC's regular management and its deteriorating situation. The Respondent asserts that the Bonyad Mostazafan did not take any action on this letter because it was informed that the Ministry of Industries and Mines had already appointed a provisional observer. An affidavit to this effect has been submitted by Mr. Mohammad Afzali, who was a member of Bonyad Mostazafan's Legal Council at the time.

55. The PMMC workers' letters of appeal to the government were submitted by the Respondent as exhibits to its June 1997 response. The earliest dates from 29 December 1979 and the following is an example of such a letter. Addressed to the Revolutionary Prosecutor, signed by fifty-five workers and dated 5 May 1980, it states in relevant part:

> Respectfully, we, the employees of [PMMC], pursuant to our letter No. 7394 dated 29 December 1979 concerning the company's lack of the management, shareholders and budget for ordering the raw materials as well as non-existence of an authorized and responsible person which has led to insufficiency of production, request you to order the Ministry of Industries and Mines to take appropriate measures for running this manufacturing unit which has been left in uncertain conditions since the victory of the Revolution.

56. The exhibits to the Respondent's June 1997 response also show that PMMC workers had made repeated requests to the IMIM to send a representative to assist in the management and operation of the company. Another exhibit to that filing is an affidavit sworn by the appointed observer, Mr. Morteza Khatibi.

He states that the IMIM's initial responses to the requests were to inform the workers to wait as long as possible for the return of the company's shareholders and only when the workers failed to convince the shareholders to return did the Ministry appoint him as a provisional observer primarily to invite the return of the shareholders by way of formal notices in newspapers. The IMIM appointment letter of 26 November to Mr. Khatibi states:

> By virtue of Legal Bills No. 6738 dated [16 June 1979] and No. 8780 dated [7 July 1979] of the Provisional Government of the Islamic Republic of Iran and in accordance with this letter of appointment, you are hereby appointed as observer of Pars Machine Manufacturing Company Co. for a maximum period of three months.
>
> It is appropriate that you fully observe all the affairs of the said entity using the powers conferred on you pursuant to the above-referenced Bills.
>
> Meanwhile, financial and obligatory instruments or documents of the Company will be signed jointly by you, one of the members of the Workers Council namely, Mr. Hassan Palizadar, and the Company's accountant, Mr. Hassan Paryab.

57. Mr. Khatibi contends that after his appointment, he "basically engaged in studying the records [of PMMC] and publishing notices of invitation of shareholders and directors in pertinent newspapers. The factory's administrative and financial matters were carried out by the company employees themselves." Several of the notices he had published have been produced by the Respondent in its June 1997 response. In concluding his affidavit, Mr. Khatibi states:

> I know for a fact and state that the notice of invitation of the shareholders was published with the sole purpose of inviting the shareholders to return and take charge of their factory, because there was no other logical reason for it. Had the [Respondent] intended to acquire the factory in those days, there was no need for it to invite the shareholders, especially as the Ministry of Industries, in light of the grave financial situation of the said factory, could have no interest in inheriting disorganization, heavy debts, and a factory which was virtually bankrupt. The Ministry of Industries' sole objective

was to return the factory to its original owners as soon as possible.

5) Pars Machine Company, Pars Union Company, Emerson Electric Company and Ranel Frigo Company

58. In the Statement of Claim, Mr. Hakim sought compensation for the expropriation of a seventy-five-percent share in Pars Machine Company[3] ("PMC"). The Statement of Claim did not mention Pars Union Company ("Pars Union"), Emerson Electric Company ("Emerson Electric") and Ranel Frigo Company ("Ranel Frigo"), but the Claimant referred to these companies in subsequent pleadings as affiliate companies of PMC.

59. PMC, the Claimant contends, was established by the Claimant and his brothers Masud and Said to import appliances and electronic products into Iran after the death of their father in 1957. The Claimant stated at the Hearing that PMC as a company was liquidated in or about 1969 and that the name PMC was thereafter used merely as a name to designate a general partnership between the three Hakim brothers in the other family businesses: Pars Union, Emerson Electric and Ranel Frigo.

60. The Claimant contends that the partnership agreement was reduced to writing and that pursuant to it he owned a 24 percent interest in Pars Union, Emerson Electric and Ranel Frigo, while Masud and Said each owned a 38 percent interest in those companies. The Claimant did not submit the alleged partnership agreement to the Tribunal. Masud Hakim stated at the Hearing that it had been left in Iran.

61. According to the Claimant, Emerson Electric imported electronic products and small appliances from the Far East, Ranel

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[3] The Statement of Claim asserted that Pars Machine Company was a company incorporated under the laws of Iran. In a later pleading, however, Mr. Hessam Nourmand stated that PMC was not incorporated.

Frigo imported home appliances from the United States and Europe, and Pars Union imported products not imported by the other entities. The Claimant acknowledged during the Hearing that Emerson Electric is registered in the name of Said Hakim and members of his family, while Pars Union and Ranel Frigo are registered in the name of Masud Hakim and the members of his family. At the Hearing, Masud Hakim stated that he believed the Claimant held shares in Pars Union, but he provided neither evidence nor further details.

62. The Claimant asserts that the best available evidence to prove his ownership of shares in Emerson Electric, Ranel Frigo, and Pars Union is a 17 October 1977 agreement between the three brothers. That agreement was registered with a Tehran notary public and refers all existing commercial disputes between them to arbitration. The source of the dispute -- the individual entitlements of the three brothers under the general partnership -- is said to indicate that each of the brothers possessed interests in PMMC, PMC, Pars Union, Emerson Electric and Ranel Frigo regardless of whether they were registered shareholders.

63. The Claimant maintains that the arbitrators, unable to reach a decision, recommended only that the three Hakim brothers settle the dispute between themselves. As a result of that recommendation, the Claimant contends that the brothers agreed to increase his shareholding in PMMC to 75 percent and to give him a 50 percent ownership interest in PMC, Pars Union, Emerson Electric and Ranel Frigo. However, the Claimant stated at the Hearing that because he could not establish that the alleged settlement occurred before the date of taking he would decrease his claim for each company to the percentage of his interest in the PMC general partnership allegedly owned prior to the settlement agreement. He argues that his 20 percent share in PMMC is evidence of his percentage in the general partnership, and he thus claims that he had a 20 percent interest in Pars Union, Emerson Electric and Ranel Frigo.

