IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 271
CHAMBER THREE
AWARD NO. 573-271-3

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده

FILED ثبت شد

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تاریخ ۱۲ /۹/ ۱۳۷۵

JAHANGIR MOHTADI
and JILA MOHTADI,
Claimants,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For the Claimants	:	Dr. Jahangir Mohtadi, Claimant; Mr. Ted Amsden, Ms. Margaret A. Costello, Counsel for Claimants; Mr. Mansour Anvari, Witness;
For the Respondent	:	Mr. Ali H. Nobari, Agent of the Government of the Islamic Republic of Iran; Mr. Nozar Dabiran, Legal Adviser to the Agent; Mr. Kamal Majedi Ardekani, Mr. Mohammad Reza Hossenian, Witnesses;
Also present	:	Mr. D. Stephen Mathias, Agent of the Government of the United States of America; Ms. Mary Catherine Malin, Deputy Agent of the Government of the United States of America.

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I. INTRODUCTION

1. The Claimants in this Case are JAHANGIR MOHTADI and JILA MOHTADI ("the Claimants"), dual Iran-United States nationals, who are husband and wife and who reside in the United States. The Respondent in this Case is THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent" or "GOI"). The Claimants seek compensation from the Respondent in the total amount of U.S.$2,289,694.00 for the alleged confiscation of two pieces of real estate located in Iran -- one located in Velenjak, Tehran, and the other in Shahsavar, near the Caspian Sea. Interest and costs are also sought.

2. The Respondent denies liability. It raises several jurisdictional and other preliminary objections, including the following: that the Claimants' dominant and effective nationality was not that of the United States during the relevant period; and that Mrs. Jila Mohtadi has no standing to claim as she did not own or co-own either of the two properties at issue. The Respondent also denies that it has expropriated either of the properties or subjected them to any other measures affecting the Claimants' property rights. It further argues that if the Claimants are found to be dual nationals whose dominant and effective nationality is that of the United States, the caveat in Case No. A18 bars their recovery.

II. PROCEDURAL HISTORY

3. The Claimants filed a Statement of Claim on 14 January 1982. The Respondent filed a Statement of Defence on 31 May 1982.

4. By Order of 28 June 1985, the Tribunal noted that the Full Tribunal in Case No. A18 had held "that it has jurisdiction over claims against Iran by dual Iran-United States nationals when the

dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States," and ordered the Parties to file all the written evidence they wished the Tribunal to consider on the nationality issue. On 24 October 1985 the Claimants filed evidence on their nationality, and on 18 January 1989 the Respondent did the same. By Order of 11 July 1990, the Tribunal joined all jurisdictional issues, including the issue of the Claimants' nationality during the relevant period between the time the claim allegedly arose and 19 January 1981, to the consideration of the merits of the Case. In the same Order, the Tribunal instructed the Claimants to submit certain additional information on their nationality, which they filed on 10 April 1991.

5. On 6 February 1991, the Claimants filed their Hearing Memorial. On 28 February 1992, the Respondent in turn filed its Hearing Memorial. On 29 June 1992, the Claimants filed their Rebuttal Memorial and on 2 March 1993, the Respondent filed its Rebuttal Memorial.

6. A Hearing in this Case was held on 7 December 1993.

7. In response to queries posed at the Hearing, the Claimants submitted additional information on 20 December 1993 and 19 January 1994.

III. JURISDICTIONAL AND PRELIMINARY ISSUES

A. Standing of Mrs. Jila Mohtadi to Bring a Claim

8. The Respondent raises an objection to the standing of Mrs. Jila Mohtadi to bring a claim before the Tribunal, on the ground that she is not the owner or the co-owner of either of the properties at issue. The Respondent argues that questions

involving the ownership of real estate in Iran are governed by the lex loci rei sitae, which is Iranian law. The Respondent further argues that since both properties were purchased by her husband, Dr. Jahangir Mohtadi, acting alone and in his own name, Mrs. Mohtadi has no ownership rights in respect of the properties.

9. The Claimants respond that since Jahangir Mohtadi purchased both properties during the course of his marriage, his wife has an interest in the properties pursuant to United States law. They cite Section 558.1 of the Michigan Compiled Laws Annotated in support of the proposition that "Jila Mohtadi has a dower right to one-third part of all the lands her husband acquires or inherits during the marriage. This dower right vests if she bec[omes] a widow."

10. The Tribunal notes that it is clear from the Claimants' own contentions that any right that Jila Mohtadi may possess under the law of the State of Michigan is contingent upon her husband's death. As her husband, Jahangir Mohtadi, remains alive at the time of issuing this Award, the Tribunal finds that any claim Mrs. Mohtadi arguably may have is not ripe for adjudication. Consequently, the Tribunal finds it unnecessary to decide this issue. The Tribunal will therefore proceed to treat this claim as though it has been brought solely by Dr. Jahangir Mohtadi, who will henceforth be referred to as "the Claimant."

B. Dominant and Effective Nationality of Dr. Mohtadi

11. Dr. Jahangir Mohtadi was born in Iran to Iranian parents on 10 October 1930.[1] He was naturalized as a United States citizen

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[1] This is the date that appears as his birth-date on his United States Certificate of Naturalization and United States passports. Other documents, however, such as his Iranian identity card, state that his birth-date is 1 November 1930. The Tribunal does not regard this inconsistency as material.

on 24 July 1978. There is no evidence in the record that the Claimant has relinquished or otherwise lost either his Iranian nationality in accordance with Iranian law or his United States nationality in accordance with United States law. Consequently, the Tribunal finds that since 24 July 1978, the Claimant has been a citizen of both Iran and the United States.

12. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, in which it determined that the Tribunal has jurisdiction over claims against Iran by dual Iran-United States nationals "when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States."[2] Accordingly, for the Tribunal to have jurisdiction over his claim, it must be shown that Dr. Mohtadi's United States nationality was dominant and effective during the relevant period, i.e., from the date his claim arose until 19 January 1981, the date on which the Claims Settlement Declaration entered into force. For the limited purpose of establishing the parameters of the relevant period, the Tribunal accepts the earliest date alleged by the Claimant, 26 June 1979, as the date on which his first claim arose. Consequently, for purposes of the inquiry into the dominant and effective nationality of the Claimant, the Tribunal concludes that the relevant period is that between 26 June 1979 and 19 January 1981.

13. In order to reach a conclusion as to the Claimant's dominant and effective nationality during the relevant period, the Tribunal must determine whether the Claimant had stronger ties with Iran or with the United States during that period. To this end, the Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties,

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[2] 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, 265 [hereinafter "Case No. A18"].

participation in public life and other evidence of attachment. See Case No. A18, 5 Iran-U.S. C.T.R. at 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between 26 June 1979 and 19 January 1981, the events and facts preceding that period also remain relevant to the issue. See Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51-52.

14. The record reveals that the Claimant lived in Iran from 1930 to 1958, and that he attended the School of Pharmacology of Tehran University from 1947 to 1951 and the Medical School of Tehran University from 1952 to 1958. During 1959, the Claimant completed an internship in the United States at a hospital in Wichita, Kansas. Upon completion of the internship, he returned to Iran and married Jila Moin, who was also an Iranian national. From 1961 to 1966 the Claimant resided in the United States with his wife to specialize in medicine, completing internships at various hospitals in the State of Michigan. On 17 November 1964, his first child, Nader Roy Mohtadi, was born in the United States.

15. In August 1966, the Claimant and his family returned to Iran, and the Claimant worked at a government-sponsored hospital in Tehran until April 1968. The Claimant's daughter, Negin Mohtadi, was born in Iran on 2 November 1967. On 30 November 1967, the Claimant purchased the first property at issue in this Case -- a parcel of land in Velenjak, Tehran. Around this time, the Claimant applied for permanent resident status in the United States, which was granted by the United States authorities. Thereafter, in April 1968, the Claimant and his family returned to the United States and the Claimant started a private practice as a medical practitioner in Northville, Michigan. The Claimant contends that from that time on, he paid Social Security and

income taxes in the United States. He further contends that almost all of his professional experience was obtained in the United States, and that he has been a member of various American professional societies since 1968.

16. In 1969 the Claimant and his wife purchased a house in the United States for their residence. Also between 1968 and 1973, the Claimant and his wife purchased four parcels of real estate (including the building where his medical practice was located) in the States of Arizona and Michigan on a land contract basis. While residing in the United States, on 24 June 1974, the Claimant purchased the second property at issue in this Case -- a property in Shahsavar, Iran -- by proxy to his sister in Iran. In August 1975 the Claimant purchased a second residence in the United States.

17. Mrs. Jila Mohtadi was naturalized as a United States citizen on 18 July 1977. The Claimant was naturalized as a United States citizen on 24 July 1978; his daughter was naturalized as a United States citizen on the same day. The Claimant was issued a United States passport on 3 October 1978. On 6 August 1979, the Claimant and his wife renewed their Iranian passports at the Iranian Consulate in Chicago. The Claimant contends that he and his wife voted in the American Presidential election of 1980. From the time of their final move to the United States in 1968, the Claimant contends that he returned to Iran only three times -- in 1970, 1973 and 1976 -- to visit relatives in Iran. The Claimant contends that his dominant and effective nationality during the relevant period was that of the United States.

18. The Respondent points out that the Claimant completed his elementary, secondary and tertiary education in the fields of pharmacology and medicine in Iran. It contends that the Claimant travelled to the United States merely to study and to specialize in his profession. The Respondent argues that the Claimant

retained deep-rooted family, academic and cultural attachments to Iran, and it suggests that he acquired United States nationality out of expediency at the culmination of the Iranian Revolution. It argues further that the time spent by the Claimant in the United States does not provide evidence of his permanent residence there, nor of a shift in the center of his interests, family ties and social and professional attachments from Iran to the United States. The Respondent concludes that the Claimant was a dominant and effective Iranian national at all relevant times.

