IRAN-US CLAIMS TRIBUNAL

IUSCT Case Nos. 842, 843 and 844

VERA-JO MILLER ARYEH, LAURA ARYEH, J.M. ARYEH V. THE ISLAMIC REPUBLIC OF IRAN

AWARD (AWARD NO. 581-842/843/844-1)

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22 May 1997

Tribunal:
Bengt Broms (President)
Charles T. Duncan (Appointed by the claimant)
Assadollah Noori (Appointed by the respondent)

Award (Award No. 581-842/843/844-1)

I. PROCEEDINGS

1. Procedural History of the Cases

1. On 19 January 1982, VERA-JO MILLER ARYEH filed a Statement of Claim (Case No. 842) against THE ISLAMIC REPUBLIC OF IRAN (the "Respondent") seeking a total amount of U.S.$29,685,146.00 [1] for the alleged expropriation of her interests in nine Iranian corporations holding real and industrial properties (in the amount of $29,150,146.00); of an unstated number of shares in the Iranians' Bank (with a value of $235,000.00) [2] and in the Hekmaton Sugar Refining Factory in Hamedan (with a value of $100,000.00) [3]; and also for the alleged expropriation of her personal property in the form of the contents of a family house in Mahmoudieh (north of Tehran) (with a value of $200,000.00). [4] On 19 January 1982, Vera-Jo Miller Aryeh also filed two other cases, on behalf of her then minor children LAURA ARYEH (Case No. 843) and J.M. [JASON] ARYEH (Case No. 844) for the expropriation of their assets in the above nine companies. The relief sought in each of these Cases was $15,116,570.00. [5] In their Hearing Memorial filed on 15 November 1991, the claims regarding the alleged expropriation of shares and interests in the various corporations were limited to five of the nine companies mentioned in the Statements of Claim, i.e., to Sherekat Sakhtemani Aslemaskan ("Aslemaskan"), Grouh Towlidi Tehran ("GTT"), Sherekat Sakhtemani Iram ("Iram"), Karkhanejat Towlidi Tehran ("KTT"), and Sherekat Sakhtemani Va Kesht Va Sanat Seeb Talaie ("Seeb Talaie"). In the same Memorial, the Claimants also sought added relief in the amount of $1,285,714 allegedly representing the value of their 20 % interest in KTT they were forced to sell to the Respondent or its controlled entities or instrumentalities in 1976 pursuant to the 1975 Expansion of Ownership of Producing Units Act (the "Expansion of Ownership Act"). Additionally, in their Rebuttal Memorial filed on 12 July 1993, the Claimants sought relief in the amount of Rls. 623,177.00 [6] for the alleged expropriation of the balances of bank accounts held by Jason Aryeh with Bank Melli Iran and Bank Pars and an account held by Laura Aryeh with Bank Melli Iran. The Claimants further seek interest from the time of expropriation, attorney's fees and costs of proceedings.

2. On 10 May 1991, the Tribunal, by identical Orders in each Case, joined the jurisdictional issues in these Cases to the consideration of the merits. In these Orders, the Claimants were invited to file

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[1] All references to dollars in this Award are to United States dollars.

[2] At the beginning of the First Hearing, this Claim was amended on the basis of the documents included in the Respondent's reply to a discovery request. These documents established that each Claimant had four shares of the Iranians' Bank with the value of Rls. 10,000 per share.

[3] This portion of Vera-Jo Miller Aryeh's claim was withdrawn at the beginning of the First Hearing.

[4] This portion of Vera-Jo Miller Aryeh's claim was withdrawn at the beginning of the First Hearing.

[5] Vera-Jo Miller Aryeh together with her children are hereinafter referred to as the "Claimants". Laura and Jason Aryeh together are referred to as the "Aryeh children".

[6] All references to Rls. or Rials in this Award are to Iranian Rials.

their Hearing Memorial and evidence by 9 August 1991.

3. On 24 May 1991, the Claimants filed a joint request for consolidation of Cases Nos. 842, 843 and 844. In a letter filed on 28 June 1991, the Respondent expressed that it had no objection to the request. Accordingly, by Order of 11 July 1991, the Tribunal decided to coordinate the proceedings in Cases Nos. 842, 843 and 844.

4. After two extensions, on 15 November 1991, the Claimants filed their Hearing Memorial and evidence. In their Hearing Memorial it was stated that Laura and Jason Aryeh were now of legal age and, thus, prosecuting their Claims on their own behalf. They confirmed the representation of their Claims by their mother, Vera-Jo Miller Aryeh, and appointed the same attorneys as she had appointed for purposes of these proceedings.

5. On 15 November 1991, the Claimants also filed a letter in which they presented a request for the production of documents. On 22 November 1991, the Tribunal invited the Respondent to comment on the Claimants' request and, by implication, vacated the filing schedule set forth in the Tribunal's Order of 13 November 1991. On 6 December 1991, the Claimants filed their request for modification and clarification of the Tribunal's Order of 22 November 1991. The Respondent filed its comments thereon on 16 December 1991. By Order of 19 December 1991, the Tribunal confirmed that its Order of 22 November 1991 was still effective, and that the Order of 13 November 1991 was vacated.

6. On 31 December 1991, the Agent of the Islamic Republic of Iran filed a letter in which he requested the Tribunal to order the Claimants to file the Persian translation of Volume IV of the Claimants' Exhibit Book (the Valuation Report of Business Valuation Services), the original English version of which was filed on 15 November 1991 with the Claimants' Hearing Memorial. On 9 January 1992, the Claimants filed a response to the Agent's letter. In that response the Claimants argued that, according to the Tribunal's practice, the expert reports were allowed to be submitted without translation. By Order of 15 January 1992, the Tribunal, referring to Article 17 of the Tribunal Rules, requested the Claimants to provide a Persian translation of Volume IV of the Claimants' Exhibit Book by 2 March 1992 and annexed thereto the Tribunal's guidelines for the translation of documentary evidence. In compliance with this Order, the Claimants filed the Persian translation of Volume IV of their Exhibit Book on 19 February 1992.

7. On 21 January 1992, the Claimants filed a letter in which they requested the Tribunal to establish a schedule for further proceedings in these Cases. On 28 January 1992, the Agent of the Islamic Republic of Iran filed a letter commenting on the Claimants' letter of 21 January 1992 and the Tribunal's Order of 22 November 1991 which vacated the filing schedule.

8. On 21 February 1992, after one extension, the Agent of the Islamic Republic of Iran filed the Respondent's response to the Claimants' request for production of documents. The Respondent also made a proposal that the Tribunal should bifurcate the proceedings in these Cases and confine the proceedings to certain preliminary issues.

9. By Order of 6 March 1992, the Tribunal found the Claimants' request of 15 November 1991 for production of documents inadmissible, since the record failed to disclose what efforts the Claimants had made to secure the requested documents. Therefore, the Tribunal denied the Claimants' motion. Moreover, by the same Order, the Tribunal did not deem it appropriate to bifurcate the

proceedings in these Cases, since the Claimants had already filed their Hearing Memorial and evidence. Therefore, the Tribunal denied the Respondent's request. Accordingly, the Tribunal established a new filing schedule for further submissions in these Cases.

10. On 23 March 1993, after four extensions, the Respondent filed its Hearing Memorial and Evidence.

11. On 6 May 1993, the Claimants filed another request for the production of documents. On 10 May 1993, the Agent of the Islamic Republic of Iran filed a letter stating that the Claimants' request should be denied because it was a demand for the revision of a previous Order of the Tribunal. By Order of 24 May 1993, the Tribunal invited the Respondent to explain whether it was possible to produce any of the requested documents and, if so, to make the producible documents available at the Tribunal by 23 July 1993. After two extensions, on 5 November 1993, the Respondent filed its response to the Tribunal's Order of 24 May 1993, together with a number of documents.

12. On 12 July 1993, after two extensions, the Claimants filed their Rebuttal Memorial and Evidence. On 15 December 1993, the Claimants filed a letter in which they requested the Tribunal to schedule a three-day hearing for these Cases. By Order of 24 March 1994, the Tribunal scheduled a Hearing to be held on 23, 24 and 25 January 1995.

13. On 1 March 1994, the Claimants filed a letter in which they presented their comments on the Respondent's response to the Tribunal's document production directive. The Claimants argued that the Respondent had failed to produce most of the requested documents and had, instead, submitted to the Tribunal documents which were either previously submitted, incomplete or irrelevant to these Cases. Moreover, the Claimants requested the Tribunal to determine that, because of the Respondent's failure to produce the relevant documentation in its possession or under its control, an evidentiary presumption existed in favor of the Claimants that the documents which were not provided would have contained evidence confirming the Claimants' Claims. By Order of 10 March 1994, the Tribunal took note of the Claimants' letter and the request included therein and decided that the Tribunal would consider any issues concerning the burden of proof raised by the Claimants' request for production of documents of 6 May 1993 and the Respondent's response of 5 November 1993 thereto in connection with the Tribunal's judgment on the merits.

14. On 23 September 1994, the Claimants filed a request for scheduling a pre-Hearing conference to be attended by the counsels of the Parties. The Claimants proposed to hold the conference in order to establish a mutually agreeable schedule for further proceedings. By Order of 28 September 1994, the Tribunal decided that it was not necessary to hold a pre-Hearing conference for the requested purpose, referring to Article 15, Notes 2 and 4, of the Tribunal Rules. However, the Tribunal allowed the Claimants to submit their comments on the issue of scheduling further proceedings. On 6 October 1994, the Claimants filed their response, and on 10 October 1994, the Agent of the Islamic Republic of Iran submitted his comments on the Claimants' response.

15. On 11 November 1994, after six extensions, the Respondent filed its Rebuttal Memorial and Evidence. However, the content of the Respondent's Document 127 [Exhibit 6: Valuation] was not in proper form, because, inter alia, several English translations of the Persian documents contained therein were not enclosed and one attachment was missing. On 21 November 1994, the Claimants filed a letter in which they stated, inter alia, that the Respondent's rebuttal filing was partially deficient because a number of the required English or Persian translations of Exhibits were not

included therein. The Claimants requested the Tribunal to direct the Respondent to file only the Persian translation of Exhibit 6A and the English translations of Exhibit 6B including Attachments 1, 5, 6, 7, 8, 11 and Attachment 9, which was completely missing; Exhibit 6C and all Attachments thereto, and Exhibit 6E; all these Exhibits and Attachments belonging to Document 127.

16. On 23 November 1994, the Tribunal issued an Order in which the Tribunal requested the Respondent to submit forthwith, but in any event no later than 30 November 1994, the requested document and translations or the corrected version of Document 127.

17. On 30 November 1994, the Agent of the Islamic Republic of Iran filed a submission including a letter, the Persian translation of Exhibit 6A and the English translations of Attachments 1, 3-5 to Exhibit 6B, Attachment b to Exhibit 6C1, Exhibit 6E of the requested documents; all these Exhibits and Attachments belonging to Document 127. Moreover, the Respondent submitted the Persian translations of Document 125 and Attachment 2 to Exhibit 6B, Document 127, which were not requested in the Order. The filing did not include the requested English translations of Exhibit 6B including Attachments 6, 7, 8, 9 and 11 thereto, Exhibit 6C1 and Attachments a and c thereto, and Exhibit 6C2. However, in the letter, the Agent stated that the "remaining documents will be filed with the Tribunal within the next week as soon as he receives them from Iran".

18. On 1 December 1994, the Agent of the Islamic Republic of Iran filed a letter with the Tribunal concerning the Respondent's failure to file the remaining documents responsive to the Tribunal's Order of 23 November 1994. Finally, on 8 December 1994, the Respondent filed Documents 135-136 as a corrected version of Document 127.

19. On 21 December 1994, the Claimants filed their list of witnesses, wherein eight persons were mentioned. On 23 December 1994, the Agent of the Islamic Republic of Iran filed two letters. In one letter the Agent objected to three of the Claimants' witnesses. In the other letter the Agent named eight persons as the Respondent's witnesses. On 28 December 1994, the Agent of the Islamic Republic of Iran filed a letter, in which he informed the Tribunal that the Respondent substituted one of its witnesses and stated that, if the Claimants did not object to a further substitution of witnesses, the Respondent might introduce replacements for other witnesses who may not be able to come to The Hague.

20. By Order of 29 December 1994, the Tribunal decided that two of the Claimants' witnesses, objected to by the Respondent, would be heard at the Hearing as witnesses and that the status of Raffie [Raffiollah] Aryeh, Vera-Jo Miller Aryeh's former husband and father of the Aryeh children, would be decided at the Hearing. At the Hearing, following objections from the Respondent, the Tribunal decided that Raffie Aryeh could testify as a party witness. The Tribunal further decided that he would not be permitted to give an oath since his testimony was that of a party witness.

21. On 6 January 1995, the Agent of the Islamic Republic of Iran filed a letter in which he requested the Tribunal to grant an additional fourth day for the Hearing. On 18 January 1995, the Claimants filed a letter in which they stated that one of their witnesses had to depart from The Hague on 25 January and others on 26 January 1995. Therefore, the witnesses would not be available if the Tribunal decided to extend the Hearing for an additional day. The Claimants would not object to the Respondent's request for an additional day, however, if these witnesses were given sufficient time to conclude their testimony and rebuttal testimony.

22. The Hearing was scheduled to be held on 23, 24 and 25 January 1995. However, one arbitrator was unable to attend the Hearing as scheduled. The Chairman decided to postpone the Hearing to 26 January 1995 through 29 January 1995 after consultations with and the consent of Judge Noori, Judge Duncan, and the Agents of the Islamic Republic of Iran and the United States of America. The Hearing was held as rescheduled.

23. At the Hearing, both Parties submitted new documents. The Claimants submitted two documents,[7] one of which was withdrawn, and the Respondent submitted two documents.[8] The Tribunal reserved the right to decide the status of these new documents after the Hearing, if necessary.

24. At the end of the Hearing, the Chairman, following the adopted practice of the Chamber and in accordance with Article 29, paragraph 1, of the Tribunal Rules, closed the proceedings in these Cases.[9]

25. On 9 March 1995, the Claimants submitted the hearing transcripts in five volumes to the Tribunal.

26. After the Hearing, on 19 April 1995, the Agent of the Islamic Republic of Iran filed a letter entitled "Report on the Inspection of Records at Iranian Corporations' Registration Departmen[t] (CRD) With Respect to Mrs. Aryeh's Signature". In the Report the Respondent, inter alia, alleged that the signature of Mrs. Aryeh on four Memoranda of Association was forged. On 4 May 1995, the Claimants filed a letter in which they stated, inter alia, that the filing of the Agent's letter of 19 April 1995 was in violation of Article 29 of the Tribunal Rules and requested that the letter should be rejected by the Tribunal and not admitted in the proceedings.

27. On 8 May 1995, the Agent of the Islamic Republic of Iran filed his response to the Claimants' letter.[10] On the same day, he also filed another letter entitled "Report of Prosecution of the Committed Crimes". According to this Report, the Bureau of International Legal Services of the Islamic Republic of Iran had recently discovered the alleged forgery by Raffie Aryeh and an official of the CRD by the name of Mr. Motazedi, who was involved in the act of registration of those companies. These men were purportedly being prosecuted by the Deputy Public Prosecutor's Office of Tehran for participation in or aiding and abetting forgery of official documents. The Report indicated further that the Claimants were being prosecuted for the crime of using forged documents.

28. After one round of deliberations in the Cases, the Tribunal, by Order of 10 May 1995, deemed it appropriate to invite the Parties to submit their comments on and limited to the question of the alleged forgery, as described in the Agent's letter of 19 April 1995 and his two other letters of 8 May 1995 (see, supra, paras. 26-27), and what impact the use of the allegedly forged documents would have on the Cases. The Tribunal left undecided the issue of the admissibility of the Respondent's

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[7] The Claimants submitted an extract of pages 6 and 7 of the UK "Members Handbook 1993, Volume II, Accounting, Auditing and Reporting", published by the Institute of Chartered Accountants in England and Wales for the witness examination. The other document consisted of Iranian newspaper clippings regarding land prices and this document was withdrawn due to the Respondent's objection.

[8] The Respondent distributed a document entitled "List of Documents presented by the Claimants which relate to a Date After the Relevant Period" and a copy of the "Text of the Law for Expansion of Industrial Ownership".

[9] The general practice of the Tribunal is that the Chambers do not formally or explicitly declare that they apply Article 29, paragraph 1, of the Tribunal Rules; but, this fact automatically follows from the scheduled termination of a hearing. Accordingly, the Tribunal views additional evidence submitted after a hearing as post-hearing submissions. Given the foregoing, it stands to reason that the filing of documents after the closure of a hearing does not lead to a reopening of the hearing, but only to a decision on the admissibility of the late-filed documents.

[10] The 8 May 1995 letter was filed in English only. On 9 May 1995 the Persian translation of the same letter was filed together with a note containing corrections to the English version of the letter.

post-hearing submissions and postponed that decision until the second phase of the deliberations in the Cases.

29. Accordingly, on 2 June 1995, the Agent of the Islamic Republic of Iran filed the Respondent's response to the Tribunal's Order entitled "Brief and Evidence on the Question of Forgery and the Impact of the Forged Documents on the Case" together with a letter, in which he, inter alia, requested the Tribunal to arrange a hearing on the forgery issue after the Claimants' response was filed. These documents were, however, filed only in English; the Persian translations were filed on 14 June 1995. On 13 June 1995, the Respondent filed revised English translations of two legal opinions contained in the submission of 2 June 1995. Moreover, on 8 June 1995, the Agent of the Islamic Republic of Iran filed a letter entitled "Discovery of More Instances of Forgery", which also contained an expert opinion annexed to it.

30. On 7 July 1995, the Claimants filed a letter in which they requested an extension until 28 July 1995 to file their response to the Brief of the Respondent. By Order of 10 July 1995, the Tribunal granted the Claimants' request. On 12 July 1995, the Agent of the Islamic Republic of Iran filed a letter, in which he, inter alia, commented on the Claimants' request and the reasons presented for that request.

31. On 28 July 1995, the Tribunal received a telefax from the Claimants in which they stated that due to unexpected delays the documents might not reach the Tribunal before the close of business on Friday 28 July 1995, but would be filed on Monday 31 July 1995, for which the Claimants requested the Tribunal's indulgence. They further informed the Tribunal that the Persian translation of certain documents would not be finalized within the prescribed time limits because of unavoidable difficulties.[11] The Claimants anticipated submitting these translations to the Tribunal in the course of the following week. The English version of the Claimants' comments and evidence and the incomplete Persian translation were received by the Tribunal Registry on 31 July 1995. These were kept there pending the receipt of the complete Persian texts. However, on 8 August 1995 the Tribunal received another telefax from the Claimants, in which they informed the Tribunal that various technical problems had required the retranslation of certain documents. Thus, the Claimants asserted that the translations would be filed on 10 August 1995 at the latest.

32. On 8 August 1995, the Agent of the Islamic Republic of Iran filed a letter objecting to the fact that the Claimants had presented only the English version of their brief and evidence. As a result, he requested the Tribunal to refuse to admit any new brief and evidence and to return the papers previously submitted by the Claimants.

33. On 11 August 1995, the missing translations referred to in the Claimants' telefaxes of 28 July 1995 and 8 August 1995 were received and they, together with the previously received documents on the Claimants' comments and evidence on the forgery issue, were filed.

34. On 15 September 1995, the Deputy Agent of the Islamic Republic of Iran filed a letter in which he, inter alia, requested the Tribunal to permit the Respondent to submit a reply to the filing made by the Claimants on 11 August 1995. He also requested that a further hearing be held. On 20 September 1995, the Claimants filed their comments on the Deputy Agent's request.

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[11] These translations included: translation of the Brief, translation of Raffie Aryeh's Affidavit, and translation of Professor Richard B. Lillich's opinion.