64. Alternatively, the Claimant asserts that he possesses a 20 percent beneficial ownership in Pars Union, Emerson Electric and Ranel Frigo.

65. The Respondent argues that the Claimant has failed to prove his ownership of the three companies. It further asserts that by first referring to those companies only after the Statement of Claim was filed, Mr. Hakim has submitted new claims which, in accordance with Article III, paragraph 4, of the Claims Settlement Declaration, should not be accepted by the Tribunal.

66. As finally pleaded, the Claimant seeks U.S.$40,000, U.S.$1,960,000 and U.S.$740,000 for a 20 percent interest in Pars Union, Emerson Electric and Ranel Frigo, respectively. Although in the pleadings the Claimant sought compensation up to U.S.$7,500,000 for a 50 percent interest in PMC, that claim was abandoned at the Hearing after admission that PMC was dissolved as a company in 1969.

V. JURISDICTION

1) Nationality

67. In accordance with the Full Tribunal's decision in Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal must first determine if the Claimant was, during the relevant period, from the time his claims arose until 19 January 1981, the date of the Claims Settlement Declaration, a national of the United States, a national of Iran, or a national of both countries. If the Claimant is found to be a national of both countries, i.e., a dual national, the Tribunal must determine whether his United States nationality was dominant and effective during that period. For the Tribunal to assume jurisdiction over his claims, the Claimant must show that during the relevant period, his dominant and effective nationality was

that of the United States.

68. The Claimant contends that his claims arose sometime between 1979 and December 1980. Thus, the Tribunal assumes for the purpose of determining the Claimant's dominant and effective nationality that the relevant period is between 1979 and 19 January 1981.

69. It is undisputed that the Claimant is a national of Iran by virtue of his birth to Iranian parents in Iran. There is no proof that he ever relinquished his Iranian nationality or that he otherwise lost that nationality. At the same time, the Claimant has shown to the Tribunal's satisfaction that he has also been a United States national since 1973 and that he maintained that nationality during the relevant period. The Tribunal, therefore, finds that the Claimant was a national of both Iran and the United States during the relevant period.

70. The question remains, however, as to the Claimant's dominant and effective nationality during that same period. The Tribunal is of the view that although the Claimant may have had numerous contacts with Iran because of his family and financial interests, ample evidence appears on the record to conclude that, during the relevant period, the United States was the center of his personal and professional life. The Tribunal is satisfied that the United States has been the Claimant's continuous and habitual place of residence since his arrival there in 1956; his education from 1956 onward was undertaken solely in the United States, and his career in the real estate business has been based in New York since he commenced work in that field in 1964. It is also of note that he became a United States national in 1973 and that his wife and children have had a near exclusive connection with the United States. These facts, which are unrebutted by the Respondent, leave the Tribunal with no doubt that, during the relevant period, the Claimant's dominant and effective nationality was that of the United States.

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

2) Other Jurisdictional Issues

72. The claims are for the alleged deprivation of the Claimant's rights in real property and company shares and therefore fall within the Tribunal's subject matter jurisdiction of claims arising "out of . . . expropriations or other measures affecting property rights." Article II, paragraph 1, of the Claims Settlement Declaration.

73. The Tribunal is satisfied that the claims were owned continuously by a national of the United States, in accordance with Article VII, paragraph 2, of the Claims Settlement Declaration and that they were outstanding on 19 January 1981, as required by Article II, paragraph 1, of the Claims Settlement Declaration.

3) Conclusion on Jurisdiction

74. Based on the foregoing, the Tribunal determines that it has jurisdiction over the claims in this Case.

VI. MERITS

1) The Velenjak Property

75. The Claimant's ownership of four of the five parcels of the Velenjak property is not in dispute. In light of the

Tribunal's conclusion in para. 85, infra, it need not decide on the existence or ownership of the fifth 3000 square meter Velenjak parcel.

76. Mr. Hakim alleges that his Velenjak property was taken as a result of the 1979 Abolition Act and its Regulations, which he asserts applied to "mawat" (undeveloped) and "bayer" (previously developed) urban lands.

77. In Rouhollah Karubian and Islamic Republic of Iran, Award No. 569-419-2, para. 111 (6 Mar. 1996) ("Karubian"), the Tribunal held that the very existence and binding force of the 1979 Abolition Act and its Regulations did not by themselves constitute an expropriation of the claimant's real property in Iran. Accordingly, to the extent that Mr. Hakim's claim is for the expropriation of the Velenjak property, it must fail.

78. Nonetheless, the Tribunal must also examine whether other measures within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration affected the Claimant's property rights. Tribunal precedent has recognized that a claim for expropriation necessarily includes a claim for other measures as provided in Article II. See Eastman Kodak Company, et al. and Government of Iran, et al., Award No. 329-227/12384-3 (11 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 153, 169.

79. In Karubian the Tribunal held that while the cumulative effect of the Iranian land reform legislation at the time of the Revolution and related governmental action did not rise to the level of an expropriation, the interference could be of such a degree as to constitute other measures affecting property rights. Karubian, supra, Award No. 569-419-2, at para. 144. In so holding, the Tribunal noted that the 1979 Abolition Act, as amended, along with its implementing Regulations "made all undeveloped or unutilized properties in both urban and rural areas vulnerable to a determination that they were mawat, and as a consequence of that determination, subject to immediate

cancellation of their title deeds by Iran." Id., at para. 143. The Tribunal held in Jahangir Mohtadi, et al. and Islamic Republic of Iran, Award No. 573-271-3, para. 68 (2 Dec. 1996)("Mohtadi") that lands which were in fact bayer might also have been affected by that Act and its Regulations by virtue of the definition of mawat land in the Regulations.

80. In light of the Karubian and Mohtadi Awards, the Tribunal must determine whether the Velenjak land was affected by the 1979 Abolition Act or its implementing Regulations.

81. Article 2 of the Regulations to the 1979 Abolition Act appears to exempt from the Act's application land on which "acceptable development and improvement" has been made, and it sets forth nine categories of such acceptable development and improvement. Land falling within these categories presumably is considered neither mawat nor bayer.

