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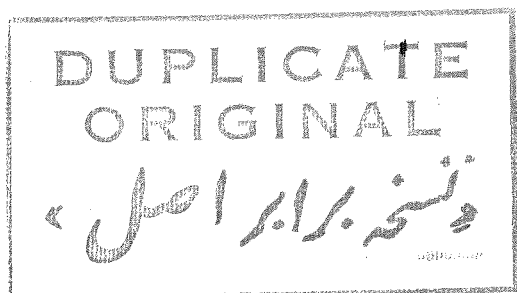
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IRAN-UNITED STATES CLAIMS TRIBUNAL

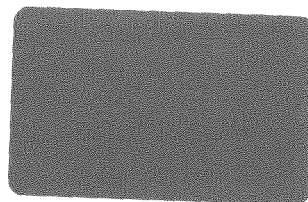
دیوان داورى دعاوى ایران - ایالات متحده



CASE NO. 319

CHAMBER ONE

AWARD NO. 554-319-1



CATHERINE ETEZADI,  
Claimant,

and

THE GOVERNMENT OF THE  
ISLAMIC REPUBLIC OF IRAN,  
Respondent.

|                                       |                                           |
|---------------------------------------|-------------------------------------------|
| IRAN-UNITED STATES<br>CLAIMS TRIBUNAL | دیوان داورى دعاوى<br>ایران - ایالات متحده |
| FILED                                 | ثبت شد                                    |
| DATE                                  | 23 MAR 1994                               |
|                                       | تاریخ<br>۱۳۷۳ / ۱ / ۳                     |

AWARD

Appearances:

For the Claimant : Mrs. Catherine Etezadi,  
Claimant,  
Mr. David Etezadi,  
Ms. Susan Etezadi,  
Mr. John Westberg,  
Counsel,  
Mr. Hooshang Etezadi,  
Representative.

For the Respondent : Mr. Ali H. Nobari,  
Agent of the Government of the  
Islamic Republic of Iran,  
Dr. Nasser-Ali Mansourian,  
Prof. Antonio Cassese,  
Legal Advisers to the Agent,  
Prof. Paul Lagarde,  
Prof. Hossein Mehrpour,  
Legal Advisers to the Government  
of the Islamic Republic of Iran,  
Mr. Seyed Mohammad Jazayeri,  
Attorney,  
Mr. Mehdi Mir Shafian,  
Representative of Respondent,  
Mr. Nariman Ilkhani,  
Expert,  
Mr. Mashallah Daneshgar,  
Witness,  
Mr. Behrouz Salehpour,  
Legal Assistant to the Agent.

Also Present : Mr. D. Stephen Mathias,  
Agent of the Government of the  
United States of America,  
Mrs. Mary Catherine Malin,  
Deputy Agent of the Government  
of the United States of America.

I. PROCEEDINGS

1. Procedural History

1. On 15 January 1982, the Claimant CATHERINE ETEZADI ("the Claimant") and her husband Hooshang Etezadi<sup>1</sup> together filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran") for the alleged expropriation of a plot of land in Karaj, Iran, of a 10% interest in Shiraz Plastic Products Corporation, of the equity interest in a condominium in Tehran, and of the pension of the Claimant's husband, Hooshang Etezadi, as a retired employee of the Ministry of Foreign Affairs of Iran. In their Statement of Claim the original Claimants sought compensation in the total amount of U.S.\$629,393.42<sup>2</sup>.

2. Iran filed its Statement of Defence on 18 January 1983.

3. In Hooshang and Catherine Etezadi and The Government of the Islamic Republic of Iran, Partial Award No. 497-319-1 (15 Nov. 1990), reprinted in 25 Iran-U.S. C.T.R. 264 (the "Partial Award"), the Tribunal found, inter alia, that Hooshang Etezadi was not a United States citizen during the relevant period of time, and therefore his Claims did not fall within the Tribunal's jurisdiction, but it went on to find that "during the relevant period Catherine Etezadi's dominant and effective nationality was that of the United States" and that she thus has standing before the Tribunal. The Tribunal also joined the remaining jurisdictional issues to the merits. (Ibid., para. 21.)

4. The procedural history prior to 15 November 1990 is reflected in the Partial Award.

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<sup>1</sup> Catherine and Hooshang Etezadi are referred to collectively as "the original Claimants".

<sup>2</sup> All references to dollars in this award are to United States dollars.

5. By its Order of 28 November 1990, the Tribunal scheduled further proceedings in this Case. Accordingly, on 25 February 1991, the remaining Claimant, Catherine Etezadi, submitted her "Statement of Claimant in Response to Order filed and dated November 28, 1990." In her submission the Claimant sought \$314,-696.50 as her one-half of the original Claims, with interest and costs plus expenses incurred in pursuing her Claim.

6. After having been granted six extensions, Iran filed its Hearing Memorial and Evidence on 19 March 1992. The Claimant filed her "Response and Rebuttal to Respondent's Memorial and Evidence" on 11 May 1992. After having been granted seven extensions, the Respondent filed its "Rebuttal Memorial and Evidence" on 2 April 1993. Both Parties submitted documents after the expiration of the filing deadlines established by the various scheduling Orders of the Tribunal.

7. In its Order of 19 March 1993, the Tribunal scheduled the Hearing in this Case for 20 September 1993. On 30 July 1993, the Agent of the Islamic Republic of Iran filed a letter in which he requested the Tribunal to schedule the Hearing for two days due to the complexity of the issues in this Case. On 13 August 1993, the Tribunal issued an Order in which it decided to have a two-day Hearing in this Case.

8. On 12 July 1993, the Claimant submitted a list of witnesses she would present at the Hearing. This list included one witness, Hooshang Etezadi, the Claimant's husband, who was to testify about issues within his personal knowledge concerning each of the Claimant's claims. On 16 July 1993, the Agent of the Islamic Republic of Iran filed a letter in which he stated that it was Iran's position that the Claimant's husband, Hooshang Etezadi, could not be heard as a witness by the Tribunal in this Case due to the fact that he had been a co-Claimant at the earlier stages of the proceedings and that as an owner of the properties in question, he might have an interest in the outcome of this Case. On 20 August 1993, the Claimant filed her

response. Iran submitted its list of witnesses on 20 August 1993. Iran's reply renewing its objection to the Claimant's witness was submitted on 27 August 1993. At the Hearing the Tribunal decided that Hooshang Etezadi could not testify as an independent witness due to his legal interest in the outcome of the Case, but could attend the Hearing as a representative of the Claimant.