35. On 20 September 1995, the Tribunal issued an Order in which it denied the Respondent's request to be permitted to file a reply to the Claimants' submission of 11 August 1995. In that same Order, the Tribunal requested the Parties to appear before the Tribunal for a Hearing which was scheduled to take place on 17 and 18 January 1996. In that Order, the Tribunal also drew the attention of the Parties to the fact that the subject matter of the Hearing was limited solely to the question of the alleged forgery and what impact the use of the allegedly forged documents would have on the Cases, and that the Tribunal would not permit the introduction of new documents in evidence prior to the Hearing. On 22 September 1995, Judge Duncan filed his Dissent from the Order of 20 September 1995 insofar as it granted a further hearing in the matter.

36. On 21 September 1995, the Agent of the Islamic Republic of Iran filed a letter in which he commented on the Claimants' letter of 19 September 1995 and reiterated the Respondent's request to be permitted to respond to the Claimants' submission of 11 August 1995. In that letter, the Agent also made references to the possible prosecution of the Claimants in both Iran and The Netherlands.

37. On 19 October 1995, the Claimants filed a letter in which they stated that they considered the holding of a Hearing prejudicial to the Claimants and contrary to the Rules of the Tribunal that require equal treatment of the parties. The Claimants also stated that they were under severe restrictions and difficulties in bringing any witnesses or experts to such a Hearing and were at a financial disadvantage. On 9 November 1995, the Agent of the Islamic Republic of Iran filed a letter in which he commented on the Claimants' letter of 19 October 1995 and questioned the correctness of the Claimants' reasoning.

38. On 17 November 1995, the Agent of the Islamic Republic of Iran filed a letter in which he addressed the issue of Mahmoud Morad Ali Beigi's testimony. He stated that Mr. Ali Beigi's testimony was so specific and the hearing time so limited that the Respondent did not intend to have him give oral testimony at the Hearing, unless the Claimants preferred to introduce him as their witness.

39. On 22 November 1995, the Claimants filed a letter in which they requested the Tribunal to postpone the Hearing scheduled for 17 and 18 January 1996 by one day. By Order of 22 November 1995, the Tribunal granted the request, thus postponing the Hearing to take place on 18 and 19 January 1996.

40. On 19 December 1995, the Claimants presented the Tribunal with their witness list consisting of one witness. On the same day, the Agent of the Islamic Republic of Iran filed the Respondent's witness list which contained the names of thirteen witnesses. Mr. Ali Beigi was one of the listed witnesses.

41. On 3 January 1996, the Agent of the Islamic Republic of Iran filed a letter in which he requested the Tribunal to make the necessary arrangements for the recording of the oral presentation at the Hearing because "on occasions certain statements are left out of the transcripts" prepared by the Claimants. On 8 January 1996, the Claimants filed a letter, in which they strenuously objected to the Agent's letter because of the threats and accusations allegedly made in it. Therefore, they requested the Tribunal to strike the letter from the record, and to sanction the Agent for the use of improper tactics. Nevertheless, the Claimants concurred that it would be in the best interest of all concerned if the Tribunal arranged to record the Hearing scheduled for 18 and 19 January 1996.

42. On 11 January 1996, the Agent of the Islamic Republic of Iran filed a letter in which he replied to the Claimants' letter of 8 January 1996 denying the allegation that the letter of 3 January 1996 contained

any threat or accusation. On 16 January 1996, the Tribunal issued an Order granting the two Parties' request to have the Hearing recorded on condition that the Parties share the costs of such recording.

43. On 12 January 1996, the Claimants filed a letter in which they, relying on Note 2 to Article 25 of the Tribunal Rules, introduced Mr. Rode as a rebuttal witness for the Hearing to be held on 18 and 19 January 1996. On 15 January 1996, the Agent of the Islamic Republic of Iran filed a letter in which he objected to the untimely introduction of a new witness. At the Hearing, Mr. Rode was permitted to appear as a witness.

44. The Hearing was held on 18 and 19 January 1996. At the Hearing, the Claimants submitted one document.[12] The Tribunal reserved the right to decide the status of this document after the Hearing, if necessary.

45. At the beginning of the Second Hearing, the Respondent wanted to change the status of Professor Ian Brownlie from expert witness to counsel. The Claimants objected to this. The Respondent, on the other hand, objected to Professor Richard Lillich's status as an expert witness. The Tribunal decided that both Professor Brownlie and Professor Lillich would be heard as expert witnesses.

46. After the Hearing, on 24 January 1996 the Agent of the Islamic Republic of Iran filed a letter to which was annexed a copy of the "certified power of attorney No. 2271 issued by Notary Public 364 Tehran granted to Mr. Morad Ali Beigi". A corrected English version of the annex was filed on 25 January 1996. On 31 January 1996, the Claimants filed their objection to the Agent's letters of 24 and 25 January 1996 and requested the Tribunal to strike the letters from the record of these Cases and direct that the letters be returned to the Respondent.

47. On 13 February 1996, the Agent of the Islamic Republic of Iran filed a letter in which he stated that the amount of the Respondent's legal cost in these Cases totaled $256,843.38. The Agent also requested the Tribunal to award the amount in full due to the Claimants' improper conduct in these Cases. On 21 February 1996, the Claimants filed a statement of their fees and expenses up to 31 January 1996 for a total of $2,149,065.41. Also the Claimants requested to be awarded in full that part of their costs and expenses which had been generated by the forgery allegations.

2. Remaining Procedural Issues

2.1. Admissibility of Late-Filed Documents: Documents Submitted at the Hearings and Post-Hearing Submissions

48. The Tribunal notes that, according to its practice reflected in Harris International

[12] The document submitted was an enlarged copy of a part of page 10 of the Claimants' Brief of 11 August 1995. The Claimants also tried to submit a copy of one page of the Official Gazette of Iran which reported the Annual General Meeting of GTT of 20 July 1995. However, this document was withdrawn due to the Respondent's objection. The Respondent also tried to submit a document containing a compilation of relevant Iranian legislation which was withdrawn due to the Claimants' objection. In addition, the Respondent tried to submit a copy of Dr. Riyazi's oral statements at the Hearing which, however, was considered to be inadmissible.

Telecommunications, Inc. and The Islamic Republic of Iran, et al., Partial Award No. 323-409-1, paras. 57-75 (2 Nov.1987), reprinted in 17 Iran-U.S. C.T.R. 31, 45-52, Articles 15, 22, 23, and 28 of the Tribunal Rules are the primary rules regulating the status of late-filed documents. Generally, based upon Article 22, the Tribunal considers and decides which further submissions in addition to the statement of claim and the statement of defense, are to be required from the parties in each case and sets forth the schedule for communicating such statements. Moreover, Article 28 gives the Tribunal the authority to make an award based on the evidence before it, if a party that has had the opportunity to file documentary evidence fails to file within the established period of time, and fails to show sufficient reason for its nonconformity. This rule equally applies to the situation in which a party has properly filed its documents, but subsequently tries to submit additional, unauthorized material for inclusion in the record of the case.

49. Furthermore, on the basis of Article 15, both parties to the case have to be treated equally. This means that both parties to the case are entitled to have an equal opportunity to present written submissions and to respond to each other's submissions. This also means that the parties must have an equal opportunity to go through the evidence and the arguments submitted by the other party, and to prepare their own position and arguments in advance of the hearing.

50. Chamber One has taken a strict stance on these matters: no new evidence is permitted prior to the hearing unless the Tribunal finds that it is justified by exceptional circumstances and is filed no later than two months before the hearing in the case. Moreover, as a matter of routine in its orders scheduling a hearing the Chamber advises the parties that any party is free to make whatever arguments it wishes at the hearing; however, parties may not introduce new documents into evidence absent the Tribunal's permission. Such permission normally is not granted except for rebuttal evidence introduced to rebut evidence produced at the hearing.

51. Both Parties submitted documents at the First Hearing; the Claimants submitted documents at the Second Hearing. The Tribunal notes that, in toto, the parties submitted the following documents: an interpretative list of certain evidence in the record; a portion of the handbook for chartered accountants in England and Wales; a portion of a legal text; and an enlarged copy of one page of the Claimants' brief on the forgery issue (see, supra, notes 7, 8 and 12). The list submitted by the Respondent contained the Respondent's interpretation of certain evidence in the record. The Respondent proffered this same interpretation in the written memorials and at the Hearing; thus the list only clarified the Respondent's position. Both the first two pages of the legal text and the excerpt copied from the Claimants' brief were already in the record. Therefore, taking into consideration the specific circumstances of these Cases, the Tribunal deems it appropriate to admit these documents submitted at the two Hearings. As to (i) the third page attached to the legal text submitted by the Respondent and (ii) the section of the chartered accountants handbook submitted by the Claimants, the Tribunal considers them to be new material and thus inadmissible.

52. Typically, the practice not to allow new evidence in the record encompasses not only the two-month period directly preceding the hearing but also the post-hearing period preceding the filing of an award. The practice of Chamber One has been strict, even though the Chamber has taken into consideration the nature of these documents, the elapsed period of time, and the reasons for the delay, when deciding on the admissibility of late-filed, unauthorized documents. Usually, the Tribunal has rejected the late-filed unauthorized documents in order to prevent any party from using "tactical" filings at the hearing or thereafter. [13]

53. The Tribunal must determine whether the Respondent's letters of 19 April 1995 and 8 May 1995 (paras. 26 and 27, supra) are admissible. Annexed to the Agent's letters are additional evidentiary documents. The Tribunal also notes that after the First Hearing it did not authorize the Parties to submit any further evidence or arguments on any matter related to the Cases. After the Agent's letters of 19 April 1995 and 8 May 1995, the Tribunal, without deciding the admissibility of these letters or the evidence annexed to them, by Order of 10 May 1995 only authorized the Parties to submit their comments on the issue. However, when the Tribunal decided on 20 September 1995 to hold an additional Hearing on the forgery issue, it also admitted those letters and also the Claimants' comments thereon in the record.

54. Next, the Tribunal examines whether the Respondent's letters of 8 and 13 June 1995 are admissible (para. 29, supra). The Respondent annexed to the first letter an additional report by its handwriting experts, the original report being included in the Respondent's Brief filed on 2 June 1995. The Respondent annexed to the second letter corrected English translations of two expert opinions that were originally filed in the Respondent's 2 June 1995 brief. Because the two submissions were filed only six and eleven days after the Respondent's time limit, and in view of the special circumstances of these Cases, the Tribunal deems it appropriate to accept these late-filed documents.

55. The Tribunal must now examine whether the submission made by the Claimants on 11 August 1995 is admissible (paras. 31 and 33, supra). The Tribunal notes that the filing was made thirteen days after the scheduled time limit. Nevertheless, noting the explanation put forward by the Claimants and the special circumstances of these Cases, the Tribunal deems it appropriate to accept the late filing.

56. Finally, the Tribunal must determine whether the Respondent's letters of 24 and 25 January 1996 and the Claimants' response thereto are admissible (para. 46, supra). Attached to the Respondent's 24 January 1996 letter is a copy of a power of attorney granted to Mr. Ali Beigi; attached to the 25 January 1996 letter is a corrected English translation of that power of attorney. In accordance with the Tribunal practice, and since the Claimants have objected to them, these letters are considered to be unauthorized filings and they are therefore inadmissible.

57. The Tribunal also notes that the Respondent's letter of 13 February 1996 and the Claimants' letter of 21 February 1996 (para. 47, supra), both of which contain a statement of fees and expenses of the respective Party, are admissible since they are submitted in response to a request made by the Chairman at the end of the Hearing in January 1996.

58. The position of the Parties and the Tribunal's decision on other late or incomplete filings will be addressed together with the merits (see, infra, paras. 211-212).

2.2. Admissibility of Late Claims and Amendment of Claims

[13] See, e.g., Harris International Telecommunications, Inc., supra, paras. 57-75. See also, e.g., Catherine Etezadi and The Government of the Islamic Republic of Iran, Award No. 554-319-1, paras. 10-16 (23 Mar. 1994), reprinted in --- Iran-U.S. C.T.R. ----, __; Ninni Ladjevardi (formerly Burgel) and The Government of the Islamic Republic of Iran, Award No. 553-118-1, paras. 32-36 (8 Dec. 1993), reprinted in --- Iran-U.S. C.T.R. ----, __; Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, Award No. 559-221-1, paras. 21-22 (24 Aug. 1994), reprinted in --- Iran-U.S. C.T.R. ----, __ ("Nazari"); Irene Boroumand and The Islamic Republic of Iran, Award No. 545-479-1, paras. 5-6 and note 1 to para. 6 (3 Feb. 1993), reprinted in --- Iran-U.S. C.T.R. ----, __; Joan Ward Malekzadeh, et al. and The Islamic Republic of Iran, Partial Award No. 543-356-1, paras. 5-6 (21 Jan.1993), reprinted in --- Iran- U.S. C.T.R. ----, __ ("Malekzadeh").

2.2.1. Generally: Late Claims and Amendment of Claims

59. The Respondent objects to the admissibility of two Claims as untimely filed. The Respondent considers the Claimants' Claim for the alleged taking of 20 % ownership of KTT, pursuant to the Expansion of Ownership Act (para. 1, supra) and the Claim concerning the Aryeh children's savings funds in Bank Melli Iran and Bank Pars are untimely raised (id.). Accordingly, these claims are inadmissible.

60. Referring to Article 20 of the Tribunal Rules, the Respondent states that these Claims cannot be considered as amendments or supplements to the Claimants' Statements of Claim or as their defense against any counterclaim; instead, they should be considered as tantamount to filing a new Claim for the properties not included in the initial Statements of Claim. The Respondent implies that the long lapse of time before these Claims were raised has affected the Respondent's ability to produce a proper defense against these Claims. The Respondent further contends that such claims are inconsistent with the requirements of Article III, paragraph 4, of the Claims Settlement Declaration [14]. As further support for its position, the Respondent refers to the Iranian statute of limitations, especially Articles 737 and 738 of the Civil Procedure Code of Iran. [15]

2.2.2. Admissibility of the Claim for Forced Sale of Shares in KTT

61. The Claimants added in their Hearing Memorial a new Claim concerning the forced sale of 20 % of their shares in KTT by virtue of the Expansion of Ownership Act. The Claimants argue that the compensation paid for the forced sale was not a fair compensation. The Respondent objects to this Claim in its Hearing and Rebuttal Memorials and implies, inter alia, that the Claim was raised too late.

62. According to Article 20 of the Tribunal Rules, the Tribunal will permit an amendment unless delay, prejudice or other concrete circumstances make it inappropriate to do so. [16] The Tribunal notes, however, that the Claimants have not provided sufficient proof of any such circumstances that would have excused the lateness of this part of their Claim. [17] Nor have the Claimants given sufficient explanation as to why they were prevented from filing this Claim in a timely manner.

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[14] That paragraph provides in relevant parts: No claim may be filed with the Tribunal more than one year after the entry into force of [the Claims Settlement Declaration] or six months after the date the [first] President [of the Tribunal] is appointed, whichever is later.

[15] See, infra, para. 166 for a brief discussion of the conflicting positions adopted by the Respondent regarding the status of statute of limitation laws in Iran.

[16] See Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 19 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 53 ("Malek") (the claimant changed the date of the alleged expropriation in his letter of 30 August 1982); and International School Services, Inc. and The Islamic Republic of Iran, et al., Interlocutory Award No. ITL 57-123-1, p. 10 (30 Jan. 1986), reprinted in 10 Iran-U.S. C.T.R. 6, 12 (even though the relief sought was increased, the factual circumstances, on which the amendment was based, had been presented in the original statement of claim). However, changing the basis of a claim or adding a new claimant or respondent is not permissible. Increases to the rate of interest initially sought and updates to the amount claimed for arbitration costs is, nevertheless, admissible, see, e.g., PepsiCo, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 260-18-1, p. 20 (13 Oct. 1986), reprinted in 13 Iran-U.S. C.T.R. 3, 17.

[17] E.g., Anaconda-Iran, Inc. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 65-167-3, para. 118 (10 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 199, 229 (counterclaim was raised after the claimant's last submission on jurisdiction had been filed).

63. Furthermore, the Tribunal does not consider this portion of the Claimants' Claim to be a mere amendment intended to raise the possible value of the allegedly expropriated company KTT (see Thomas Earl Payne and The Government of the Islamic Republic of Iran, Award No. 245-335-2, para. 9 (8 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 6 ("Payne")). Instead, the Tribunal holds that this portion of the Claim is a separate claim concerning a time period and acts different from the present, timely filed Claim on the expropriation of KTT. The facts underlying the Forced Sale of Shares Claim (nationalization through the Expansion of Ownership Act and governmental implementation acts related to the year 1976) appear to be wholly unrelated to those facts giving rise to the Claimants' present Claim for the expropriated shares in KTT. Accordingly, even if the Respondent may be liable for the acts executed by the previous government pursuant to the international law on State responsibility and State succession, the Claimants' failure to include this Claim in the Statements of Claim prevents them effectively from raising the issue long after the date set forth for the filing of claims with the Tribunal. Moreover, the Claimants have not shown that they could not have referred to these acts previously in their Statements of Claim. Therefore, the Tribunal finds that it is precluded from accepting this new portion of the Claim[18] because it constitutes "the filing of a new claim" after the filing deadline of 19 January 1982.

64. The Tribunal further notes that the Claimants cannot raise these questions as part of their valuation argument, because they have not shown that the previous taking of a portion of KTT's shares would have affected the value of KTT or that the previous alleged taking bears any relation to the acts forming the present taking. Accordingly, this portion of the Claim is inadmissible.

2.2.3. Admissibility of Bank Account Claims

65. Along with its Hearing Memorial, the Respondent filed evidence of Jason and Laura Aryeh's Iranian bank accounts to support its view of their allegedly dominant and effective Iranian nationality. According to the documents submitted, Jason Aryeh held accounts both at Bank Melli Iran and Bank Pars, and Laura Aryeh, at Bank Melli Iran (para. 1, supra).

66. On the basis of the documents submitted by the Respondent, the Claimants assert in their Rebuttal Memorial that in May 1974 and in February 1976 the accounts were credited with a total sum of Rls. 623,177. The Claimants further assert that no further transaction has taken place in respect of these accounts and argue that the accounts were confiscated by the Respondent. Therefore, they claim the sum of Rls. 623,177 together with interest accrued thereon from the dates shown on the deposit certificates to the date of taking at usual rates applicable to bank accounts. Further, the Claimants claim interest from the date of taking on the principal amount then taken, up to the date of payment of the Award.

67. However, the Respondent considers in its Rebuttal Memorial that the Claimants' Claim for the bank accounts amounts to a filing of a new claim and that the Claim is not outstanding.

68. In accordance with what was stated previously, supra, paras. 62-63, the Tribunal considers that the

[18] See, e.g., Arthur Young & Company and The Islamic Republic of Iran, et al., Award No. 338-484-1, paras. 36-37 (1 Dec. 1987), reprinted in 17 Iran-U.S. C.T.R. 245, 253-254, in which the amendment raised new factual and legal issues, and was presented in the claimant's hearing memorial; Kambiz Hakim and The Government of the Islamic Republic of Iran, Award No. 478-952-2, para. 9 (16 May 1990), reprinted in 24 Iran-U.S. C.T.R. 269, 271, in which the amendment was made only in the claimant's rebuttal submission.

Claimants' Claim for the bank accounts of Jason and Laura Aryeh, which was for the first time raised in the Claimants' Rebuttal Memorial, is a new claim. Therefore, the Tribunal finds the Claim inadmissible.

2.2.4. Admissibility of Claims for Shares in the Iranians' Bank

69. In her Statement of Claim, Vera-Jo Miller Aryeh sought compensation in the amount of $235,000 for the alleged expropriation of an unstated number of shares in the Iranians' Bank. After the Claimants had submitted their Rebuttal Memorial, the Respondent produced some of the documents requested by the Claimants which showed that each Claimant owned four shares in the Iranians' Bank. At the Hearing, the Claimants amended their Claim for shares in the Iranians' Bank to reflect these twelve shares.

70. The Tribunal notes that the first time the Claimants claimed that Laura and Jason Aryeh owned any shares in the Iranians' Bank was at the first hearing held in 1995 ("First Hearing"). Therefore, the Tribunal finds that the claim for the eight shares owned by Jason and Laura Aryeh is a new claim and thus inadmissible. However, the Tribunal finds that Vera-Jo Miller Aryeh's claim for her four shares in the Iranians' Bank is admissible.

II. JURISDICTION

1. The Claimants' Locus Standi: Claims Brought on Behalf of Minors

1.1. The Parties' Contentions

71. As a preliminary matter, the Respondent argues that Vera-Jo Miller Aryeh lacked the capacity to file a claim on behalf of her children who were minors at the time the Claims were filed. The Respondent contends that Iranian law is the law applicable to the issue involved. However, in the Respondent's view, under the laws of both Iran [19] and the United States [20] a mother cannot bring a claim on behalf of her minor child unless the father of the child is deceased and the mother is appointed, by a competent court, as the minor child's guardian.

72. Moreover, in its Rebuttal Memorial, the Respondent refers to Article III, paragraphs 3 and 4, of the Claims Settlement Declaration as further support for its argument that the claims should be filed by the claimants themselves or by a person legally authorized by them. Therefore, in the present circumstances the Aryeh children's Claims should be considered to be either untimely or

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[19] The Respondent relies on Article 6 and Articles 1180 through 1183 of the Iranian Civil Code.

[20] The Respondent refers to 39 Corpus Juris Secundum 17 in the Hearing Memorial. Moreover, in its Rebuttal Memorial the Respondent refers to Sections 1201 and 1209 of the New York Civil Practice Law and Rules (Consolidated 1993 edition) and to permission obtained in Cases Nos. 815-817, Aram Sabet, et al. and The Islamic Republic of Iran, et al. to file a claim on behalf of minors.

improperly filed.

73. The Claimants argue that the question of Vera-Jo Miller Aryeh's capacity to act on behalf of her minor children must be determined by the law of the country in which the minors are domiciled. In the present Cases, the law of the United States and in particular the law of the State of New York would control. The Claimants state that, according to Section 1201 of the New York Civil Practice Law and Rules, which governs the representation of a minor or "infant" in litigation proceedings, a "parent" has the right to appear in proceedings on behalf of the "infant", in the absence of a court appointed guardian ad litem.[21] According to the Claimants, New York case law defines the term "parent" commonly: "a father or a mother".

74. The Claimants also point out that both Jason and Laura Aryeh, now of legal age, have confirmed the actions taken by their mother on their behalf. The Claimants argue that it is a universally accepted principle that a minor, upon attaining the age of majority, has the right to confirm actions taken on his behalf during his incapacity, and that such confirmation is dispositive of the issue.[22] Moreover, at the First Hearing both Jason and Laura Aryeh reconfirmed that they fully accepted and agreed with all actions taken by their mother on their behalf in these Cases. In addition, the children's father, Raffie Aryeh, confirmed that he had fully agreed with and accepted the action taken by Vera-Jo Miller Aryeh on behalf of their minor children. In response, the Respondent argued that the reconfirmation by the Aryeh children could not have any retroactive effect.

1.2. The Tribunal's Decision

75. Previously, the Tribunal dismissed an argument similar to that of the Respondent in Faith Lita Khosrowshahi, et al. and The Government of the Islamic Republic of Iran, et al., Final Award No. 558-178-2, paras. 5-7 (30 June 1994), reprinted in --- Iran-U.S. C.T.R. ----, __ ("Khosrowshahi").[23] In that case the Tribunal found no bar to the claim of Cameron Kamran Khosrowshahi, a minor at the time the claim was filed. His claim was presented on his behalf and pursued by his mother whose dominant and effective nationality was that of the United States. The Tribunal noted that neither the Claims Settlement Declaration nor the Tribunal Rules as written exclude minors as claimants. The Tribunal further noted that both Cameron Kamran Khosrowshahi, having reached the age of legal majority, and his father were present at the hearing held in that case, and that by their presence and statements they gave their approval to Faith Lita Khosrowshahi's act of filing the claim.[24]

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[21] The Claimants have produced the following quotation from Section 1201 of the New York Civil Practice Law and Rules:
Unless the court appoints a guardian ad litem, an infant shall appear by the guardian of his property or, if there is no such guardian, by a parent having legal custody, or, if there is no such parent, by another person or agency having legal custody.

[22] In the Claimants' Rebuttal Memorial, the Claimants included a request that the Tribunal direct the Registry to change the title of Cases Nos. 843 and 844 to reflect that Jason and Laura are pursuing their claims in their own right. However, the Tribunal determined that, as it had not previously decided the standing of the Aryeh children, the change to the titles of Cases Nos. 843 and 844, if any, would be made in the Award. This has also been the Tribunal's practice in other similar situations.

[23] In that case the respondent's standing defenses raised during the rebuttal round were quite similar to those presented in these Cases; although that respondent provided less supporting evidence on the issue.

[24] Though all the claimants in that case resided in New York, this Chamber notes that the Tribunal did not base its decision on New York law, but on the Claims Settlement Declaration, the Tribunal Rules, the minor's statements, and his father's presence and statements at the hearing. Moreover, according to Article 33, paragraph 1, of the Tribunal Rules, the Tribunal shall "... decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as [it] determines to be applicable...". Therefore, there

76. Similarly, in the present Cases, both Jason and Laura Aryeh have confirmed the representation of their Claims by their mother. Moreover, their father, Raffie Aryeh, clearly is and has been aware of these proceedings and has not objected to them. The Claimants have also submitted an affidavit sworn to by Raffie Aryeh, the content of which was confirmed at the Hearing, stating that he did not object to, but fully accepted and agreed with, any action Vera- Jo Miller Aryeh took on behalf of their children in these Cases.[25] Consequently, the Tribunal must reject the Respondent's defenses regarding Vera-Jo Miller Aryeh's standing to file claims on behalf of her then-minor children.

77. The Tribunal notes that there is no evidence in the record that there is a requirement to apply for permission to file a claim on behalf of the minors in an international arbitral tribunal such as this Tribunal. In addition, Section 1201 of the New York Civil Practice Law and Rules relates to situations where the parents of the minor are divorced. The ratio behind that rule appears to be that, where the parents of the minor child are divorced, the non-custodial parent may file independently a suit on behalf of the minor to preserve the child's legal rights, if the custodial parent fails to do so. Furthermore, according to the law of New York, where the parents of the minor child are not divorced, both parents are the legal guardians of the child with the same rights to act on the child's behalf. The purpose of the rule, referred to above and applicable in the sphere of private, civil arbitration, is to cover situations where there might be a potential conflict of interest between the parent and the minor, or when there is a risk that the parent will not take such action which is in the best interests of the minor. Those elements are not present in these Cases.

78. Moreover, the Tribunal is a treaty-based institution, whose aim and function is to settle the disputes falling within its jurisdiction and competence. Accordingly, the obligations undertaken by the United States include the implementation of the Algiers Accords just like any other treaty. Therefore, all the claims of dual nationals who have dominant and effective U.S. nationality are to be settled and decided at this Tribunal since no other forum is available for these claims.

79. Accordingly, the Tribunal reaches a similar conclusion as was found in Khosrowshahi, supra, and accepts the Claims filed by Vera-Jo Miller Aryeh on behalf of her minor children as properly filed claims. This view also prevents the possibility of a denial of justice from occurring on merely formal grounds and is in harmony with the Tribunal's previous awards.

80. Consequently, the Tribunal finds that the only remaining, relevant jurisdictional question on the standing of the Aryeh children is to determine what is the dominant and effective nationality of the children.[26]

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is no obligation or reason for the Tribunal's decision to turn solely upon choice of law rules, because that result, in some instances, might necessitate the denial of justice on formal grounds.

[25] The Claimants also refer to Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 71- 44/45/46/47-3, para. 25 (16 June 1989), reprinted in 22 Iran-U.S. C.T.R. 138, at 143-144, in support of their assertion that the Tribunal has also accepted claims filed by minor children. However, the Respondent has contested this reference in its Rebuttal Memorial, arguing that the referred award could not be used as an analogy in these Cases because the mother of the Ebrahimi minors held the position of guardian ad litem of her children. Since the Tribunal decides this issue on other grounds, it need not address the applicability of that award to the instant Cases.

[26] E.g., in Raymond Abboud, as legal guardian of Chrisline Arianne Abboud and The Islamic Republic of Iran, Award No. 477-383-2, paras. 10-15 (16 May 1990), reprinted in 24 Iran-U.S. C.T.R. 265, 267-268, the Tribunal examined the issue of the minor's dominant and effective nationality without any emphasis on the father's/guardian's dual Lebanese-Iranian nationality. A similar approach, i.e., to consider the nationality of a minor claimant separately from his or her parents' nationality, has been applied in several cases of the Tribunal, see, e.g., Betty Laura Monemi, et al. and The Islamic Republic of Iran, et al., Partial Award No. 533-274-1, paras. 31-32 (1 July 1992), reprinted in 28 Iran- U.S. C.T.R. 232, 242-243; Malekzadeh, supra, paras. 29-30; Anita Perry-Rohani, et al. and The Government of the Islamic Republic of Iran, Award No. 427-831-3, para. 18 (30 June 1989), reprinted in 22 Iran-U.S. C.T.R. 194, 199; Ardavan Peter Samrad, et al. and The Government of the Islamic

2. The Claimants' Dominant and Effective Nationality

2.1. Facts and Contentions

2.1.1. Case No. 842: Vera-Jo Miller Aryeh

81. Vera-Jo Miller Aryeh was born on 11 April 1943 in New York City, New York. Consequently, she is a native born United States citizen. Both her parents are United States citizens. Vera-Jo Miller Aryeh received her junior and high school education at The Dalton School in New York and went to college in Wellesley, Massachusetts, and New York City, New York. She was awarded a Bachelor of Arts Degree in 1964 from Barnard College in New York City, New York. Thereafter, Vera-Jo Miller Aryeh taught mathematics at The Dalton School until June 1967.

82. On 5 July 1967, Vera-Jo Miller married Raffie Aryeh, an Iranian national in New York. She acknowledges that by operation of Iranian law, Iranian nationality was imposed on her. On 18 September 1967, Vera-Jo and Raffie Aryeh traveled to Iran and commencing in March 1968 they lived in a home of their own at Mahmoudieh in Iran. Vera-Jo Miller Aryeh asserts that she had difficulty adjusting to the lifestyle, language, and culture she encountered in Iran. Although she attempted to learn Persian, her efforts met with little success. Vera-Jo Miller Aryeh asserts that both at their home in Iran, and later in New York City, she and her husband spoke English exclusively.

83. Vera-Jo Miller Aryeh was issued an Iranian identity card on 23 October 1968 in New York. She asserts that she spent the summers of 1968, 1969 and 1970 in the United States. Her two children were born in New York in August 1968 and May 1970. Vera-Jo and Raffie Aryeh purchased an apartment in River House, New York City, in February 1969 and a summer house in Connecticut in August 1969. Vera-Jo Miller Aryeh states that from the fall of 1970 through the spring of 1973, she visited Iran for several months each year before she left Iran for good on 12 June 1973. Carl M. Mueller, the then director of the River House Realty Corporation and owner of the River House, confirms in a letter dated 4 November 1985, that Vera-Jo Miller Aryeh has been in constant residence at her River House apartment since June 1973. Her former husband, Raffie Aryeh, used to spend time with his family in the United States or in Europe. The rest of his time was spent in Iran and other places attending to his business. Raffie Aryeh left Iran in August 1978. Vera-Jo Miller Aryeh was divorced from Raffie Aryeh in February 1992.

84. The children started school in New York as part-time students in September 1972. Vera-Jo Miller Aryeh took courses at the New School for Social Research and New York University School of Continuing Education at various times between 1974 and 1981. She is a registered voter in New York City and has voted continually in New York State and national elections since 1964; she voted by absentee ballot in the presidential election of November 1968. She asserts that she has filed federal, state and City of New York income tax returns for each calendar year from 1965 onwards. She further asserts that since 1964 she has held and operated active accounts with a number of stock

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Republic of Iran, Award No. 505-461/462/463/464/465-2, para. 37 (4 Feb. 1991), reprinted in 26 Iran- U.S. C.T.R. 44, 56 ("Samrad").

brokerage firms in New York City and has conducted all of her banking and related financial activities at New York financial institutions since 1971.

85. Vera-Jo Miller Aryeh has submitted copies of her United States passports issued on 31 May 1960, 25 June 1965, 20 August 1969, 14 June 1974 and 29 November 1978. In 1967 and 1968, she entered and exited Iran using her United States passport. Vera-Jo Miller Aryeh asserts that only when she was advised that she must obtain an Iranian passport in order to enter and exit Iran did she obtain one. She has also submitted a copy of her Iranian passport issued on 7 November 1974 in New York City, which supports her assertion that she has not returned to Iran after 1973. It is stated in that passport that it was issued on the basis of an earlier passport issued on 15 October 1968 by the Consulate General in New York City. Vera-Jo Miller Aryeh admits that the 1968 Iranian passport was issued to her but claims that she has not been able to locate that passport. She, however, asserts that she used her Iranian passport only to gain entry and exit from Iran, and that she used her United States passport for all other purposes.

86. In light of the evidence she has submitted, and in accordance with the practice of the Tribunal, Vera-Jo Miller Aryeh submits that there can be no doubt that long before the date the Claims arose her dominant and effective nationality was and continued to be that of the United States.

87. The Respondent notes that pursuant to Article 976(6) of the Iranian Civil Code,[27] Vera-Jo Miller Aryeh became Iranian upon her marriage to Raffie Aryeh, and was issued an Iranian identity card no. 1038 by the Iranian Consulate in New York City. According to the Respondent, her Iranian nationality has never been relinquished.

88. Moreover, the Respondent contends that Vera-Jo Miller Aryeh's consent to marry an Iranian citizen includes her acceptance of the Iranian nationality, which fact is confirmed by the fact that Vera-Jo Miller Aryeh herself applied for an Iranian identity card.

89. The Respondent further argues that Vera-Jo Miller Aryeh has failed to establish that during the relevant period she was dominantly and effectively a national of the United States. The Respondent argues that since she obtained her Iranian nationality by virtue of her marriage to an Iranian national, it is Raffie Aryeh's Iranian nationality which is to be considered as the determining factor in evaluating Vera-Jo Miller Aryeh's ties with and interests in Iran. The Respondent points out that, as admitted by Vera-Jo Miller Aryeh, Raffie Aryeh continued to reside in Iran until 1978.

90. The Respondent also notes that despite the fact that Vera-Jo Miller Aryeh was able to travel to and from Iran in 1967 and 1968 by using her United States passport, as evidenced by the passport issued on 25 June 1965, she obtained an Iranian passport on 15 October 1968. Vera-Jo Miller Aryeh has not submitted a copy of that passport. However, the evidentiary record includes a copy of her Iranian passport no. 1482432, issued on 7 November 1974 by the Iranian Consulate in New York City on the basis of that earlier passport. Initially, the 1974 passport was valid until 7 November 1975; on 28 April 1977, its validity was extended from 7 November 1976 until 7 November 1978. Since Vera-Jo Miller Aryeh admits that she was traveling between Iran and the United States until June 1973 and, bearing in mind her statement that she later never returned to Iran, the 1974 passport is obviously

[27] Article 976(6) reads as follows:
The following persons are considered to be Iranian subjects:
(6) Every woman of foreign nationality who marries an Iranian husband.

of great importance. There is a multiple exit permission affixed to the passport (as translated by the Tribunal's Language Services Division) stating that
[t]he holder of this passport, Mrs. Vera-Jo Miller Aryeh, a resident of the United States, may leave the country via air and land (Bazargan and Razi) borders more than once during the period of validity of this passport,... provided that the duration of her stay in Iran does not exceed six months from the date of entry.

It is also observed on page 8 of the passport (as translated by the Claimants) that

[t]he date of the last exit of the passport holder from Iran is 23.3.1352 [[13 June 1973].

Vera-Jo Miller Aryeh notes that it can be determined from a review of her and Jason Aryeh's U.S. passports, and Laura Aryeh's Iranian passport, that this date should have been 12 June 1973. The passport does not show any other signs of use.

91. The Respondent disputes the statement that Vera-Jo Miller Aryeh left Iran for good in June 1973. To the contrary, the Respondent argues that the meeting minutes of various Iranian companies in which she was a shareholder demonstrate that she was present in those meetings in Iran. It also notes that she was elected the Chairman of the Board of Directors of Grouh Towlidi Tehran on 23 July 1974 and of Karkhanejat Towlidi Tehran on 10 March 1975, and argues that such positions called for her presence in Iran. As further proof of her presence in Iran, the Respondent also refers to the affidavit of Ali Akbar Vatan Doost in which he testifies that he had met Mrs. Aryeh at Mr. Aryeh's house in Iran; but Mr. Vatan Doost fails to mention the date on which that event happened.

92. The Respondent notes that the birth of both children was registered with the Iranian Consulate in New York. It appears from both registration certificates, however, that the person notifying Iranian authorities was the children's father, Raffie Aryeh.

93. In order to show Vera-Jo Miller Aryeh's intention to become integrated into the Iranian society, the Respondent notes her own statement according to which she had "shipped to Iran from the United States a 1977 Chevrolet Blazer" which was registered in her name. The Respondent also refers to Vera-Jo Miller Aryeh's 1965 United States passport in which it is allegedly certified in Persian that "a passenger car marked Buick 67 was released from the customs." The Respondent further points out that, according to her Claims, Vera-Jo Miller Aryeh had in Iran personal property in the form of furnishings and decorative items as late as 1979. Finally, the Respondent asserts that she speaks Persian or, at least, tried to learn Persian and that her own statements show that she was very interested in the Iranian culture and art and used to collect pieces of Iranian art. As a further indication of her interest in the Iranian way of life, the Respondent also introduced an affidavit from Mrs. Najib-Nejad, the children's nurse in New York, who testified also at the First Hearing that the Aryeh family's life style in New York was Iranian. Mrs. Najib-Nejad stated that the cook and the house servant were also Iranians, the family used to eat Iranian dishes, and she and other domestics spoke Persian with Mrs. Aryeh and the children.[28] Moreover, the Respondent notes that Vera-Jo Miller Aryeh's living expenses in the United States were provided by her husband from Iran.

94. The Respondent notes that, as shown by the Claims, Vera-Jo Miller Aryeh alleges to have had significant economic interests in Iran. Further, if their existence is shown, then these interests

[28] The Tribunal notes, however, that Mrs. Najib-Nejad added that her successor was a Pakistani.

together with obligations to pay taxes should be considered to weaken Vera-Jo Miller Aryeh's U.S. nationality. However, Vera-Jo Miller Aryeh maintains that she played no active role in acquiring or managing any of the Iranian companies at issue in these Cases and that, while she did hold positions as an officer and director of some of these companies, she never actively participated in the management of the companies. With reference to the Tribunal's holding in Lilly Mythra Fallah Lawrence and The Islamic Republic of Iran, Interlocutory Award No. ITL 77-390/391/392-1, para. 12 (5 Oct. 1990), reprinted in 25 Iran-U.S. C.T.R. 190, 194-195, Vera-Jo Miller Aryeh argues that the existence of interests in assets in Iran is irrelevant to the determination of the dominant and effective nationality.

95. Vera-Jo Miller Aryeh argues that, instead of drawing conclusions on her stay in Iran on the basis of the corporate documents, the Respondent could have produced records from the passport office showing the precise dates when the holder had visited or stayed in Iran but that the Respondent has failed to do so. As far as the corporate documents are concerned, she explains that these documents were either sent to her from time to time for signature or, when Raffie Aryeh was in the United States, he would ask her to sign them. Raffie Aryeh also signed some of the Minutes on her behalf, by proxy. He also explained the contents of the documents to her since her knowledge of Persian was very limited. Vera-Jo Miller Aryeh submits that such a practice is not unusual in private closely-held companies, where board meeting minutes are circulated among the members of the board in the absence of attending a formal meeting; in such instances the board members all sign a resolution in writing.

96. As to the argument that her dominant and effective nationality would be affected by the nationality of Raffie Aryeh, Vera-Jo Miller Aryeh submits that the Tribunal has clearly stated in Case No. A18 that it is the dominant and effective nationality of each claimant which must be ascertained, and that such a determination is to be made based on the facts presented. She admits that it may be a relevant fact that the father or husband of a claimant is an Iranian national, but she states that it is not, as suggested by the Respondent, the determining factor.

97. The Respondent states that the documents related to Vera-Jo Miller Aryeh's activities after the relevant period, i.e., after 19 January 1981, are not relevant to the Case. Finally, referring only to the Merge Case, 14 [UN]RIAA, p. 248, the Respondent asserts that international judicial decisions show that the identity of the head of the family, for example, in Iran that would be the father, is to be considered as a decisive factor in determining the dominant nationality of their spouses.

2.1.2. Cases Nos. 843 and 844: Laura Aryeh and Jason Aryeh

98. Jason Aryeh was born on 29 August 1968; his sister Laura Aryeh, on 28 May 1970. Both were born in New York City, New York. Consequently, they are native born United States citizens. Jason and Laura Aryeh's mother is a dual United States-Iranian national and their father an Iranian national. Both Jason and Laura Aryeh acknowledge that, according to Iranian law, they also were Iranian nationals by birth.

99. After his birth Jason Aryeh stayed in the United States with his mother until about 17 November 1968 when they both returned to Iran. They both came back to the United States for the summer,

from May 1969 till September 1969, and again in March 1970. Vera-Jo Miller Aryeh stayed in the United States, together with Jason and newborn Laura until the fall of 1970; from that time through the spring of 1973, they all spent several months each year in Iran. According to Laura Aryeh's Iranian passport, issued on 28 April 1977, the date of her last exit from Iran was 22.3.1352 [12 June 1973]. Both Jason and Laura Aryeh assert that since then they have continuously resided in the United States and they have never returned to Iran.

100. Jason and Laura Aryeh were enrolled in The Dalton School in New York as part-time students in the fall of 1972 and as full-time students in September 1973. From September 1973 until the end of the relevant period they were full-time students in The Dalton School. Jason and Laura Aryeh have submitted a number of letters attesting to their activities during and before the relevant period. In several such letters they have been described as "typical American kids".

101. Jason Aryeh has submitted copies of his United States passports issued on 18 October 1968, 6 November 1973 and 1 September 1978. Laura Aryeh has submitted copies of her United States passports issued on 16 October 1970, 11 September 1975 and on 9 April 1980. Both assert that they have a United States social security number. Jason Aryeh has also submitted a copy of his Iranian identity card, issued on 23 October 1968 in New York, as well as of his Iranian passport, issued in New York on 7 November 1974 by the Consulate General of Iran. Laura Aryeh has submitted copies of her Iranian identity card, issued in New York on 4 August 1970, and of her Iranian passport, issued in New York on 28 April 1977. Jason and Laura Aryeh assert that they only used their Iranian passports to enter and exit Iran, and that they used their United States passports for all other purposes. Both Aryeh children also assert that after their departure from Iran in June 1973 they never returned to Iran. They further assert that they do not read, write, or understand Persian.

102. The Respondent notes that, as evidenced by Jason and Laura Aryeh's Iranian identity cards, they were born to an Iranian father and they are Iranian nationals. According to the Respondent, this nationality has never been relinquished. As stated previously, the Respondent also maintains that the dominant and effective nationality of their mother is that of Iran and argues that because the father is an exclusive national of Iran and the mother possesses an Iranian nationality the children are Iranian nationals. Moreover, the Respondent argues that the fact that Jason and Laura Aryeh were born in New York, thereby becoming U.S. nationals, has no bearing on the issue of their dominant and effective nationality because it was usual among wealthier families in Iran to turn to foreign medical facilities and services at the birth of a child. Furthermore, both children were brought to Iran soon after they were born.

103. The Respondent also argues that Jason and Laura Aryeh have failed to establish that during the relevant period they were dominantly and effectively nationals of the United States. The Respondent states that the Aryeh children's financial interests in Iran, their emotional ties with their Iranian relatives and father, who provided financial resources to them, supervised their upbringing, and whose successors in economic activities the Aryeh children would be, outweigh their ties to the United States.

104. The Respondent also questions whether Laura Aryeh could have been enrolled in The Dalton School in the fall of 1972 at the age of 27 months. Moreover, the Respondent explains that in pre-revolutionary Iran it was common for members of a certain social class to enroll their children in foreign language schools in Iran or send them abroad for education. Thus, the Aryeh children's

attendance of a U.S. school is not evidence of the dominance and effectiveness of the United States nationality. The Respondent also refers to the affidavit of Hajyeh Najib-Nejad, the Iranian nurse in New York City, who testifies that Raffie Aryeh advised her to speak Persian to the children so that they would not forget the language. She also testified that Raffie Aryeh had said that the children "were his successors who should live and function in Iran". Moreover, the Respondent states that the evidence of Jason and Laura Aryeh's hobbies and learning of foreign languages does not affect the issue of their dominant and effective nationality during the effective period. [29]

105. Additionally, the Respondent argues that, in determining the dominant and effective nationality of Jason and Laura Aryeh, the Tribunal must examine their father's intent in sending them to the United States. This is particularly so since the Aryeh children were minors and incapable of taking care of themselves. The Respondent submits that Raffie Aryeh did not intend his children to become integrated into the American society. In support of this argument, the Respondent, in addition to its reasons above, refers to the fact that Raffie Aryeh registered the children's births with the Iranian authorities and obtained Iranian identity cards for them. The Respondent contends that the children were sent to Iran annually to meet relatives and maintain their ties with Iran, and that Raffie Aryeh provided them with economic interests in Iran.

106. The Respondent also states that their father provided the living expenses of the Aryeh children and that he also decided where the children resided. Moreover, referring to Raffie Aryeh's statements on his intentions to return to Iran, the Respondent states that when the Claimants moved to the United States they did not intend to permanently reside there and it is for this reason that Raffie Aryeh renewed the children's Iranian passports until November 1978. To that point the Respondent further adds that domicile based on the emergency situation created by the Revolution should not be considered to strengthen the other nationality.

107. Finally, the Respondent asserts that because the Aryeh children had not completed their primary school education by the jurisdictional cut-off date, the period of their education does not outweigh the effect of the years spent in Iran and the effect of family upbringing. The Respondent also refers to such other relevant factors as owning property in Iran, and the obligation to pay taxes on that property, which in turn may affect the consideration of the dominant and effective nationality. Moreover, the Respondent contends, referring to one separate statement from the case Reza Nemazee, et al. and The Islamic Republic of Iran, Partial Award No. 487-4-3, para. 33 (10 July 1990), reprinted in 25 Iran-U.S. C.T.R. 153, 161, that the property of Raffie Aryeh and Morad Aryeh, the children's grandfather, should be taken into account as the Aryeh children are potential inheritors of that property.

2.2. The Tribunal's Decision

108. In order to determine whether the Claimants have standing before this Tribunal, the Tribunal must determine whether the Claimants were citizens of Iran, of the United States, or of both Iran and the United States, during the period from the date the Claims arose until 19 January 1981, the date on

[29] In support of this assertion, the Respondent also refers to certain parts of the award in Samrad, supra, paras. 29 and 42, 26 Iran-U.S. C.T.R. 53, 57, a factually distinguishable case, to argue that education in the United States and extra curricular activities have no impact on the nationality, and will not render the United States nationality of the children dominant and effective.

which the Claims Settlement Declaration entered into force. If the Claimants were citizens of both Iran and the United States, the Tribunal must determine the Claimants' dominant and effective nationality during that period. See Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251. In these Cases, the relevant periods commenced when the Respondent allegedly expropriated the properties for which the Claimants seek compensation. On the basis of the Claimants' Claims, and taking into consideration the Tribunal's decision on the admissibility of the Claim for Forced Sale of Shares in KTT, see, supra, paras. 62-64, the Tribunal considers, solely for jurisdictional purposes, that the relevant period for the Claimants' various Claims began in February 1979.

109. The Tribunal notes that there is no dispute that Vera-Jo Miller Aryeh became an Iranian national by virtue of her marriage to an Iranian national, and that Jason Aryeh and Laura Aryeh are also Iranian nationals because they were born to an Iranian father. The Tribunal is also satisfied that the Claimants acquired their United States citizenship at birth, as evidenced by their birth certificates and their United States passports. There is no evidence in the record which would indicate that the Claimants have relinquished either their Iranian citizenship in accordance with the law of Iran or their United States citizenship in accordance with the law of the United States. Consequently, the Tribunal finds that during the relevant period the Claimants were nationals of both Iran and the United States.

110. Having found that during the relevant period the Claimants were citizens of both Iran and the United States, the Tribunal proceeds to determine their dominant and effective nationality during that period. For this purpose, the Tribunal must establish the country with which the Claimants had stronger factual ties. In making such a determination the Tribunal must consider all relevant factors, such as the Claimants' habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Case No. A18, supra, p. 25, 5 Iran-U.S. C.T.R. 265. While the Tribunal's jurisdiction is dependent on the Claimants' dominant and effective nationality during the period between the date the Claims arose and 19 January 1981, events and facts preceding that period remain relevant to the determination of the Claimants' dominant and effective nationality during that period. See Malek, supra, para. 14, 19 Iran-U.S. C.T.R. 51.

111. As noted above, Vera-Jo Miller Aryeh is a native born United States citizen who lived in the United States until the age of twenty-four; that is, from 11 April 1943 until September 1967. From 18 September 1967 to 5 March 1970 she spent a major part of her time in Iran with approximately eight months in the United States, and from 7 March 1970 to 12 June 1973 she spent a major part of her time in the United States with several months each year in Iran. Since 15 June 1973 she has resided in the United States. Thus, between 1943 and 1979 Vera-Jo Miller Aryeh resided altogether thirty-two years in the United States and less than four years in Iran. In light of the above, the pertinent issue is whether the circumstances of Vera-Jo Miller Aryeh's life in Iran outweigh the fact that she lived more than eight times as many years in the United States as in Iran.

112. Before turning to the other evidence, the Tribunal addresses the Respondent's argument that because Vera-Jo Miller Aryeh obtained her Iranian nationality by virtue of her marriage to an Iranian national her Iranian nationality should be considered as the determining factor in evaluating her ties with and interests in Iran. The Tribunal notes that the Iranian nationality was obtained by operation of Iranian law and finds therefore that this formal acquisition of a nationality cannot be considered as a determining factor while considering the other evidence concerning her

ties to Iran.

113. Turning to the other evidence, the Tribunal first confirms that after moving to Iran Vera-Jo Miller Aryeh kept an American lifestyle rather than adopting an Iranian lifestyle. The evidence in the record indicates that she maintained American customs in her home and spoke English to her children. It also appears to the Tribunal that this is so even though she was able to speak some Persian with the servants. Moreover, the Tribunal finds that Vera-Jo Miller Aryeh maintained her American family ties after she was married to her Iranian husband and continued to hold financial interests in the United States. She has also voted in different United States elections since 1964. The Tribunal also observes that all her blood relatives besides her children have lived and continue to live in the United States. Also, since her return to the United States in 1973 she reestablished her contacts in American society. For example, she taught a poetry seminar and tutored mathematics in The Dalton School and took courses at the New School for Social Research and New York University School for Continuing Education during 1974-1981. [30]

114. Next, the Tribunal considers the Respondent's argument that Vera-Jo Miller Aryeh could not have left Iran for good in 1973, since her name has been included in several minutes of meetings of various Iranian companies in which she was a shareholder and since she was elected as the Chairman of the Board of GTT and KTT, which positions allegedly demanded her presence in Iran. However, the Tribunal notes that Vera-Jo Miller Aryeh has explained that her husband either signed her name on these documents by proxy or brought them to her in the United States, to be signed while he was visiting his family. Moreover, at the First Hearing, the Claimants informed the Tribunal that Mahmoud Morad Ali Beigi had a proxy to sign the documents on behalf of the members of the Aryeh family. Therefore, absent any other supporting evidence to the contrary, these documents do not outweigh the other evidence presented which shows that Vera-Jo Miller Aryeh did not return to Iran after 1973.

115. Considering the evidence on the whole, the Tribunal finds that Vera-Jo Miller Aryeh's attachment to the United States has not been outweighed by her attachment to Iran. Consequently, the Tribunal determines that during the relevant period Vera-Jo Miller Aryeh's dominant and effective nationality was that of the United States.

116. The Tribunal turns now to the Aryeh children's dominant and effective nationality. [31] The Tribunal confirms that the Aryeh children were born to a native American mother and an Iranian father, and that they were both born in the United States. It appears to the Tribunal that the Aryeh children had lived most of their lives in the United States before their Claims arose sometime in 1979. Further, the Tribunal recognizes that the Aryeh children received their education and maintained their residence and center of interests and activities in the United States for most of their lives even prior to and also during the relevant period. Based on the evidence in the record, the Tribunal is satisfied that the Aryeh children lived with their mother and spoke English at home. All their active family ties, other contacts and activities evince that they became fully integrated into the American society long before the relevant period began.

117. Moreover, the Tribunal does not consider the registration of the children's birth with the Iranian

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[30] She also enrolled her children in various school activities.

[31] It has been the Tribunal's practice to consider the nationality of a minor claimant separately, rather than to assume that he or she has the nationality of the parent or guardian. See the cases mentioned, supra, in note 26.

authorities in the United States and the obtaining of Iranian ID cards for them provide sufficient proof that their father's intent was to prevent their integration into the American society. [32]

118. In light of the above, the Tribunal finds that during the relevant period, the Aryeh children's ties to the United States outweighed their ties to Iran. Consequently, the Tribunal concludes that during the relevant period, Jason and Laura Aryeh's dominant and effective nationality was that of the United States.

119. This jurisdictional determination of the Claimants' dominant and effective U.S. nationality remains subject to the caveat recognized by the Full Tribunal in its decision in Case No. A18, supra, p. 26, 5 Iran-U.S. C.T.R. 266, in which it stated "the other nationality may remain relevant to the merits of the Claim."

III. MERITS

1. The Ownership of Certain Claims [33]

120. The Claims before the Tribunal in the present Cases are for the alleged expropriation of, inter alia, certain ownership interests the Claimants contend to have had in a number of companies incorporated in Iran. In denying the Claimants' ownership of the claims in connection with KTT, GTT, Seeb Talaie, Aslemaskan and Iram, the Respondent argues that, since the Claimants allege that their interests in the companies involved were acquired through donation by Raffie Aryeh and by operation of incorporating those companies, the Claimants have the burden to prove their ownership and that such transfer of interests was effectively executed. However, the Respondent raises two main objections against the Claimants' ownership of claims in connection with the above companies. First, the Respondent challenges the authenticity of the documents underlying such ownership and the valid formation of the companies involved, claiming that the documents were forged and their presentation as evidence before the Tribunal amounted to another separate crime of using forged documents. Second, the Respondent argues that the alleged transfer of ownership interests was not real and that the alleged donation did not satisfy the mandatory requirement of the Iranian law. Based on these arguments, the Respondent requests that the Claimants' claims with respect to the expropriation of KTT, GTT, Seeb Talaie, Aslemaskan and Iram must fail for the want of proof of ownership. The Tribunal will treat these allegations under the following two separate titles.

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[32] Article 993 of the Iranian Civil Code provides: The following events must be notified to the Office for Vital Statistics during the proper period and in the way stipulated by special laws and regulations:
(1) The birth of every child...
Moreover, according to Article 976 of the Iranian Civil Code, inter alia, persons born outside Iran whose fathers are Iranian are considered to be Iranian subjects.
Finally, according to Article 1001 of the Iranian Civil Code, Iranian Consular Officers abroad must fulfill in respect of Iranians residing in their jurisdiction the duties which are under the charge of the Office for Vital Statistics according to the relevant laws and regulations. Therefore, under Iranian law an Iranian father is not merely entitled, but also obliged, to notify the birth of his children to the Office for Vital Statistics, or while being abroad at that time, to the applicable Consular Office. Accordingly, the fact that a child has been registered as an Iranian at the Consular Office does not prove the father's intentions, but only establishes the fact that the child also has an Iranian nationality.

1.1. The Issue of the Alleged Forgery and the Use of Allegedly Forged Documents

1.1.1. The Respondent's Contentions

121. After the first hearing held in January 1995, the Respondent raised the allegation that the Registration Book at the Corporation Registration Department ("CRD") and the Memoranda of Association underlying the Claimants' Claims for four of the five companies, that is to say, Aslemaskan, GTT, Iram and Seeb Talaie, were forged. The Respondent argued that Iranian law is applicable, and this would include, inter alia, Articles 195-198 of the 1311 [[1932] Commercial Code, Articles 1-2 of the Justice Ministry's By-law concerning the Commercial Code, Article 5 of the Draft Amendment to the Registration of Companies' By-law, Article 18 of the Notary Public Offices' Act, Articles 8, 19 and 25 of the Notary Public Offices' By-law and Articles 47-48, 50 and 63 of the Law on Registration of Deeds and Real Estate ("Registration Act"). Based on these laws, the Respondent contends that an official contract of association (a memorandum of association) is a pre- requisite for the establishment of a company and that the memorandum of association must be registered in the Registration Book of the CRD.

122. The Respondent argues that it is undisputed that the four Memoranda of Association were registered in Iran in 1974 and 1975. The CRD official's signed attestation on the four Memoranda confirms that the documents were registered on a certain date and that the identity of the shareholders was verified or established in his presence. The Respondent claims that each and every one of the registration documents purports to have been signed by Vera-Jo Miller Aryeh herself and not by someone else acting on her behalf. The Respondent refers, especially, to Vera-Jo Miller Aryeh's insistence at the First Hearing that she never returned to Iran after 1973[34] and submits that it was this insistence that prompted the Respondent to investigate the matter leading to the discovery of the forgery. In the Respondent's assessment, the inescapable conclusion to be drawn from Vera-Jo Miller Aryeh's admission that she was in the United States in the years 1974 and 1975 is that the signatures appended to the CRD Registration Book are not her signatures and that someone has forged them. According to the opinion prepared by four Iranian handwriting experts and provided by the Respondent, the signatures on the Memoranda of Association of the four companies in question have been appended to those documents by the same person who has forged Vera-Jo Miller Aryeh's signatures in the CRD Registration Book.

123. In connection with the Claimants' contention that the CRD Registration Book might have been signed by Raffie Aryeh or Mahmoud Morad Ali Beigi, the Respondent argues that no power of attorney has been produced to show that proxies to those persons were ever issued. The Respondent also points out that Mahmoud Morad Ali Beigi denied in his affidavits having any general or specific proxy from Vera-Jo Miller Aryeh.[35]

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[34] This assertion was consistently maintained by the Claimant throughout the course of the filings and proceedings before the Tribunal.

[35] The Tribunal notes, however, that although Mahmoud Morad Ali Beigi was present at the Second Hearing, he was not called by the Respondent as a witness.

124. The Respondent states that the Claimants have submitted in evidence before this Tribunal the forged Memoranda of Association reflecting the falsehood contained in the CRD Registration Book.[36] The Respondent argues that, under Iranian law, for the crime of using forged documents to occur, the existence of the user's knowledge of the forged character of the documents is necessary. Proof of such knowledge is provided, according to the Respondent, by the fact that the Claimants have tampered with the original text of the Memorandum of Association of Seeb Talaie and omitted to translate the Persian text of the CRD's false attestation on two others. As to the legal basis of the Claimants' action, the Respondent states that the action constitutes an independent crime of using forged documents under the criminal laws of both Iran and the Netherlands.

125. The Respondent contends that the registration documents are forged on two grounds: because the CRD official registered the Memoranda of Association in the absence of Vera-Jo Miller Aryeh, and because they contain false signatures of Vera-Jo Miller Aryeh. In the Respondent's view, the Claimants are guilty of a series of criminal offenses of forgery. This kind of conduct cannot, in the Respondent's opinion, but render the registration documents null and the claims inadmissible. The Respondent also contends that, according to specific provisions of the Civil Procedure Code of Iran, once it is established that a document is forged the court must order its destruction.

126. Founding its forgery argument, in part, upon international law tenets, the Respondent refers to a statement by one of its expert witnesses wherein he concluded that "[i]f the existence of forgery is established by proof it is the duty of an international tribunal to dismiss the claims based upon the forgery."

127. As to the Claimants' argument that the passage of time would somehow cure the defect, the Respondent contends that the Claimants overlook the fact that the incorporation process and the registration documents are, for the stated reasons, null and void, and cannot therefore by passage of time or otherwise turn into a valid act.

128. The Respondent asserts that, under Article 97 of the old Iranian Penal Code which has been adopted as Article 20 of the present Islamic Punishment Code, Taezirat, "fraudulent intention" is not a condition for the crime of "making seal or signature" and that the presence of mens rea is presumed by the fact that the person making the seal or signature has the knowledge that the signature is made "contrary to the truth." Furthermore, the Respondent states that although the proof of damage or prejudice has not been a condition in connection with such crimes, damage or prejudice to the society, particularly in connection with an official/public document such as a memorandum of association and the Registration Book of the CRD, must be presumed.

129. Furthermore, the Respondent argues that under Iranian law a valid corporation cannot be formed without the fulfillment of the registration requirements. Accordingly, Vera-Jo Miller Aryeh's failure to appear in person at the CRD in violation of Iranian law affects the validity of all four corporations, even though the other shareholders might have fulfilled the necessary requirements, because the creation of an official document under Iranian law is an all-or-nothing affair.

130. The Respondent states that neither a commercial corporation, nor a corporate agreement, materialize without having been registered. The Respondent continues that there are a host of

[36] The Tribunal notes that, in fact, three out of four of the contested Memoranda of Association, i.e., those of GTT, Iram, and Seeb Talaie are submitted by the Claimants while the fourth (Aslemaskan) is submitted by the Respondent.

statutory provisions stressing that the proper execution of a memorandum of association and the registration of a corporation is the sine qua non for the proper formation of the corporation and the validity of a memorandum of association. The Respondent, therefore, concludes that the registration of a company has a constitutive, rather than a purely declaratory, impact.

131. The Respondent also argues that since the four corporations have not been duly incorporated, Raffie Aryeh's intention of transferring the title to the portions of his property earmarked for his wife and children has failed. Instead, title remains with him. Thus, the Respondent concludes that the Claimants' lack of ownership of the claimed interests results in the dismissal of the claims on the merits or, in the alternative, in their inadmissibility under the Algiers Declarations, since Raffie Aryeh is neither a U.S. national nor a claimant in these Cases. Therefore, the Claims should be dismissed.

132. As to the Claimants' argument in relation to the statute of limitation, the Respondent contends that all the forgery crimes committed in 1974-1975 had not been time-barred by the statutes of limitation prescription, when in 1982 the Iranian legal system abolished all such regulations following the establishment of the Islamic system of law which does not recognize any statute of limitation. In connection with the crime of using forged documents, the Respondent invokes the same argument and adds that the crime being continuously committed during these proceedings is not time-barred, either under Iranian law or under Dutch law, whichever the Tribunal might find applicable.

133. The Respondent's forgery defense does not extend to KTT. However, the Respondent contends, based on the theory of fraus omnia corrumpit and principles of international public policy, bonos mores and "clean hands," that the crime of forgery should be considered to have such a sweeping vitiating impact that it would render also the claim in connection with KTT inadmissible.

1.1.2. The Claimants' Contentions

134. The Claimants state that it is for the Respondent to establish that (i) the documents are forgeries; and (ii) the Claimants and their representatives have submitted them to the Tribunal with full knowledge of the fact that they were forgeries. The Claimants state that neither one of these allegations is true.

135. The Claimants deny that any "forgery" occurred. They further state that even if the allegations of the Government of Iran were taken as true, the alleged "forgery" would have no impact on the Cases.

136. As to the question of whether Vera-Jo Miller Aryeh signed the CRD Registration Books in connection with the registration of each company, the Claimants reply that she was not in Iran at the time. Vera-Jo Miller Aryeh states that she cannot explain the circumstances under which her name might have been inscribed on the CRD Books. However, both before and after the dates on which the companies were registered, she had fully authorized and empowered Raffie Aryeh to execute all documents and to carry out any and all matters on her behalf. Thus, to the extent she was required to sign the CRD Registration Books, Raffie Aryeh could have signed for her. Also Mahmoud Morad Ali Beigi, employed by both the former and current managers of KTT, could have easily signed on her behalf

as proxy because at all times he was authorized to act on Raffie's and her behalf with respect to the details of registration at the CRD. As to the signatures appearing on the Memoranda of Association, Vera-Jo Miller Aryeh confirms that, to the best of her knowledge and belief, they are her signatures.

137. The Claimants state that Vera-Jo Miller Aryeh trusted her husband to see to it that all required formalities of incorporation were properly carried out. She never had any reason to question, nor does she today question, whether all the technicalities of the formation of the companies had been properly carried out. Indeed, to her the notices of establishment in the Official Gazette were the ultimate proof of the promoters/founders compliance with the registration requirements.

138. The Claimants state that the Respondent does not properly identify forgery and fraud under Iranian law. Since the alleged offenses are forgery and fraud, the relevant provisions under the Penal Code of Iran 1304/1354 [[1925/1975], which were in force at the time the alleged improprieties were purportedly committed (1974/1975), are Articles 97 and 238. Both Articles provide clearly that forgery, fabrication or fraud do not occur unless it is with the intention of fraudulently taking advantage at another person's expense or to "appropriate someone else's property". According to the Claimants, forgery requires three elements: (a) alteration of truth; (b) fraudulent intention; (c) possible loss to others.

139. Since Raffie Aryeh was fully authorized to carry out all the registration formalities for and on behalf of Vera-Jo Miller Aryeh, his alleged conduct of inscribing her name, even if true, would not constitute fraud and forgery. Similarly, it is the Claimants' understanding that Mahmoud Morad Ali Beigi was fully authorized to carry out registration formalities and, therefore, even if he had signed the Registration Book at the CRD, also this would not constitute fraud and forgery. Vera-Jo Miller Aryeh also confirmed at the second hearing held in January 1996 ("Second Hearing") that she accepts any actions taken on her behalf. Furthermore, there is no loss or prejudice caused even if Raffie Aryeh or anyone else inscribed Vera-Jo Miller Aryeh's signature on the CRD registers or corporate documents either with her prior authority or approval or with her subsequent ratification. Since the alleged improprieties occurred in 1974/1975 it cannot possibly be argued that the alleged improprieties were committed in contemplation of bringing a claim to this Tribunal or to harm the Government of Iran which confiscated the shares many years after the formation of the companies.

140. The Claimants conclude that, in the absence of a wrongful intent or any intent to deceive or defraud, the allegations of forgery and fraud must collapse. Forging someone's signature must primarily be prejudicial to the person whose name has been forged. The only person who could have been prejudiced as a result of the alleged forgery is Vera-Jo Miller Aryeh and, indeed, that is what is alleged by the Respondent. Thus, in view of Vera-Jo Miller Aryeh's ratification of the formation of these companies, this element of fraud, i.e., possible damage to others, is also rendered moot. Failure to establish any of the three essential elements of forgery defeats any charge that someone has copied and/or inscribed Mrs. Aryeh's name in the registration documents and, therefore, the Respondent's claim should be dismissed without consideration of other issues.

141. The Claimants state that, under Articles 94 and 96 of the Commercial Code 1311 [1932], a limited liability company is formed by the promoters' intention to form such a company. Further, the Claimants allege that registration, although mandatory, has only a declaratory effect. They state that the reality of the existence of the companies cannot be denied. Therefore, the Claimants submit that

the companies were duly established and came into being prior to their respective registrations. In their opinion, the documents of registration of the companies confirm this fact.

142. The Claimants also state that improper registration does not lead to the nullity of a corporation. According to the Claimants, even non-registration of the companies would not lead to the consequences alleged by the Respondent; instead, the companies would be regarded as "general partnerships" (Art. 220 of the Commercial Code 1311 [1932]).

143. Furthermore, according to the Claimants, there is no provision under the relevant legislation requiring the shareholders or their representatives to appear before the Registrar either in person or through a proxy and to sign the relevant sections of the CRD Registration Books. Such requirements, if any, are internal requirements of the CRD, they are purely administrative in nature and are not sanctioned expressly by law. Further, the Claimants point out that the affidavit submitted by the Respondent's registration expert, Mohammad Jalali, supports the Claimants' assertion.

144. According to the Claimants, it is inappropriate to rely on various provisions of the Registration Act dealing with the duties of notaries for registering transactions as compared to registration of a corporation which is purely recording a summary of the corporation. Thus, the Claimants conclude that primarily it should be asked whether the details of the companies entered into the CRD registers are correct. There is no allegation that what was registered is at variance with the corporate documents of the companies. Insofar as registration reflects the truth, reflects the proper details of the companies, and reflects the intention of the shareholders, it must be concluded that it does not matter whether the CRD registers have been signed, or whether somebody has inscribed the name of the shareholders, including Vera-Jo Miller Aryeh, in one or another column of the Registration Book.

145. Furthermore, the Claimants state that no provision of the Registration of Companies Act, its Administrative Regulations or the Commercial Code requires an official of the CRD to establish the identity of the shareholders at the time of registration. Moreover, establishing the identity of the parties is a subjective matter. That is to say, the party's identity must be established to the satisfaction of that particular registration official. The Claimants place particular emphasis upon this point, since they contend that Mahmoud Morad Ali Beigi registered certain companies for the Aryeh family. From this fact the Claimants conclude that it is equally clear that the registration official had been called upon to verify indirectly the identity of shareholders. That would seem to indicate that the verification of identity amounts to a low and surmountable threshold for the Claimants, particularly considering the fact that the Aryeh family name was well known.

146. The Claimants further state that the shareholders as well as the public at large are entitled to rely on the formal announcement by the Government that a company has been formed and registered. The Claimants point to the Official Gazette notices as proof of the then-Government's recognition and acknowledgement of the shareholders of the four companies in question. Thus, the Claimants conclude that the official notices constitute incontrovertible proof of the valid formation and registration of the companies.

147. According to the Claimants, the Respondent has not provided any basis for its assertion that the documents in question and the registration of the companies are a nullity; nor has it explained what

the impact of such nullity would be on the Cases. Furthermore, the Claimants state that their Claims arise out of the confiscation of their assets in Iran by the Respondent, be it in the form of shares or interest in the companies or interest in the underlying properties owned by those companies. Moreover, the Claimants point out that the companies were registered as limited liability companies. The Commercial Code 1311 [1932] provides in Article 100 that in two instances a limited liability company may be declared a nullity. Neither one applies to these Cases.

148. Furthermore, according to the Claimants, the suggestion of the Respondent that the companies would be void ab initio is in direct conflict with the public policy of Iran as manifested by the Commercial Codes, since under the Codes every opportunity is afforded to a company to correct deficiencies in its formation and registration.

149. The Claimants conclude in connection with the forgery issue that for the reasons stated above the facts alleged by the Respondent have no impact on the companies: there has been no fraud or forgery, nor alteration of truth or any fraudulent intention at any stage; the companies were properly established and Vera-Jo Miller Aryeh has confirmed and ratified the establishment of the companies; the companies were properly registered; there has been no application for nullity and no such application can now be filed with a competent court; and even if the companies were declared a nullity the underlying assets would remain the property of the Claimants in proportion to their holding.

150. The Claimants finally state that under Iranian law none of the facts alleged by the Respondent can be the basis for an application to a competent court for nullity of the companies, let alone automatic and ab initio nullification of these companies. Therefore, the formation of the companies is free of any legally significant defect. The Claimants state that the same applies to the registration of the companies, particularly, where Vera-Jo Miller Aryeh has confirmed the authenticity of the signatures appended to the Memoranda of Association and confirmed the authority of Raffie Aryeh to act on her behalf. Moreover, as a matter of Iranian law, if a corporation is declared a nullity, the court would appoint a liquidator to liquidate the affairs of the company. Consequently, ownership of the assets of the companies would vest in common in the shareholders through the person of the liquidator.

151. In connection with the alleged use of forged documents, the Claimants state that the Respondent's purported evidence of the Claimants' knowledge of submitting false documents is the allegation that the Claimants have knowingly tampered with the documents presented to the Tribunal. The Claimants state that it is true that in photocopying the documents as exhibits the CRD attestation on one of the Memoranda of Association was not properly copied. However, they point out that if there was any intention to tamper with one document, why would the Claimants not have done the same in respect of the other Memoranda of Association, namely those of GTT and Iram, which are subject to similar allegations.

152. A subsidiary charge presented by the Respondent is that the printed formulae of the Registrar on these documents were not translated. According to the Claimants, the documents in question were sent by the Claimants' attorneys to an outside independent translator for translation. The fact that the translator has chosen not to translate the printed attestations of these documents, contend the Claimants, is immaterial.

153. As a matter of international law, the Claimants assert that the questions of (i) fraud and forgery and (ii) reliance upon forged and fraudulent documents arise in circumstances where fraud and forgery is at the heart of the case and has been committed with the intention to induce the award of the tribunal. The Claimants argue that international public policy will not tolerate "material" fraudulent conduct that is deliberate, intentional and designed to mislead an international tribunal in reaching its decision.

154. However, according to the Claimants, the allegations of the Respondent in these Cases relate to alleged technical shortcomings in the registration of the companies, years before the establishment of the Tribunal. It is not even contended that the alleged improprieties were committed with a view to defrauding this Tribunal or that, at the time they were allegedly committed, anybody could have contemplated the 1979 Revolution. Further, and undoubtedly, the allegations of fraud and forgery are not at the heart of these Claims, since the Claims arise out of the confiscation of the Claimants' assets by the Government of Iran.

155. The Claimants also contend that it is clear that the Respondent is not an "interested party" entitled to advance the allegations of fraud and forgery. This is because, at the time of formation of the companies, the Respondent State had no interest in these companies. Further, the Respondent has in no way been prejudiced as a consequence of the registration of the companies. Consequently, the Respondent has no locus standi to raise any of the allegations that it has so far raised.

156. Furthermore, the Claimants assert that the extinctive prescription under Iranian law has definitely and finally eradicated any possibility of claims being brought against anyone in connection with fraud and forgery, nullity of documents of incorporation, nullity of registration of the companies, and finally nullity of the companies themselves some 20 years after the event. Also, from the date the Respondent State confiscated the companies in early 1979, it has been in full control of the affairs of the companies and in general has ratified each and every action of the companies, including their very existence. Notwithstanding the fact that the Respondent maintains that as of February/March 1995 it became aware of the alleged improprieties, the Respondent has continued to operate at least one of the four companies, and, to the Claimants' knowledge and belief, no action has been taken by the Respondent to disband any of the four companies. Consequently, the Government of Iran is estopped from challenging the existence or validity of the companies.

1.1.3. The Tribunal's Decision

157. The Tribunal notes that the basic rule on the allocation of the burden of proof is expressed in Article 24, paragraph 1, of the Tribunal Rules which states that "[e]ach party shall have the burden of proving the facts relied on to support his claim or defence." Further, as described by Sandifer in his work on the practice of international tribunals,
[t]he broad basic rule of burden of proof adopted, in general, by international tribunals resembles the civil law rule and may be simply stated: that the burden of proof rests upon him who asserts the affirmative of a proposition that if not substantiated will result in a decision adverse to his contention. This burden may rest on the defendant, if there be a defendant, equally with the plaintiff, as the former may incur the burden of substantiating any proposition he asserts in answer

to the allegations of the plaintiff. [37]

158. In the present Cases, it was the Respondent who raised the defense that some of the Claimants' documents have been forged. Therefore, the burden of proving that a forgery was committed falls on the Respondent.

159. As was the case in Dadras International, et al. and The Islamic Republic of Iran, et al., Award No. 567-213/215-3 (7 Nov. 1995), reprinted in --- Iran- U.S. C.T.R. ---- ("Dadras"), the Tribunal, in the present Cases, is confronted with allegations of forgery that are particularly grave, because of their implications of fraudulent conduct and intent to deceive. The Tribunal considers that the allegations of forgery in these Cases are of a character that requires an enhanced standard of proof. Therefore, consistent with its past practice, the Tribunal holds that the allegation of forgery must be proven with a higher degree of probability than other allegations in these Cases. See, e.g., Dadras, supra, para. 124. The proper standard of proof, as articulated in Dadras, was that of "clear and convincing evidence." Id. This heightened standard of proof was first propounded in Oil Field of Texas, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 258-43-1, para. 25 (8 Oct. 1986), reprinted in 12 Iran-U.S. C.T.R. 308, 315.

160. Next, the Tribunal must examine the question whether the signatures on the four Memoranda of Association are forged, as the Respondent alleges. At the Hearing, the Tribunal heard the testimony of two handwriting experts, one brought by each Party. Mr. Bouzari, the Respondent's expert, testified that the signatures on the Memoranda of Association were made by the same person who made the signatures on the Registration Books. Mr. Rode, the Claimants' expert, on the other hand, testified that he found considerable differences between the two sets of signatures. Of the two experts, the Tribunal finds the Claimants' expert to be more convincing, especially in view of the more advanced technical means and method used to compare the signatures. This conclusion is also supported by the fact that Vera-Jo Miller Aryeh herself states that, to the best of her knowledge and belief, the signatures on the Memoranda of Association are her signatures. Therefore, based on the evidence before it, the Tribunal cannot but conclude that the signatures on the four Memoranda of Association are made by the Claimant, Vera-Jo Miller Aryeh, or, at least, that they have not been proven to be forged. Furthermore, the Memoranda of Association have been properly registered since they have not been changed in any way.

161. The Tribunal next turns to examine the issue of who signed the Registration Books. It is clear that they were not signed by Vera-Jo Miller Aryeh since, as she admits, she was not in Iran in 1974/1975 when the Books were signed. Thus, the Tribunal must decide whether Vera-Jo Miller Aryeh's presence was necessary to comply with registration formalities or whether someone else could have signed on her behalf.

162. Based on the evidence before it, the Tribunal is not satisfied that the Respondent has been able to prove that Vera-Jo Miller Aryeh's presence was required under Iranian law. Furthermore, during the Second Hearing some of the Respondent's own experts admitted that someone else could have signed the Registration Books at the CRD on Vera-Jo Miller Aryeh's behalf. The Tribunal is convinced that Raffie Aryeh and Mahmoud Morad Ali Beigi had a power of attorney from Vera-Jo Miller Aryeh to sign documents on her behalf. The Respondent has not been able to prove to the Tribunal's

[37] Durward V. Sandifer, Evidence Before International Tribunals, revised edition, Charlottesville 1975, 127 (footnotes omitted).

satisfaction that the signatures made on the Registration Book were not made by someone who had authority to sign.

163. Furthermore, the Tribunal points out that in any case the alleged crime here is at the most only an act which caused some untrue information to appear in the record of the CRD, which act falls under the category of misdemeanors. It is clear that the one who introduced false information to the records was the state official in charge of the records and not the Claimants. The Claimants, in particular Vera-Jo Miller Aryeh, are not guilty of any kind of criminal behavior. Clearly, this is not an issue with regard to Jason and Laura Aryeh since they were only six and four years of age when the alleged irregularities occurred.

164. Moreover, the Tribunal is not satisfied that the Respondent has met its burden to prove the existence of the different elements of forgery. According to Dr. Anvari, the Claimants' expert on Iranian criminal law, for the crime of forgery to be established three elements of forgery have to be proven: (1) intent to mislead or deceive someone; (2) alteration of an instrument contrary to the truth; and (3) capability of damaging a third party. One of the experts proffered by the Respondent, though not an expert on Iranian criminal law, substantially agreed that, under international law, these elements must be established. The Tribunal is not satisfied that the Respondent has proven the existence of any of these elements. To the contrary, the evidence before the Tribunal shows that the Claimants, in 1974/1975, had no intention to mislead or deceive anyone; that the registration documents in question are what they purport to be, i.e., that they reflect the partners' intention to create the four companies; and finally, that no one was harmed by the alleged forgery since the only party who could possibly have been harmed by the alleged forgery is Vera-Jo Miller Aryeh.

165. Finally, the Tribunal turns to the issue whether the Claimants have committed the crime of using forged documents. As was already concluded supra, no forgery has been proven. Even if the Tribunal's conclusion on the question of forgery had been the opposite, for the crime of using forged documents to occur, the person alleged to have committed this crime must be shown to have knowingly submitted the forged documents. However, the Respondent has not been able to produce any evidence to support its allegation that the Claimants knew in 1991, when they submitted the Memoranda in question to the Tribunal, that they were allegedly forged. Furthermore, as for the international law aspect of the forgery allegation, the Tribunal notes that all the examples cited by the Respondent's experts involved cases where an effort was made to deceive or mislead a court. However, the Respondent has not been able to produce any evidence which would prove that the Claimants have tried to mislead or deceive the Tribunal in any way. Therefore, the Tribunal concludes that the Claimants have not been shown to be guilty of using forged documents.

166. Ultimately, as to the impact of the alleged forgery, the Tribunal notes that the companies have been in existence for the past twenty years, seventeen years of which the companies were owned by the Respondent, and that at least GTT still continues to operate. Furthermore, the Claimants have produced evidence to show that, in case the Tribunal were to find that a forgery has been committed, the allegation would be time-barred because of the different statutes of limitations existent under Iranian law, and thus, the alleged forgery would in any case have no impact on the Cases. The Tribunal has previously held that municipal statutes of limitation are not necessarily binding on claims before international tribunals. However, such periods may be taken into account when determining the effects of an unreasonable delay in pursuing a claim before such tribunals. Iran National Airlines Company and The Government of the United States of America, Award No.

333-B8-2, para. 8 (30 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 187, 189; Iran National Airlines Company and The Government of the United States of America, Award No. 335-B9-2, para. 8 (30 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 214, 216; Iran National Airlines Company and The Government of the United States of America, Award No. 336-B12-2, para. 10 (30 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 228, 230; Alan Craig and Ministry of Energy of Iran, et al., Award No. 71-346- 3, pp. 15-16 (2 Sept. 1983), reprinted in 3 Iran-U.S. C.T.R. 280, 287; and Harnischfeger Corporation and Ministry of Roads and Transportation, et al., Award No. 144-180-3, p. 46 (13 July 1984), reprinted in 7 Iran-U.S. C.T.R. 90, 116. The Tribunal notes that the Respondent has expressed different interpretations of the statutes of limitations, sometimes stating they have been abolished and at other times relying on the statutes of limitations to bar the Claimants' claim (see, e.g., supra, para. 60). Furthermore, even if the statutes of limitations were abolished in 1982, as argued by the Respondent, under general criminal law such abolishment could have no retroactive effect. Therefore, for several reasons, the Tribunal determines that there has been an unreasonable delay in presenting the forgery allegation. Thus, the Tribunal concludes that the Respondent's claim is time-barred. Finally, even if the companies were declared null and void, the Claimants would still be entitled to the value of their property at the time it was expropriated. The Tribunal also notes that the Respondent brought up the forgery allegation very late, i.e., in April 1995, even though the Respondent must have noticed that Vera-Jo Miller Aryeh insisted from the inception of the claim before this Tribunal throughout the written pleadings that she never returned to Iran after June 1973. Thus, the Respondent is estopped from making this allegation so late in the proceedings.

167. Consequently, the Tribunal concludes that the Respondent's forgery allegations are rejected and the forgery claim is dismissed.

1.2. The Issue of Ownership in the Five Companies

168. Having found that no forgery has been established, the Tribunal turns next to examine whether the Claimants have been able to sufficiently prove that they owned their Claims.

1.2.1. The Parties' Contentions

169. The Claimants have maintained that the transfer of the ownership of the shares and interests at issue was properly done.

170. The Respondent appears to argue that due to several reasons, including the alleged bad faith of Raffie Aryeh, the transfer of the shares and interests at issue to his wife and his children was not valid. The Respondent contends that a lack of intention to make a real, genuine transfer rendered the transfers invalid and no ownership rights for the Claimants were established. As support for this position, the Respondent refers to Articles 190, 191 and 463 of the Iranian Civil Code and to Article 426 of the Iranian Commercial Code. The Respondent deals also with the nature of these transfers and alleges that, on the basis of Article 47 of the Registration Act and Article 798 of the Civil Code, the contract of gift should have been effected through a notarized deed. Moreover, the Respondent argues that because the Claimants or Raffie Aryeh have not presented evidence

establishing that the donees took possession of the donated property, no possession of the property has been established and that, accordingly, no ownership rights have been created.[38] The Respondent also argues as further support for its position that Raffie Aryeh maintained the possession of, authority over and control of these shares and interests, and that the powers exercised by him over this property were more than the powers of a guardian or a designated attorney.

171. Further, the Respondent refers to Vera-Jo Miller Aryeh's signatures in the corporate documents and to her statement that she was not involved in the daily business affairs of these companies. The Respondent maintains that Raffie Aryeh acted like a sole owner of the companies. Apparently trying to establish Raffie Aryeh's intention behind the distribution of shares and interests among his wife and children, the Respondent refers to the benefits and advantages an investor gains in forming a company (joint stock or limited liability company) in comparison with a single private investment. The Respondent states that the true actor in the companies was solely Raffie Aryeh, who was the only one who benefitted from these arrangements. Therefore, the Respondent states that the Claimants are not the true owners of these company Claims; thus, these Claims should be dismissed on that jurisdictional ground.

172. The Claimants reply that the Respondent's argument that the Claimants' ownership is nothing but a sham is at best tenuous. The Claimants contend that the Respondent offers no evidence to support its contentions and its legal argument is totally without foundation. The Claimants refer to the Respondent's admission that, as a matter of Iranian law, minors have no limitation in acquiring ownership rights in property. Furthermore, all the shares owned by the Claimants are properly registered by the Registrar of the Companies.

1.2.2. The Tribunal's Decision

173. For a gift to be valid, the Iranian law requires genuine intention and taking possession of the gift. The Tribunal notes that there are different reasons why the Respondent's arguments on the invalid transfer of these shares and interests as gifts cannot be accepted. For instance, Article 799 of the Iranian Civil Code states:
In a gift to a minor,... the taking possession of the legal guardian is lawful.

Moreover, Article 798 states that a gift does not take place except with the acceptance of the donee and with his taking possession of it, whether the donee himself or his attorney takes over the gift. Article 747 of the Iranian Civil Procedure Code further states in its beginning the general rule that

[a]nyone who is a possessor, his possession is recognized in the capacity of an owner, but if it is established that his [the possessor's] possession was started on behalf of another person he [the possessor] will not be considered as a possessor, unless the said possessor could establish that the nature of his possession has been changed and that he has taken possession as an owner.

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[38] According to the general principles of international procedural law and Article 24, paragraph 1, of the Tribunal Rules, each party shall have the burden of proving the facts relied on to support his claim or defense. Therefore, a party which refers to a failure to establish a legal act in a proper manner should bear the burden of proof for establishing the alleged failure. When someone who was a third party to the legal act at issue at the time of the transaction makes an allegation on the failure, it has the burden of proving its allegation. Thus, it is up to the Respondent in these Cases to show that the transfer was not executed in a proper manner.

Furthermore, Article 745 of the Iranian Civil Procedure Code states that possession takes place whether directly or through an intermediary such as a guardian, attorney or a steward.

174. Moreover, Article 1180 of the Iranian Civil Code states in the relevant part that, in Iran
[a] minor child is under the guardianship of its father or paternal grandfather.

Article 1183 of the same Code further provides:

In all matters pertaining to the estate, and the civil and financial concerns of the ward, the guardian will be his or her legal representative.

Also, one of the Respondent's expert witnesses confirmed at the First Hearing that under Article 799 of the Iranian Civil Code the natural guardian of a minor child may take possession of a gift on behalf of the minor.

175. Thus, the arguments concerning the Claimants' alleged failure to establish legally valid possession of the donated property is against Iranian legislation. Moreover, Article 803 of the Civil Code states: After possession has been taken, also the donor may take back his gift, provided it still exists, except in following circumstances:

1. When the donee is the father, the mother, or the children of the donor.

Accordingly, Iranian legislation recognizes the donations made by parents and effectively protects the donee after the donation has been made. Therefore, the donations made to the children are final and executed in a proper manner. The mere fact that the father was a donor and the legal guardian of the donee does not affect that issue. [39]

176. The arguments concerning the benefits conferred to investors through different corporate forms in comparison to the benefits derived from investments made as a single private investor are probably true, but the use and enjoyment of these benefits, as established in legislation, cannot be considered in any way to be negative. They are normal options in domestic business. Therefore, these arguments do not affect the issue of the ownership of the Claimants' shares and interests in the companies in question.

177. Moreover, Raffie Aryeh himself confirmed at the First Hearing that he truly intended to, and also did, transfer the shares and interests at issue to the Claimants. Also, the record contains several indications that this actually took place. For example, numerous documents of the general meetings of the companies show that the Claimants were mentioned as shareholders of the companies at issue. Therefore, the transfer of the property was also factually executed and implemented.

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[39] Furthermore, the remaining legislation referred to by the Respondent does not outweigh this argument nor does it support Iran's position. For example, Article 426 of the Commercial Code should be read in its proper context which relates to the issue of bankruptcy (Part Eleven of the Code) and its effects (Chapter Two of Part Eleven). The reference to contract in Article 426, therefore, refers to a contract made in order to avoid liabilities or to defraud the creditors. Moreover, the reference to Article 463 of the Iranian Civil Code refers to Section Two "On Conditional Sales", which is not the case at issue. Furthermore, the Article states that "[i]f, in a conditional sale, it becomes apparent that the object of the seller was in reality not a sale, the rules as to sales will not be applied to it." Therefore, the applicability of this Article is explicitly limited to conditional sales.

178. The Tribunal notes that in order to challenge an official document in Iran the challenger is required to take an action to set aside the document. It has to be proven that the document is forged. As long as an official document exists, no governmental official is entitled to challenge it. Also, according to Article 1288 of the Iranian Civil Code, the contents of a document are authentic if it is not contrary to the laws.

179. The Tribunal also rejects the theory proffered by the representatives of the Respondent at the First Hearing that the Respondent, as an expropriator, could intervene in the legal transactions accomplished between Raffie Aryeh and the Claimants several years before the expropriation. Additionally, according to Article 223 of the Iranian Civil Code, "[a]ny contract entered into is understood to be genuine unless its false nature is proved". The Tribunal considers that the Respondent has not met the burden of proof required to successfully challenge this legal presumption.

180. The Tribunal also notes that various corporate records and documents submitted by both Parties, a majority of them by the Claimants, confirm the Claimants' ownership in these companies and indicate that the transfers were validly made and registered in their names. The Tribunal notes that in four of the five companies at issue all the Claimants were among the original founders. Furthermore, after the Expansion of Ownership Act was applied to KTT, representatives of the governmental entity, National Organization for Expansion of Ownership, attended the general meetings of KTT, and there is no proof that, during the time the Claimants were shareowners of the company, they ever protested in any manner against the Claimants' ownership. Moreover, this shows that representatives of a governmental entity knew that each Claimant owned a portion of KTT. In addition, over sixteen years had elapsed between the time of the application of the Expansion of Ownership Act to KTT and the filing of an objection to the Claimants' ownership in the Respondent's Hearing Memorial. Thus, there was no timely objection to the Claimants' ownership interest in KTT. In view of the above, the Tribunal determines that the Respondent can be considered estopped from raising the issue now. Therefore, for several reasons, the Tribunal dismisses the Respondent's implications that the Claimants would have been merely nominal shareowners and that the ownership would have remained with Raffie Aryeh.

181. Accordingly, the Tribunal finds on the basis of evidence in the record that the transfers of the shares and interests of the companies at issue were properly executed and that the Claimants' ownership rights were validly established. Consequently, the Respondent's assertion that the Claimants are not the true owners of the Claims cannot be accepted.

2. Expropriation

182. As the Tribunal has already found, supra, that the Claimants had ownership interests in the five companies, KTT, GTT, Seeb Talaie, Aslemaskan, and Iram, and Vera-Jo Miller Aryeh also in the Iranians' Bank, the Tribunal now turns to examine whether these properties were expropriated.

2.1. KTT and GTT

2.1.1. Introduction

183. The Tribunal notes that on the basis of several documents in the record it is possible to conclude that both KTT and GTT were expropriated sometime in 1979. [40] The loss of the title to the shares and the loss of shareholders' control over the administration of the companies are clearly present in these Cases. At the First Hearing, several witnesses testified that the administration of GTT was handled by the same people who handled the administration of KTT. [41] Therefore, the expropriation date for GTT will be the same as that for KTT. Thus, the Tribunal finds that the only unclear question is what should be considered as the exact date of expropriation. As is typical in other similar cases, the de facto expropriation seems to consist of several acts which together appear to ripen into an irreversible taking at a certain time. The Tribunal must decide when that moment occurred in these Cases.

184. As a preliminary note, it has to be remembered that the record appears to show two different series of acts affecting the status of KTT: (i) the government-oriented measures (the "first phase") and (ii) the measures originating from the implementation of the List relating to Clause (b) of the Protection and Development of Iranian Industries Act (the "Protection Act"), the 22 August 1979 court decree and steps taken by the Foundation (the "second phase"). The Claimants state that both KTT and GTT were taken during the first phase but the Respondent denies this and instead states that the expropriation took place during the second phase and in no case earlier than the beginning of that phase.

2.1.2. The Date of Expropriation of KTT and GTT

185. In order to establish the expropriation, the Claimants refer to different acts and incidents. They conclude that KTT and GTT were expropriated on 13 February 1979, the date on which the first interference with the enjoyment of their property rights was allegedly undertaken.

186. In order to establish the date of taking in instances of measures affecting property rights, the Tribunal usually looks for a concrete, complete and definite act of taking or for a measure that was irreversible rather than merely ephemeral. For example, in International Technical Products Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Final Award No. 196-302-3, at 49 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 240- 241 ("International Technical Products"), the Tribunal has stated that
[w]here the alleged expropriation is carried out by way of a series of interferences in the enjoyment of the property, the breach forming the cause of action is deemed to take place on the day when the interference has ripened into more or less irreversible deprivation of the property rather than on the beginning date of the events. The point at which interference ripens into a taking depends on the circumstances of the case and does not require that legal title has been transferred.

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[40] KTT was incorporated from the date of incorporation as a joint stock company and GTT was incorporated initially as a limited liability company but it was later transformed into a joint stock company.

[41] This is established by the uncontroverted evidence in the record. Both Nematollah Faghih Nassiri and Raffie Aryeh testified and their testimony remained unrebutted that KTT and GTT were managed and operated by the same individuals who had similar responsibilities with respect to both companies.

187. In the present Cases the Tribunal has to investigate the different incidents and acts which have affected the management of KTT and GTT in order to find the date on which the interference, attributable to the Respondent, ripened into an irreversible deprivation of the Claimants' property. See, e.g., id.; Phillips Petroleum Company Iran and The Islamic Republic of Iran, et al., Award No. 425-39-2, para. 101 (29 June 1989), reprinted in 21 Iran-U.S. C.T.R. 79, 116 ("Phillips Petroleum"); Foremost Tehran, Inc., et al. and The Government of the Islamic Republic of Iran, et al., Award No. 220-37/231-1, at 29 (11 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 249. Therefore, the Tribunal has to examine the acts of interference referred to by the Claimants. The first act affecting the ability of the corporate directors chosen by the shareholders was the incident occurring immediately after the Revolution in February 1979. Nematollah Faghih Nassiri, who was at the time in charge of the operations of the two companies, and the other top officers and directors of KTT and GTT were prevented from entering the premises of the two companies by the Workers' Islamic Committee. Next, on or about 13 February 1979, the Revolutionary Guards of Revolutionary Committee No. 9 arrested six of the senior managers of KTT and GTT, three of whom were also the companies' directors, who thereafter were detained for one night and interrogated by the magistrate.

188. On or about 20 February 1979, Mohammad Taghi Mohammadi appears to have exerted some control over KTT and GTT. Though he did not directly interfere with daily operations, he apparently had an absolute veto power over decision- making. Furthermore, on or about 21 March 1979, Esmail Ali Babaie was designated as a supervisor by the Ministry of Industry and Mines.

189. The record also contains a declaration issued by the Public Prosecutor General's Office dated 12 April 1979 which lists the names of the persons whose own properties as well as those of their next of kin have been expropriated for the benefit of the oppressed. The handwritten remarks on the margin of the document made by the religious judge of the court, Sadegh Khalkali, states that "[t]he movable and immovable properties of the above-named persons... have been confiscated by the Revolutionary Court." The names of all the Claimants are included in the list. Moreover, the record contains a document entitled "List of Decrees Issued by Courts of [the] Islamic Revolution of Iran", which shows that at least two decrees have been issued against the Claimants, one on 22 May 1979 (Decrees Nos. 1542 and 1544) and another on 10 October 1979 (Decree No. 180). The record does not, however, contain the mentioned decrees. [42]

190. On 20 June 1979, the Minister of Industries and Mines and the Minister of Labor and Social Affairs appointed Malek Bahram Marzban, Esmail Ali Babaie, Abdorrahim Afshar, Mohammad Reza Moghaddasi, and Mohammad Taghi Mohammadi as members of the Board of Directors of KTT and GTT, Mr. Mohammadi also being appointed as Managing Director of the two companies.

191. Furthermore, on 16 July 1979 the Protection Act was passed. Article 1, Clause (b), of the Act refers to "[h]eavy industries and mines whose owners through illegal relations with the former regime... have obtained huge wealth... and whose management has been overtaken [sic] by the government by virtue of the legal bill No. 6738 dated 26.3.1358" [16 June 1979]. [43] According to Clause (b), the shares of such individuals "will be owned by the government." Appended to the Act is a list of 51 individuals who are covered by Clause (b), and Morad Aryeh, Raffie Aryeh's father, is one of these named individuals. One month after the adoption of the Act Iran expanded the scope of the Act to

[42] These decrees, though helpful in pinpointing the date of expropriation, were not necessary for a finding of expropriation.

[43] This is an act entitled the "Legal Bill Concerning the Appointment of Provisional Director or Directors for Supervising Production, Industrial, Commercial, Agricultural and Services Units Whether in Public or Private Sector" (the "Law of 16 June 1979").

include the spouses, children and, subject to the decision of a special commission, brothers and sisters of those 51 persons originally identified.

192. On 22 August 1979, Chamber One of Tehran Islamic Revolutionary Court issued a decree, whereby all the assets of 58 named individuals and their close relatives were expropriated. The execution of the decree was assigned to Bonyad Mostazafan and Janzaban. Raffie Aryeh was one of the 58 listed individuals.

193. Finally, the record contains several minutes of the general meetings of KTT from 12 September 1979 onwards which clearly show that at the time of the meetings in question, the ownership of the Aryeh family's shares, including those of the Claimants, had been transferred to the Foundation for the Oppressed which represented all the shares owned by the Aryeh family. The minutes state that the meetings were held in the presence of all the shareholders of the company, and the enclosed list of shareholders does not contain the names of the Claimants or any reference to any of them. [44]

194. The Tribunal has held in several previous Awards that a finding of expropriation "is warranted whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral." See, e.g., Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2, at 11 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225 ("Tippetts"). Moreover, the Tribunal has stated that it is recognized in international law that measures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the State does not purport to have expropriated them and the legal title to the property formally remains with the original owner. Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 32-24-1, p. 51 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 15 ("Starrett, Interlocutory Award"). See also Tippetts, supra, at 10-11; Nazari, supra, para. 121; and Harold Birnbaum and The Islamic Republic of Iran, Award No. 549-967-2, para. 28 (6 July 1993), reprinted in --- Iran-U.S. C.T.R. ----, __ ("Birnbaum"). The appointment of "provisional managers" does not automatically justify a finding of expropriation. Although "not a conclusive proof" (see James M. Saghi, et al. and The Islamic Republic of Iran, Award No. 544-298-2, para. 66 (22 Jan. 1993), reprinted in --- Iran-U.S. C.T.R. ----, __ ("Saghi"); and Birnbaum, supra, para. 28), the Tribunal has previously held that "the appointment of managers often has been regarded as a 'highly significant indication' of a taking and thus of expropriation." Motorola, Inc. and Iran National Airlines Corp., et al., Award No. 373-481-3, para. 58 (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 73, 85 ("Motorola") (citing Sedco, Inc., et al. and National Iranian Oil Co., Interlocutory Award No. ITL 55-129-3 (24 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 277-278 (finding that the appointment of managers is "a highly significant indication of expropriation because of the attendant denial of the owner's right to manage the enterprise.")). The Tribunal turns now to examine the circumstances of the present Cases in light of the above principles.

195. As mentioned above, the Claimants have alleged that KTT and GTT had been expropriated by 13

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[44] Moreover, the record contains letter No. 933.28 of 29 September 1979 from the Foundation for the Oppressed relating to the confiscation of the Aryeh family assets and addressed to the Ministry of Industry and Mines and the Organization for the Protection and Expansion of Industries. The Foundation informs the addressees that "in accordance with the verdict of the Islamic Revolutionary Court, the belongings of the Aryeh family have been confiscated and have been put at the disposal of [the] Foundation", which has also elected a new Board of Directors to KTT. The letter further refers to the directors appointed by the Government and requests that the necessary measures are taken to organize the taking control of the company and transferring it from the Government-designated Board to the Board designated by the Foundation. Also a letter of 12.7.1359 [4 Oct. 1980] from KTT, GTT and Pashmbaf to a bank states that these companies were confiscated.

February 1979. However, the Tribunal is not satisfied that the appointment of Mr. Mohammadi in February 1979 and/or Mr. Ali Babaie in March 1979 amounted to such interference in the affairs of the companies as to justify a conclusion that the Claimants were deprived of their ownership rights in KTT and GTT because the directors appointed by the shareholders still continued to work for the companies. Nor is the Tribunal satisfied that in the specific circumstances of these Cases the inclusion of the Claimants' names in the list of the Public Prosecutor General's Office dated 12 April 1979, when dealing with companies such as KTT and GTT, which are determined to be going concerns (see infra, para. 238), is sufficient to determine that the companies were taken. The determining factor is the point in time when the Claimants irreversibly lost control of the property. This, however, had not yet happened on 12 April 1979. Therefore, the Tribunal turns next to examine whether it can be considered that, on 20 June 1979 when the directors appointed by the Government began to function and those appointed by the shareholders were stripped of their competence, the Claimants were divested of the ability to participate in the management and control of the companies in such a manner as to justify the conclusion that their property was taken.

196. The evidence before the Tribunal shows that the Government appointments were made by virtue of legal bill No. 6738. The record does not contain the actual appointment orders, but the other evidence in the record establishes this point. First, a letter from Mr. Mohammadi and Mr. Malek Marzban to the Minister of Labor and the Minister of Industries and Mines dated 3.7.1358 [25 September 1979] refers to assignment orders Nos. 10187 and 10193, both dated 30.3.1358 [20 June 1979], whereby the two men were appointed members of the Board of Directors of both KTT and GTT. The letter also states that the two "have acted respectively as responsible for Board of Directors [Malek Marzban] and Managing Director [Mohammadi] of the Companies since 30.3.58 (20 June 1979), until 31.6.58 ([22 September] 1979)", when the representatives of Bonyad Mostazafan and the Financial Organization for Expansion of Ownership of Production Units elected a new Board of Directors and a new Managing Director for the companies.

197. Furthermore, the Minutes of the Meeting of the Board of Directors of KTT dated 21 June 1979 refer to the minutes of the meeting of the two Ministers wherein the above-mentioned appointments were made. Also the notice of changes in KTT dated 24 June 1979 refers to the same minutes of the Ministers' meeting and announces the appointment of a new Board of Directors and a Managing Director. A similar notice of changes in GTT is dated 4 July 1979. This is also confirmed by a list of directors and auditors of GTT contained in a report by the Accounting Institute of National Industries Organization and the Plan and Budget Organization, where the tenure of the directors appointed by the shareholders is shown to have ended on 4 July 1979. The Tribunal notes that the record also contains one page of a report by La Societe Comptable which states that the tenure of the directors appointed by the shareholders of KTT ended on 30.4.58 [21 July 1979].

198. The Tribunal has considered the consequences of appointing directors pursuant to the 16 June 1979 Law in several cases. For example, in Payne, supra, para. 20, 12 Iran-U.S. C.T.R. at 10, the Tribunal found that:

The effect [of Legal Act No. 6738] is to strip the original managers of affected companies of all authority and to deny shareholders significant rights attached to their ownership interest... [T]he sum effect in this Case was the deprivation of any interest of the original owners of the companies once they were made subject to provisional management by the Government.

199. Moreover, in Birnbaum, supra, para. 29, which involved the same Act, the Tribunal found that "[i]t is difficult to deny that once the government appointed a temporary manager under the Law of 16 June 1979 and that manager began to function, the owner was divested of the ability to participate in the management and control of his company." See also Starrett Interlocutory Award, supra, p. 52, 4 Iran-U.S. C.T.R. 155, and Khosrowshahi, supra, paras. 23-28. Even more relevant than the Act is the loss of the possibility to participate in the administration of the company, even if the participation is carried out through elected directors.

200. In the present Cases, Mr. Faghih Nassiri testified that, at the same time when he was apprised of the appointment of the new directors for these companies by the Ministry of Industries and Mines and the Ministry of Labor, he was also advised that he and the other members of the Board of Directors were no longer directors of KTT and GTT. He also testified that his employment with KTT and GTT was terminated in July 1979. Accordingly, on the basis of the evidence presented as a whole, the Tribunal finds that the authority exercised by the directors appointed on 20 June 1979 on the basis of the Law of 16 June 1979 was such as to justify a finding that the Claimants were deprived of the power to exercise their ownership rights in the two companies as of 21 July 1979.

201. The subsequent appointment of new directors by Bonyad Mostazafan also shows that the goal of the Respondent was to permanently exclude the existing management. By effectively forcing out the existing management, the Respondent deprived the Claimants, as shareholders, of their rights to select by vote directors and managers of their choice.

202. The Tribunal notes that the record also contains, for example, the Protection Act and the decree of 22 August 1979 of Chamber One of the Tehran Islamic Revolutionary Court. However, because of the Tribunal's conclusion, supra, that the Claimants were deprived of their ownership interests in KTT and GTT prior to the issuance of the above Act or decree, there is no need to address their possible relevance to the present Cases.

2.2. Seeb Talaie, Aslemaskan and Iram

203. The Claimants have asserted that measures similar to those enacted in KTT and in GTT were also taken in the other companies at issue. However, there is little evidence in the record of any measure that has affected the other companies prior to the issuance of the declaration and decrees directed against the assets and the property of Raffie Aryeh and his family. The Claimants allege that these companies were expropriated on 12 April 1979 at the latest and the Respondent claims that they have never been expropriated.

204. The Tribunal notes, as was stated supra, in para. 189, that the record contains the declaration of the Public Prosecutor General's Office dated 12 April 1979 which lists the persons whose own properties as well as the properties of their next of kin had been expropriated for the benefit of the oppressed. This statement is further confirmed in the handwritten statement affixed to the margin of the list where it is stated that the movable and immovable properties of the above-mentioned persons and those of their spouses and children have been confiscated by the Revolutionary Court. The Tribunal has previously found that as of the date of the declaration the property of the listed individuals has been expropriated. See Hidetomo Shinto, a claim of less than US0,000 presented by the United States

of America and The Islamic Republic of Iran, Award No. 399-10273-3, paras. 31-32 (31 Oct. 1988), reprinted in 19 Iran-U.S. C.T.R. 321, 328-329; and Nazari, supra, para. 120.

205. In the instant case, the Tribunal notes that the property of the three companies consists mainly of land and that the companies were established for the purpose of developing the land owned by them. In this respect these three companies differed from KTT and GTT which pursued commercial activities. Accordingly, the Tribunal finds that the Claimants' ownership rights in Seeb Talaie, Aslemaskan and Iram were expropriated on 12 April 1979 when the above- mentioned declaration by the Public Prosecutor General's Office was issued. This is also confirmed by the decree of Chamber One of the Tehran Islamic Revolutionary Court issued on 22 August 1979 which states that all the properties of, inter alia, Raffie Aryeh and his close relatives, which cannot but include his wife and children, i.e., the Claimants, were expropriated and that the decree was final and canonical. Further, it is doubtful that members of the Aryeh family had any realistic expectation that they could have ever resumed use and enjoyment of their property.

2.3. The Iranians' Bank Shares

206. The Claimants allege that Vera-Jo Miller Aryeh's shares in the Iranians' Bank were expropriated at the same time as her other property was expropriated. As was the case with the Claimants' interests in Seeb Talaie, Aslemaskan and Iram, supra, para. 205, the Tribunal determines that Vera-Jo Miller Aryeh's shares in the Iranians' Bank were expropriated on 12 April 1979 when the above- mentioned declaration of the Public Prosecutor General's Office was issued.

3. Caveat

207. Before turning to the issue of valuation, the Tribunal will address the "Caveat argument" advanced by the Respondent. During the written pleadings, the Respondent made a general allegation that the Claimants' Claims are barred by the "caveat" in the Tribunal's decision in Case A18 without pointing out what precise conduct of the Claimants falls under the caveat.

208. At the First Hearing, the Respondent reiterated that the Claimants' Claims are barred, inter alia, because of the Claimants' Iranian nationality. The Respondent argues that equitable considerations do not permit the making of a claim on the basis of a legal interest that depends on or relates to the nationality of the Respondent State.

209. Thus, the Respondent contends that by not using their U.S. nationality the Claimants received benefits available only to Iranian nationals. The Claimants deny that they concealed their U.S. nationality when they acquired the interests in the different companies or that they received benefits available only to Iranian nationals. The Claimants also argue that Iran has failed to prove that the Claimants concealed their identity or that they received any benefit by so doing.

210. The Tribunal finds that there is no evidence in the record to support the conclusion that the Claimants concealed or otherwise abused their dual nationality or received benefits solely available

to Iranian nationals when they acquired their interests in the companies. Accordingly, the Claimants' Claims are not barred by the caveat.

4. Valuation and Compensation

4.1. Preliminary Issues

211. Before turning to the issue of valuation, the Tribunal has to determine whether to accept three of the valuation reports submitted by the Respondent (two by Javad Fallahi on the value of the machinery of GTT and one by Kazem Laknejadi on the value of Seeb Talaie). The Claimants object to the filing of these reports. This is because the Laknejadi report and the first Fallahi report were referred to previously in the report by Khalil Tabatabai, which was submitted together with the Respondent's Hearing Memorial. However, the reports were filed only after the Claimants had filed their Rebuttal Memorial: the Fallahi report was filed on 11 November 1994 and the Laknejadi report, on 8 December 1994. Thus the Claimants contend that they were deprived of an opportunity to rebut the reports. The second Fallahi report, besides not being submitted until 9 December 1994, was filed in Persian only. Therefore, the Claimants request that all three reports be rejected.

212. The Tribunal notes that, although the first Fallahi report and the Laknejadi report were filed only two and a half months and a month and a half, respectively, before the First Hearing, the Claimants did have the opportunity to give their comments on the reports and in fact did cross-examine both Mr. Fallahi and Mr. Laknejadi at that Hearing. Consequently, the Tribunal deems it appropriate to accept the two reports. However, the second report by Mr. Fallahi, which was filed in one language only, is rejected.

4.2. The Standard of Compensation

213. The Claimants request a "payment of just compensation which must represent full equivalent of the property taken" with interest at the fair market rate(s) for all the properties taken from the date of taking up to the date of payment of the award.

214. The Tribunal has previously held that, both under the Treaty of Amity[45] and customary international law, a deprivation requires compensation equal to the full equivalent of the value of the interests in the property taken.[46] The Tribunal has found, supra, paras. 200, 205 and 206, that

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[45] Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900. The Tribunal has already found that the Treaty was in force at the time the Claims in these Cases arose. See, e.g., Phelps Dodge Corp., et al. and The Islamic Republic of Iran, Award No. 217-99-2, para. 27 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 131-132 ("Phelps Dodge").

[46] See, on the standard under the Treaty of Amity, e.g., Payne, supra, para. 29, 12 Iran-U.S. C.T.R. 12; Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Final Award No. 314-24-1, para. 261 (14 Aug. 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 195 ("Starrett"); Phillips Petroleum, supra, para. 103, 21 Iran-U.S. C.T.R. 118; Birnbaum, supra, para. 37; Saghi, supra, para. 79; Khosrowshahi, supra, para. 34; and on the standard under customary international law, e.g., American International Group, Inc., et al. and Islamic Republic of Iran, et al., Award No. 93-2-3, pp. 14-15 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 105 ("AIG") and Tippetts, supra, at 10, 6 Iran-U.S.

the Respondent expropriated the Claimants' ownership interests in KTT, GTT, Seeb Talaie, Aslemaskan and Iram, and Vera-Jo Miller Aryeh's interests also in the Iranians' Bank, and consequently they are entitled to compensation.

215. The Tribunal has previously held that, if the taken enterprise was a going concern, then the full equivalent of its value equals its fair market value. See AIG, supra, pp. 21-22, 4 Iran-U.S. C.T.R. 109; INA Corporation and The Government of the Islamic Republic of Iran, Award No. 184-161-1, p. 10 (13 Aug. 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 379 ("INA"); Starrett, supra, paras. 261, 277, 16 Iran-U.S. C.T.R. 195, 201; Khosrowshahi, supra, para. 34. Fair market value has been defined as
the amount which a willing buyer would have paid a willing seller for the shares of a going concern, disregarding any diminution of value due to the nationalization itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares.

See INA, supra, at 10, 8 Iran-U.S. C.T.R. at 380. See also Payne, supra, para. 30, 12 Iran-U.S. C.T.R. 12-13; Sedco, supra, para. 31, 15 Iran-U.S. C.T.R. 35; Starrett, supra, paras. 18, 319, 16 Iran-U.S. C.T.R. 122-123, 214; and Saghi, supra, para. 79.

216. The Tribunal has also held that it is "necessary to exclude the effects of actions taken by the nationalizing State in relation to the enterprise which actions may have depressed its value." AIG, supra, at 18, 4 Iran-U.S. C.T.R. at 107. See also Sedco, supra, para. 31, 15 Iran-U.S. C.T.R. at 35; and Birnbaum, supra, para. 42. On the other hand, the Tribunal has considered that while any diminution of value caused by the expropriation of the property itself should be disregarded, "prior changes in the general political, social and economic conditions which might have affected the enterprise's business prospects as of the date the enterprise was taken should be considered." AIG, supra, at 18, 4 Iran-U.S. C.T.R. at 107. See also, e.g., Sedco, supra, para. 31, 15 Iran-U.S. C.T.R. at 35; Saghi, supra, para. 79; Khosrowshahi, supra, para. 34; and Birnbaum, supra, para. 42. The Tribunal has also stated that the value of a going concern involves "not only the net book value of its assets but also such elements as good will and likely future profitability, had the company been allowed to continue its business under its former management." AIG, supra, at 21, 4 Iran-U.S. C.T.R. at 109. See also Khosrowshahi, supra, para. 34.

4.3. Valuation of KTT and GTT

4.3.1. The Parties' Contentions

217. In view of the valuation method ultimately used by the Tribunal (see infra, paras. 238-241), the Tribunal will only briefly summarize the Parties' main assumptions and arguments and not discuss in detail the different valuation methods used by the Claimants and the Respondent.

C.T.R. 225. On the fact that the two standards are basically the same, see, e.g., Phelps Dodge, supra, para. 28, 10 Iran-U.S. C.T.R. 132; Sedco, Inc. and National Iranian Oil Company, et al., Interlocutory Award No. ITL 59-129-3, p. 13 (27 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 180, 189; Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3, para. 30, note 9 (7 July 1987), reprinted in 15 Iran- U.S. C.T.R. 23, 34. Cf. Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran, Final Award No. 560-44/46/47-3, paras. 88-95 (12 Oct. 1994), reprinted in --- Iran-U.S. C.T.R. ----.

218. The Claimants have valued KTT and GTT together. According to the Claimants, their approach of combining KTT and GTT for purposes of valuation is correct and it is the only reasonable approach available in the circumstances. This is because, inter alia, the two companies were managed and operated by the same individuals and there were significant inter-company transactions, including the joint use of assets, facilities, labor and sales organizations.

219. As to the value of the combined entity, along with their Hearing Memorial the Claimants submitted a valuation report by Business Valuation Services Ltd. ("BVS") in connection with their Claims regarding KTT and GTT. In the report, BVS employed various methodologies for arriving at a value for the combined undertaking of KTT and GTT as at 13 February 1979. BVS put a fair market value of Rls. 3,574,000,000 equivalent to $51,050,000[47] on KTT and GTT on a going concern basis. The Claimants consider that this value is conservative and represents the minimum value of the combined entity as at 13 February 1979.

220. According to the Claimants, the valuations undertaken by them since the submission of their Hearing Memorial prove that their earlier approach was a conservative one. To prove their point, the Claimants later submitted three reports, one by Manouchehr Vahman, another by Thomas W. Lembo, and a second report by BVS.

221. Mr. Vahman, who was licensed as an official expert by the Ministry of Justice of Iran in 1968, was asked to value only the land and buildings of KTT and GTT. As the basis for valuation, he adopts the surface areas of land and details of the buildings as provided in the Laknejadi report submitted by the Respondent. Mr. Vahman values the companies' land at Rls. 352,195,595 and their buildings at Rls. 362,162,714. In this respect, he also confirms that he would have accepted BVS's valuation had the Revolution not occurred, and that his opinion with regard to the land would have been the same even if he had been asked to value the property in June 1979 instead of February 1979.

222. Mr. Lembo was asked to produce a valuation of the assets of the two companies, which he did by using three different methods. First, he reviews the replacement cost on the bases applied to comparable enterprises in the United States, Canada and Mexico, and concludes that in 1979 the replacement cost value of the assets of KTT and GTT on a turnkey basis would have been between 58 - 65,000,000. Second, he values the machinery and equipment and the intangible assets of the companies and arrives at a valuation of $46,500,000. This figure represents the value of the companies' assets including installation costs, but excluding the value of land and buildings. Finally, he considers the fair market value of the assets of the companies as at February 1979 by applying the so-called rule of thumb in the industry method (=$1.00 to $1.50 per each pound (in weight) of the production capability of the plant) and concludes that the sum of $62,000,000 represents the fair market value of the assets of the companies.

223. According to the Claimants, the third valuation report submitted by them, i.e., the second BVS report, which incorporates the other two valuations, demonstrates that their first valuation was indeed a conservative one. In valuing the net assets of the companies, BVS adopts as a starting point the balance sheets of KTT and GTT as at 20 March 1979. After several adjustments, BVS arrives at a net asset value of Rls. 3,378,019,750 or $48,257,425, representing the net asset value of the combined entity of KTT and GTT in February 1979. In the earnings based valuation BVS suggests a value of Rls. 3,646,800,000 or $52,097,143 as the combined value of GTT and KTT.

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[47] The exchange rate used is $1.00 = Rls. 70.35.

224. The Claimants explain that, in total, they owned KTT and GTT shares with a face value of Rls. 667,500,000. Compared with the combined share capital of KTT and GTT of Rls. 1,200,000,000, the Claimants thus owned 55,625% of the combined undertaking. The Claimants state that it is reasonable to expect that a buyer of such a controlling interest would be willing to pay a premium to obtain control of the companies. In the circumstances, the Claimants submit that a premium of 10 % over and above the valuation is a fair premium. Consequently, the Claimants request the sum of $31,236,218 together with interest in respect of expropriation of their shares in KTT and GTT.

225. The Respondent, on the other hand, argues that KTT and GTT are two independent and separate companies with different scopes of operations, different capitals and different shareholding interests and thus they cannot be considered as one entity. In support of this position the Respondent submitted with its Hearing Memorial two reports on the value of the two companies, one by Mr. Tabatabai and the other by Touche Ross & Co., and a report by Mr. Laknejadi on the value of the land and buildings of KTT and GTT. Mr. Laknejadi received his license in 1968 as an official expert by the Ministry of Justice of Iran.

226. According to the Laknejadi report, the lands and buildings of KTT and GTT had a total value of Rls. 237,747,405. Mr. Tabatabai accepts Mr. Laknejadi's value on the lands and buildings of the two companies. He gives a value of Rls. 166,833,349 for the machinery and equipment of KTT and GTT, partly basing his estimation on the first BVS report and Mr. Fallahi's report. Mr. Tabatabai values these two companies separately by adjusting considerably their financial and accounting reports for the year ending 20 March 1979. He determines that, based on an adjusted net asset approach, both companies had a negative value at the time of expropriation. He also concludes, based on the financial and accounting reports of the companies for the past, that neither of the companies was profitable and that no one would have been willing to buy the companies in 1979.

227. In its first report, Touche Ross concludes that KTT and GTT, in view of their alleged loss-making record, could not be valued using the earnings valuation method. In the opinion of Touche Ross, the asset value method as used by BVS is wholly unreliable. Thus, Touche Ross reaches the conclusion that the companies had no value.

228. With the Rebuttal Memorial the Respondent submitted, inter alia, a second report by Touche Ross and a report by Bijan Rahimi. According to the Touche Ross report, it is not necessary--or even proper--to value KTT and GTT on a combined basis. Touche Ross asserts that the Claimants' evidence does not indicate that the financial affairs of the two companies cannot be separated, and that even the auditors of the two companies express separate audit opinions for each company.

229. Touche Ross criticizes both the Lembo report and the second BVS report submitted by the Claimants for their methodology and their result. Touche Ross considers that an assessment of the market value by reference to the value of their assets is appropriate for valuing the two companies. Using this approach, neither KTT's nor GTT's shares have any value. With regard to the earnings based valuation method, Touche Ross reached the same conclusion as in its first report and stated that there is no evidence showing that, at the valuation date, either company could have been expected to be profitable in the future.

230. In the second valuation report submitted by the Respondent, Mr. Rahimi disagrees with both BVS reports. Instead, he concurs with the report presented by Mr. Tabatabai and agrees that there is

acceptable proof for carrying out the adjustments made by the auditors to the balance sheet of 20 March 1979.

231. With regard to the valuation of KTT and GTT, Mr. Rahimi rejects the valuation of the land and buildings by Mr. Vahman and accepts the one done by Mr. Laknejadi. As to the machinery and equipment of the two companies, Mr. Rahimi confirms Mr. Tabatabai's approach and Mr. Fallahi's appraisal.

232. Mr. Rahimi also concurs with Mr. Tabatabai and Touche Ross that KTT and GTT should be evaluated separately, since they are independent companies. Furthermore, Mr. Rahimi concurs with Mr. Tabatabai's report concerning both KTT and GTT in that neither one of the companies was attractive to purchasers in the circumstances prevailing at the time of evaluation.

233. With regard to the profitability method, Mr. Rahimi contends that all methods based on profitability lead to the conclusion that the shares of the companies were valueless for the following reasons: (i) KTT and GTT were not profitable in the past; (ii) they had already sustained serious and relatively irrecoverable losses at the time of evaluation; and (iii) all information available indicated their future non-profitability.

234. Therefore, in Mr. Rahimi's opinion, the proper method of valuation is the method of adjusted net assets. Mr. Rahimi asserts first, referring again to Mr. Tabatabai's report, that the value of KTT is Rls. 222,000,000 and that of GTT Rls. 182,000,000. When the adjustments made in the Moshiran audit report for 1357 [1978/79] are taken into consideration, the companies had no positive value.

235. The Respondent and its experts also disagree with Mr. Lembo's valuation methods which equate the value of the old machinery in Iran with that of new and technologically highly advanced machinery in North America, allegedly ignore the market place which was in Iran, and consider that age has no impact on the value of the machinery involved.

236. With regard to the Claim for a 10 % premium based on the Claimants' majority shareholdings in KTT and GTT, the Respondent states, first, that the Claimants' allegation of the existence of a majority shareholding is mistaken, since each Claimant owned only 16 % and 20,357 % of KTT and GTT, respectively, and that family relationship among shareholders is irrelevant. Second, the Respondent contends that there is no Tribunal precedent evincing an increase in the value of shares on account of their being majority shares.

4.3.2. The Tribunal's Decision

237. The first point in issue is whether KTT and GTT should be valued as one entity or whether they should be valued separately. The Tribunal notes that the two companies shared facilities, assets, and sales organizations, and that intercompany transactions occurred. More importantly, they had a common management. The Claimants' expert, BVS, stated that there was insufficient information available to enable it to distinguish between the two companies. This contention is also supported by the KTT audit report for 1357 [1978/79] by the Moshiran Audit Firm, where it is stated that due to the insufficiency of documents it is impossible to separate the company's fixed assets from those of

GTT. In addition, one of the Respondent's witnesses, Mr. Salami from Moshiran, testified at the First Hearing that even today it is still not possible to separate the fixed assets of the two companies. The Tribunal is faced with the same difficulty. Based on the evidence before it, the Tribunal considers it appropriate, under all the circumstances, to evaluate the two companies as one entity.

238. The second point in issue is which method should be used for the valuation of KTT and GTT. The Claimants and their experts consider that the proper method is to value the two companies as a going concern while the Respondent and its experts consider that the companies should be valued on the basis of their adjusted net book value. The Tribunal holds that the appropriate method is to value the companies as a going concern. In this context, the Tribunal refers to its findings in para. 239, infra.

239. Therefore, the next issue to be considered is what conclusions can be drawn from the evidence before the Tribunal concerning the going concern or fair market value of the Claimants' interests in KTT and GTT. The Tribunal notes that it is confronted with widely conflicting assessments of the value of the two companies. The values offered by the Claimants' experts range between $48,000,000 and $65,000,000 which are considered to be too high. Conversely, the Respondent's experts consider that the companies had no value. The Tribunal notes that the Respondent's experts have given the main emphasis to the liabilities of the companies which they have compared with the companies' net assets and simply end up with a negative value. Furthermore, they have given no value to the goodwill of the companies. The Tribunal recognizes that, according to the audit reports of the companies for 1358 [1978/1979], the companies' books contain an error since the buildings, which were allegedly transferred to GTT in 1976 with the value of Rls. 341,000,000, are reflected in the books of both KTT and GTT. However, the Tribunal notes that it is possible that the liabilities of a company are presented to their full value in the company's books for tax purposes but that the assets are normally valued to as low a figure as possible. Therefore, the Tribunal considers that the approach used by the Respondent's experts is not an appropriate basis for estimating the real value of the assets of KTT and GTT.

240. Since the Tribunal considers that it cannot directly base its decision on the value of the two companies on the reports presented by either Party, it will have to make an approximation of that value, taking into account all the relevant circumstances of these Cases. In so doing, the Tribunal notes, inter alia, that the two companies owned a large piece of land on which were erected the substantial number of buildings needed for the operation of the companies.[48] The companies also had a considerable amount of machinery which was fully operational in 1979. The two companies formed a large unit with a workforce of 800 - 1,100 employees. The companies had mainly private sector customers and the companies were not dependent on government contracts. Cf. Motorola supra, para. 76, 19 Iran-U.S. C.T.R. 91; and Payne, supra, para. 35, 12 Iran-U.S. C.T.R. 15. The companies' products, for example floor coverings, wallpaper, blankets, and dinnerware, were such items for which a market can be expected to have continued to exist even during and after the Revolution. Cf. Sola Tiles, Inc. and The Government of the Islamic Republic of Iran, Award No. 298-317-1, para. 63 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 223, 241; and CBS Incorporated and The Government of the Islamic Republic of Iran, et al., Award No. 486-197-2, para. 52 (28 June 1990), reprinted in 25 Iran-U.S. C.T.R. 131, 148. KTT was the third largest company in Iran in laminating and the largest in calendaring. The companies continued to manufacture and sell their products

[48] The Tribunal points out that although the Parties' experts differ in their valuations of the buildings, they concur that the surface area of the buildings is at least 34,677.56 m2.

throughout the events of the Revolution and also afterwards. Furthermore, the companies possessed a manufacturing license and they were strategically located approximately 18 kilometers away from Tehran, well within the 120 kilometer radius where it was the policy of the Ministry of Industries and Mines not to issue any new licenses after 1970. The operations of the companies were not dependent on obtaining technical know-how or licenses from third parties, since the necessary formulations were provided by the companies' own staff. The companies also had a number of registered trademarks. Moreover, the companies had established their profitability before the expropriation. They apparently had good prospects for the future and in fact continued to be profitable even after the expropriation.

241. Therefore, based on the best possible use of the evidence in the record and taking into account all the circumstances of these Cases, the Tribunal fixes the value of KTT and GTT at Rls. 1,870,000,000, of which the Claimants' share is Rls. 1,040,187,500 or $14,785,892. Thus, each Claimant is entitled to $4,928,630.66 as compensation for the expropriation of his or her interest in KTT and GTT.

242. The Claimants request also that they be awarded a premium of 10 % for their controlling interest in the two companies. The Respondent disputes the Claimants' status as majority shareholders. The Tribunal notes that in its practice it has never awarded surplus value for a controlling interest, just as it has never discounted the value of a minority interest. See Birnbaum, supra, para. 147. Therefore, the Claimants' request for a 10 % premium is rejected. Under these circumstances, there is no need for the Tribunal to decide whether the Claimants' shareholding in KTT and GTT could be considered as a majority shareholding.

4.4. Valuation of Seeb Talaie

4.4.1. The Parties' Contentions

243. As far as Seeb Talaie is concerned, the Claimants rely on the estimates of Raffie Aryeh, George Aryeh, and Roy Chapin III. Their estimates are limited to the value of 800 lots of 1,000 m2 of Seeb Talaie land out of a total of approximately 1,300,000 m2, and exclude the residual parts of the land including a shopping center, allegedly constructed on the property. Their values range from Rls. 4,200,000,000 to 4,800,000,000. On the basis of those estimates, the Claimants request the sum of $13,483,928 plus interest as of 13 February 1979 for the expropriation of their 20,975% interest in Seeb Talaie.

244. The Respondent disputes the authenticity and relevance of the evidence on which the Claimants rely in order to prove the developments undertaken on the Seeb Talaie property. In the report by Mr. Laknejadi, relied on by the Respondent, the Seeb Talaie land is valued at Rls. 258,373,400.

245. At the First Hearing, the Claimants asked Mr. Vahman to testify briefly on the value of Seeb Talaie land. The Respondent objected to Mr. Vahman testifying on Seeb Talaie, because in the Claimants' witness list Mr. Vahman's testimony was limited to KTT and GTT. Since Mr. Vahman is an expert on land evaluation and, since the Respondent had to be prepared to cross-examine also other witnesses

on the value of Seeb Talaie, the Tribunal allowed him to testify. On the basis of his experience in general and of the Seeb Talaie land in particular, Mr. Vahman put the value of Seeb Talaie land at Rls. 2, 500-2, 800/m2.

4.4.2. The Tribunal's Decision

246. The Tribunal notes that again the estimations of the two Parties' experts differ considerably. The lowest figure is offered by the Respondent's expert, Mr. Laknejadi, who gives the land the value of Rls. 200/m2, and the highest figures given by the Claimants' experts equal approximately Rls. 3,500/m2. Also some evidence on comparable sales from 1976 and 1977 were offered where the price/m2 ranged between Rls. 2,000 - 3,500. The Tribunal considers the Claimants' estimations to be too high, since they are based on the assumption that Raffie Aryeh's plan to develop the land into a suburb would have been carried out. Although the Tribunal recognizes that the plan had potential, it would also have required considerable amount of expenditure to be completed. On the other hand, the Tribunal notes that Mr. Laknejadi did not visit the area until 1992 and, for this reason, he could not testify on all the improvements allegedly made on the land. The record contains conflicting evidence concerning the state of the property and its improvements in the post-revolutionary era. Based upon this evidence and absent any evidence to the contrary, the Tribunal concludes that the property was left unattended following its expropriation. The Tribunal is mindful of what happens to a land that has not been cared for during a long period of time. Therefore, the Tribunal is not satisfied that the value presented by Mr. Laknejadi is correct. The Tribunal notes that the Claimants' witnesses testified that on the Seeb Talaie land were streets, curbing, and street lights; electricity and water; as well as fruit trees and rose bushes. Since the Respondent has not offered any contemporaneous evidence to the contrary, the Tribunal is satisfied that in 1979 this infrastructure and five model houses, as alleged by the Claimants, existed on the land.

247. Therefore, based on all the evidence before it, the Tribunal deems it appropriate to find that the value for the land of Seeb Talaie together with the improvements on it is Rls. 1,250/m2. Thus, the total value of Seeb Talaie is estimated to be Rls. 1,625,000,000, of which the Claimants' joint share is Rls. 340,843,750 or $4,844,972. Consequently, Vera-Jo Miller Aryeh is entitled to $213,664 and Jason and Laura Aryeh each $2,315,654 as compensation for the expropriation of his or her interest in Seeb Talaie.

4.5. Valuation of Aslemaskan and Iram

4.5.1. The Parties' Contentions

248. Originally, relying on the valuation provided by Raffie Aryeh, the Claimants requested the sum of $19,660 in respect of expropriation of their 0,192 % interest in Aslemaskan and the sum of $13,092 in respect of expropriation of their 0,187 % interest in Iram. Subsequently, however, the Claimants stated that they were prepared to accept the values suggested by the Respondent and reduced their

claims for these two companies from $32,752 to $27,144. They further claim interest as of 13 February 1979. The Respondent agrees that the Claimants' interests in Aslemaskan and Iram were not worth more than $27,144 at the relevant time of valuation.

4.5.2. The Tribunal's Decision

249. Since the two Parties agree on the value of the Claimants' interest in the two companies at issue, the Tribunal accepts that $27,144 represents a fair compensation for the expropriation of the Claimants' interests in Aslemaskan and Iram. Thus, Vera-Jo Miller Aryeh is entitled to $9,257 and Jason and Laura Aryeh each to $3,600 as compensation for the expropriation of his or her interest in Aslemaskan and each Claimant is entitled to $3,562 as compensation for the expropriation of his or her interest in Iram.

4.6. Valuation of Iranians' Bank Shares

4.6.1. The Parties' Contentions

250. The Claimants stated at the First Hearing that the nominal value of the shares in the Iranians' Bank was Rls. 10,000. The Respondent did not dispute this figure.

4.6.2. The Tribunal's Decision

251. Upon examination of the shares of the Iranians' Bank, the Tribunal discerned and now decides that, as reflected by the bank statement, their nominal value was Rls. 1,000 instead of Rls. 10,000 as alleged by the Claimants. Thus, the Tribunal awards Vera-Jo Miller Aryeh Rls. 4,000 equal to $56.86 for the expropriation of her shares in the Iranians' Bank.

5. Interest

252. In accordance with the principles outlined in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 31-32 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 320-322 ("Sylvania"), the Tribunal considers it appropriate to award interest to the Claimants at the rate of 8,180 % from 12 April 1979 and at the rate of 8,142 % from 21 July 1979.

6. Costs

253. The Claimants claim fees and expenses for a total amount of $2,149,065.41. Of this amount, $252,769.81 and £200,165.75 are for fees and costs which have been generated by the Respondent's forgery allegations. The Claimants argue that, in view of the nature of these allegations, the Tribunal should award the Claimants these fees and expenses in full.

254. Considering the outcome of these Cases, the Tribunal, referring to Sylvania, supra, pp. 35-36, 8 Iran-U.S. C.T.R. 323-324 and Dadras, supra, paras. 280-282, determines that the Claimants shall be awarded costs of arbitration in the amount of $200,000.

IV. AWARD

255. For the foregoing reasons,
THE TRIBUNAL AWARDS AS FOLLOWS:

a) The Claim for the expropriation of the Claimants' 20 % share in KARKHANEJAT TOWLIDI TEHRAN in 1976 is inadmissible.

b) The Claim for the expropriation of J.M. ARYEH'S and LAURA ARYEH'S shares in the IRANIANS' BANK is inadmissible.

c) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the following amounts to VERA-JO MILLER ARYEH as compensation for expropriation of her shares and interests in:

--KARKHANEJAT TOWLIDI TEHRAN and GROUH TOWLIDI TEHRAN, the amount of U.S. $4,928,630.66 (Four Million Nine Hundred Twenty-Eight Thousand Six Hundred Thirty United States Dollars and Sixty-Six Cents), plus simple interest at the rate of 8,142 % per annum (365-day basis) from 21 July 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

--SHEREKAT SAKHTEMANI VA KESHT VA SANAT SEEB TALAIE, the amount of U.S. $213,664 (Two Hundred Thirteen Thousand Six Hundred Sixty-Four United States Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

--SHEREKAT SAKHTEMANI ASLEMASKAN, the amount of U.S.$9,257 (Nine Thousand Two Hundred Fifty-Seven United States Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

--SHEREKAT SAKHTEMANI IRAM, the amount of U.S.$3,562 (Three Thousand Five Hundred Sixty-Two United States Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account; and

--IRANIANS' BANK, the amount of U.S.$56.86 (Fifty Six United States Dollars and Eighty Six cents), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account.

d) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the following amounts to J.M. ARYEH as compensation for expropriation of his shares and interests in:

--KARKHANEJAT TOWLIDI TEHRAN and GROUH TOWLIDI TEHRAN, the amount of U.S. $4,928,630.66 (Four Million Nine Hundred Twenty-Eight Thousand Six Hundred Thirty United States Dollars and Sixty-Six Cents), plus simple interest at the rate of 8,142 % per annum (365-day basis) from 21 July 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

--SHEREKAT SAKHTEMANI VA KESHT VA SANAT SEEB TALAIE, the amount of U.S. $2,315,654 (Two Million Three Hundred Fifteen Thousand Six Hundred Fifty-Four United States Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

--SHEREKAT SAKHTEMANI ASLEMASKAN, the amount of U.S.$3,600 (Three Thousand Six Hundred United States Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account; and

--SHEREKAT SAKHTEMANI IRAM, the amount of U.S.$3,562 (Three Thousand Five Hundred Sixty-Two United States Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account.

e) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the following amounts to LAURA ARYEH as compensation for expropriation of her shares and interests in:

--KARKHANEJAT TOWLIDI TEHRAN and GROUH TOWLIDI TEHRAN, the amount of U.S. $4,928,630.66 (Four Million Nine Hundred Twenty-Eight Thousand-Six Hundred Thirty United States Dollars and Sixty-Six cents), plus simple interest at the rate of 8,142 % per annum (365-day basis) from 21 July 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

--SHEREKAT SAKHTEMANI VA KESHT VA SANAT SEED TALAIE, the amount of U.S. $2,315,654 (Two Million Three Hundred Fifteen Thousand Six Hundred Fifty- Four United Stated Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

--SHEREKAT SAKHTEMANI ASLEMASKAN, the amount of U.S.$3,600 (Three Thousand Six Hundred United States Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to

effect payment to the Claimant out of the Security Account; and

--SHEREKAT SAKHTEMANI IRAM, the amount of U.S.$3,562 (Three Thousand Five Hundred Sixty-Two United States Dollars), plus simple interest at the rate of 8,180 % per annum (365-day basis) from 12 April 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account.

f) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay VERA-JO MILLER ARYEH, J.M. ARYEH and LAURA ARYEH, jointly, the aggregate sum of U.S.$200,000 (Two Hundred Thousand) in respect of their costs of arbitration.

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