82. The language of Article 2 is ambiguous in that it does not indicate whether development or improvement other than what is specifically defined therein is acceptable. In addressing ambiguities contained in other Iranian land legislation, the Tribunal in Mohtadi stated that it

> normally would view the responsibility for providing a complete and persuasive explanation of Iranian legislation as falling upon the Respondent. This is because the Respondent is surely better positioned than a claimant to explain the meaning and effect of its own laws. Especially where the legislation is confusing and its scope ambiguous, as in the case of the Lands Grant Act, the Respondent may not confine itself to the mere assertion that particular legislation does not apply.
>
> On the other hand, it falls to the Claimant to demonstrate with clarity the facts that bring his property within the scope of the legislation that allegedly expropriated his property. Where, as here, there is no evidence of physical interference attributable to the Respondent . . . the Claimant must take particular care to demonstrate that the subject property is, as a factual matter, of the type apparently covered by the Lands Grant Act. In that

> event the burden would shift to the Respondent to demonstrate that the scope of the Act was in fact narrower than the Claimant suggests.

Id. at paras. 82-83.

83. In view of the above, and considering the absence of any evidence that the property was subject to any physical interference by the Respondent, it is the Tribunal's opinion that Mr. Hakim has the burden of proving that his Velenjak property was of the type which fell within the scope of the 1979 Abolition Act and that it was not exempted under the implementing regulations. Because the Claimant has submitted evidence of substantial development of the property and has claimed that substantial funds were spent, in part, on developing the property, the Tribunal is unable to determine whether the Velenjak property was affected by the laws and regulations on which he relies. That legislation was aimed primarily at the abolition of private ownership of undeveloped land, and the evidence in the record showing development leaves the Tribunal with some doubt as to whether the land was of the type vulnerable to cancellation of title deed under the 1979 Abolition Act and its Regulations. Thus, the Claimant has not met his burden of showing that the Velenjak property fell within the scope of that legislation.

84. At the Hearing, Counsel for the Claimant argued that the development on the Velenjak property fell below the level of development deemed to be acceptable under the Regulations to the 1979 Abolition Act because Mr. Karimi, the Respondent's expert witness, had testified that the land was registered as bayer, i.e., land previously utilized but which had fallen into disuse. However, although Mr. Karimi inspected the registration files, he did not visit the property. Furthermore, the entries in the registration files to which Mr. Karimi made reference appear to have been recorded in the 1950's. In view of the fact that the Claimant's development of the Velenjak property occurred well after the date those entries were recorded, the Tribunal cannot

find that the degree of actual development in 1979 is to be determined by a classification made more than two decades prior to that year.

85. The Tribunal concludes that, on balance, the Claimant has not made out a claim "for other measures affecting property rights" with respect to the Velenjak property. Therefore, this claim must fail for lack of proof.

2) 77 Pirasteh Street

86. The Tribunal is satisfied that the title deed submitted by the Claimant is sufficient proof of his ownership of 77 Pirasteh Street. However, the Tribunal finds that the evidence before it is not adequate to prove that 77 Pirasteh Street was expropriated or that it was subjected to other measures affecting the Claimant's property rights. The sworn statements of Mr. Nourmand and Mr. Talmud do not give a clear indication as to the activities of the Revolutionary Guards at the house, the frequency of the visits by the Guards, or the measure of control the Guards exercised over the property. The mere observation of Revolutionary Guards entering and leaving a premises does not, by itself, amount to a de facto expropriation. Vernie Rodney Pointon, et al. and Islamic Republic of Iran, Award No. 516-322-1, para. 36 (23 Jul. 1991), reprinted in 27 Iran-U.S. C.T.R. 49, 61-62. Further, Mr. Talmud fails to identify the occupants of the house who allegedly told him that they were paying rent to the government, nor for the purposes of jurisdiction does he offer any precise date as to when this conversation took place. For these reasons, the Pirasteh Street property claim must be dismissed for lack of proof during the period over which the Tribunal has jurisdiction.

3) The Vanak Property

87. The Claimant admitted at the Hearing that no formal agreement, title deed or other contemporaneous documentary evidence exists to prove his ownership of the Vanak property, and the Respondent's expert witness, Mr. Karimi, testified that he found no entry in the official land registration files to show that the Claimant possessed an ownership interest in the Vanak property.

88. The evidence the Claimant does submit as to his ownership of this property is not persuasive. The Claimant's mother admits that she does not know the exact amount invested on behalf of the Claimant in Mr. Hay's Vanak project but says that her accountants told her that it was equivalent to U.S.$2.4 million. Mr. Hessam Nourmand has sworn that he instructed Mr. Hassan Paryab to prepare a statement on the funds given to Mr. Hay for investment in Vanak property on behalf of the Claimant. Consequently, a statement relating to the Vanak property, purportedly signed by Mr. Paryab, was submitted by the Claimant. Mr. Paryab, however, has sworn that the testimony ascribed to him was a forgery, that he was never given any such instructions by Mr. Nourmand, and that no investments were made on the Claimant's behalf in properties in the Vanak region. Some time thereafter, Mr. Nourmand admitted that the signature that statement bore was not Mr. Paryab's.

89. Mr. Hay has stated that because he fled Iran, he left behind the documents evidencing the Claimant's ownership of the Vanak property. The Tribunal is mindful that a person making a sudden departure from Iran during the revolutionary events prevailing at the time may have left behind documentation or other material that could prove a claim. It would be unfair to impose a rigorous standard of proof on a claimant in such instances. However, in adopting such an approach, the Tribunal also must be careful not to expose the Respondent to claims not properly evidenced. See W. Jack Buckamier and Islamic Republic

of Iran, et al., Award No. 528-941-3, para. 67 (6 Mar. 1992), reprinted in 28 Iran-U.S. C.T.R. 53, 74-76. There is no precise formula to balance these competing concerns; each case is to be decided with due regard to the particular circumstances which surround it.

90. It seems clear that the Claimant's alleged interest is not recorded in the relevant land registration files. Although that fact, on its own, may not be sufficient to find against the Claimant, the Claimant has failed to proffer any documentation of adequate probative value to overcome the strong legal presumption against him. It may be true that documentary evidence was left behind in Iran but the affidavits and statements relied on by the Claimant are not sufficient to prove that the Claimant possessed an ownership interest in the Vanak lands. The affidavits submitted in support of the Claimant's ownership of the Vanak property are vague and imprecise. Mr. Hay's affidavits do not specify what type of ownership interest the Claimant held, i.e., a whole, part or some other interest in the five parcels of the Vanak land. Mr. Hay's absence from the Hearing and failure to elaborate on his written affidavit also adds to the Claimant's evidentiary problems. The Claimant's mother has admitted that she did not know precisely how much of the Claimant's inheritance from his father or her gifts to the Claimant was made available to Mr. Hay for investment in Vanak real estate. Furthermore, the main basis for Mr. Nourmand's opinion is the statement falsely attributed to Mr. Paryab.

91. The Tribunal also notes that where a Claimant alleges a proprietary interest of the magnitude at issue here, it would be reasonable to expect the Claimant to have with him in the United States some documentation, which would have evidenced his ownership interest in that property. The Claimant here has proffered nothing of the kind.

92. Based on the foregoing, the Tribunal dismisses for lack of proof the portion of the Claim relating to the Vanak property.

4) Pars Machine Manufacturing Company

93. The Parties ultimately agreed that the Claimant owned 20 percent of PMMC. Consequently, the Tribunal now turns to examine whether the appointment of Mr. Khatibi as an observer at PMMC in November 1980 constitutes an expropriation or other measures affecting the Claimant's property rights under Article II, paragraph 1, of the Claims Settlement Declaration for which the Respondent bears responsibility.

94. Mr. Khatibi was appointed pursuant to Legal Bill No. 6738, the "Law Concerning the Appointment of Provisional Manager(s) to Supervise Productive, Industrial, Commercial, Agricultural and Services Units in the Private and Public Sectors" ("Law of 16 June 1979"). That same law has been the subject of detailed consideration in previous awards. Indeed, in determining whether an expropriation occurred in prior cases, the Tribunal has examined both the text of the law pursuant to which the appointment was made and the events occurring after the appointment.

95. In Thomas Earl Payne and Islamic Republic of Iran, Award No. 245-335-2, para. 20 (8 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 10 ("Payne"), the Tribunal held that the "effect [of the Law of 16 June 1979] is to strip the original managers of affected companies of all authority and to deny shareholders significant rights attached to their ownership interest." See also Starrett Housing Corporation, et al. and Islamic Republic of Iran, Award No. ITL. 32-24-1, (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 154. Likewise, the Tribunal here notes that the Law of 16 June 1979 provides that once an observer is appointed he will remain in his position, and the shareholders have no rights whatsoever to appoint a person in his place for the period of his appointment unless it is earlier revoked by the appointing authority. Article 2 of the Law of 16 June 1979.

96. The mere appointment of an observer under that Law is, however, not conclusive of a finding of expropriation. In addition to examining the powers that were conferred pursuant to the appointment itself, prior cases have generally contained a detailed discussion of the specific actions actually taken by the appointee. For instance, in Harold Birnbaum and Islamic Republic of Iran, Award No. 549-967-2, para. 30 (6 Jul. 1993) ("Birnbaum"), the Tribunal noted that the appointed manager testified that he had "'assumed control over all of AFFA's affairs on the basis that the law . . . gave complete authority to conduct the firm's business.'" Id. He testified further that he "'also felt obligated to exclude the owners of the firm from all management responsibilities.'" Id. The manager went on to say that "'he did not try to contact AFFA's partners who were outside of Iran because he was 'not in a position' to do so.'" Id. In Faith Lita Khosrowshahi, et al. and Islamic Republic of Iran et al, Award No. 558-178-2 (30 Jun. 1994) ("Khosrowshahi"), as in the instant case, the Government of Iran had appointed an observer, as opposed to a manager. There, the Tribunal determined on the evidence before it that once the observer was appointed and assumed his duties, "he immediately excluded the existing Khosrowshahi management. There is no evidence that [the observer's] appointment was intended to be or in fact was temporary. The subsequent appointment of directors and chairman of the board also shows that the intention of the Government was permanent exclusion of the existing management." Id., at para. 25.

97. In the instant case, although Mr. Khatibi was appointed pursuant to the Law of 16 June 1979, the evidence of his actual interference in PMMC falls short of that described in Birnbaum and Khosrowshahi. In contrast to the latter two cases, the evidence concerning PMMC indicates that the relevant government authorities resisted involvement in PMMC and appointed Mr. Khatibi only at the insistence of PMMC workers.

98. Mr. Khatibi states in his affidavit that PMMC workers

had been managing the company before he arrived and that they continued to do so after he assumed his position. He asserts that he "basically engaged in studying the records and publishing notices of invitation of shareholders and directors in pertinent papers." He placed advertisements in various newspapers inviting the shareholders to hold a special general meeting, but the shareholders neither returned nor responded. Thus, in the instant case, the Tribunal has not been presented with the evidence of the exercise of actual control that was present in Birnbaum and Khosrowshahi, among other cases. Furthermore, the evidence is insufficient to hold that between the appointment of Mr. Khatibi, 26 November 1980, and the end of the relevant period, 19 January 1981, the Respondent's actions had ripened into an outright taking of property. See SEDCO, Inc., et al. and Islamic Republic of Iran, Award No. ITL 55-129-3, (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 278 ("SEDCO").

99. Therefore, taking into account the particular circumstances of the present case, the Tribunal finds that the appointment of the observer was not an interference of a degree sufficient to justify a conclusion that PMMC was expropriated within the relevant period. But a finding that there was no expropriation does not preclude a determination that the above governmental actions deprived the Claimant of his property rights.

100. According to Mr. Khatibi, his primary function was to invite the PMMC shareholders to attend an extraordinary shareholders meeting, which function is supported by the newspaper notices published at the time. However, Mr. Khatibi was also given significant powers in the company by virtue of the appointment letter and pursuant to the bill under which he was appointed. As noted above, see supra, para. 95, the law under which he was appointed stripped the shareholders of their rights to choose others in his place. Moreover, the IMIM appointment letter authorized Mr. Khatibi to "observe all the affairs of [PMMC] using the powers conferred upon [him] pursuant to the

above-referenced Bills." Most importantly, the appointment letter provided that financial and obligatory instruments were to be signed by Mr. Khatibi and two employees of PMMC, Mr. Palizdar and Mr. Paryab. Thus, Mr. Khatibi, together with the other two individuals, assumed full control over the company's financial affairs.

101. By conferring the power over financial matters on Mr. Khatibi, the Government of Iran prevented the legitimate company officials from signing documents on behalf of the company. An individual with the authority to sign obligatory documents in any organization has a position of substantial responsibility, and the importance of that power at PMMC is highlighted by the fact that a number of extraordinary general meetings had been convened by the shareholders of the company during 1977 through 1979 specifically to decide who was entitled to sign on behalf of the company. Thus, the effect of the appointment was to impair significantly the rights belonging to PMMC's owners. They lost control over the contracts PMMC would subsequently enter and were deprived of the right to liquidate or sell the company as they saw fit. Moreover, the owners' loss of control over PMMC's management would have thwarted any attempts to find a buyer. Thus, by preventing the shareholders from signing financial documents and from affecting management decisions, the Respondents deprived the shareholders of their right to participate in the operation of the company. The effect was to deny shareholders significant rights attached to their ownership interests. See, e.g., Payne, supra, at para. 20, 12 Iran-U.S C.T.R. at 10.

102. As discussed above, the Tribunal is mindful that the IMIM appointed Mr. Khatibi because the legitimate managers of PMMC had left Iran and the workers had repeatedly requested a government supervisor. Nevertheless, Tribunal practice dictates that "[t]he intent of the government is less important than the effects of the measures on the owner." Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran,

et al., Award No. 141-7-2, at 11 (29 Jun. 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225-226 ("Tippetts").

103. The existence of a causal nexus between the appointment of Mr. Khatibi and the PMMC workers' interest in maintaining the operation of the factory does not change the fact that that appointment resulted in substantial loss of control over PMMC by its shareholders, including the Claimant. The Tribunal is aware of and understands the social circumstances of the appointment. But the reasons for assuming control of a company, however compelling, cannot relieve a government from the obligation to compensate for the loss suffered. Birnbaum, supra, Award No. 549-967-2, at para. 35, Phelps Dodge Corp., et al. and Islamic Republic of Iran, Award No. 217-99-2, para. 22 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 130. Khosrowshahi, supra, Award No. 558-178-2, at para. 28. Furthermore, due to the conditions prevailing in Iran, the departure of the Hakims and managers of PMMC at the time was not unjustified. See, e.g., Birnbaum, at para. 26 Finally, the Tribunal points out that the evidence does not indicate whether the notices published by Mr. Khatibi were communicated to the Hakim family.

104. The Tribunal is also aware that the appointment of Mr. Khatibi was deemed to be a temporary one. The terms of his appointment expressly limited his duties to a period of three months, although Mr. Khatibi himself has stated that this period was extended for a second three-month period. Nevertheless, in the practice of the Tribunal, provisional or temporary appointments have not precluded a finding that a taking occurred. See Motorola, Inc. and Iran National Airlines Corporation et al., Award No. 373-481-3, para. 58 (28 Jun. 1988), reprinted in 19 Iran-U.S. C.T.R. 73, 85; Birnbaum, supra, Award No. 549-967-2, at para. 29. The "form of the measures of control or interference is less important than the reality of their impact." Tippetts, supra, 6 Iran-U.S. C.T.R. at 226. The evidence indicates that the interference with the Claimant's rights was not merely transitory. The control established by Iran with

regard to PMMC was not simply a temporary interruption of the existing management.

105. The Tribunal concludes that while the interference created by Mr. Khatibi's appointment did not rise to the level of an expropriation, it did deprive the Claimant of his basic rights as a PMMC shareholder. The Claimant was effectively deprived of the use and control of his property. Consequently, the Respondent is obliged to compensate the Claimant for the value of the lost property rights.

5) Pars Machine Company, Pars Union Company, Emerson Electric Company and Ranel Frigo Company

106. As finally pleaded at the Hearing, the claim for the alleged interests in PMC was abandoned. The Claimant has admitted that the company was liquidated in 1969 and no longer exists.

107. As for Pars Union, Emerson Electric and Ranel Frigo, there is no mention of these three companies in the Statement of Claim. Indeed, their earliest reference appears in the Claimant's brief filed on 22 April 1991. Despite this belated expansion of the initial claim, the Claimant sought no amendment to his claim, but rather asserted that these were "affiliated companies" of PMC. The Respondent objected to the late inclusion of the companies, arguing that they were new claims.

108. Amendments of claims are governed by Article 20 of the Tribunal Rules of Procedure which states:

> During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances.
>
> However, a claim may not be amended in such a

> manner that the amended claim falls outside the jurisdiction of the arbitral tribunal.

The above provision affords wide latitude to a party who seeks to amend a claim. See Emanuel Too and Greater Modesto Insurance Associates et al., Award No. 460-880-2, para. 13 (29 Dec. 1989), reprinted in 23 Iran-U.S. C.T.R. 378, 382; International Schools Services Inc. and Islamic Republic of Iran et al., Award No. ITL 57-123-1, at 10-11 (30 Jan. 1986), reprinted in 10 Iran-U.S. C.T.R. 6, 12. However, additional claims presented as amendments after the deadline for the filing of claims prescribed under Article III, paragraph 4, of the Claims Settlement Declaration have been dismissed by the Tribunal to the extent that they represent new claims. See, e.g., W. Jack Buckamier and Islamic Republic of Iran et al., Award No. 528-941-3, paras. 24-29 (6 Mar. 1992), reprinted in 28 Iran-U.S. C.T.R. 53, 59-60. In the present circumstances, the Tribunal's decision on the merits, see infra, para. 112, renders moot a decision as to whether the late inclusion of claims relating to Pars Union, Emerson Electric and Ranel Frigo are permissible amendments under Article 20 or should be construed as new claims that are inadmissible.

109. Counsel for the Claimant admitted at the Hearing that there was no evidence on record of the Claimant's direct ownership of Pars Union, Emerson Electric and Ranel Frigo. The Claimant has argued that he possessed an ownership interest in Pars Union, and he bases that claim on a statement made at the Hearing by Mr. Masud Hakim that the Claimant had a registered interest in that company. That statement is not sufficient to prove the Claimant's ownership in Pars Union in the absence of contemporary documentary evidence.

110. As regards Emerson Electric and Ranel Frigo, a 20 percent beneficial ownership interest is claimed. In essence, the Claimant asks the Tribunal to imply from his ownership of 20 percent of PMMC that he was also the owner, in that same percentage, of Emerson Electric and Ranel Frigo. The Tribunal is unable to do so in light of the scant evidence before it. The

Claimant maintains that the arbitration agreement is strong circumstantial evidence of his interest in these companies, yet while that agreement may suggest that the business relationship between the brothers extended beyond PMMC, it is not conclusive evidence of the Claimant's ownership in those companies, and in any event, it does not indicate the percentage of the Claimant's ownership interest, if any, in Emerson Electric or Ranel Frigo.

111. The Tribunal has previously held that a person who is not a record shareholder may nonetheless be deemed a beneficial owner of company shares. See James M. Saghi et al. and Islamic Republic of Iran, Award No. 544-298-2, paras. 18-44 (22 Jan. 1993)("Saghi"). With respect to the level of proof required to establish a beneficial ownership interest, the Tribunal in Reza Nemazee and Islamic Republic of Iran, Award No. 575-4-3, para. 54 (10 Dec. 1996), observed "it is incumbent on a claimant to produce strong evidence that he or she, and not the person registered as the legal owner, was in reality the true owner of the property." In applying this standard to the facts at hand, the Tribunal is of the opinion that the Claimant has fallen well short of discharging his burden of proof.

112. The Claimant has failed to meet his burden of establishing that he held a beneficial or other interest in Pars Union, Emerson Electric or Ranel Frigo. These claims also are dismissed for lack of proof.

VII. VALUATION

1) Standard of Compensation

113. In this Case, as in Saghi, supra, Award No. 544-298-2, at para. 79, Khosrowshahi, Fereydoon Ghaffari and Islamic Republic of Iran, Award No. 565-968-2, para. 100 (7 Jul. 1995)("Ghaffari"), and Edgar Protiva et al. and Islamic Republic of Iran, Award No. 566-316-2, para. 92 (14 Jul. 1995)

("Protiva"), the Tribunal adopts as appropriate the Treaty of Amity[4] standard of compensation without deciding whether the Treaty itself is applicable to claims of dual nationals whose dominant and effective nationality in accordance with the criteria set forth in Case A18 was that of the United States or Iran, as the case may be. Under the Treaty of Amity, the Claimant must be compensated for the "full equivalent" of the deprived interests. See Phelps Dodge, et al. and Islamic Republic of Iran, supra, 10 Iran-U.S. C.T.R. at 131-132; Petrolane, Inc. et al. and Islamic Republic of Iran, et al., Award No. 518-131-2, para. 105 (14 Aug. 1991), reprinted in 27 Iran-U.S. C.T.R. 64, 99; Birnbaum, supra, Award No. 549-967-2, at para. 37; and Protiva, supra, Award No. 566-316-2, at para. 92. Accordingly, the Tribunal must determine what is the "full equivalent" of the Claimant's 20 percent share in PMMC.

2) Facts and Contentions

a. Experts' Opinions

114. The Claimant's valuation experts, Mr. Rosenthal and Mr. Miller, first presented their report at the Hearing. They valued PMMC as of 26 November 1980. Because they did not value PMMC as a going-concern, their valuation does not include PMMC's future earnings, goodwill or other intangible assets. Rather, to arrive at the fair market value of PMMC, they begin with PMMC's book value based on its 20 March 1980 financial statements, negative U.S.$358,766, and they then make three adjustments to this figure. First, they add the fair market value of the land and buildings as appraised by the Claimant's land expert, Mr. Vahman, less the net book value of those items. Next, they add the fair market value of the machinery and equipment as assessed on a

[4] Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900.

"cost to build" basis by the Claimant's equipment and machinery expert, Mr. Lembo, less the net book value of those items. Finally, they eliminate the "partners' accounts" line items because they assert that, although those accounts are fairly stated from an accounting standpoint, they represent inter-company accounts which have no value in a fair market analysis. After making the above three adjustments, they conclude that as of 26 November 1980 the fair market value of PMMC was U.S.$13,541,831. Another valuation of PMMC was made by Mr. Lembo who, at the Hearing, came to the conclusion that PMMC was worth U.S.$12.5 million, using a hypothetical "rule of thumb" approach based on PMMC's estimated output.

115. Mr. Merati, for the Respondent, also did not consider that PMMC was a going-concern either in his written report, filed with the Tribunal during the course of written pleadings, or in his testimony at the Hearing. He began with the net book value of PMMC and made several adjustments thereto. His main adjustments were to adopt Mr. Khorassanchian's valuation of land and buildings and to increase PMMC's liabilities by 26 million rials for alleged income tax arrears for the years 1967-79. He also included a 63.9 million rial liability described as "partners accounts" and a 21.7 million rial asset of the same description. Mr. Merati concludes that at the end of the financial period 1979-1980, the net realizable value of PMMC was negative 24.8 million rials.

b. Land and Building

116. The Claimant has proffered several statements in relation to the value of PMMC's land and buildings. Parviz Yari, the owner of a factory adjacent to PMMC, states in an affidavit that land in that area was worth 30,000 rials (U.S.$415) per square meter just prior to the Revolution. Said Hakim, the Claimant's brother, estimates PMMC's land and buildings to have been worth U.S.$20 million at the time of

expropriation, and, in the opinion of the Claimant's cousin, Mr. Nourmand, their value in 1978-1979 was U.S.$30 million.

117. At the Hearing, the Claimant presented Mr. Vahman, a real estate appraiser who was residing in Iran until early 1980. Mr. Vahman does not claim to have visited the property, but he priced the land in the vicinity of PMMC during 1979 and 1980 at 9,800 rials (U.S.$136) per square meter. On the assumption that PMMC owned 35,000 square meters of land, he calculated that the land alone was worth 343 million rials (U.S.$4,744,450). He estimated the price of the buildings and landscaping at 225,742,000 rials (U.S.$3,122,512) and 15 million rials (U.S.$207,483), respectively. His conclusion was that the buildings and land together had a fair market value of 583,742,000 rials (U.S.$8,074,445).

118. The Respondent relies on a report by Mr. Khorassanchian, an Iranian valuation expert accredited by the Ministry of Justice as an official appraiser. At the Hearing he stated that he visited the PMMC factory, saw the "registration plaque of the land" and investigated the files at the real estate registration office. According to him, PMMC owned only 14,121 square meters of land which he valued at 2,000 rials (U.S.$27.66) per square meter, thus totalling 28,242,420 rials (U.S.$390,655). He valued the buildings and landscaping at 28,240,400 rials (U.S.$390,627) and 1.5 million rials (U.S.$20,748), respectively. On the basis of a land area of 14,121 square meters, his total figure for land and building was 57,982,820 rials (U.S.$802,031).

c. Equipment and Machinery

119. Mr. Thomas Lembo testified for the Claimant on the value of PMMC's equipment and machinery. He is the founder and chairman of International Technology and Trade Incorporated, a Canadian company which, inter alia, designs, manufactures and installs industrial equipment used to produce domestic appliances

on a mass scale. He has been in this line of business for approximately thirty years. He made two valuations of PMMC's equipment and machinery: one based on its 1980 break-up value and the other based on the 1980 cost-to-rebuild (and install) the equipment and machinery. He arrived at a 1980 break-up value of U.S.$3,352,120 and a 1980 cost-to-rebuild value of U.S.$5,259,720. Mr. Lembo testified that he did not visit the PMMC factory but interviewed former PMMC officials to determine what equipment was there. He cross-checked this information by establishing what equipment and machinery would theoretically be necessary to achieve an annual production capacity of 10,000 refrigerators of the type manufactured by PMMC. He testified that he established that productive capacity of PMMC after reviewing correspondence which existed between PMMC and its licensors and suppliers. He did not, however, submit those documents. In ascertaining the value of the equipment and machinery, he also had discussions with a number of companies in the United States and Canada which manufacture and supply equipment and machinery similar to that used by PMMC.

120. The Respondent's valuation expert, Mr. Merati, valued PMMC's equipment and machinery by reference to their net book value (their value as stated in the company's financial records after a rate of depreciation for accounting purposes is applied) because he believed their useful life had been spent. He maintained that the equipment and machinery had been purchased secondhand and that, therefore, they were depreciated even at the time of purchase.

121. In reply to Mr. Merati's position, Mr. Lembo stated that "[t]he principal pieces of equipment here, if they are properly maintained, should be producing the same in 1980 as they did in 1963, assuming that they were built in 1963, which I cannot attest to . . . ."

3) The Tribunal's Findings on Valuation

a. Introduction

122. In conformity with its well established practice, the Tribunal will make its best approximation of the value of PMMC and the Claimant's shareholding interest therein based on the best possible use of the evidence and taking into consideration all the relevant circumstances of the Case. In so doing, the Tribunal is aware that

> [w]hile the Claimant must shoulder the burden of proving the value of the expropriated concern by the best available evidence, the Tribunal must be prepared to take some account of the disadvantages suffered by the Claimant, namely its lack of access to detailed documentation, as an inevitable consequence of the circumstances in which the expropriation took place.

Sola Tiles, Inc. and Islamic Republic of Iran, Award No. 298-317-1, para. 52 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 223, 238 ("Sola Tiles").

123. The Tribunal need not decide whether PMMC was a going-concern because neither the Claimant nor the Respondent advance a going-concern valuation. See Vivian Mai Tavakoli, et al. and Islamic Republic of Iran, Award No. 580-832-3, para. 93 (23 Apr. 1997); Birnbaum, supra, Award No. 549-967-2, para. 38; and Sola Tiles, supra, para. 52, 14 Iran-U.S. C.T.R. 238.

124. Rather, in making its best approximation of PMMC's value, the Tribunal utilizes the dissolution method of valuation, i.e., it examines the value of PMMC "after the collection of all assets and the discharge of all obligations." Tippetts, supra, at 12, 6 Iran C.T.R. at 226. See also, Birnbaum, supra, Award No. 549-967-2, at paras. 40-41. However, given the paucity of evidence, the Tribunal will restrict its discussion only to PMMC's assets and liabilities which were the focus of the valuation experts. See Birnbaum, at para. 52. Further, in determining PMMC's fair market value, the Tribunal must not

consider as a valuation factor the impact of Mr. Khatibi's appointment on the Claimant's property rights. See SEDCO, at para. 31, 15 Iran-U.S. C.T.R. at 35; Birnbaum, supra, Award No. 549-967-2, at para. 42. In addition,

> while any diminution of value caused by the deprivation of property itself should be disregarded, the Tribunal recognizes that changes in the general political, social, and economic conditions should be considered to the extent they could reasonably have been expected to affect the value of the enterprise's assets.

Birnbaum, supra, Award No. 549-967-2, at para 42.

b. Land and Building

125. Although Mr. Vahman's valuation is substantially lower than the earlier estimates submitted by the Claimant, it, like the earlier estimates, is not supported by any credible evidence. Notwithstanding the above concern that relevant evidence might not readily be available to the Claimant, the Tribunal is forced to conclude that Mr. Vahman's valuation is vague, devoid of detail and unsupported by credible data. Therefore, the Tribunal finds it difficult to place much weight on his report.

126. The Respondent's expert, Mr. Khorassanchian, visited the land and building and inspected relevant documents and registration files. While the Tribunal recognizes that, in the absence of any pre-Hearing evidence by the Claimant, Mr. Khorassanchian may not have felt it necessary to include much detail in his report, it notes nevertheless that he had access to the registration files relating to PMMC but presented none of its contents as evidence. However, despite the deficiencies in Mr. Khorassanchian's report, in the absence of any credible evidence by the Claimant, the Tribunal accepts his position that PMMC's land measured 14,121 square meters, rather than Mr. Vahman's assumption of 35,000 square meters.

127. Given the paucity of reliable evidence on the land and buildings, the Tribunal is unable to ascertain their precise value. A reasonable approximation of the fair market value of PMMC's land and building will be reflected in the valuation of PMMC as a whole, see infra, para. 136.

c. Equipment and Machinery

128. The Tribunal believes that Mr. Lembo's expertise in the field of valuing the relevant equipment justifies relying on his opinion over that of Mr. Merati. Although Mr. Lembo admitted that his business was not in financial valuation, he stated that he conducts valuations on the basis of productive capacity. Further, he has detailed knowledge of, and substantial involvement in, the manufacture and installation of the industrial production equipment of the types used in PMMC's factory.

129. Nonetheless, the Tribunal is not prepared to accept Mr. Lembo's valuation in its entirety. For instance, Mr. Lembo includes in his break-up valuation U.S.$269,700 for installation costs. The Tribunal considers these costs inappropriate since they are normally borne by the buyer of such equipment. The Tribunal further considers that there is no documentary evidence as to the actual equipment and machinery owned by PMMC in 1980 or their condition at the date of taking.

130. Moreover, the Tribunal is aware that Mr. Lembo did not visit the PMMC factory and had no first-hand knowledge of its productive capacity. When the PMMC workers wrote to the Ministry of Industries and Mines in December 1979, they indicated that in the first nine months of 1977, 1978 and 1979, PMMC manufactured 7,033, 5,411 and 2,354 units, respectively. However, these figures offer no precise information as to the productive capacity or performance of PMMC's equipment because the decrease in unit production may well have been caused by a variety of

factors which a reasonable purchaser would also take into account. The Tribunal also notes that the Respondent's expert visited PMMC in 1991, and he believed that the factory was still working as of that date.

131. In order to provide a firm basis for valuing equipment and machinery, the Tribunal would prefer documentary evidence indicating such particulars as the date of manufacture, name of the maker, purchase contracts, photographs, comparable sales, maintenance reports and contemporaneous offers of sales. Nevertheless, while the Claimant's failure to produce such probative evidence is relevant, the Tribunal is generally satisfied with the inquiries and investigations that Mr. Lembo made on that score, particularly since the Respondent, who had access to the actual equipment and machinery, failed to provide any information regarding them.[5] However, given the uncertainty as to exactly what equipment and machinery existed and as to their condition on 26 November 1980, the Tribunal is unable to ascertain the precise value of PMMC's equipment and machinery. Thus, a reasonable approximation of their fair market value will be reflected in the valuation of PMMC as a whole, see infra, paras. 135-136.

d. Tax Liabilities

132. Mr. Merati's report states that PMMC was liable for income tax unpaid for the years 1967-1979, but he has not presented any evidence in support of his position. The Respondent has always been in a position to have access to all PMMC's tax records and thus could have produced evidence to show on what basis these taxes were assessed and that they were actually payable. Having failed to do so, the Tribunal, for lack

[5] The Tribunal recognizes that the failure of the Claimant to provide a report by Mr. Lembo in the course of written proceedings placed the Respondent at a disadvantage in dealing with the details of his report at the Hearing.

of proof, is unable to take the alleged tax liabilities into consideration when deciding on the amount of compensation owed to the Claimant. See Birnbaum, supra, Award No. 549-967-2, at paras. 106-107; Ghaffari, supra, Award No. 565-968-2, at para. 87.

e. Partners' Accounts

133. The 1980 financial statements of the company show that PMMC shareholders (or partners) had paid into their company accounts a sum of 63.87 million rials (i.e., a liability from PMMC's viewpoint) and that PMMC had advanced to the shareholders 21.67 million rials (i.e., an asset from PMMC's viewpoint). There is no evidence that the Claimant was involved in these accounts. In considering all the circumstances, particularly the other shareholders' departure from Iran, the Tribunal concludes that there was no reasonable prospect of PMMC collecting the shareholders' debts or of PMMC paying the 63.87 million rials owed to the partners. See Birnbaum, supra, Award No. 549-967-2, at para. 95. Thus, the Tribunal considers both these items uncollectible and does not include them in its valuation of PMMC.

f. Conclusion on Valuation

134. The Claimant and Respondent have put forward widely divergent assessments as to PMMC's value. The Tribunal considers the figure of U.S.$13,541,831 offered by the Claimant's valuation experts as too high. A large portion of that figure is based on Mr. Vahman's land appraisal which has not been substantiated and Mr. Lembo's "cost-to-rebuild" estimate which the Tribunal considers an inappropriate approach under these circumstances. Mr. Lembo's "rule of thumb" estimate of PMMC's total plant value is also not helpful to the Tribunal because it is based on a number of assumptions that have not been proven. While Mr. Lembo's break-up value is helpful, the Tribunal cannot accept it

fully. On the other hand, the main emphasis of the Respondent's expert's report is on the value of assets and liabilities of PMMC as they appear on the company account books. The Tribunal does not accept this approach. Nor can it fully agree with the adjustments the Respondent's expert had made to the book value of PMMC fixed assets. For these reasons, the Tribunal cannot base its decision as to PMMC's fair market value on the report of Mr. Merati, the Respondent's expert.

135. In light of the deficiencies in the Claimant's and Respondent's valuations, the Tribunal will have to make an approximation of that value "which is reasonable and equitable taking into account all the circumstances in this Case." Seismograph Service Corporation et al. and National Iranian Oil Company et al., Award No. 420-443-3, para. 306 (31 Mar. 1989), reprinted in 22 Iran-U.S. C.T.R. 3, 80. In so doing, the Tribunal notes that PMMC owned a large piece of land situated in the vicinity of Tehran which contained buildings and machinery enabling refrigerators to be assembled or produced on a commercial scale, that its machinery was operational up to the date of taking, and that it maintained a workforce of at least fifty employees. The Tribunal also takes into account the impact of political, social and economic conditions on the value of PMMC's assets on 26 November 1980.

136. Accordingly, based on the best possible use of the evidence in the record and taking into account all the circumstances of this Case, the Tribunal determines that a fair and reasonable assessment of PMMC's value as of 26 November 1980 is 250,000,000 rials, of which the Claimant's 20 percent share is 50,000,000 rials.

137. In conclusion, the Tribunal finds that the Claimant is entitled to 50,000,000 rials as compensation for measures attributable to the Respondent which deprived him of his 20 percent ownership interest in PMMC. This amount is equivalent to U.S.$691,611 when converted at the rate of exchange of rials

72.295/U.S.$1. This was the rate of exchange prevailing in November 1980. See International Monetary Fund, International Financial Statistics, Supplement on Exchange Rates 64 (1985). The Tribunal therefore awards the Claimant U.S.$691,611.

VIII. INTEREST

138. In order to compensate the Claimant for the damages he has suffered due to delayed payment, the Tribunal considers it fair to award interest at the rate of 7.5 percent per annum from the date of the interference.

IX COSTS

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

X. AWARD

140. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, KAMRAN HAKIM, Six Hundred Ninety One Thousand Six Hundred Eleven United States Dollars and No Cents (U.S.$691,611.00) plus simple interest at the rate of 7.5 percent per annum (365-day basis) from 26 November 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(b) The obligation shall be satisfied by payment out of the Security Account established by paragraph 7 of the

Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

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

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

Dated, The Hague
24 June 1998

Krzysztof Skubiszewski
Chairman
Chamber Two

In the Name of God

George H. Aldrich

Koorosh H. Ameli
Concurring in part;
dissenting in part.
See, Separate Opinion.