9. The Hearing was held on 20 and 21 September 1993. At the Hearing, the Claimant distributed one diagram and two other documents. At the end of the Hearing, the Claimant also requested the Tribunal to permit her to file a post-hearing submission on the issue whether the Caveat in Case A18 (the "Caveat") applies to the merits of her Claims. See Case No. A/18, Decision No. DEC 32-A18-FT, at 25-26 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265-266.

## 2. Remaining Procedural Issues

### 2.1 Late Filed Documents, Late Submissions and the Claimant's Request To Be Allowed To File a Post-Hearing Submission

10. In this Case both Parties have submitted documents after the expiration of the filing deadlines established by the Tribunal's scheduling Orders. Furthermore, at the Hearing the Claimant submitted one diagram and two other new documents. At the Hearing, the Tribunal reserved until after the Hearing its decision on the admissibility of these documents. The Tribunal now turns to an examination of this issue.<sup>3</sup>

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<sup>3</sup> The Tribunal's case law on this issue is reflected in Harris International Telecommunications Inc. and The Islamic Republic of Iran, Award No. 323-409-1, paras. 57-70 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 45-51.

11. On 7 September 1993, the Claimant filed a corrected English translation of the Minutes of the Meeting of the Board of Directors of Shiraz Plastic Products Corporation, held on 14 October 1977 in California, which document was originally submitted as an exhibit to the Statement of Claim on 15 January 1982. On 16 September 1993, Iran filed its response to the Claimant's submission, including its own translation of that document. Furthermore, on 17 September 1993 Iran filed the English and Persian texts of Article 26 of the Articles of Association of Shiraz Plastic Products Corporation together with the annexed complete text of the Persian version of the same Articles.

12. It has not been the Tribunal's practice to permit the introduction of new documents in evidence prior to the Hearing unless it finds that this is justified by exceptional circumstances and unless such documents are filed not later than two months before the Hearing. The Tribunal finds that neither Party has shown the existence of exceptional circumstances which could have justified the late submission of these documents only a few days before the Hearing. Therefore, the Tribunal considers these filings inadmissible.

13. The Tribunal now turns to an examination of the documents submitted at the Hearing. At the end of the Hearing, the Claimant submitted copies of an Iranian administrative circular, No. 1069 issued on 6 July 1976 by the Ministry of Foreign Affairs, with reference to the Housing Co-operative Company for official members of the Ministry, concerning the offer of the Omran Techlar Construction Company on the construction of housing for the employees of the Ministry of Foreign Affairs, as well as copies of a Declaration by Lawrence J. Lococo rebutting the analysis of Iran's expert witness in respect of the financial condition and valuation of Shiraz Plastic Products Corporation. Iran opposed these late submissions at the Hearing.

14. The Tribunal considers that this declaration and administrative circular No. 1069 constitute documentary evidence which must be submitted in accordance with the time limits set forth in the Tribunal's orders so that the other party is able to respond. Evidence that could have been submitted during the established time periods but which was presented late without adequate justification will normally not be accepted at the hearing, because late submissions containing facts and evidence are most likely to cause prejudice to the other Party and to disturb the arbitral process. The Tribunal notes that the Claimant has not provided any reason for the late submission of these documents. Therefore, the Tribunal considers the declaration by Lawrence J. Lococo and administrative circular No. 1069 inadmissible.

15. However, the Tribunal has found no difficulty in admitting a late submission when it contains no additional evidence. Therefore, the Tribunal considers the Claimant's diagram admissible, because the intention was to summarize the Claimant's arguments and the diagram does not contain new evidence not already submitted by the Claimant in her earlier filings, and the Respondent did not oppose the submission of that diagram at the Hearing.

16. At the end of the Hearing the Claimant also requested permission to file a post-hearing submission on the issue of the Caveat and its possible implications for this Case. However, the Tribunal decided not to permit the requested post-hearing submission in this Case, in order to preserve the fairness and orderliness of its proceedings and to avoid possible prejudice to the other Party. Furthermore, there were no exceptional circumstances to justify the permission of any post-hearing submission, and the issue of the Caveat was not raised at the Hearing for the first time in this Case. Moreover, in view of the Tribunal's findings in paras. 53-78 infra, there is no need for the Tribunal to address the question of the Caveat in this Case.

## II. FACTS AND CONTENTIONS

### 1. Introduction

17. The Claimant was born in Grand Rapids, Michigan, the United States, on 19 February 1925. Thus she is a born United States citizen who upon her marriage on 4 May 1955 in Maryland, the United States, to Hooshang Etezadi, an Iranian citizen, also became an Iranian national under clause (6) of Article 976 of the Civil Code of Iran. After they were married, the Claimant and her husband moved to New York, which became their first marital domicile from 1955 to the end of 1958. In December 1958 or early in 1959 she moved to Tehran, Iran where she and her family resided and had their domicile until 1967, when she returned to the United States on 2 June 1967. Thereafter she resided in California and returned to Iran again in 1970, where she maintained her principal residence until 1974. When the Claimant's husband retired from the Foreign Ministry of Iran in 1974, the Claimant moved to California, the United States together with her husband and their children, where they have since resided and had their domicile.

18. The Claimant states that pursuant to an oral agreement between her and her husband, from the time they were married everything she and her husband saved or invested was always considered to belong to both of them. In her written submissions, the Claimant explains this understanding between the spouses as being an adoption of the community property system in their matrimonial property relations. The Claimant asserts that they applied this procedure between them even when they were living in Iran, whose legal system did not contain or recognize this arrangement as such. However, the Claimant acknowledges that this joint understanding between the spouses has not been made in a written form.

19. At the Hearing, the Claimant asserted that her ownership rights to one-half of the properties in question were also to be

considered as beneficial interests whose nature could be characterized as community property. Hooshang Etezadi was alleged to be the nominal owner of that one half of the properties and property rights in question, in respect of which the Claimant was alleged to be a beneficial owner.

20. To further substantiate the basis of her ownership rights and interests, the Claimant asserts that after their marriage and while working in the United States, she and her husband succeeded in accumulating joint savings of \$10,000, which the Claimant states was the original capital that she and her husband transferred to and invested in Iran when they moved to that country in December 1958 or early 1959. The Claimant asserts that this capital was invested in a private enterprise in Iran and that the profits from its sale in 1967 were transferred to and invested in a motel in California, the United States, in 1967 when the Claimant and her husband returned there. However, the Claimant maintains that she and her husband had to realize their property in the United States and return to Iran in 1970. The Claimant asserts that of these funds, which she considers to have belonged to the community property or to have been jointly owned, \$100,000 was transferred to Iran in 1970 and a further \$50,000 in 1971. These sums allegedly were later invested in a plot of land in Karaj, Iran, in the shares of Shiraz Plastic Products Corporation, and in a condominium in one of the two apartment towers in Arya Towers Complex in the West Tehran Development area (Farahzad). The Claimant has asserted that all these investments were made out of assets that had accumulated through the couple's combined income.

21. Therefore, the Claimant contends that, due to the use of joint funds and the intention of both spouses that they have joint ownership of all the properties acquired and invested in, one-half of the property that is in her husband's name in Iran is to be considered to be legally her property. The Claimant explained that due to practical reasons and her lack of knowledge of the Persian language and for convenience, most of the

properties in question were registered under the name of her husband. The Claimant has asserted that she signed only those documents which were done in English because she did not want to sign documents she could not read. Therefore, her husband signed all the documents done in Persian. However, the Claimant emphasizes that it has always been a common understanding between herself and her husband that even if the property was registered under his name, it belonged to the sphere of community property and the Claimant owned 50% of that property. To support her assertion the Claimant also referred to affidavits filed by her. Iran disputed the evidentiary value of those affidavits. However, in view of the Tribunal's findings in paras. 60, 65, 70 and 75, infra, there is no need to decide the evidentiary value of those affidavits.

22. Iran argues that according to the appropriate principles of international law and conflict of laws, and also according to rules of private international law of Iran, the law to be applied to the Claimant's alleged property rights should be that of Iran. To support this argument Iran has submitted in the rebuttal filings an expert opinion from professor Paul Lagarde, who also acted as a legal adviser to the Government of the Islamic Republic of Iran at the Hearing, on the conflict of laws issues in this Case. Iran has presented further arguments in disputing the Claimant's alleged property rights on the basis of the municipal legislation. Iran argues that according to Article 966 of the Civil Code of Iran, possession, ownership and other rights to immovable and movable properties follow the laws of the country where such properties or rights exist or are located. Furthermore, if the spouses have different nationalities, then their matrimonial property relations will be subject to the law of the country of the husband. (Civil Code, Article 963.) In its rebuttal filings Iran has also submitted an expert opinion from professor Hossein Mehrpour, who also acted as a legal adviser to the Government of the Islamic Republic of Iran at the Hearing, on the matrimonial property relations between spouses in Iran. Invoking Article 1118 of the Iranian Civil Code, Iran

argues that the system of community property between spouses in their matrimonial relations is not recognized in Iranian law; rather, the husband and wife are financially independent of one another. Therefore, the Claimant can be considered the owner of only those properties in Iran whose title deed has been prepared and issued in her name according to the legal requirements as set forth in the appropriate Iranian laws. Iran concludes that because all the alleged properties are in the name of the Claimant's husband and are owned by him, the Claimant has no rights to the properties and pension at issue. Iran also asserts in the alternative that the Claimant's Claims on the immovable properties and on those which are tantamount to immovable properties should be dismissed on the basis of the Caveat.

## 2. The Claimant's Property Rights in Iran

### A. The One Thousand Square-Meter Plot of Land in Mehrshahr, Karaj, Iran

23. On 26 November 1970, Hooshang Etezadi purchased a one thousand square-meter plot of land in Mehrshahr, Karaj, Iran, which before the purchase had been a part of the lands adjacent to the Pearl Palace owned by Shams Pahlavi. This plot of land, identified as lot No. 106, was subdivided from the entire tract of Hossein-Abad Afshar (also known as Mehr-Dasht), bearing the original registration number 170, and located within the Savojbalagh Tehran, Karaj Registration District. The Claimant asserts that by 1977, the purchase price had been paid off to Shams Pahlavi in 84 installments as agreed and that these payments were made by using the joint funds of the spouses. However, the deed to the plot was signed only by Hooshang Etezadi. Hooshang Etezadi acknowledged at the Hearing that he was familiar with the legal requirements set forth in Iranian legislation to establish the ownership rights to real property. On the alleged expropriation the Claimant asserts that in 1979, at the time of the Revolution in Iran, the revolutionaries took

over the Pearl Palace and the adjacent lands including those portions already sold to others, of which one parcel was owned by the Etezadis.

24. Iran asserts that the Law for Registration of Deeds and Real Estate recognizes as the owner only that person in whose name the real estate is registered. Iran maintains that if there is an intention to establish joint ownership of immovable property, it must be registered and included in the title deed accordingly. During the written proceedings Iran also submitted a letter, No. 32452 issued on 26 September 1991 by the State Organization for Registration of Deeds and Real Estate, Karaj Registration Department, which states that according to a relevant register of properties the present owner of the real property at issue is Hooshang Etezadi, in whose name it was registered before 19 January 1981. According to that register, Iran has not taken the land in question, but it is still mortgaged to the seller, Shams Pahlavi. Furthermore, at the Hearing the representatives of Iran confirmed that the land is still owned by Hooshang Etezadi. Therefore, Iran concludes that because the real property is solely in the name of and owned by Hooshang Etezadi, and the promissory notes were signed by him alone, the Claimant does not have any right to the property. Iran asserts further that the Claimant has not produced any evidence in support of the alleged expropriation of that property.

25. Both Parties have also presented arguments on the nature of the immovable property in question. Iran has asserted that if the real property was utilized or unutilized agricultural land, or rural or urban wasteland, then no decision has been made and no law enacted which might have affected the ownership rights to the plot of land in question. The Claimant has disputed this conclusion and asserted that the land does not belong to any of these categories.

B. Interest in Shiraz Plastic Products Corporation

26. In 1970 the Claimant's husband, together with other persons, founded a company, Shiraz Plastic Products Corporation (the "Corporation") in Iran. The Corporation was engaged in manufacturing plastic pipes in Shiraz, and its headquarters were located in the Techno-Frigo Building in Tehran. According to the Claimant, the Corporation employed approximately 70 employees, and its annual profits in 1977 and 1978 were approximately \$1,000,000.

27. Upon investing in the shares of Shiraz Plastic Products Corporation in 1970, the Claimant's husband acquired 10% of its stock. These shares were registered solely in Hooshang Etezadi's name. The Claimant alleges that she owns one-half of the 10% equity interest in the Corporation, due to the fact that the funds invested in the Corporation were joint funds of the Etezadis and according to the joint understanding of the spouses on their property relations, these shares were considered to be owned jointly. However, the Claimant states that her name was not included on the share certificates despite their intention to be joint owners thereof.

28. The Claimant asserts that because the originals of the share certificates were placed in the Corporation's safe at its headquarters in Tehran, she has not been able to produce copies of these certificates to the Tribunal. However, in order to show indirectly her interest in the shares, the Claimant asserts that she has received her share of the profits distributed by the Corporation and that in 1977 these profits were deposited at the Bank Pars in the names of both the Claimant and her husband.

29. On the alleged expropriation of the Corporation the Claimant states that within the first six months of the founding of the Islamic Republic of Iran in 1979, Iran took over the assets of the Corporation and this caused her investment to lose its value.

The Claimant further maintains that this takeover was carried out when a local, unidentified "Committee" seized control of the Corporation. The Managing Director of the Corporation was allegedly forced to resign after a conflict between him and certain workers of the Corporation, and several former clients of the Corporation were instructed to deal with an unspecified agency of Iran when paying their debts to the Corporation. The Claimant suggests that instructions given to the former clients of the Corporation have to be considered as a formal acceptance by Iran of the alleged takeover by the local "Committee". Furthermore, she asserts that no notices or dividends have been sent to the Etezadis from the Corporation since the Revolution. She considers that these alleged acts amount to actual expropriation of the Corporation and that therefore Iran has to compensate her as a foreign national for the property taken. To support her conclusion the Claimant has also submitted a copy of the telefax including a newspaper announcement inviting the shareholders of the Corporation to convene an extraordinary session of the ordinary meeting of the shareholders in the Iranian National Industries Organizations Building. The invitation was made pursuant to the decision of the five-member board, referred to in Article 2 of the Supplementary Law on Protection and Expansion of Iranian Industries, regarding the exclusion of the Corporation from the coverage of Legal Bill No. 6738, on Designation of Temporary Managers.

30. Iran contests the Claimant's allegation that the shares have been expropriated, asserting instead that there have not been any changes in Hooshang Etezadi's shareholding, no expropriation has occurred, and no control has been exercised by instrumentalities or agencies of the Government of Iran. The supervisor of the Corporation was designated for a certain period of time, allegedly only to attend to administration and not to control the Corporation. The Corporation also had a temporary manager in 1980 due to the resignation of the former manager, Kamran Ebrahimi, in September 1979.

31. At the Hearing, when Mashallah Daneshgar, Director of the Finance Department since 1978 and former Chief Accountant (1974-1978) of Shiraz Plastic Products Corporation, was heard as Iran's witness, he asserted that the present amount of shares in the Corporation is 9000 and that Hooshang Etezadi still owns 10% of these shares. He further asserted that Hooshang Etezadi is free to use his ownership rights to these shares and to enjoy their benefits. The witness also confirmed that no expropriatory measures have been taken with respect to Hooshang Etezadi's shares of the Corporation. He added that in the register of the shareholders of the Corporation Hooshang Etezadi continues to be registered as the holder of 10% of the shares in the Corporation. The witness also disclosed that 32.5% of the shares in the Corporation were taken under governmental control. However, he confirmed that the shares of Hooshang Etezadi did not belong to the category of shares under governmental control. Furthermore, the representatives of Iran informed the Tribunal at the Hearing that Hooshang Etezadi has accrued dividends amounting to approximately 32 million Rials after deduction of taxes, which sum is freely available for him at the Corporation. Either he or his representative with a power of attorney can collect the money.

32. During his testimony Mashallah Daneshgar asserted that the reason why Hooshang Etezadi did not receive notices or dividends from the Corporation was probably due to the lack of information at the Corporation as to how to contact him. He also asserted that the Corporation had not received any letters sent by Hooshang Etezadi. When questioned by counsel for the Claimant the witness stated that a supervisor helped to run the Corporation in early 1980, and that on 3 September 1980, a temporary manager was appointed.

33. During the written proceedings and at the Hearing both Parties presented arguments and evidence on the possible value of the Corporation and its shares.

C. The Equity Interest in a Condominium in Tehran

34. The Claimant asserts that she and her husband have an equity interest in a condominium in one of the two apartment towers in the Arya Towers Complex in the West Tehran Development Area (Farahzad). She also states that those apartments were allocated to employees of the Iranian Ministry of Foreign Affairs, and that the Ministry controlled the construction process. On 16 August 1976, Hooshang Etezadi made a purchase option with the Omran Techlar Construction Company Ltd. (the "Company"). On 17 August 1976, he invested in the condominium project, when he entered into Sales Agreement No. 235 with the Company and paid the down payment of Rls.1,052,750 (\$15,039.29). According to the Claimant, Hooshang Etezadi made four further semi-annual principal installment payments of Rls.131,595 (\$1,879.93) each, plus annual payments of Rls.245,000 (\$3,300.00) as interest on the outstanding balance of the purchase price. The Claimant asserts that the total equity or principal payments amounted to Rls.1,579,130 (\$22,559.00). All these funds were transferred from the joint account of the Etezadis in Bank Pars to the Company.

35. Both the option agreement and Sales Agreement No. 235, signed by Hooshang Etezadi, include a clause stating: "The deed of trust will be made out [in] the name of Mrs. Catherine M. Etezadi". The Sales Agreement states that the apartment would be delivered to the buyer on 30 June 1978. Article 4 of the Sales Agreement further states that the purchaser agrees to pay the remaining installments over a period of 12 years by 24 promissory notes. The Claimant asserts that as a result of a letter received from the Company, no further payments were made. In that letter of 24 May 1978 the Company informed the purchaser that due to unforeseen circumstances, the completion and delivery of the apartment would be delayed. Subject to force majeure or other unforeseen circumstances, the new date of delivery was stated to be 30 June 1979. The Company also informed its customer that it would prepare a new set of promissory notes

which would be exchanged for the previous ones, and that they would be sent to the purchaser through the Ministry of Foreign Affairs if he were not in Tehran.

36. The purchaser was also informed by the same letter that, the Omran Techlar Construction Company Ltd. would take responsibility for the harm caused to the purchaser of the apartment due to the delay in the construction, and that the Company would pay a penalty of 1000 Rials per day pursuant to Sections A and B of Article 6 of the Sales Agreement. The Claimant maintains that neither penalty fees nor correspondence were sent to the Claimant or her husband after the Revolution, even though the Company had their address in the United States to which they have sent other correspondence regularly. However, counsel for Iran disputed at the Hearing the relevancy of the letter of 24 May 1978, because the number of the apartment in the letter differs from that mentioned in the Sales Agreement.<sup>4</sup>

37. The Claimant states that she is claiming only her share of the funds advanced, plus all penalties and interest accrued thereon from the date of accrual to the present, and not the fair market value of the condominium. She alleges that the Government of Iran provided the land for the project, exercised control over the Company and expropriated the condominium.

38. Iran asserts that the Claimant's husband is the sole purchaser of the property but admits that the name of the Claimant is mentioned in the option and sales agreements, in the additional clause on the title deed. However, Iran asserts that due to the delay in construction and the failure of the purchaser to make further payments, such a title deed has not been prepared so that the ownership of the Claimant could have been established. Therefore, no expropriatory measures could have been taken by Iran concerning the apartment itself.

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<sup>4</sup> The number of the apartment in the letter of 24 May 1978 is "11031" whereas the one stipulated in the Sales Agreement is "11071".

39. Furthermore, Iran asserts that according to the Sales Agreement each of the parties had the right to cancel the agreement without any claim against the other party and, therefore, due to the impossibility of completing the apartment in question as well as a delay in excess of six months and the purchaser's failure to make further payments, this agreement No. 235 became subject to Article 6(B) of the Sales Agreement, in addition to Article 5, and was canceled by virtue of Notice No. 12794, dated 2 July 1989. According to Article 5 of the Sales Agreement, the Omran Techlar Construction Company is allowed to withhold one-third of the monies advanced in such cases where the purchaser has failed to make the payments in due time.

40. The Omran Techlar Construction Company has requested the applicants for purchase of apartments from the Company to inform it in writing, within 10 days from the date of publication of the notice, of any change of their addresses. Such a request was made by a newspaper announcement of 9 July 1985, in Daily Kayhan issue No. 12492. According to the record the Company has also twice tried (on 9 July 1989 and on 4 April 1990) to contact the Claimant's husband regarding the cancellation of the Sales Agreement and to inform him that one-third of the advance payments has been withheld and to request him to contact the finance department of the Company in order to receive his credit balance. The address used has been that of Shams Avari in Tehran. The document dated 2 July 1989 includes a clause stating that after 6 August 1989 the Company would make a decision to deposit the monies with the relevant legal authorities. The record shows that according to the information received from the Company, these termination notices were also sent to the Ministry of Foreign Affairs of Iran, whose Personnel Department later returned these documents to the Company with the note that it did not have the foreign address of the Etezadis.

41. In response to this evidence, the Claimant asserts that their address in the United States was included in the Sales

Agreement, and that the Statement of Claim filed with the Tribunal in 1982 included their whereabouts. Furthermore, on the issue of promissory notes which were not paid, the Claimant responds that those notes were superseded by new promissory notes which they never actually received. However, it has been admitted that neither the Claimant nor her husband has tried to contact the Company in order to obtain further information on the situation.

42. Iran also asserts that the Claimant has failed to show either that the Omran Techlar Construction Company is an entity owned or controlled by Iran, or that Iran has had any involvement in the contractual relations between Hooshang Etezadi and the Company.

D. The Rights to the Pension of the Claimant's  
Husband or to the Survivors' Pensionary Benefits

43. The Claimant's husband, Hooshang Etezadi, joined the Ministry of Foreign Affairs of Iran in 1951 and retired from the service in April 1974. Due to his 22 years of service in the Ministry of Foreign Affairs of Iran, he was entitled to a guaranteed life pension allegedly worth \$226,263. After her husband's retirement, the Claimant moved together with him and their children to the United States in 1974 and the pension was paid monthly and transferred to Hooshang Etezadi in California until May 1980. Iran asserts that the pension was discontinued by virtue of Order No. 16/23082, dated 25 August 1980, issued pursuant to the "Legal Bill on Purging the Ministries..." adopted by the Revolutionary Council, and the further payments were terminated. During the proceedings no copy of that Order terminating the pension has been submitted to the Tribunal by either Party. However, Iran has submitted a letter dated 26 February 1983, from the Office of Personnel and Welfare of the Iranian Ministry of Foreign Affairs and another letter, dated 2 July 1987, from the Director General of Administrative Affairs

of the Iranian Ministry of Foreign Affairs, confirming the termination of the pension.

44. The Claimant requests her alleged one-half interest in the vested guaranteed life pension of her husband. She states that the reason for this Claim is the fact that her husband contributed from his earnings to the pension fund for 22 years. She asserts that the right of a person to receive the pension includes also the right of that person's spouse and successors to receive the same. She states that due to the fact that at the time the pension was terminated her husband was no longer in the service of the Ministry of Foreign Affairs, there cannot be any justification for the termination. The Claimant asserts that the payments of the pension were terminated by the Government of Iran without giving any notice or reason and without allowing any opportunity to respond. The Claimant further states that she and her husband also thought that by virtue of their joint understanding on the mutual ownership of their properties, the proceeds of the pension were jointly owned. Moreover, she emphasizes that she was to receive survivors' pensionary benefits upon her husband's death, and maintains that because her husband's pension was expropriated she has an interest in one-half of the full value of the pension.

45. Iran asserts that the severance of the retirement pension was based on a decision made by an administrative committee in the Ministry of Foreign Affairs after certain investigations. Iran further takes the position that the Claimant has no right to claim her alleged share of her husband's pension, since under Iranian law the right to the pension has first to be created for the Claimant's husband and then certain conditions must be met, inter alia, the husband has to be deceased, before the retirement pension will be converted to survivors' pensionary benefits for the wife. Iran also maintains that Hooshang Etezadi should have exhausted the appropriate administrative and legal remedies in Iran in order to contest the decision withdrawing his pension rights and to preserve these rights.

46. During the written proceedings Iran has also asserted that an abandonment of Iranian nationality results in the termination of a retirement pension as well as survivors' pensionary benefits to those persons who have received payments from the retirement fund. However, the Claimant has responded to this argument by noting that Hooshang Etezadi was purged on 25 August 1980 and that only after that decision he became a naturalized U.S. citizen in June of 1981 when he also became a dual national because he did not abandon his Iranian nationality.

47. According to Iran, the Claimant's Claim should be rejected because these rights to the pension benefits are exclusively owned by her husband. The Claimant may have had a contingent right in this regard, but one which has not yet materialized as an ownership right. Therefore, Iran considers that the Claim has no legal basis.

### III. JURISDICTION

48. The Tribunal has found in its Partial Award, supra, para. 18, that during the relevant period Catherine Etezadi's dominant and effective nationality was that of the United States, and that she does have standing before the Tribunal according to the Claims Settlement Declaration, Article II, paragraph 1 and Article VII, paragraph 1. Ibid., supra, para. 21 (b).

49. In the Partial Award the Tribunal also decided that the question of whether Catherine Etezadi has a legal interest in the subject matter of the Claim, as well as the question of whether her property rights, if any, were expropriated or otherwise affected by measures taken by Iran, belongs to the merits of the Case . . . . (Partial Award, supra, para. 19.)

50. Iran has contested the Tribunal's jurisdiction in this Case on two grounds. As a basis for her alleged ownership interests and other property rights the Claimant has provided arguments on the joint understanding on the intended community property system

between the spouses in their matrimonial relations and arguments on her beneficial ownership rights to these properties and interests. Iran asserts, firstly, that the Claimant has no legal interest in this Case because she has no proprietary interests in the properties in question. However, in view of the Tribunal's findings, paras. 60, 65, 70 and 75, infra, the Tribunal does not need to decide whether the Claimant has a legal interest in the properties at issue or, if so, to ascertain the nature of this interest.

51. Iran further asserts that the Claims of the Claimant are not outstanding, because Iran has neither expropriated nor taken any other measures against the Claimant's or her husband's property rights, and that the Claimant has accrued no right to the pension of Hooshang Etezadi and that she has no actualized right with respect to these pension benefits since her husband has lost his right to the pension. As an additional support to this contention, Iran also contests the evidentiary value of the Claimant's affidavits, asserting that the evidence produced by the Claimant does not meet the requirements of Article VII (2) of the Claims Settlement Declaration for ownership of claims and for continuity of such ownership during the relevant period. Iran maintains that with the exception of the Claim for the pension, the dates when the Claimant's Claims arose are uncertain and remain unspecified, and that these Claims should therefore be rejected.

52. Since these arguments cannot be separated from the merits, the Tribunal will not consider these arguments at this stage. Therefore, the remaining jurisdictional issues are considered together with the merits.

#### IV. MERITS

##### 1. Introduction

53. In order to meet her burden of proof the Claimant has to establish two distinct elements: first, that she had ownership interests in or other property rights to the properties and rights at issue and, second, that an expropriation or other measure affecting her ownership interests or other property rights, attributable to Iran, took place.

54. In this Case, the Claimant's alleged property rights are either derivative from or linked to the ownership interests and other property rights of her husband. The Tribunal notes that Hooshang Etezadi's ownership rights to the properties and rights at issue are not disputed as such.

55. Therefore, the Tribunal, turning to the second element, observes that the Claimant is alleging that her property rights at issue have been expropriated and that these acts of expropriation are attributable to Iran. The Tribunal will first examine whether the Claimant's alleged ownership interests have been expropriated.

##### 2. The Claimant's Ownership Interests

###### A. The One Thousand Square-Meter Plot of Land in Mehrshahr, Karaj, Iran

56. The Claimant contends that a one thousand square-meter plot of land in Mehrshahr<sup>5</sup>, Karaj, Iran, which her husband purchased

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<sup>5</sup> "Mehrdasht" has occasionally been mentioned in the file as the place where the plot of land at issue is situated, and this interchangeable local name is even reflected in the official deed of ownership attached to the Statement of Claim. However, it is clear from the record that the plot of land in question is located in an area adjacent to the Pearl Palace in the suburb of

from Shams Pahlavi and which before the purchase was a part of the lands adjacent to the Pearl Palace, was expropriated during the Revolution in Iran in 1979, when the "revolutionaries" took over the Pearl Palace and the adjacent lands, including those parcels sold to others, of which a portion was owned by the Etezadis.

57. However, in her written submissions the Claimant has not produced any evidence of either the alleged expropriation or how this alleged act would be attributable to Iran. The only information provided is a statement given at the Hearing by the Claimant's representative, Hooshang Etezadi, according to which he had been informed by a friend on the developments affecting the real property. However, he did not want to identify the friend who had given this information to him. The Tribunal notes that because this information does not relate to Hooshang Etezadi's personal experience regarding the alleged events, but refers to what another, unidentified person has told, the Tribunal cannot give any evidentiary value to this information.

58. The Tribunal also notes that the Claimant has not submitted any further information on the "revolutionaries" and has therefore neither established whether these "revolutionaries" in fact acted on behalf of the government, nor shown that there was a sufficient degree of Government involvement to make Iran responsible.

59. Furthermore, the Tribunal notes that the State Organization for Registration of Deeds and Real Estate in Iran has confirmed that according to the relevant register of properties the present owner of the real property at issue is Hooshang Etezadi, and that the property was registered in his name prior to 19 January 1981. According to the register, Iran has not taken the land in question. The Tribunal also notes that at the Hearing the representatives of Iran confirmed that Hooshang Etezadi still

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Karaj city.

owns the real property in question. Thus, there should be no reason why he cannot use or sell this property.

60. The Tribunal concludes that, apart from her arguments, the Claimant has not provided any evidence in support of the alleged expropriation of the real property in question. Since she has not met her burden of proof in respect of this important element, this Claim is dismissed for lack of evidence.

B. Interest in Shiraz Plastic Products Corporation

61. The Tribunal must examine the acts of interference the Claimant complains of and determine whether any or all are attributable to the Government of Iran and whether any or all, by themselves or collectively, constitute a sufficient degree of interference to warrant a finding that an expropriation of property has occurred.

62. The Tribunal notes that 32.5% of the shares of Shiraz Plastic Products Corporation have been taken under governmental control and that the supervisor and temporary manager have been designated to the Corporation for an undisclosed period of time. It is true that under international law and the arbitral practice of this Tribunal, an expropriation or taking of property may occur through certain acts of interference by a state in the use of the property or with the enjoyment of its benefits, see, e.g., Petrolane, Inc., et al. and The Government of the Islamic Republic of Iran, et al., Award No. 518-131-2 (14 Aug. 1991), reprinted in 27 Iran-U.S. C.T.R. 64, 96, even where legal title to the property is not affected. See, e.g., Harold Birnbaum and The Islamic Republic of Iran, Award No. 549-967-2 (6 July 1993), para. 28, reprinted in Iran-U.S. C.T.R.. In the Tribunal's practice the appointment of governmental managers has been regarded in some cases as a significant factor in support of a finding of a taking. On the other hand, the appointment of such managers has not, in certain cases, been found to constitute a

taking. See, e.g., Otis Elevator Company and The Islamic Republic of Iran, et al., Award No. 304-284-2, paras. 40-44 (29 April 1987), reprinted in 14 Iran-U.S. C.T.R. 283, 297; Motorola, Inc. and Iran National Airlines Corporation, et al., Award No. 373-481-3, para. 59 (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 73, 85-86. However, the circumstances of each case and the impact of the appointment of temporary managers on the control over the company and its effects on the fundamental rights of the owners are more decisive in any finding of whether or not a taking has occurred. In this case there is not sufficient evidence that the governmental supervisor or temporary manager assumed control of the Corporation prior to 19 January 1981. Furthermore, there is no further evidence in the record to show that these acts would have had a sufficiently severe impact on the status of the Corporation and its administration to constitute an expropriation of the Corporation.

63. In any event, in order to find that an expropriation or taking had occurred, the Tribunal would have to be satisfied that there was governmental interference with Hooshang Etezadi's shareholding interest in Shiraz Plastic Products Corporation which substantially deprived Hooshang Etezadi and the Claimant of the enjoyment of their property rights and the benefit of their investment. Therefore, the Tribunal will now turn to the issue of whether the shares of the Claimant's husband have been expropriated. Hooshang Etezadi asserted at the Hearing that he had tried to contact the Corporation but had not received any reply to his letters. However, no evidence has been submitted to substantiate this assertion. Therefore, there is not sufficient evidence in the record to show that the Claimant's husband, Hooshang Etezadi, tried to exercise his ownership rights as a shareholder of the Corporation, and that these attempts were frustrated by an action attributable to the Government of Iran.

64. The Tribunal takes note of the information presented at the Hearing by the representatives of Iran that the accrued dividends, amounting to approximately 32 million Rials, are

available for Hooshang Etezadi at the Corporation. The Tribunal considers that this is an additional important indication that the shares of Hooshang Etezadi have not been expropriated. Furthermore, Iran's witness, Mashallah Daneshgar, confirmed that Hooshang Etezadi still owns 10% of the shares of the Corporation and is able to exercise his ownership rights to the shares and to enjoy their benefits. The correctness of the information was confirmed by the representatives of Iran. Therefore, it appears that the property rights of Hooshang Etezadi in the Corporation have not been affected; the shares are registered in his name, and it has been confirmed by the representatives of Iran before this Tribunal that his accrued dividends and the shares are available to him.

65. The alleged expropriation or other measures amounting to expropriation have not been proven. Therefore, the Tribunal concludes that the Claimant's Claim based on an expropriated equity interest in the shares of Shiraz Plastic Products Corporation is dismissed for lack of evidence.

#### C. The Equity Interest in a Condominium in Tehran

66. The Tribunal notes that Hooshang Etezadi signed a contract with the Omran Techlar Construction Company for the purchase of a condominium. He was the only signatory to the option and sales agreements and to the cheques, when the monies due to the Company were transferred to it. The option and sales agreements included a clause that the title deed would be prepared in the name of the Claimant. However, that title deed was never made out, and the right of the Claimant to the apartment itself was not established.

67. The funds advanced were transferred from the joint account of the Etezadis. However, even when the funds transferred to the Company have been joint funds of the spouses, the Claimant still has the burden of proof to show that these funds have been

expropriated in the way she alleges, or at least that they are in the possession of a governmental entity which has not refunded the monies due to the transferor, even if requested to do so. The Tribunal notes that on the alleged expropriation there is no evidence in the record to show that the monies transferred to the Omran Techlar Construction Company would have been expropriated as such through separate measures attributable to the Government of the Islamic Republic of Iran.

68. The Tribunal now turns to the Claimant's implicit allegation that the mere possession of funds by the Company might amount to an expropriation. To prove this, the Claimant has to show a sufficient connection between the Ministry of Foreign Affairs and the Omran Techlar Construction Company to establish that the Company was under the control of the Government of the Islamic Republic of Iran. The Tribunal notes that no evidence has been provided that the Omran Techlar Construction Company was either owned or controlled by Iran before 19 January 1981. The Claimant's arguments that the apartments were intended to be used and owned by former and present officials of the Ministry of Foreign Affairs and that the land allegedly was provided by the Ministry do not substantiate such control.

69. Furthermore, there is no evidence in the record to show that the Company has acted either as a co-contractor or as an agent of the Ministry of Foreign Affairs of Iran, while entering into agreements with private citizens on the apartments to be built. The option and sales agreements do not indicate that the seller was any other entity than the Omran Techlar Construction Company or that the Company was representing some other entity, either private or governmental. The Tribunal notes also that Hooshang Etezadi acknowledged at the Hearing that neither he nor the Claimant had tried to contact the Omran Techlar Construction Company and require new promissory notes or the refund of the monies advanced. However, on the basis of the record the Tribunal notes that the Omran Techlar Construction Company has several times expressed its wish to refund the monies due to

Hooshang Etezadi. Therefore, there appears to be no reason why Hooshang Etezadi cannot obtain these monies.

70. The Tribunal consequently concludes that the Claimant has not succeeded in establishing that the monies transferred to the Omran Techlar Construction Company were expropriated, and she has thus failed to meet her burden of proof in this important element of her Claim. Therefore, the Claimant's Claim for her share of the monies transferred to the Omran Techlar Construction Company is dismissed for lack of evidence.

D. The Alleged Beneficial Interest in the Pension of the Claimant's Husband

71. The Tribunal notes that the Claimant's husband held various posts as a civil servant of the Iranian Ministry of Foreign Affairs between 16 February 1951 and 20 April 1974, when he retired pursuant to the provisions of Article 74 of the Civil Service Act. While working as a civil servant Hooshang Etezadi was exclusively an Iranian citizen, whose rights to a pension were provided for by the Iranian laws governing the status of civil servants. Therefore, the relations between such a retired employee and his employer continued to be governed by the appropriate Iranian laws even after his retirement. No other law than the Iranian law applicable to the relations between the retired employee and his employer may govern the pension rights of Hooshang Etezadi. Nor can these pension rights, which are based on the Iranian laws, be affected by contrary legislation or practice in the State of California, or by the oral joint understanding between the Claimant and her husband allegedly creating, for the Claimant, a beneficial interest or rights based on community property. In Iran, the rights to a pension are solely statutory rights. The transfer of these rights is not allowed under the law of Iran.

72. According to Article 70, note 1 of the Civil Service Act, the state retirement and pension system in Iran recognizes retirement pension, disability pension and survivors' pensionary benefits of heirs of employees as forms of payment from the retirement fund. According to Article 82 of the Act a distinction is made between the retirement pension and survivors' pensionary benefits of heirs of employees. The latter can be paid to the legal heirs only after a retiree has died. Furthermore, according to Article 86, paragraph d), legal heirs include a permanent wife as long as she has not remarried. As a general rule the materialization of the derivative rights of the successors to survivors' pensionary benefits depend on the decease of the retiree, the real owner of those materialized rights. The law recognizes only a few exceptions according to which such pension payments could be made to the spouse and the children when the retiree is not deceased.

73. The Tribunal notes that according to the Civil Service Act the wife and the children of the retiree cannot have a better right in the retiree's pension than he himself enjoys. Their rights are derivative from the rights of the retiree and cannot be created or maintained separately from his status, unless there exists legislation specifically providing for an exception to this main rule. Therefore, if for any reason the rights of the retiree to a pension come to an end, the wife and children cannot obtain new or separate pension rights thereto unless such special rights have been established in the legislation. The existence of these rights in the present Case thus depends on the status of Hooshang Etezadi as an Iranian retired civil servant.

74. Hooshang Etezadi's pension was terminated on 25 August 1980 on the basis of the Legal Bill on Purging adopted by the Revolutionary Council, and a Dismissal Decree (No. 16/23082). The Tribunal notes that the decision to terminate Hooshang Etezadi's pension rights was reached before he became a naturalized U.S. citizen in June 1981 and that, therefore, he lost his rights to the pension solely as an Iranian national. In these circum-

stances the Tribunal concludes that it is not in a position to review internal decisions of the Iranian government. These questions are traditionally considered to belong to the domain of municipal law and are, therefore, in these circumstances, outside the competence of the Tribunal. However, the Tribunal notes that the Legal Bill on Purging includes a note stating that the Purging Committee may terminate the pension of the retiree if he is among the persons subject to purging.<sup>6</sup> Moreover, the same note also states that the person whose pension rights have been terminated is entitled to receive that portion of the pension which he has contributed from his salary during his employment.<sup>7</sup> However, the Claimant did not submit any evidence that her husband made any efforts to demand such a portion, and Hooshang Etezadi stated himself at the Hearing that he did not contact the appropriate governmental entities to request an explanation for the termination or to demand the monies that he considered to belong to him, when he noticed that his pension payments had been discontinued. As Hooshang Etezadi is not a Claimant in this Case the Tribunal cannot express its opinion as to whether he, in light of the existing Iranian legislation, would still be entitled to receive this particular portion of the pension. This issue will have to be decided by the competent Iranian authorities.<sup>8</sup> The Tribunal emphasizes that this right belongs solely to Hooshang Etezadi as a retiree and the real owner of these pension benefits.

75. Furthermore, the Tribunal notes that there is no evidence in the record that any partial pension payment was made to the

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<sup>6</sup> A similar provision has been included in Article 55 of the Law for Reconstructing the Manpower of the Ministries, State Agencies and Government-affiliated Institutions, enacted on 27 September 1981.

<sup>7</sup> The same right has been mentioned in Article 27 of the Law for Reconstructing the Manpower of the Ministries, State Agencies and Government-affiliated Institutions.

<sup>8</sup> See, e.g., