

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده	
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CASE NO. 10913

CHAMBER TWO

AWARD NO. 326-10913-2

JACK RANKIN,
a claim of less than U.S.\$250,000
presented by
THE UNITED STATES OF AMERICA,
Claimant,
and
THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

DUPLICATE
ORIGINAL
نسخه برابر اصل

AWARD

Appearances:

For Claimant:

Michael F. Raboin
Richard B. Lillich,
Presenters

For Respondent:

Mohammad K. Eshragh,
Agent of the Government
of the Islamic Republic
of Iran
Seied-Mostafa Dorcheizadeh,
Legal Adviser to the Agent
Sohrab Rabiee,
Assistant to the Agent
Mostafa Kamfar,
Witness

Also present:

John Crook,
Agent of the Government of
the United States of America

I. THE CLAIM

1. JACK RANKIN ("the Claimant") left Iran on 17 February 1979 on an evacuation flight organized for American nationals by the United States Embassy in Iran. He was an employee of Bell Helicopter International, Inc. ("BHI") working at the Iranian Helicopter Support and Renewal Company ("IHSRC") facilities at Mehrabad Airport in Tehran.¹ His employment was terminated by BHI immediately after he left Iran. He claims compensation for loss of personal property and property rights in the amount of U.S.\$81,647.96² from THE ISLAMIC REPUBLIC OF IRAN ("the Respondent") for his alleged wrongful expulsion from Iran.

2. The Respondent asserts that the Tribunal lacks jurisdiction over this Claim and denies that it wrongfully expelled the Claimant from Iran, contending that he left either voluntarily or under instructions from his employer and his own government.

¹BHI was providing technical support and training services under a Foreign Military Sales (FMS) contract between the governments of Iran and the United States for the sale of a fleet of Bell helicopters. BHI's contract was with the U.S. Government.

²The claimed compensation changed repeatedly during the course of the proceedings. In the Statement of Claim, the amount was U.S.\$137,572, revised in the Supplemental Statement of Claim to U.S.\$96,382.96 and again in the Reply Memorial to U.S.\$101,647.96. At the Hearing, the Claimant withdrew his claim for retirement benefits valued at U.S.\$20,000 since he was in fact granted those benefits by BHI in the interim.

II. THE FACTS³

3. The Claimant arrived in Iran on 19 February 1974 to begin a two-year assignment with BHI. Each year thereafter he applied for and received a further one-year extension of his assignment. The latest extension was requested and approved in October 1978, with effect from 19 February 1979 through February 1980.

4. The principal events of the Iranian revolution are well known, and they obviously made life in Iran more difficult and less secure than it had been in previous years. Starting in October 1978, BHI granted its employees extra hardship pay and offered to repatriate at company expense any employee who wished to leave Iran, although this would normally have been the case only at the end of an assignment. At the same time, the Claimant states that the company encouraged employees to remain and tried to maintain its operations as much as possible, even though many other companies decided in December 1978 and January 1979 to evacuate most or all of their employees from Iran until order was re-established.

5. BHI did terminate employment for large numbers of its employees during January 1979, and those employees and their dependents left Iran. This reduction in the workforce was apparently scheduled in groups of about 300, the third group of which was in the process of repatriation when the events described below occurred. However, the Claimant was among those whose employment had not been terminated.

6. Early in the morning of 12 February 1979 -- coinciding with a period of great disorder in Tehran after the success

³More detailed consideration of certain facts is given, as appropriate, in connection with the merits of the claim, set forth in Part V below.

of the Revolution -- the Claimant and his wife requested company permission to leave their apartment and to join terminated BHI employees and their dependents who had been gathered at the Hilton Hotel ("the Hotel") in preparation for departure. Permission was given, and so they quickly packed a few belongings in two suitcases and were driven to the Hotel by their landlord, followed closely by another BHI employee and friend.

7. Soon after the Rankins checked in, the Hotel was the scene of armed clashes between various groups, including, according to newspaper reports, a group of Afghani laborers. After considerable initial violence one armed group established control, restored order, and prevented anyone from leaving the Hotel. Subsequently, members of this group took senior BHI representatives to the revolutionary headquarters of Ayatollah Khomeini at the Raza School in southern Tehran.

8. The BHI representatives allegedly met there with Dr. Ibrahim Yazdi, a senior leading figure in the Revolutionary Movement. It is not clear whether Dr. Yazdi's formal appointment as a Deputy Prime Minister in the Provisional Government had been made at that time or occurred only subsequently. However, Dr. Yazdi allegedly told the BHI representatives that the new government wanted nothing to do with Americans and that all BHI employees would have to leave Iran as soon as the airport was reopened.

9. After five days of confinement in the Hotel, the Claimant and his wife, along with about one hundred other BHI employees and dependents, were taken by bus to Mehrabad Airport, which reopened on 17 February 1979, and left Iran late the same day. Other BHI employees and dependents assembled at the Hotel were evacuated in similar groups during the subsequent five days.

10. At a stopover in Frankfurt, West Germany, the Claimant's employment was terminated by BHI, and he thereafter

received two weeks' separation pay. It appears from various documents submitted by the Claimant that his contract allowed BHI to terminate his employment at any time for "force reductions". The Claimant apparently did not find a new job until several years later.

III. PROCEDURAL ISSUES

A. Request for an Interlocutory Award

11. On 9 October 1984, the United States on behalf of the Claimant and the approximately 1,500 other claimants with similar claims, requested an Interlocutory Award holding that "the Government of Iran is liable for the collective wrongful expulsion of all Americans who left Iran from October 1978 through February 1979". By Order of 11 March 1985 in this Case, the Tribunal decided that "while the pleadings are incomplete, it is premature to consider any request by the Claimant for an Interlocutory Award." A Hearing was held on 15 and 16 January 1987, and the Claimant's representative reiterated the request for the Interlocutory Award.

12. As the Tribunal finds that it is able to decide all issues relevant to the present Case in this Award, the request for an Interlocutory Award in this Case becomes moot. Furthermore, the Tribunal considers that it would be inappropriate for it to decide the issue of Iran's liability on general grounds applicable to all claims for wrongful expulsion asserted by U.S. nationals, when the facts of each claim may differ markedly and lead to different results when considered in the light of the applicable principles of state responsibility.

B. Amendment of Claim

13. The Tribunal notes that the Claimant amended his claim

in his final Reply submission filed on 25 June 1986. This amendment, changing the amount of relief sought, also added information regarding certain carpets listed in an exhibit to the Supplemental Statement of Claim as property lost due to the alleged wrongful expulsion. To the extent that this information further particularizes the claim for lost property asserted in the Statement of Claim and the Supplementary Statement of Claim, the Tribunal decides that it is admissible under Article 20 of its Rules of Procedure. The Tribunal notes that the amendment did not delay proceedings and that the Respondent is not prejudiced by this determination in that it was able effectively to raise a full defense on this issue in its own submissions.

IV. JURISDICTION

A. The Parties

14. The Claimant is a United States citizen by birth, as evidenced by a copy of his U.S. passport. The Respondent, the Government of Iran, is clearly a proper respondent under the terms of the Claims Settlement Declaration.

B. The Claim

15. The Parties do not dispute the fact that the Claim was owned continuously by the Claimant from the date it arose to the date of the Claims Settlement Declaration and thus satisfies the continuity of nationality requirement of Article VII, paragraph 2, of the Claims Settlement Declaration. There is also no dispute that the Claim was outstanding on 19 January 1981 as required by Article II, paragraph 1, of the Claims Settlement Declaration.

16. The Respondent, however, contends that the Claim does not meet the final jurisdictional requirement that it "arise

out of debts, contracts . . . , expropriations or other measures affecting property rights". The Respondent argues that the categories of "debt" and "contract" are not applicable and that no act of "expropriation" or "other measure" has been alleged by the Claimant. The Claimant alleges that his forced departure was unlawful and had the effect of depriving him of certain items of his property and was therefore a measure affecting his property rights. The Tribunal observes that in order to state a claim within the jurisdiction of the Tribunal, a U.S. claimant must allege facts indicating that his property or property rights were lost through conduct attributable to Iran and wrongful as a matter of law. Whether an unlawful expulsion amounts to an expropriation depends on the particular facts of a claim. However, an allegedly unlawful expulsion is by definition a measure which may affect property rights and so lies within the jurisdiction of this Tribunal.

17. The Respondent further argues that expulsion is in the nature of a tort and that torts per se are not included in the jurisdictional parameters of the Claims Settlement Declaration. The Tribunal disagrees. Expulsion may or may not constitute a tortious act, but it clearly is an act that can affect property rights. Acts or omissions which engage the responsibility of one State with respect to a national of the other and which affect property rights of that national may give rise to claims for damage to those property rights which would be within the jurisdiction of this Tribunal, whereas claims for personal injury caused by the same acts or omissions would not be within such jurisdiction. In this connection, the Respondent referred to Lillian Byrdine Grimm and The Government of the Islamic Republic of Iran, Award No. 25-71-1 of 18 February 1983, where the Tribunal held that a claim for both loss of support and punitive damages due to mental anguish resulting from the assassination of the claimant's husband, based on an alleged failure of the Government of Iran to protect her husband, was not within the jurisdiction of the Tribunal as

a claim based on measures affecting property rights. Whether this Chamber would agree with that conclusion is an issue we need not decide in the present Case, as the alleged expulsion of the Claimant and the alleged consequential losses of income and personal property are not analogous to the alleged failure of protection and relief sought in the Grimm case. The wrongful expulsion of an individual who is employed and owns property within the expelling country clearly is a measure affecting that individual's property rights under the broad meaning given that phrase under international law. See Harza Engineering Company and The Islamic Republic of Iran, Award No. 19-98-2, at p. 9, fn. 2 (30 December 1982). A claim for property losses caused by such expulsion is therefore a claim within the jurisdiction of this Tribunal.

18. Certain claims which are otherwise within the Tribunal's jurisdiction are nonetheless excluded by Article II, paragraph 1, of the Claims Settlement Declaration, and the Respondent invokes the exclusion of claims described in Paragraph 11 of the Declaration of the Government of Algeria of 19 January 1981 ("the General Declaration"). In Paragraph 11 of the General Declaration, the United States agreed that it would "bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this Declaration related to (A) the seizure of the 52 United States nationals on November 4, 1979, . . . and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran." The Claimant contends that this exclusion applies only to the 52 United States nationals seized on 4 November 1979, while the Respondent argues that the exclusion applies to any United States nationals claiming injury to themselves or their property resulting from popular movements during the course of the revolution. The Tribunal does not consider it necessary to resolve the

conflict between these two interpretations in the present Case because the Claimant does not allege, and the Tribunal does not find, that any of the injuries to the Claimant's property resulted from acts of popular movements.⁴ In any event, the Tribunal observes that only injuries resulting from popular movements which are not an act of the Government of Iran are excluded from the Tribunal's jurisdiction by this provision, which exclusion is no more than a restatement of the customary international law requirement that a State's responsibility is engaged only by wrongful conduct attributable to the State. Such conduct has in recent years come under the scrutiny of the United Nations' International Law Commission, culminating in the development of a set of Draft Articles on the origins of State Responsibility for internationally wrongful acts. The Tribunal has adopted the criteria set down by the International Law Commission as the most recent and authoritative statement of current international law in this area. See Draft Articles on State Responsibility (Part 1 of the Draft) as provisionally adopted by the International Law Commission, cited 1980 Y.B. Int'l L. Comm'n, Vol. II, Part 2 at pp. 30-34, U.N. Doc. A/CN.4/SER.A/1980/Add.1 (Part 2); accord Alfred L.W. Short and The Islamic Republic of Iran, Award No. 312-11135-3 (14 July 1987).

19. Based on the foregoing, the Tribunal determines that it has jurisdiction over this Case.

⁴While conceivably involved in the claim for lost carpets, the Claimant, as discussed below, did not identify those responsible for that loss.

V. REASONS FOR THE AWARD

A. Requirements for Liability

20. In order to determine whether the Respondent is liable, the Tribunal must be satisfied that the Claimant was compelled to leave Iran by acts or omissions attributable to the Respondent and wrongful as a matter of law, and that such wrongful expulsion caused losses to the Claimant's property or property interests for which he has not been compensated. While each of these constituent elements of liability is critical, the Tribunal will begin with an analysis of the applicable law and the requirements for a finding of wrongfulness.

1. Applicable Law

21. Pursuant to Article V of the Claims Settlement Declaration, the Tribunal is directed to decide all cases "on the basis of respect for law" and to apply "such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable." With respect to these expulsion cases, however, it is clear that, contractual questions aside, only Iranian law and international law can be relevant. In the present Case there has been no allegation that the Claimant's departure involved violations of Iranian law, so the allegation of wrongfulness is to be determined solely by the standards of international law.

22. According to the practice of States, the writings of scholars, the decisions of international tribunals, and bilateral treaty provisions such as those contained in the Treaty of Amity, Economic Relations and Consular Rights of 1955 between Iran and the United States which entered into force on 16 June 1957, international law imposes certain restraints on the circumstances and the manner in which a State may expel aliens from its territory. A claimant

alleging expulsion has the burden of proving the wrongfulness of the expelling State's action, in other words that it was arbitrary, discriminatory, or in breach of the expelling State's treaty obligations. These restraints have usually been considered in the context of specific measures directed against an individual emanating directly from the State or legally attributable to it. However, these general principles apply equally to a situation in which, while there is no law, regulation, or directive which forces the individual alien to leave, his or her continued presence in the host country is made impossible because of conditions generated by wrongful acts of the State or attributable to it. See G. Goodwin-Gill, The Limits of the Power of Expulsion in Public International Law, Brit. Y.B. Int'l L., 55 (1974-1975); G. Goodwin-Gill, International Law and the Movement of Persons Between States (1978); I. Brownlie, State Responsibility, Part 1 at 76-77 (1983); M. Pellonpää, Expulsion in International Law (1984).

23. For the reasons stated in Phelps Dodge Corp. et al., and The Islamic Republic of Iran, Award No. 217-99-2 (19 March 1986) and Amoco International Finance Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 310-56-3 (14 July 1987), the Tribunal need not determine whether the Treaty of Amity today remains in force between the two State Parties, as it was clearly applicable at the time the claim arose and is, pursuant to Article V of the Claims Settlement Declaration, a relevant source of law on which the Tribunal is justified in relying in reaching its decision.

24. In essence, the pertinent provisions of the Treaty of Amity assured nationals of the United States the rights: (a) to enter Iran and remain there for purposes of trade and commerce on terms no less favorable than those accorded to

nationals of any other country;⁵ (b) to receive "fair and equitable treatment" for themselves and their property;⁶ (c) to receive and to have their property and property interests receive "constant protection and security";⁷ and (d) to be able to sell or otherwise dispose of their property within Iran.⁸ At the same time, Iran reserved the right to exclude or to expel U.S. nationals if "necessary to maintain public order, and to protect public health, morals and safety"⁹ and the right to take measures necessary to protect Iran's essential security interests. However, these reserved rights need not be considered in this Case, as the Respondent did not rely on them.

25. Application of the protections accorded by customary international law and the Treaty of Amity to the facts of specific cases will require the resolution of certain questions. For example, several problems remain even though it is an accepted principle of international law that acts of an insurrectional or revolutionary movement which becomes the new government of a State are attributable to the State. See Article 15,¹⁰ Draft Articles on State Responsibility

⁵Article II, paragraph 1.

⁶Article IV, paragraph 1.

⁷Article IV, paragraph 2.

⁸Article V, paragraph 1(c).

⁹Article II, paragraph 3.

¹⁰Article 15. Attribution to the State of the act of an insurrectional movement which becomes the new government of a State or which results in the formation of a new State

1. The act of an insurrectional movement which becomes the new government of a State shall be considered as an act of that State. However, such attribution shall be without prejudice to the attribution to that State of conduct which would have been previously considered as an

(Footnote Continued)

(supra para. 18); I. Brownlie, State Responsibility, Part I at 177-78 (1983); Alfred L.W. Short and The Islamic Republic of Iran (supra para. 18). First, when property losses are suffered by an alien during a revolution, there may be a question whether the damage resulted from violence which was directed at the alien or his property per se or was merely incidental or collateral damage resulting from the presence of the alien's property or property interests during the period of revolutionary unrest. Second, even with respect to some property losses that are not the result of incidental or collateral damage -- for example, losses resulting from acts directed by revolutionaries against the alien because of his nationality -- a further question of attribution remains, that is, whether those acts are acts of the revolutionary movement itself, rather than acts of unorganized mobs or of individuals that are not attributable to the movement.

2. General Considerations

26. The Claimant alleged that Americans were targets of violence and harassment in the course of the Islamic Revolution in response to anti-American exhortations of Ayatollah Khomeini and that this anti-Americanism was a central feature and major driving force of the Revolution. The Respondent asserted in response that those who led or inspired the Revolution were urging violence against the Shah and his supporters, not against U.S. nationals. The Tribunal has examined carefully the evidence submitted by both Parties with respect to anti-Americanism during the

(Footnote Continued)

act of the State by virtue of articles 5 to 10.

2. The act of an insurrectional movement whose action results in the formation of a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered as an act of the new State.

Revolution and notes in particular the following points contained in that evidence.

27. Ayatollah Khomeini, the undisputed leading opponent of the Shah and instigator of the change to an Islamic government, issued guidance from exile through public and private statements. The Tribunal has in evidence the texts of some public statements only. Those relevant to the United States and its nationals during this period generally linked the imposition of the Shah's regime and the Shah's agricultural and arms policies to American support, accused the United States of complicity in the massacre of Iranian demonstrators, and warned that the United States would attempt by any means to maintain the Shah's regime. The Ayatollah stated that contracts with Americans would be reviewed and those deemed against the national interest would be terminated, and he indicated that the relationship with U.S. military advisers and civilian technicians in Iran would be ended. In Iran, the evidence shows that anonymous threats and exhortations to Americans to "Go Home" were numerous and widespread. On 19 January 1979, a few days after the Shah's departure, the slogan shouted by demonstrators in Tehran was reported by the press as "The Shah is gone! And the Americans must follow!"

28. When Ayatollah Khomeini returned from exile on 1 February 1979, his first statement at the airport, as reported in press articles in evidence in this Case, contained the message that "Final victory will come when all foreigners are out of the country"¹¹, and he said that the

¹¹The Tribunal is aware that even at the time that this speech was reported, differences regarding the translation of the Farsi speech into English were noted. The Tribunal is aware of a subsequent translation contained in Islam and Revolution: Writings and Declarations of Imam Khomeini (H. Algar trans. 1981), which reads in part:

(Footnote Continued)

United States was plotting to bring back the Shah. While this policy towards foreigners was not implemented literally, among the first acts of the Provisional Government which took office on 11 February 1979 was the cancellation of numerous military contracts, followed by the immediate departure of thousands of Americans still remaining in Iran in connection with those contracts. In this connection the Claimant presented evidence regarding a meeting on 12 February 1979 between Dr. Yazdi, and Major General McKinnon, the General Manager of BHI, at that time the largest single employer of Americans still in Iran, according to which Dr. Yazdi declared that the new government did not want to have anything to do with the Americans and that they must leave Iran. Mr. McKinnon's account is supported by affidavits of other persons present at the meeting and by affidavits from numerous BHI employees who heard Mr. McKinnon's report of the meeting upon his return to the Hotel. The Respondent submitted several affidavits from Dr. Yazdi in which he denies that the meeting took place and that he ever made such a statement. The Tribunal does not have to decide whether or not this meeting took place nor, if it took place, what was said. The subsequent events, as evidenced in this Case, clearly showed that the new Government's policy was to reduce, if not to eliminate, the influence of foreigners and to reduce drastically and promptly the numbers of foreigners in Iran, which caused the departure of most Americans. This policy, as it applied to BHI, is confirmed by evidence presented in this Case that other BHI employees not present in the Hotel on 12 February 1979 were, during the following days, stopped on the street or taken from

(Footnote Continued)

Our triumph will come when all forms of foreign control have been brought to an end and all roots of the monarchy have been plucked out of the soil of our land I offer again my thanks to all of you, and beseech God Almighty to foreshorten the arms of the foreigners and their agents.

Id. at pp. 252,253.

their homes by Government agents and escorted to the Hotel for departure from Iran with the others when the airport reopened and that those in the Hotel were prevented from leaving, except to travel to the airport. BHI, therefore, decided to evacuate all employees except for a small management group which would be left to try and negotiate a resumption of activities or, if that proved impossible, to close out activities.

29. A few days later another BHI manager, who was responsible for coordinating transportation of BHI employees from the Hotel to the airport and who was having difficulties with "armed bands," requested and received a meeting with Deputy Prime Minister Entezam, who confirmed that the policy of the new government was the cancellation of contracts entered into by the Shah's administration and that he understood that the American employees were leaving as a result. He promised assistance in assuring a safe evacuation. Throughout February 1979, the new government encouraged foreigners to leave. For instance, it was reported on 27 February 1979 that the revolutionary council had ordered police not to renew the work or residency permits of Americans and other foreigners still in the country.

30. On the basis of all of the evidence in the present Case, the Tribunal makes the following general conclusions:

- a. A distinction must be made between the period prior to February 1979 and thereafter, when the Ayatollah Khomeini returned to Iran from exile and the new Islamic Government replaced that of the Shah.¹²

¹²In the context of this Case the Tribunal does not have to decide whether the second period began on 1 February 1979 when the Ayatollah Khomeini returned or on 12 February 1979 when the Provisional Government assumed control.

b. During the earlier period, the leaders of the Revolution fostered anti-American attitudes by claiming that the Shah was imposed on Iran by the United States, was under the control of the United States, was serving the interests of the United States against the true interests of Iran and in disregard of Islamic laws, was supported by the United States in his oppression of the Iranian people, and would be protected by the United States against the efforts of the people to overthrow him. In addition, the Revolutionary Movement encouraged and supported efforts by striking Iranian oil workers to replace non-Iranian executives and advisors. However, the evidence before us is inadequate to show that in the period prior to February 1979 there existed a general expulsion policy towards foreigners. The thrust of the Revolutionary Movement was then aimed at the overthrow of the regime of the Shah.

c. The statements, referred to above, of the leaders of the Revolution could, however, have reasonably been expected to initiate or prompt the types of harassment and violence that were suffered by individual U.S. nationals and other foreigners in the period from September 1978 through January 1979. These statements, which clearly are attributable to the Revolutionary Movement and thereby to the Iranian State (See Article 15, Draft Articles on State Responsibility: supra paras. 18 and 25), were inconsistent with the requirements of the Treaty of Amity and customary international law to accord protection and security to foreigners and their property. According to the evidence presented, it would seem that the then authorities of Iran did what they could under the circumstances of the revolutionary environment to assure the protection of foreigners. In order to find the Respondent liable for damages to the property interests of U.S. nationals during this period, it will therefore be necessary to show in an individual case that the damages alleged

were caused by these pronouncements, and were not just the result of the general unrest and mass demonstrations of the revolutionary period.

d. However, when the Ayatollah Khomeini returned to Iran on 1 February 1979, he was reported to have called for the departure of all foreigners. Shortly thereafter, the newly-formed Government began to take action to cancel contracts with non-Iranian persons and companies and to implement a policy to lessen the influence of foreigners in Iran and cause the departure of, among others, most Americans.

e. The implementation of this policy could, in general terms, be violative of both procedural and substantive limitations on a State's right to expel aliens from its territory, as found in the provisions of the Treaty of Amity and in customary international law.¹³ However, it does not automatically follow that all U.S. nationals who departed from Iran (or all those U.S. nationals who were residents of Iran and who were prohibited from returning) after the implementation of this policy were wrongfully expelled. It is necessary to examine the circumstances of each departure and to identify the general and specific acts relied on and evidenced to determine how they affected or motivated at that time the individual who now is alleging expulsion and whether such acts are attributable to Iran (See Articles 5-10, Draft Articles on State Responsibility: supra para. 18). In this regard the Tribunal notes the significance of the general turmoil and disorder which ensued after the return of Ayatollah

¹³For example, by expelling an alien who had a continued right to residency in Iran or by depriving an alien of a reasonable opportunity to protect his property interests prior to his expulsion.

Khomeini as competing groups vied for power in the revolutionary environment which existed in Iran at that time. The Tribunal considers this a factor which could have caused an individual's decision to leave and which could not be attributed to the State or its agents or organs. In addition, the Tribunal notes that where an employee's contract was terminated by his employer pursuant to the terms of that contract, the termination of that individual's contract by itself does not automatically engage a State's responsibility for any damages resulting therefrom.¹⁴

3. Application of the Law to the Facts

31. The Claimant in this Case does not allege that he suffered any direct property losses as a result of violent acts directed against him or his property. While he does allege that he suffered minor personal injury when his office window was broken by a rock and psychic trauma from being questioned at gunpoint at the Hotel, the present

¹⁴The employer, on the other hand, might have, and in many cases before the Tribunal has, brought a claim against the Iranian Government for damages for salary, repatriation and termination payments to employees as a result of the implementation of the policy. See, e.g., Questech, Inc. and The Ministry of Defence of the Islamic Republic of Iran, Award No. 191-59-1 (25 March 1985); International Technical Products Corporation, et al. and The Government of the Islamic Republic of Iran, Award No. 186-302-3 (19 August 1985); Phelps Dodge International Corp. and The Islamic Republic of Iran, Award No. 218-135-2 (19 March 1986); AHFI Planning Associates, Inc. and The Government of Iran, et al., Award No. 234-179-2 (8 May 1986); Howard Needles Tammen & Bergendoff and The Government of the Islamic Republic of Iran, et al., Award No. 244-68-2 (8 August 1986); McLaughlin Enterprises, Ltd. and The Government of the Islamic Republic of Iran, et al., Award No. 253-289-1 (16 September 1986); American Bell International Inc. and The Islamic Republic of Iran, et al., Award No. 255-48-3 (19 September 1986); Cosmos Engineering, Inc. and Ministry of Roads and Transportation, Award No. 271-334-2 (24 November 1986).

claim, consistent with the limited jurisdiction of this Tribunal, seeks compensation only for damage to the Claimant's property and property interests, not for personal injury.

32. In view of the Tribunal's holdings that the Respondent would be liable for damage to the Claimant's property and property interests resulting from actions attributable to it which were wrongful, the Tribunal must now consider whether the Claimant has established that his alleged property losses resulted from such actions.

33. The crucial underlying issue to these considerations is to examine the reason for the Claimant's departure from Iran and whether the Claimant has established the necessary causal link between his departure and acts or omissions attributable to the Government. The preliminary question arising in this Case in this connection is the intention of the Claimant when he and his wife went to the Hotel on 12 February 1979. In order to prevail on the question of causation, the Claimant must establish either that he did not intend to leave Iran permanently when he went to the Hotel (for, if he did so intend, the implementation of the policy of the new Government could not have been a substantial factor in causing his departure), or that his decision to leave Iran permanently resulted, not merely from the perceived risks and deprivations of life in the midst of revolutionary ferment and violence, but from wrongful actions attributable to the Respondent.

34. The Tribunal recognizes the difficulties of determining motivation in circumstances that occurred long ago and that involved a multiplicity of factors, many subjective. Nevertheless, the question of causation cannot be ignored, as the Respondent can be held liable for damages only if wrongful actions attributable to it were a substantial factor in causing the damages.

35. The Tribunal must first, therefore, inquire into the Claimant's intended purpose in going to the Hotel on 12 February 1979. The Claimant maintains that prior to that day he expected to remain in Iran performing his job, at least as long as that was possible. Mrs. Rankin, however, makes it clear in her affidavit that she was anxious to leave the country. The Claimant asserts that the only way to reconcile these desires was for Mrs. Rankin to leave Iran, either temporarily on vacation or indefinitely, depending on how the situation developed. Mr. Rankin asserts that he also intended to take a vacation during this period but to return to Iran and move to a smaller apartment in the event that Mrs. Rankin decided to stay away longer. However, after the collapse of the old regime on 11 February 1979, and early in the morning of 12 February 1979, fears for their personal safety became so intense that the Rankins resolved to leave their apartment and go to the Hotel, where a large number of Mr. Rankin's colleagues had gathered.

36. The presenter of the Claim stated at the Hearing that the Claimant's intention on the morning of 12 February 1979 was to remain at the Hotel only until his wife had safely departed, and then to remain on the job in Iran. The Claimant was not present at the Hearing and so the Tribunal is unable to assess the credibility of this explanation in light of prior accounts contained in various affidavits submitted by the Claimant and others in support of the Claim. The evidence before the Tribunal is ambiguous on this question. In his principal affidavit, the Claimant stated that: "My wife was very distressed . . . and insisted that I get in touch with Mr. J. McGlaughlin [his BHI security contact] . . . who . . . authorized my wife and me to go to the Tehran Hilton where other BHI employees had gathered." His wife states that: "I had asked Jack to check with [the BHI personnel representatives at the Hilton Hotel] to see if it would be possible for us to stay there, rather than remain alone in our apartment. . . . We were told . . . that political activity had reached the point

where evacuation was inevitable and that we should make our way to the hotel as soon as possible." The management of BHI decided later that same day that it would evacuate all remaining employees, except for a skeleton crew. In a previous affidavit, the Claimant had stated that: "I was given clearance to leave my apartment . . . and proceeded [sic] to the Tehran Hilton for the purpose of preparing to leave Iran." The Claimant's last affidavit states that he "did not intend to leave Iran at the time," although it is not clear from the context whether he was referring to November 1978 or to February 1979. The Claimant's landlord testified at the Hearing that the Claimant had told him in late January 1979 of his intention to leave Iran. However, it is not clear whether this was in reference to a vacation outside of Iran or to a definitive departure. The Tribunal notes that the BHI check-in slip at the Hotel cites "realignment", rather than termination, as the reason for the Claimant's presence in the Hotel, but no evidence was presented as to the meaning of that term.

37. Preparations for departure, including the sale of personal property, may also indicate intent, but here the evidence is again conflicting. The Claimant, by affidavit, asserts that, except for a freezer and a "few other items" sold to his landlord, he did not sell his household furnishings, clothing, or automobile. The landlord, who testified both by affidavit and at the Hearing, asserts that the Claimant sold those possessions to various persons and left behind only worthless items. In his last affidavit the Claimant did acknowledge that he sold some items but asserts that most of those belonged to friends who had left Iran. Supporting the Claimant's assertions are the apparent value of his job which he believed could not be equalled elsewhere, the inherent improbability that he could have continued to live, sleep, and eat in his apartment until his departure if he had, in fact, disposed of his furniture, utensils, and appliances and that he and his wife could not have taken all their clothing with them to the Hotel in one

suitcase each. With respect to the Claimant's car, the Tribunal notes that the Respondent has presented no evidence of its disposal other than the landlord's testimony that he understood it had been sold to an unidentified individual. On the other hand, supporting the landlord's testimony is the absence of any evidence that the Claimant, after leaving Iran, made any effort to have items left behind sold or sent to him or even had any communication with the landlord or anyone else concerning such items. This is surprising in view of the apparently amicable relations that existed at that time between the Claimant and his landlord. Also arguably supporting the Respondents' assertions that the Claimant intended to leave Iran is the fact that he posted four carpets just two days before going to the Hotel; on the other hand, the Tribunal notes that the Claimant's access to the U.S. military postal system was dependent on his wife, who was employed by the U.S. Navy, and any inference with respect to his intent to depart from Iran may not therefore clearly be drawn from that act.

38. After reviewing the evidence as a whole, the Tribunal is unable to reconcile the conflicting statements of the Claimant as to his intended purpose in going to the Hotel on 12 February 1979. The Tribunal notes that the Claimant bears the burden of proving that he was wrongfully expelled from Iran by acts attributable to the Government of Iran. In the absence of any explanation of this conflicting evidence, the Tribunal concludes that the Claimant has failed to prove his intention.

39. Consequently, the Tribunal finds that the Claimant has not satisfied the burden of proving that the implementation of the new policy of the Respondent, as possibly exemplified by Dr. Yazdi's statement, was a substantial causal factor in his departure from Iran. Neither has the Claimant satisfied the burden of proving that his decision to leave was caused by specific acts or omissions of or attributable to the Respondent. Rather, the turmoil and generally chaotic

conditions associated with this crucial stage of the Revolution would appear to have been the motivating factor in the Claimant's decision to leave. Therefore the Claimant's claim against the Government of Iran for lost salary and other employment-related benefits is dismissed for lack of proof that his departure from Iran was caused by wrongful acts of the Government of Iran or attributable to it under international law.

40. The Claimant also seeks compensation in the amount of U.S.\$39,070 for various items of personal property allegedly left behind due to his abrupt departure from Iran. Insofar as the Claimant bases his claim for compensation for this property under the theory of his wrongful expulsion from Iran, it is dismissed as the Claimant has not established that he was wrongfully expelled from Iran.¹⁵ Therefore, the Tribunal finds it unnecessary to resolve the conflict of evidence as to whether he owned this property when he departed from Iran.

41. The Claimant also claims for the value of four carpets which were mailed to his address in the United States from the U.S. Army Post Office on 10 February 1979, two days prior to leaving for the Hotel. The carpets never arrived, and the Claimant alleges that they were confiscated or destroyed by revolutionaries when the U.S. Commissary, where the post office was located, was burned on or about 12 February 1979. As discussed above, in order for the Respondent to bear any liability for the loss of these carpets, the Claimant must show that the loss resulted from wrongful actions attributable to the Respondent. This the Claimant has failed to do. There is no evidence that the

¹⁵The Claimant's claim that these household goods, personal property, and his automobile left behind were expropriated is based solely on the allegation that he was wrongfully expelled and that this property was constructively "taken" by the Government of Iran.

carpets were still in the post office when it burned, nor any evidence as to why the post office burned or who was responsible. The claim for the value of the carpets is therefore also dismissed.

VI. COSTS

42. Each Party shall bear its own costs of arbitrating this Claim.

VII. AWARD

43. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

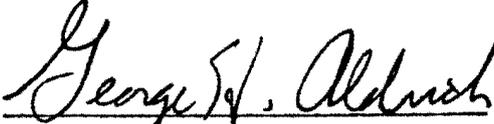
- (a) The Claim of JACK RANKIN is dismissed.
- (b) Each Party shall bear its own costs of arbitration.

Dated, The Hague
3 November 1987

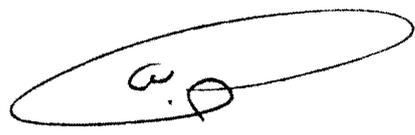


Robert Briner
Chairman

In the name of God,



George H. Aldrich



Hamid Bahrami-Ahmadi
Concurring

ORIGINAL DOCUMENTS IN SAFE

120

Case No. 10913

Date of filing: 3 Nov 87

** AWARD - Type of Award Final
- Date of Award 3. Nov 87
25 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: _____

- Date _____
_____ pages in English _____ pages in Farsi