19. The Tribunal notes first that the Claimant lived in the United States for a substantial time before the commencement of the relevant period. Apart from a brief period between 1966 and 1968, he has lived in the United States continuously since 1961. Furthermore, from 1968 onwards, there are strong indications that the Claimant and his family had chosen to make their lives in the United States. Particularly from the late 1960s onwards, the Claimant's professional life was increasingly centered in the United States, as shown by the fact that the Claimant opened a medical practice in the United States in 1968 and has practiced his profession there ever since. The Claimant subsequently joined various professional associations. In addition, he and his wife purchased two family homes in the United States, in 1969 and 1975, as well as several other pieces of property for investment and business purposes. His children were brought up in the United States and he fulfilled his civic duties, including the payment of taxes and participation in elections.

20. The Claimant's ties to Iran, on the other hand, weakened progressively over the years that he lived in the United States. After 1968 he travelled to Iran only three times, these being for family visits lasting approximately three or four weeks each in 1970, 1973 and 1976. By the commencement of the relevant period (at its earliest June 1979), his economic ties to Iran had

dwindled to the properties at issue in this Case, which had been purchased several years earlier, in 1967 and 1974. He had no other business or professional interests in Iran after 1968. Furthermore, at the Hearing, the Claimant contended that by 1977 all his close relatives in Iran had died.

21. To be sure, one factor weighing against the Claimant is his delay in applying for United States nationality until an unspecified date in 1977 or 1978. However, this delay was credibly explained at the Hearing by the Claimant's description of his increasing objective and subjective attachment to the United States in the late 1960s and early 1970s, together with a gradual lessening of his ties to Iran. His application for United States citizenship and subsequent naturalization as a United States national demonstrate that in 1977 he made a definitive choice for the United States over Iran. The fact that the Claimant and his wife applied for extensions of their Iranian passports in 1979 is also a factor that weighs against the Claimant. However, at the Hearing, the Claimant explained this act as motivated by the possibility that it might have been necessary for him to travel to Iran to assist family members. In the light of this plausible explanation, this factor is likewise not sufficient to tilt the balance away from the dominance of the Claimant's United States nationality during the relevant period.

22. Consequently, the Tribunal finds that although the factors discussed above demonstrate that the Claimant did not sever all his links with Iran, these factors do not outweigh his closer and very lengthy ties to the United States. By the time the relevant period began, the center of his professional, economic and personal activities was the United States. The Tribunal therefore finds that the dominant and effective nationality of the Claimant from the date his claim is alleged to have arisen (26 June 1979) until 19 January 1981 was that of the United

States. It follows that the Tribunal has jurisdiction over his claim.

IV. MERITS -- FACTS AND CONTENTIONS

A. The Claimant's Contentions

1. The Velenjak Property

23. The Claimant contends that his claim in respect of the property in Velenjak arose through the expropriation of that property by the Respondent on 26 June 1979. The property in question is an undeveloped piece of real estate measuring approximately 2,110.5 square meters located in Velenjak, a residential suburb of Tehran. The Claimant alleges that he is the owner of the property, and in support of that allegation he has submitted a title deed showing that the land was registered in the Claimant's name on 30 November 1967. The Claimant further contends that this property was taken by the Respondent on 26 June 1979. In this regard, the Claimant relies on various pieces of Iranian legislation that allegedly effected a legislative taking of the property.

24. The first piece of legislation invoked by the Claimant is the "Act Concerning Abolition of Ownership of Mavat [Undeveloped] Urban Lands and the Manner of their Development" [hereinafter the "Abolition Act"], which was enacted by the Islamic Revolutionary Council on 26 June 1979.[3] The Claimant contends that this Act

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[3] The Parties have provided different English translations for the title of the Act; in addition, its date of enactment was referred to in Rouhollah Karubian and The Government of the Islamic Republic of Iran, Award No. 569-419-2 (2 March 1996), reprinted in __ Iran-U.S. C.T.R. __, __ [hereinafter "Karubian"] as "27 June 1979." The English version of this Award relies upon the translation provided by the Tribunal's Language Services Division.

expropriated undeveloped urban lands like the Velenjak property. The Claimant further contends that the expropriatory effect of the Abolition Act was confirmed by the subsequent promulgation of Regulations implementing the Act, which were drafted by the Ministry of Housing and Urban Development and approved by the Council of Ministers on 13 August 1979 [hereinafter the "Abolition Regulations"]. In addition, the Claimant cites the Amendment to the Abolition Act passed on 27 August 1979 as confirming the expropriation of undeveloped urban lands, as well as the 1980 Implementing Act for Tehran.[4] The Claimant alleges that as of the date of the enactment of the Abolition Act, undeveloped urban lands in Iran could not be sold, transferred or otherwise disposed of.

25. In further support of his claim, the Claimant has submitted several articles from the Tehran daily newspaper Ettela'at. He argues that these articles provide evidence of contemporaneous statements by government officials indicating that the Abolition Act, as implemented by the Abolition Regulations, effected a taking of undeveloped urban lands larger than 1000 square meters in area. He further contends that in September 1979 the National Organization for the Registration of Documents and Real Property issued a circular to all Notary Public Offices in Iran, prohibiting them from recording any transfer of title of undeveloped lands larger than 1000 square meters.

26. The Claimant points out that the Velenjak property was larger than 1000 square meters and contends that it would therefore not have qualified under the so-called "small parcel exemption" provided for in the Abolition Act, which exempted undeveloped lands smaller than 1000 square meters in area from the Act's effects in some instances. He argues that even if the land had qualified for exemption from the Abolition Act on that

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[4] See para. 48, infra.

basis, he would not have been able to take advantage of the exemption because of alleged restrictions on the use and authentication of foreign powers of attorney in Iran.

2. The Shahsavar Property

27. The Claimant's second claim is for the alleged expropriation of a piece of real estate measuring approximately 27,583 square meters situated in the Shahsavar area in Iran, near the Caspian Sea. The Claimant alleges that he was the registered owner of this property, and he has submitted a title deed for the property showing that it was transferred to him on 24 June 1974.

28. The Claimant alleges that this property was expropriated by the Respondent on 16 September 1979 through the "Law Concerning the Manner of Grant and Reclamation of Lands Within the Jurisdiction of the Islamic Republic of Iran" [hereinafter the "Lands Grant Act"].[5] The Claimant argues that the Lands Grant Act expropriated land described as "woodlands" and that the Shahsavar property was woodland at the date of enactment of the Act. The Claimant also cites a contemporaneous newspaper report in support of this contention.

29. In the alternative, the Claimant alleges that his property rights were interfered with physically, through the invasion of his land by persons whose actions were allegedly sanctioned by the Respondent.

B. The Respondent's Contentions

30. The Respondent does not contest the Claimant's ownership of the properties in question. Rather, it denies that it

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[5] The English version of this Award relies upon the English translation of the Lands Grant Act provided by the Tribunal's Language Services Division.

expropriated those properties and specifically denies that the legislation invoked by the Claimant effected a taking of them.

1. The Velenjak Property

31. Concerning the property in Velenjak, the Respondent contends that the Abolition Act applied only to mavat land, see para. 38, infra. It further contends that the Velenjak property was bayer land, and not mavat land, because it is characterized in the title deed as bayer land. Consequently, the Respondent argues, the Abolition Act did not expropriate the Velenjak property. The Respondent concedes that the Velenjak property could have fallen within the scope of the Urban Lands Act of 18 March 1982, but it points out that this Act was passed after the Tribunal's jurisdictional cut-off date of 19 January 1981.

32. In response to the Claimant's allegation about limitations on powers of attorney, the Respondent contends that the Claimant would not have been affected by any such restriction because he held an Iranian passport.

2. The Shahsavar Property

33. Concerning the property in Shahsavar, the Respondent contends that the property was not woodlands at the date of the alleged taking (16 September 1979), but rather had been developed into farmland or orchards prior to that date. In support of this contention, it cites the 21 August 1967 Law Concerning Protection and Operation of Woods and Pastures, which allegedly leased woodland to persons for conversion into agricultural land within a limited period. According to the Respondent, this Act provides that woodland properties could be sold to the lessee only after they had been converted into agricultural land. As the Shahsavar property had been registered first in the name of the Claimant's brother-in-law, Mr. Mahmood Rostami, and then in the name of the

Claimant himself in 1974, the Respondent concludes that the land must have been converted into farmland long before the passage of the Lands Grant Act in 1979. The Respondent further argues that even if the property was woodlands at the alleged date of taking, it was not expropriated by the Lands Grant Act. In addition, the Respondent contests the relevance and reliability of the newspaper report submitted by the Claimant.

3. The Caveat in Case No. A18

34. The Respondent raises a further argument, namely that the claims should be dismissed on the merits by application of the caveat in Case No. A18. The Respondent argues in essence that the Claimant is claiming before the Tribunal, in his capacity as a United States national, for the purpose of receiving compensation for the alleged expropriation of real estate that he had purchased and continued to own solely in his capacity as an Iranian national. In this regard, the Respondent relies on an interpretation of Articles 988 and 989 of the Iranian Civil Code. It argues that Article 989 of the Civil Code envisages a one-year "grace period" after the acquisition of a second nationality within which the Claimant allegedly should have divested himself of his real properties in Iran. The Respondent argues further that the grace period in this instance expired on 24 July 1979, i.e., one year after the Claimant was naturalized as a United States citizen on 24 July 1978. The Respondent contends that at least as of 24 July 1979 the Claimant was in violation of Article 989 of the Iranian Civil Code by continuing to own real property in Iran. It raises the international law doctrines of estoppel, clean hands and abuse of rights as reasons why the claim should be dismissed on the merits, and it argues that Iran can incur no state responsibility under international law because it has not committed an internationally wrongful act.

V. MERITS -- THE TRIBUNAL'S FINDINGS

A. Ownership

35. The Claimant contends that he was the registered owner of the two properties at issue in this Case -- the Velenjak property and the Shahsavar property. In support of this contention he has produced title deeds to both properties, which show that the Velenjak property was registered in his name on 30 November 1967 and that the Shahsavar property was registered in his name on 24 June 1974. The Respondent does not contest Dr. Mohtadi's ownership of the properties in question, so this matter is not in dispute between the Parties. The Tribunal is satisfied that the record confirms that the Claimant was the registered owner of the properties at issue in this Case.

36. The Tribunal therefore must turn to the question whether -- for each of the properties at issue -- the legislation or other official actions invoked by the Claimant constituted either an expropriation or a measure affecting the Claimant's property rights within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration.

37. As noted above, the Claimant seeks to rely on several pieces of Iranian legislation to support his contention that his properties were expropriated. In order to come to a conclusion on whether an expropriation or other measure affecting property rights has occurred in respect of the Claimant's property, it will be necessary to review in some detail the relevant Iranian land reform legislation and other official acts of the Respondent. The Tribunal therefore turns first to the legislation invoked by the Claimant as relevant to the Velenjak property.

B. The Velenjak Property

1. Expropriation

a. Applicable legislation

38. As a preliminary matter, it should be noted that Iranian law classifies real estate into a number of different categories. Most relevant for present purposes is land classified as mavat and land classified as bayer. The Tribunal understands mavat land to be land that is undeveloped and that has no prior record of development. The Tribunal understands bayer land to be land that previously has been developed but that has fallen into disuse.

39. The Claimant's Velenjak property is identified in the title deed as bayer land. The Claimant, however, argues that the land is really mavat land because the land was in fact undeveloped and unutilized. By the close of the Hearing, there did not appear to be any dispute between the Parties as to the fact that there was no development of any kind on the Velenjak property from the date the Claimant bought it until at least the date of the alleged expropriation. In fact, the Respondent's expert witness testified at the Hearing that the property remains undeveloped at the present time. Nevertheless, based on the use of the term bayer in the title deed to the property, the Tribunal infers that the property may have been developed or utilized in some way prior to the Claimant's acquisition of it. In any event, the Tribunal is disinclined to question the characterization of the land in the official deed. Accordingly, the Tribunal concludes that the Velenjak property must be deemed to be bayer land. It will therefore be necessary to inquire whether the 1979 Abolition Act, as amended and implemented, affected undeveloped bayer land such as the Velenjak property.

40. The starting point of the inquiry is the 1979 Abolition Act, adopted by the Revolutionary Council of the Provisional Government of the Islamic Republic of Iran on 26 June 1979.[6] The Abolition Act states in its Preamble:

> Whereas under Islamic standards Mavat [undeveloped] land is not recognized as anyone's property, it is at the disposal of the Islamic Government, and ownership deeds that were issued during the former regime with regard to mavat lands lying within or outside city boundaries, are contrary to Islamic precepts and against the interests of the people.

41. The relevant provisions of the Abolition Act read as follows:

> Article 1: In connection with lands lying within the legal (25-year) boundaries of cities, where such boundaries exist, and also in other cities within the limits to be determined and announced by the Ministry of Housing and Urban Development, the Government shall, in a gradual manner and with due observance of the detailed urban plan in each region, inform those individuals who were, under the criteria of the former regime, recognized as owners of such lands, to take measures to develop and improve those lands within a specified period. In the event no action is taken by them within the stipulated period, they shall be afforded no priority, and such lands will be taken over by the Government without compensation.
>
> Note: Those persons who have procured a small piece of land for their personal residence, and do not own a residential unit, shall be given, by the Government, a minimum period of three years to develop their lands.
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> * * *
>
> Article 3: The manner of notification to those individuals who were recognized as the owners of such lands in the former regime, classification of lands as mavat [undeveloped], and the manner of development and improvement, as well as the conditions of transfer of the said lands, the determination of the area of land referred

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[6] The Abolition Act was announced to the public by Notice No. 7/2064 dated 2 July 1979 and published in Official Gazette No. 10025 on 24 July 1979.

> to in the Note to Article 1 in each region, and other matters relating to the implementation of this Act shall be in accordance with the Regulations which are to be prepared by the Ministry of Housing and Urban Development, and approved by the Council of Ministers.

42. Article 1 of the Abolition Act, read in conjunction with the Act's Preamble, evinces a clear policy by the new Government against the private ownership of undeveloped urban lands. Such lands are "not recognized as anyone's property" and are "at the disposal of the Islamic Government," according to the Preamble; and Article 1 refers to "those individuals who were . . . recognized as owners" under the former regime (emphasis added). At the same time, Article 1 appears to hold out the possibility that the formerly-recognized owners of undeveloped urban lands might be able to regain their ownership by developing the land, although what sort of development would be required, and what period of time would be allowed for this to be accomplished, is left unspecified. The Note to Article 1 exempts some owners of "small" parcels of undeveloped lands from the Act's expropriatory scope for at least three years, but it does not define what constitutes a "small" parcel. Article 3 then goes on to delegate the resolution of most specific issues relating to the implementation and enforcement of the Abolition Act to the Ministry of Housing and Urban Development, which is authorized to draft implementing regulations for the approval of the Council of Ministers.

43. Less than two months after the passage of the Abolition Act, on 13 August 1979, the Council of Ministers approved Regulations drafted by the Ministry of Housing and Urban Development to implement the Act. These Regulations provided, inter alia, that "for the purposes of [the Abolition Act] undeveloped [mavat] land is land which has been left idle and on which no development or improvement has been made." However, Article 2 of the Regulations goes on to define "acceptable development and improvement" to include such examples as the existence of: a

house; the ruins of a building; land under agricultural cultivation; flower gardens; tree orchards; parking lots; service stations; and swimming pools and recreation facilities.

44. It is not in dispute that the Claimant's property contained no such development, or indeed any analogous development. The plain wording of the Abolition Regulations, therefore, makes it clear that the Claimant's property would not have qualified as acceptably developed, and -- despite its formal characterization in the title deed as bayer land -- would therefore have come within the scope of the Abolition Act.

45. This reading of the Abolition Act is confirmed by other evidence, most significantly an Opinion issued by the Guardian Council on 3 February 1981 -- after the Tribunal's jurisdictional cut-off date of 19 January 1981. The Guardian Council is the body charged by the Constitution of Iran with ensuring that Iranian legislation conforms with Islamic law and the Constitution of Iran. Its 3 February 1981 Opinion held that the Abolition Regulations "applie[d] to previously developed bayer lands" and therefore were contrary to Islamic law and violated the Iranian Constitution. The Regulations were declared "unenforceable" to the extent that they applied to bayer land. After a request from the Ministry of Housing for a clarification of that Opinion, the Islamic Jurists of the Guardian Council confirmed that their Opinion related solely to the applicability of the Regulations to previously developed urban bayer lands and did not concern the Abolition Act itself or measures taken on the basis thereof.

46. While the Guardian Council Opinion is useful as an interpretive tool for understanding the intention and scope of the 1979 Abolition Act as applied, the Tribunal is acutely aware that the Opinion was not rendered until after the Tribunal's jurisdictional cut-off date of 19 January 1981. Consequently,

the Tribunal cannot take the Opinion into account for any other purpose. The Tribunal is concerned exclusively with the impact, if any, of Iranian land reform legislation on the Claimant's property from the date the claim allegedly arose until 19 January 1981. Any subsequent changes to the legislation are not directly relevant to the potential impact of the legislation during the relevant period. The Guardian Council Opinion is significant merely in that it confirms that the scope of the Abolition Regulations extended to urban bayer land.[7]

47. In addition to defining the meaning of mavat land as used in the Abolition Act, the Abolition Regulations clarified the meaning of the small-parcel exemption contained in the Note to Article One of the Act. This small-parcel exemption was defined in Article 5 of the Regulations as applying to land with a maximum area of 1000 square meters in large cities like Tehran. An Amendment to the Abolition Act announced on 27 August 1979 further clarified the meaning of the small-parcel exemption by providing that for plots in excess of the small-parcel exemption, no grace period for development was granted; instead, such lands "will become Government property forthwith."

48. The scope of the Abolition Act was further extended by the "Law Concerning Abolition of Ownership of Mavat [Undeveloped] Urban Lands Situated within the Legal Twenty-Five-Year [Development] City Limit of Tehran and its Protective Border" [hereinafter the "Implementing Act for Tehran"], which was approved by the Revolutionary Council on 26 March 1980, and published in the Official Gazette dated 14 May 1980.[8] This Act

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[7] In fact, subsequent to the Guardian Council Opinion, the Iranian legislature passed a new measure, the Urban Lands Act, which expressly provided for the confiscation of urban bayer lands in some circumstances. See para. 49, infra.

[8] This Act was referred to in Karubian, Award No. 569-419-2, as the "Urban Lands Extension Act."

extended the application of the Abolition Act beyond the 25-year city limit of Tehran to the city's "protective border." Its Single Article provided:

> The private ownership of all the lands situated within the legal twenty-five-year [development] city limit of Tehran and its protective border, per the attached map, which have remained in a mavat [undeveloped] condition and on which no development or improvement has taken place, is abolished by virtue of the provisions of the [Abolition Act] as from the date of transmission thereof [emphasis added].

49. In continuation of its program of land reform, on 18 March 1982 the Islamic Consultative Assembly approved the Urban Lands Act. That Act defined bayer land in the following way: "Bayer [unutilized] urban lands are lands which have a record of development and reclamation but have gradually reverted into mavat condition." The Urban Lands Act states that "[a]ll mavat urban lands are at the disposal of the Government of the Islamic Republic of Iran, and previous ownership deeds and documents are devoid of legal validity." Significantly, it states further in Article 7 that "[a]ll bayer urban lands which have no known owners are at the disposal of the Government." Article 8 prohibits the sale of urban bayer lands in excess of 1000 square meters, except to the Government, and Article 9 provides for the forced sale of bayer lands to the Government at its discretion. The Urban Lands Act also instituted new procedures for the cancellation of title deeds and for hearing the objections of interested parties, providing in addition that the process was to be overseen by the judicial authorities.

b. Tribunal's findings on expropriation

50. The Claimant has argued that the Velenjak property would not have fallen within the "small-parcel" exemption of the Abolition Act as implemented. The Claimant contends that this is so because the small-parcel exemption only covered land of less than

1000 square meters; the Claimant's land was over 2000 square meters. He argues further that in any event it would not have been possible for him to qualify for exemption, as he would not have been able to file a petition seeking an exemption on the basis of this provision within the three months required, especially from the United States.[9] This difficulty would have been compounded, he alleges, because there were restrictions in force on the use in Iran of foreign powers of attorney.

51. The Tribunal notes that the Respondent has not argued that the Velenjak Property fell within the small-parcel exemption. In large cities like Tehran, where the property was located, the small-parcel exemption would have applied only to lands of less than 1000 square meters. Consequently, based on its area -- stated in the title deed to be 2,110.5 square meters -- the Tribunal finds that the Claimant's land would not have fallen within the small-parcel exemption set out in the Abolition Act, as amended.

52. The Claimant has argued further that the effect of the Abolition Act, as amended and implemented, was to expropriate the Velenjak property, without the necessity of any specific action on the part of the authorities directed against his property in particular. The Respondent denies that the legislation was of relevance to land such as that owned by the Claimant. The Tribunal therefore turns to the question whether the Abolition Act, as amended and implemented, expropriated the Velenjak property.

53. In this regard, the Tribunal is not convinced that the mere passage of the Abolition Act with its Regulations and amendments

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[9] Article 10 of the Abolition Regulations appears to provide for a possible exception from the Abolition Act if a landowner provided proof to the Ministry of Housing, within 3 months of the date of the Regulations, that his land fell within the "small parcel" exemption.

in itself effected a taking of the Claimant's property. It is true that a textual reading of the Abolition Act and its amendments is consistent with its being a self-executing statute. For instance, the Abolition Act states that "mavat land is not recognized as anyone's property" and the 27 August 1979 Amendment to the Act states that the land covered by the Act "will become Government property forthwith." The title deeds to properties located within the geographical reach of the Abolition Act and the Implementing Act for Tehran would therefore be susceptible to cancellation at any time thereafter.

54. However, other factors suggest that the Abolition Act was not a self-executing statute. For instance, the Regulations to the Abolition Act, while not entirely clear, appeared to require that certain procedures be carried out, resulting in a determination whether the land in question was mavat land. Such procedures included the assessment of improvements to land in order to determine whether the land would be exempted from the Act, as well as application by landowners for exemption from the effects of the Act on the basis of the small-parcel exemption. A contemporaneous newspaper report supports this view. In the Ettela'at of 2 September 1979, the Iranian Minister of Housing and Urban Development, Mr. Mostafa Katirai, is reported to have announced:

> We have divided the lands into two categories. Small undeveloped lands and large undeveloped lands. The owners of the small undeveloped lands must develop their lands within the time limit provided in the [Abolition Act]. Large lands and lands in excess of the limit provided by law belong to the Government. For this reason, we have asked the Ministry of Justice to notify the National Organization for Registration of Documents and Real Properties to issue a circular to the Offices of the Notary Public prohibiting any transaction on lands in excess of the limit specified by law, because the status of owners of large lands must first be determined so that if they allege that their lands are not undeveloped, the matter must be examined and decided whether or not the land has been developed, then a transaction on it would be permitted

[emphasis added].

The Tribunal therefore concludes that the implementation and enforcement of the Abolition Act and the Implementing Act for Tehran apparently remained contingent upon a determination that the land in question was large, undeveloped land. See Karubian, Award No. 569-419-2 at paras. 52, 106-108.[10]

55. The Tribunal's conclusion that the legislation invoked by the Claimant was not self-executing and did not operate automatically to expropriate his property is strengthened by the fact that the Claimant's land is identified in the title deed as bayer rather than as mavat land. While the Regulations to the Abolition Act were drafted so widely that they covered bayer as well as mavat land, the precise status of the Claimant's land could not have been anything other than uncertain until a formal determination had been made. The Tribunal therefore finds that the Iranian land reform legislation relied on by the Claimant did not constitute a legislative taking of the Velenjak property. Nor is there any evidence that any procedures were followed with respect to the Claimant's land under the Act.

56. The Tribunal's inquiry does not end here, however, because the Claimant argues further that even if the laws discussed above are found not to expropriate the property at issue, the property was taken de facto. The Claimant argues that his property rights were interfered with, inter alia, because of restrictions on his ability to transfer his properties and because of restrictions

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[10] This requirement of a prior inquiry into the status of undeveloped lands does exist under the 1982 Urban Lands Act, which provided for a procedure whereby determinations as to which lands were mavat or bayer would be made by a committee composed of representatives of the Ministry of Justice, the Ministry of Housing and Urban Development and the local mayor. Objections could be lodged within 10 days after announcement of the determination. The judicial authorities would take the final decision.

on the use in Iran of foreign powers of attorney.

57. It is well-settled in Tribunal practice that a claim for expropriation necessarily includes a claim for "other measures affecting property rights" as provided for in Article II, paragraph 1 of the Claims Settlement Declaration. See Eastman Kodak Company, et al. and The Government of Iran, et al., Award No. 329-227/12384-3 (11 November 1987), reprinted in 17 Iran-U.S. C.T.R. 153, 169 (hereinafter "Eastman Kodak") ("The Tribunal is satisfied that the Claimant's claim for expropriation must be taken to include a claim for a lesser degree of interference with its property rights."). Consequently, the Tribunal now turns to the question whether the legislation invoked by the Claimant constitutes a measure affecting property rights within the meaning of Article II, paragraph 1 of the Claims Settlement Declaration.

2. Other Measures Affecting Property Rights

58. It is firmly established in the Tribunal's jurisprudence that liability for interference with property rights may be found even where the formal legal title to property has not been affected. In Tippetts, Abbett, McCarthy, Stratton, for example, the Tribunal held that "[a] deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected."[11]

59. Furthermore, the Tribunal has on numerous occasions held that a deprivation of property rights not amounting to an expropriation nevertheless may be compensable. For instance, in Eastman Kodak, 17 Iran-U.S. C.T.R. at 169, the Tribunal stated:

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[11] Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225.

> The fact that Iran's interference did not rise to the level of an expropriation or of a deprivation of ownership rights does not, however, preclude the Tribunal from considering whether the interference established here was such as to constitute "other measures affecting property rights" as contemplated by Article II, paragraph 1, of the [CSD]. Such measures, while not amounting to an expropriation or deprivation, may give rise to liability in so far as they give rise to damage to the Claimant's ownership interests [citation omitted].

See also Foremost Tehran, Inc., et al. and The Government of the Islamic Republic of Iran, Award No. 220-37/231-1 (11 April 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 251 (hereinafter "Foremost Tehran"). Furthermore, the Tribunal has interpreted the language "other measures affecting property rights" as not being limited to a taking of legal title to property, but rather as envisaging a broader range of circumstances that might give rise to liability. See, e.g., Karubian, Award No. 569-419-2, at para. 141; Kenneth P. Yeager and The Islamic Republic of Iran, Award No. 324-10199-1 (2 November 1987), reprinted in 17 Iran-U.S. C.T.R. 92, 99-100.

60. While the legislation invoked by the Claimant appears on balance not to have been self-executing, the history of land legislation during and after the Iranian Revolution indicates the existence of a program by the Iranian authorities at the time to effect far-reaching reform with respect to the ownership of undeveloped or unutilized land. The goal of the various pieces of legislation discussed at paras. 40 to 49, supra, read together, appears to have been to remove from its owners unutilized land larger than a size that might be used to build a house or run a small enterprise, and to redistribute such land. It is significant that more than one year after the Guardian Council declared the government's first attempt to expropriate urban bayer land to be unconstitutional, the 1982 Urban Lands Act explicitly authorized the expropriation of urban bayer lands in certain circumstances. This provides further confirmation that

the ultimate intention of the Iranian legislature in its Revolutionary land reform program was to expropriate all undeveloped urban land, not merely land formally classified as mavat.[12]

61. As noted above, the Claimant's land was identified in the title deed as bayer land, i.e., land that had at some point been developed but had fallen into disuse. It is, however, undisputed that the land was in fact unutilized and unimproved, at least from the time the Claimant purchased it until the date of the Hearing. Therefore the Claimant was in the position of holding land that was formally classified as bayer land, but which was in appearance indistinguishable from mavat land. While the land reform legislation invoked by the Claimant may not have automatically expropriated the Claimant's property, it clearly had an effect on his property rights.

62. Evidence that supports the Claimant's contention that his property rights were infringed includes several reports appearing in Tehran newspapers and other media during the months of May to November 1979.[13] An early foreshadowing of the passage of the Abolition Act is to be found in a report in the Tehran daily newspaper, Kayhan, on 19 May 1979, headlined "Unutilized (Bayer) Lands to be Expropriated for the Benefit of the Oppressed." The article reported that the Iranian Minister of Housing and Urban Development, Mr. Mostafa Katirai, had made the following

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[12] It appears that the Government of Iran also intended to take some rural bayer lands. A 2 March 1980 Amendment to the Lands Grant Act declared that large areas of bayer land in the hands of major land owners that had been kept unutilized would be taken over by the Respondent in order to grant such lands to farmers and other eligible applicants for cultivation. A further Amendment approved on 19 March 1980 restricted the scope of the 2 March 1980 Amendment by providing that such large bayer lands would be taken over by the Government only "if necessary."

[13] All English translations by the Tribunal's Language Services Division.

statement in a radio and television interview:

> In the course of the coming days the government will approve a bill on the basis of which owners of unutilized [bayer] lands located within the boundary of cities shall be given a specific deadline within which to act to construct [housing units] on their lands.
>
> Engineer Katirai warned that if by the expiry of the deadline, owners of unutilized [bayer] lands located within the boundary of cities do not act to build [housing units], the government shall expropriate such lands for the benefit of the oppressed so that they may be used for implementation of the housing projects of the Ministry of Housing and Urban Development.

The article noted further that "[t]his bill is currently being debated in the Council of Ministers and will be implemented immediately upon approval." Mention of a proposed "Act Concerning Abolition of Private Ownership of Bayer [Unutilized] Lands Lying Within the 5-Year and 25-Year Boundaries" also appears in a Kayhan article dated 20 May 1979, which notes that "the Government shall not charge any money for the grant of bayer lands to the public." The Tribunal finds it particularly significant that the word used in these early reports for unutilized land is "bayer." Later, on 27 June 1979, the day after its approval by the Revolutionary Council, Kayhan published the full text of the Abolition Act, noting the "importance of this news."[14]

63. Further relevant newspaper reports include a 2 September 1979 article in the Tehran daily newspaper, Ettela'at, see para. 54, supra, reporting another announcement by the same Iranian Minister of Housing and Urban Development, Mr. Mostafa Katirai, that owners of small parcels of undeveloped lands were obliged

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[14] These reports from Kayhan newspaper were submitted by the Government of Iran in Cases Nos. 800-804 (Dora Sholeh Elghanayan, et al. and The Islamic Republic of Iran).

to develop their lands within the time limit provided in the Abolition Act, while lands in excess of the limit provided by law belonged to the Government. The Minister went on to discuss a prohibition on the transfer of land in excess of the limit:

> For this reason, we have asked the Ministry of Justice to notify the National Organization for Registration of Documents and Real Properties to issue a circular to the Offices of Notary Public prohibiting any transaction on lands in excess of the limit specified by law, because the status of owners of large lands must first be determined so that if they allege that their lands are not undeveloped, the matter must be examined and decided whether or not the land has been developed, then a transaction on it would be permitted.

A report in Ettela'at four days later, on 6 September 1979, confirms that announcement:

> Transactions in Large Undeveloped Lands Shall Be Prohibited.
>
> The National Organization for the Registration of Documents and Lands has issued a circular to all notary public offices throughout the nation, instructing them to prevent transactions in undeveloped lands larger than those limits set in the Regulations Concerning Nullification of Ownership of Undeveloped Lands.
>
> In making this announcement, a spokesman for the National Organization for the Registration of Documents and Real Property told Ettela'at's news reporter that the Regulations Concerning Nullification of Ownership of Undeveloped Lands have been sent to all notary public offices, so that transactions in land will be carried out with due regard to the said Regulations, wherein "undeveloped lands" ["mavat"] and large vis-à-vis small lands have been defined.
>
> Based on the said Regulations, an undeveloped land is a land on which there has been no development, and which has been left idle.

64. Another report in Ettela'at on 27 November 1979, under the headline "Without the Knowledge of the Organization for

Development of Undeveloped Urban Lands: Transaction of Land is Illegal," reads as follows:

> Yesterday, Engineer Mohssen Yahyavi who is in charge of the Ministry of Housing and Urban Development, in an interview, stated the plans of the said Ministry and his own point of view concerning the measure of land, housing problem, purchase of land . . . .
>
> I declare that there is no owner for large lands. If an individual or an entity attempts to divide lands without the permission of the Organization for Development of Undeveloped Lands and to make it available to the others, this is against the law and the Government shall not recognize such an act.

A further report in the Ettela'at of 11 October 1979 affirmed that the Ministry of Housing and Urban Development had stated that "as of Saturday, October 13, without the permission of [the Organization for Development of Urban Lands] transaction of lands at any level and of any measurement is prohibited."

65. While newspaper reports alone may not be sufficient to establish the Claimant's contentions, the Tribunal regards these reports as contemporaneous evidence that corroborates several of the Claimant's contentions about the status of undeveloped land in Iran at the time. See Karubian, Award No. 569-419-2, at paras. 133-37.

66. The Claimant also has contended that his property rights were interfered with by virtue of alleged restrictions on the use in Iran of foreign powers of attorney. In Karubian, the Tribunal quoted from the Ettela'at of 5 March 1980, in which it was reported that the Islamic Revolutionary Prosecutor General had "issued a circular in which he notified all government offices, banks and notary public offices that powers of attorney sent to individuals from foreign countries shall, until further notice, be null and void." Id. at para. 46. The Tribunal further noted in Karubian that it was "aware of the existence of restrictions

placed on powers of attorney sent from abroad." See id. at para. 139. In this Case, too, the Tribunal notes the existence of such restrictions on the ability of the Claimant to transfer his property from abroad.

67. The Tribunal previously has considered in some depth the legislation at issue in this Case. In Karubian, after a detailed examination of the Abolition Act and its Regulations and amendments, as well as other official actions alleged to have interfered with the claimant's property rights (such as restrictions on the use in Iran of foreign powers of attorney), the Tribunal concluded:

> [] The Tribunal is satisfied that governmental action, at least for some time, restricted transactions in undeveloped lands that were larger than a certain size. The Respondent's action also prevented transactions by persons outside Iran. On this basis, the Tribunal concludes that the Claimant's right to dispose of his properties was adversely affected.
>
> [] Even if the Claimant could have transferred his real property, the Tribunal is persuaded that the effect of adoption of the 1979 [Abolition] Act, along with its Amendment and its accompanying Regulations, was to impair the actual possibility of such a transfer. These laws 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. Under the circumstances, the Claimant would have had difficulties in finding a buyer for his properties.

Id. at paras. 142-43.

68. In this Case, the Tribunal is confronted with the same land reform legislation and substantially similar factual circumstances. While the property at issue in this Case is bayer rather than mavat land (such as the relevant property in Karubian, as agreed by the parties in that case), it is clear that bayer land also fell within the confiscatory ambit of the

Abolition Act. See paras. 43-46, supra. Consequently, in the light of the relevant land reform legislation and other governmental measures detailed in contemporaneous newspaper reports, the Tribunal is satisfied that governmental action during the relevant period restricted transactions in all undeveloped lands that were larger than a certain size, whether formally classified as mavat or bayer land. The Claimant's land fell into the category of land that was affected by this governmental action. The Tribunal is persuaded that the effect of the adoption of the Abolition Act, together with its Regulations and amendments, was to impair the right and real possibility of the Claimant to transfer his property. As noted in Karubian (see para. 67, supra), under the circumstances, even if the Claimant had been able to transfer his property, he would have had difficulty finding a buyer for the property.[15] The

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[15] The Respondent has recognized in other cases that substantial amounts of undeveloped land were confiscated pursuant to the Abolition Act. For example, the Respondent argued in one submission that

> [l]egal decisions, such as the approval of the Cancellation of Ownership of Mawat Lands Act, brought extensive lands at the disposal of the government which declared that such lands would be used to meet the needs of homeless persons. Naturally such decisions had extraordinary effects on the demand in the real estate market.

See Case No. 266 (Moussa Aryeh and The Government of the Islamic Republic of Iran).

In another case, the Respondent's expert recognized the effect of these actions on property owners:

> Repeated publication of the news related to assignment of mavat lands to cooperative companies, private-sector companies as well as the measures taken by the government for housing in such lands in the press in 1358 (1979) and the people's knowledge of the government plans in the field of housing resulted in the fact that they did not hurry for homebuying. This in itself caused decrease in demand, [and] decline in the price of land and houses.

See Cases Nos. 839-840 (Eliyahou Aryeh, et al. and The Government

Abolition Act, as amended, impacted upon the Claimant's property rights in other ways as well. The Claimant certainly would have been unable to lease or mortgage the property after the Act's passage, because his continued ownership of it was, at best, uncertain. Even the Claimant's ability to use and develop the land was undermined, because the Government could have chosen to seize it at any time. See Karubian, Award No. 569-419-2, at para. 106.

69. The Tribunal therefore finds that, while the interference created by the cumulative effect of the land reform legislation and related governmental action did not rise to the level of an expropriation, at least prior to 19 January 1981, it has been established that the interference was of such a degree as to constitute "other measures affecting property rights" within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration.

70. The Tribunal further finds that the nature of the interference was such that its effect would have been felt from the date of the passage of the Abolition Act on 26 June 1979. At least as of that date, it would have been common knowledge that restrictions had been placed on the enjoyment and transferability of undeveloped land larger than a certain size. Indeed, even before the passage of the Abolition Act the public had knowledge of the government's intention to implement reforms with respect to unutilized lands, through newspaper reports dated as early as 19 May 1979, several of which reports referred explicitly to bayer rather than mavat land. The issue was reported on extensively in Tehran newspapers during the months of May to November 1979, see paras. 62-64, supra. The Abolition Act was formally announced to the public on 2 July 1979 by Notice No. 7/2064; this action would certainly have confirmed the

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of the Islamic Republic of Iran).

chilling effect on land ownership and transferability created by the passage of the legislation. While it may not have been entirely clear until the promulgation of the Abolition Regulations that the Abolition Act intended to take undeveloped bayer land as well as mavat land, at least from the date of passage of the Abolition Act there was a cloud on the title of the Claimant's property. The passage of the Abolition Regulations merely aggravated an existing interference with the Claimant's property rights and confirmed that property of the type held by the Claimant did indeed come within the scope of the Abolition Act.

71. The Tribunal therefore concludes that the interference with the Claimant's property rights commenced on 26 June 1979, with the passage of the Abolition Act. This is consistent with the Tribunal's prior holdings that where a series of actions has resulted in a deprivation of property rights, the date of the deprivation should be taken to be the date on which the initial interference took place. See, e.g., Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran, Award No. 560-44/46/47-3, para. 79 (12 October 1994), reprinted in _ Iran-U.S. C.T.R. _, _; James M. Saghi, et al. and The Islamic Republic of Iran, Award No. 544-298-2, para. 77 (22 January 1993), reprinted in _ Iran-U.S. C.T.R. _, _; Sedco, Inc. et al. and National Iranian Oil Company, et al., Award No. ITL 55-129-3 (28 October 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 278; Tippetts, Abbett, McCarthy, Stratton, 6 Iran-U.S. C.T.R. at 225. It remains to be determined whether the interference of the type described above caused damage to the Claimant and what compensation, if any, is due to him.

C. The Shahsavar Property

72. As noted above, the Claimant contends that the Shahsavar property was expropriated by the "Law Concerning the Manner of Grant and Reclamation of Lands within the Jurisdiction of the Islamic Republic of Iran" (the "Lands Grant Act"), enacted on 16 September 1979.[16] This is so, the Claimant contends, because the Lands Grant Act expropriated land characterized as "woodlands"; at the time the Lands Grant Act was passed, continues the Claimant, his property was "woodlands." The Respondent contests these contentions, arguing instead that at the time of the alleged taking, the Shahsavar property had been developed as a farm or orchard. It further argues that even if the property was woodland, it was not expropriated by the Lands Grant Act.

73. The overall purpose of the Lands Grant Act appears to have been agrarian land reform. This emerges from the Preamble, which states that "lands and natural resources belong to the Great Creator and [] exploitation of these divine blessings should be accomplished through useful work with a view to satisfying the needs, and achieving the self-sufficiency, of society." Most of the provisions of the Act are concerned with the manner of assignment of lands nationalized under the law to local inhabitants and other applicants. Definitions for land included within the expropriatory scope of the Lands Grant Act may be found in Article 1, the relevant provisions of which read as follows:

> e) Natural Forests and Groves: Natural forests or groves are expanses of open land containing live species of plants (trees, shrubs, bushes, saplings, weeds and mosses), or animals, regardless of the extent of their development, in the creation and development of which man has had no

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[16] English translation by the Tribunal's Language Services Division. The Act was approved on 16 September 1979, announced to the public by Notice No. 55934 dated 26 September 1979 and published in Official Gazette No. 10092 dated 16 October 1979.

role.

* * *

g) Woodlands: These are undeveloped forests in any of the following forms:

> 1. Lands on which the number of trunks, saplings or forest bushes, separately or collectively, exceeds one hundred trunks per hectare. . . .

The expropriatory provision of the Lands Grant Act appears in Article 5, which provides: "The exploitation of natural forests and groves as public wealth is, pursuant to applicable laws and regulations, under the control of the Government." This provision appears either to expropriate such lands or to confirm their previous expropriation.

74. Other definitions relating to woodlands appear in subsequent amendments to the Lands Grant Act. For instance, a 27 February 1980 Amendment defines "Natural Resources Lands" as "forests and pastures, natural groves, government nursery plantations [and] afforested woodlands." This Amendment confirms that "natural resource lands," which include "woodlands," are "at the disposal of the Islamic Government."

75. A further definition can be found in the Regulations implementing the Lands Grant Act, enacted by the Ministry of Agriculture and Rural Development on 10 April 1980 and approved by the Revolutionary Council on 21 May 1980 [hereinafter "Lands Grant Regulations"]. The Lands Grant Regulations appear to affirm that woodlands fell within the expropriatory scope of the Lands Grant Act. Article 1(7) of the Lands Grant Regulations defines the term "Natural Resource Lands," as used in the Lands Grant Act, to include:

d) Wood Lands: These are undeveloped forests in any of the following forms:

> 1. Lands on which the number of stumps, saplings or

> bushes, separately or collectively, does not exceed one hundred per hectare.

The apparently strange definition in the Lands Grant Regulations of woodlands as having no more than 100 trunks per hectare is accompanied in the version submitted by the Claimant by a translator's comment indicating that the use of the negative in the Lands Grant Regulations is probably a typographical error. The definition is also inconsistent with that found in the enabling Lands Grant Act. In light of what is commonly understood as "woodland," the Tribunal agrees that it is more likely that the Regulations defined woodland as land where the number of trees exceeded one hundred trunks per hectare, and that the use of the negative in the text submitted to the Tribunal is a typographical error.

76. In support of the contention that the Shahsavar property was woodland at the time of taking, the Claimant seeks to rely on the description of the property in the title deed, which he translates as "a tract of plain jungle (wood) land." The Respondent's translation of the same part of the deed describes the property in similar terms as "plain forest lands." The Claimant also has submitted two photographs taken from the porch of a house on the property, allegedly during the Claimant's last visit to Iran in 1976. The photographs show a porch in a garden with a heavily wooded landscape in the background in two directions. The photographs do not, however, reveal the extent of the wooded property, or whether it extended in all directions. Furthermore, the photographs reveal that there was at least one building on the property. While the Claimant acknowledges that there were two small houses, a storehouse, a water pump, a water tank and fencing on the property, he contends that its essential nature remained undeveloped wooded land.

77. The Respondent argues, however, that the property cannot have been wooded land at the date of the alleged taking. This

is assertedly so because rural woodlands had been expropriated by Iran in the 1960s. In this regard, the first law of relevance is the 1963 "Law Concerning Nationalization of the Country's Forests." Article One of that Law provides:

> As of the date of the ratification of this legal decree, lands and whatever thereon of all natural forests, pastures and woods as well as forestlands of the country will be regarded as public property and belong to the government.

78. Subsequent legislation then allegedly provided for the conditions under which, and the manner in which, previously nationalized forest land could be assigned to individuals. Article 31 of the Law Concerning Protection and Exploitation of Forests and Pastures (enacted on 21 August 1967) provides that

> [t]he Forestry Department is authorized, in compliance with the following articles, to rent or sell to natural or legal persons the plain woodlands in the north of the country so that they may be used for agriculture, afforestation, cultivation of animal feed, and for animal husbandry, or converted to orchards, pastures or tree nurseries.

Article 34 of the same law states that if the forest land is so converted by a lessee within five years, "the Forestry Department is obligated to sell the rented lands irrevocably to the said lessee upon request." Note 2 to Article 35 provides that if the land has not been developed within five years, "[t]he Forestry Department is obligated . . . to terminate the lease agreement with respect to that part of the forestlands on which development operations have not been carried out."

79. The Respondent argues that the Claimant must have acquired ownership of the Shahsavar property by means of this legislation, because the property was part of a piece of forestland leased to the Claimant's brother-in-law, Mr. Rostami, in 1968, and then transferred to him by the Ministry of Agriculture in 1971. The Respondent argues that in order for Mr. Rostami -- and later the

Claimant -- to have been able to own the property, the forestland must have been developed into farmland or similarly cultivated land before Mr. Rostami was registered as the owner in 1971. Consequently, it argues, in 1979, at the date of passage of the Lands Grant Act, the Shahsavar property would no longer have been wooded land.

80. This explanation by the Respondent is facially plausible. It is arguably consistent with the rather obscure wording of the 1979 Lands Grant Act in that what appears to be the expropriatory provision therein may be read as merely confirming a prior expropriation. On the other hand, it is not entirely consistent with other evidence presented to the Tribunal, such as the Claimant's photographs of the property. Furthermore, the 1963 Law Concerning Nationalization of the Country's Forests contains a Note stating that "[m]asses of forests surrounded by farmlands located in the plain forestlands of the north of the country, which are within the areas covered by private title deeds will not be covered by [the expropriatory provision]." The Tribunal does not have at its disposal the information to determine whether the Claimant's property would have fallen within the scope of the 1963 Act. Moreover, the significance of the 1963 legislation is unclear in that it does not seem consistent with what appears to be a later attempt at land reform of much the same kind of property in 1979, through the Lands Grant Act and its Amendments and Regulations. The Respondent's explanation does, however, serve to question the accuracy of the Claimant's interpretation of the Lands Grant Act and its alleged effect on the Shahsavar property.

81. More importantly, though, it is unclear to the Tribunal precisely what the scope of the definition of "woodlands" in the Lands Grant Act was. For instance, it is unclear whether the improvements admittedly existing on the property (two small houses, a storehouse, a water pump, a water tank and some

fencing) would have removed the Shahsavar property from the category of "woodlands."

82. The Tribunal 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.

83. 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, see paras. 85-86, infra, 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.

84. In the present Case, the Tribunal finds that the Claimant has failed to meet his burden of proving that the Shahsavar Property was of the type covered by the Lands Grant Act. The photographs submitted by the Claimant do not show the extent of the forestation on the property. In particular, they do not demonstrate with clarity the number of trees per hectare over the expanse of the property, which is a highly relevant fact under the terms of the Lands Grant Act. Moreover, the affidavits submitted by the Claimant and his wife concede that there were improvements on part of the property. Indeed, the affidavit submitted by the Claimant's brother-in-law, Mr. Rostami, refers to the property as a "Farm" and a "Woodland Farm." In sum, it

is simply not clear to the Tribunal that the expanse of the property indeed remained in its original wooded state at the date of the alleged taking and that it had not been developed, at least to some extent. Under the circumstances, the Tribunal concludes, on balance, that the Claimant has not shown that the Shahsavar property was expropriated by the 1979 Lands Grant Act. For the same reason, the Tribunal concludes that the Claimant has not made out a claim for "other measures affecting property rights" with respect to the Shahsavar land.

85. The Claimant argues in the alternative that there has been physical interference with the property attributable to the Respondent and amounting to an expropriation. He bases this contention on the fact that in 1980 there was an alleged intrusion onto the land and a confiscation of personal property, which was reported by Mr. Rostami to the local police station. The Claimant contends that the Respondent should be held liable because it failed to act when notified of the incident. The Claimant's brother-in-law also stated in his affidavit that he "believe[d] that the destruction and confiscation was done with the knowledge and approval of the local governmental authorities." At the Hearing, the Claimant testified that the person responsible for the intrusion was the caretaker or gardener of the property, Mr. Esfandiar Goleij, possibly acting with some other unidentified persons.

86. The Tribunal finds that this intrusion is more consistent with theft than with government-sanctioned interference with the property. This conclusion is supported by the fact that the Claimant's brother-in-law chose to report it to the police station rather than to the revolutionary authorities or courts. The Tribunal finds that the evidence presented by the Claimant is insufficient to establish that the alleged interference amounted to any more than an informal occupation of the property by the resident gardener, accompanied by other unidentified

persons. It is well-established in Tribunal practice that not every action arising from revolutionary chaos may be attributed to the Government of Iran. See, e.g., Sea-Land Service, Inc. and The Islamic Republic of Iran, et al., Award No. 135-33-1 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 149, 164-66 (holding that no expropriation had taken place where the disruption was due to general revolutionary upheaval); Starrett Housing Corp., et al. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 32-24-1 (19 December 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 156 (holding that "[a] revolution as such does not entitle investors to compensation under international law.") The Tribunal therefore finds that there is insufficient basis for attributing liability to the Respondent for any physical intrusion onto the Shahsavar property in 1979 or 1980.

87. Consequently, the Claimant's claim in respect of the Shahsavar property is hereby dismissed by reason of the Claimant's failure to prove that the Respondent expropriated the property or otherwise interfered with his property rights.

D. The Caveat in Case No. A18

88. The Tribunal notes that the Respondent has argued in this Case that the Claimant's claims should be barred on the basis of the caveat in Case No. A18. The Respondent bases its argument on Articles 988 and 989 of the Iranian Civil Code. Article 988, in relevant part, reads as follows:

> Iranian nationals cannot abandon their nationality except on the following conditions:
>
> * * *
>
> 3. That they have previously undertaken to transfer, by some means or other, to Iranian nationals, within one year from the date of the renunciation of their Iranian nationality, all the rights that they possess

> on landed properties in Iran or which they may acquire by inheritance although Iranian laws may have allowed the possession of the same properties in the case of foreign nationals. . . .

Article 989 of the Iranian Civil Code, in relevant part, reads as follows:

> In case any Iranian subject acquired foreign nationality after the solar year 1280 (1901-1902) without the observance of the provisions of law, his foreign nationality will be considered null and void and he will be regarded as an Iranian subject. Nevertheless, all his landed properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale.

89. The Respondent argued in its pleadings and at the Hearing that because the Claimant had acquired a foreign nationality on 24 July 1978, as of 24 July 1979 -- one year after his acquisition of United States nationality -- he was in violation of the provisions of Articles 988 and 989 and could no longer legally own real property in Iran. At the Hearing, Counsel for the Respondent argued as follows:

> What I am trying to say is that, when a national or an individual who has acquired U.S. nationality fails to perform his legal obligations required by the laws of Iran or the United States, the application of the legal requirements would have two consequences: 1) to deny claims founded on any rights retained over immoveable property for more than a year after the acquisition of U.S. nationality or obtained subsequent to the acquisition of that nationality -- in simple words: whoever acquires U.S. nationality has the right to retain his immoveable property in Iran only within one year; [and] 2) to disallow any other claims that the Claimant could not possibly have because of the restrictions imposed upon him by Iranian law, as a result of his loss of Iranian nationality. That is to say, if a claimant has failed to perform his legal obligations, whatever claims brought by him on the basis of his nationality must be disallowed.

Again during the Hearing, he reiterated:

> Mr. Mohtadi's problem is that he could not own any immoveable property in Iran after the lapse of one year after his acquisition of United States nationality. Meaning that, after he acquired United States nationality he was considered a foreigner, and Iran bars foreigners from acquiring immoveable property in Iran.

90. It further seems clear that the Respondent reads Article 988 and 989 together to arrive at an understanding of their import. To quote the Respondent's Lead Counsel once again:

> Here, if we read these two Articles [988 and 989] together, we certainly will arrive at the conclusion that a person who has renounced his Iranian nationality without observing the legal requirements, and has failed to make use of the one year period required by that law to sell his properties, is subject to punishment. In fact the sanction set by the Government for observance of that Article of the law is that it enjoys the right to sell the properties of such persons and to remit the proceeds to them.

91. The Respondent's stance regarding the one-year grace period is consistent with the Tribunal's prior holding that Articles 988 and 989 of the Iranian Civil Code, read together, provide for a one-year grace period after the acquisition of a second nationality before the question of the enjoyment of property rights contrary to Iranian law has to be considered. In the Mahmoud case, the Tribunal held as follows:

> According to Iranian law, therefore, the Claimant could only have kept the property for one year from the date of her naturalization. The period of one year had not yet expired at the date of the alleged expropriation and thus the question of her enjoyment of property rights contrary to Iranian law does not fall to be decided.

Leila Danesh Arfa Mahmoud and The Islamic Republic of Iran, Award No. 204-237-2 (27 November 1985), reprinted in 9 Iran-U.S. C.T.R. 350, 354. See also Article 4, Note 2, of the Tribunal Rules (stating that "[a]n appointed representative shall be deemed to be authorized to act before the arbitral tribunal on behalf of

the appointing party for all purposes of the case and the acts of the representative shall be binding upon the appointing party").

92. The Tribunal has held in para. 71, supra, that the "measures affecting property rights" that affected the Claimant's property interests in the Velenjak property commenced from the date of passage of the Abolition Act (26 June 1979). As noted at para. 70, supra, the impact of the passage of the Act, which had been presaged in several newspaper reports, would have been intensified by its official announcement to the public on 2 July 1979. These events both occurred less than one year after the Claimant's acquisition of United States nationality on 24 July 1978. Consequently, in the light of this finding, and given the Tribunal's dismissal of the Claimant's claim for the Shahsavar property, see para. 87, supra, the issue of the Claimant's enjoyment of real property rights in Iran in a manner inconsistent with Iranian Law does not fall to be decided. The Tribunal therefore finds it unnecessary to consider this issue.

VI. VALUATION

93. The Claimant's initial contribution on the question of valuation is an affidavit by Mr. Akbar Vaghei, who states that "on a part-time basis I sold land in Tehran" during the 1970s and who claims to have been "familiar" with properties in Tehran, having bought or sold "more than ten pieces of property in Tehran from 1973 through 1976." Mr. Vaghei states further that the Velenjak Property was located close to the Tehran Hilton Hotel and that -- based upon his inspection of the site in April 1992 -- it is surrounded by large and expensive residences. He values the Velenjak Property in 1979 at U.S.$1,300,000.00. No indication is given of his formal qualifications as an appraiser.

94. At the Hearing, the Claimant presented the testimony of a

second expert, Mr. Mansour Anvari, who stated that he had worked for the Ministry of the Interior of Iran; served as mayor of several municipalities; acted as the representative of the Minister at the Plan and Budget Organization; and had been the majority shareholder, managing director and chairman of the board of the Khara Construction Company. As part of his work with the Khara Construction Company, he allegedly bought or sold "more than 70 pieces of property" between 1970 and 1979 in Iran, including approximately eight pieces in Tehran, most notably within "two miles" of the Velenjak Property. At the Hearing, Mr. Anvari explained the basis for his valuation in some depth. Regarding the Respondent's contention that land prices in Iran were extremely depressed during 1979, he testified that although "during the Revolution and the period of transformation, the market was inactive," after a "period of two to three months, when everything returned to normal, the prices again found their natural course." Mr. Anvari values the Velenjak Property at U.S.$1,195,751.00 in 1979.

95. The Respondent contests the Claimant's valuation of the Velenjak Property. It presents the testimony of Mr. Kamal Majedi Ardakani, who states that he worked at the National Organization for the Registration of Documents and Real Property for 30 years as a topographical engineer and assessor. At the time the Hearing was held, he had worked as an authorized expert licensed by the Ministry of Justice for 17 years. In the pleadings and at the Hearing, Mr. Ardakani testified that during the Islamic Revolution land prices in Iran fell drastically because of the large number of people leaving Iran and the reduced demand for houses. He values the Velenjak Property at between 3,000 and 3,500 Rials per square meter, which, converted at the 1979 exchange rate of 70.6 Rials to the dollar, results in an assessment between U.S.$89,000.00 and U.S.$104,000.00 for the property.

96. The Tribunal notes as an initial matter that the qualifications of the expert witnesses provided by both Parties contain certain deficiencies. Mr. Vaghei claims to have experience in the purchase and sale of property. By his own admission, however, this experience is confined to the sale of a very limited number of properties. Furthermore, his affidavits provide little detail as to the basis for his valuation. Consequently, the Tribunal is not convinced that Mr. Vaghei is adequately qualified or experienced such that the Tribunal could give his evidence substantial weight.

97. The qualifications of Mr. Anvari are more extensive. He appears to have had substantial exposure to land issues both through the governmental positions he held and through his commercial dealings involving the purchase and sale of land in Tehran and its environs. Furthermore, he allegedly had knowledge of comparable properties, in that he had bought land within two miles of the Velenjak Property and his own house was located in the same area. The qualifications of Mr. Ardakani, on the other hand, while revealing that he has occupied two positions in Iranian offices dealing with land transactions, are ambiguous as to whether he himself ever assessed property values in either of those two functions. Moreover, at the Hearing he admitted that he had never been a property broker and had never appraised property for tax or insurance purposes.

98. The Tribunal now turns to the content of the experts' opinions, noting first the extreme lack of detail contained in the valuation by Mr. Vaghei. Mr. Anvari, on the other hand, provided a much more thorough explanation for his valuation and gave a plausible explanation for fluctuations in property prices around the time of the Revolution. The views of the Claimant's experts, however, are disputed by Mr. Ardakani, who testified to a sharp drop in property prices in Iran during the Revolution. He testified that his conclusions were supported by his having

studied the "relevant registration records" and having "surveyed the local situation" of the land. He failed, however, to produce any documentation corroborating his contentions regarding comparable land values, despite his admitted access to such documents. In addition, the Tribunal found some of his statements during the Hearing to be somewhat less than fully candid. For example, he testified that the large size of the Velenjak property and the fact that it has a view overlooking Tehran would reduce the price of the land -- a position the Tribunal finds to be at odds with common sense.

99. The title deed provided by the Claimant provides very little guidance on the question of valuation. According to the deed, the Claimant paid an amount of 180,000.00 Rials (approximately U.S.$2,500.00) for the property in 1967. The Claimant has, however, explained the discrepancy between the amount in the title deed and the amount he claims to have paid for the land in 1967, namely $200,000.00, by saying that the figures in the title deed were entered by the broker. His counsel speculated that the use of the lower amount might have been intended to avoid the payment of higher transfer taxes. The Tribunal notes that even adjusting for the effects of inflation and increases in the value of real property, $2,500.00 does not appear to be a realistic figure. Furthermore, the Respondent does not suggest that the property was worth such a minuscule amount, valuing the property closer to $100,000.00 in 1979.

100. In sum, the Tribunal notes that the evidence proffered by both Parties contains deficiencies. In this regard, however, the Tribunal notes further that the Respondent could have remedied any deficiencies in its valuation evidence without difficulty. Documents within the control and access of the Respondent -- such as government statistics, tax records and registration records of sales of comparable properties in 1979 -- would have been relatively easy for the Respondent to procure. In fact, the

Respondent's expert stated explicitly that he had viewed at least some such documents, and yet he failed to present them to the Tribunal. The Claimant, on the other hand, is surely in a weaker position with respect to gathering material held in governmental offices in Iran.

101. Given the above considerations, and in light of the deficiencies in the record, the Tribunal must rely upon its discretion to assign a value to the Velenjak Property "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 (31 March 1989), reprinted in 22 Iran-U.S. C.T.R. 3, 80 [hereinafter "Seismograph"]. See also Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 314-24-1 (14 August 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 221. The Tribunal concludes that a fair and reasonable assessment of the value of the property in June 1979 would be U.S.$600,000.00.

102. The Tribunal turns now to determining the appropriate measure of compensation to be applied in a situation where no outright expropriation has taken place, but where the Claimant's property rights nevertheless have been affected within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration. The approach of the Tribunal in such cases has been to identify the particular ownership right or rights affected by the government's actions and to award compensation for the infringement of that right or rights, less the value retained after the interference had occurred. See Eastman Kodak Company and The Government of Iran, Award No. 514-227-3 (1 July 1991), reprinted in 27 Iran-U.S. C.T.R. 3, 17; Seismograph, 22 Iran-U.S. C.T.R. at 80; Foremost Tehran, 10 Iran-U.S. C.T.R. at 253.

103. In order to determine which rights have been affected in the

present case, the Tribunal first turns to the so-called "bundle of rights" that make up the right of ownership. Under the law of both civil and common law countries, the elements of this right traditionally are regarded to include: the right to use the property; the right to enjoy the fruits of it; the power to possess the property; the right to exclude others from the possession or use of the property; and the right to dispose of it. Moreover, the right of ownership of real property generally confers "wide powers of control, disposition and use of the land."[17] Examples of such powers would be the rights to use and improve the real property, lease it, mortgage it, sell it or otherwise dispose of it, and to prevent third parties from using or occupying the land. Ownership is thus a comprehensive right, limited in the public and private law of most legal systems only in areas such as the control of natural resources, planning and development regulations and nuisance.[18]

104. The nature of the interference found to have occurred, see para. 68, supra, effectively made the Velenjak Property subject to seizure by the government at any time and thereby affected several of the Claimant's rights of ownership in the property. First, as concluded in para 68, supra, Dr. Mohtadi's ability to sell the property was certainly affected by the passage of the Abolition Act and public awareness of that fact. Second, given the publicity associated with the interference with the property, the likelihood of his being able to mortgage or lease the property would have been negligible, as no rational tenant or mortgagee would have been interested. Third, the passage of the Abolition Act would have infringed upon the Claimant's ability to develop the property in any significant way, such that the

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[17] Robert Megarry, et al. Manual of the Law of Real Property 506 (7th ed. 1993).

[18] See id. at 506-56; Roger A. Cunningham, et al., The Law of Property 1-25 (1993); C.G. Van Der Merwe, The Law of Things 97-115 (1987).

right was rendered meaningless. Fourth, with the imminent possibility of confiscation by government authorities created through the Abolition Act and its amendments and Regulations, his right to exclude others from the property was likewise affected.

105. On the other hand, some elements of the Claimant's ownership rights remained unaffected. First, he undoubtedly retained title to the Velenjak Property. Neither of the Parties has ever suggested that between the date the claim arose and 19 January 1981, the property was transferred from his name. Second, the Claimant retained the use of the land, although this right was, in reality, quite limited due to the "cloud" of possible confiscation that hung over the property.

106. Significantly, however, it is clear from the pleadings and from testimony at the Hearing that the Claimant had purchased and retained the Velenjak Property primarily for investment purposes. There is no indication in the record that he intended to develop the property in any significant way; rather, he intended to resell the land at a higher price than he had paid in 1967. For this reason, the Claimant's loss of his ability freely to sell the property had a profound effect on the use that the Velenjak Property had for him and thus fundamentally affected his right of ownership. This interference was exacerbated by the fact that it would have been highly unlikely that he would have been able to derive income from the property by leasing it. The retention of bare title to the property and the limited use-rights remaining would not have been significant in comparison to the Claimant's loss of his primary use for the property.

107. Furthermore, the interference with the Claimant's rights was not merely ephemeral. See Tippetts, Abbett, McCarthy, Stratton, 6 Iran-U.S. C.T.R. at 225-26. Even after the Guardian Council in February 1981 declared unconstitutional the attempt to take bayer land through the Abolition Regulations, the Iranian

legislature continued its attempts to reform the ownership of certain urban bayer lands. For instance, the Urban Lands Act of 1982 authorized the taking of urban bayer lands under certain circumstances, see paras. 49, 60, supra. See also Karubian, Award No. 569-419-2, at para. 36 (discussing other takings of mavat lands by the Government of Iran).

108. Under the circumstances, the Tribunal deems it fair to apply a discount of 15% to the full value of the property (namely $600,000.00, see para. 101, supra), to reflect the lesser degree of interference with the property and the value of the residual rights that the Claimant maintained in the property during the period between the date of initial interference and 19 January 1981. Consequently, the Tribunal concludes that the Claimant should be compensated in the amount of U.S.$510,000.00 for interference with his property rights attributable to the Respondent.

VII. COSTS

109. Considering the outcome of the Award, the Tribunal, applying the criteria outlined in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 323-24, decides to award the Claimant U.S.$15,000.00 in costs of arbitration.

VIII. AWARD

110. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent is ordered to pay the Claimant, Dr. Jahangir Mohtadi, the sum of U.S.$510,000.00, plus

simple interest at the rate of 8.2% per annum (365 day basis), calculated from 26 June 1979 up to and including the day on which the Escrow Agent instructs the Depositary Bank to effect payment to the Claimant out of the Security Account, for its interference with the Claimant's property rights in respect of the Velenjak property;

(b) The claim for the expropriation of the Shahsavar property is dismissed for failure to prove expropriation or any other measure affecting property rights;

(c) The Respondent is ordered to pay the Claimant costs of arbitration in the amount of U.S.$15,000.00;

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

Dated, The Hague
2 December 1996

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God

Richard C. Allison

(Separate Opinion)

Mohsen Aghahosseini

Dissenting as to the findings on the Velenjak Property.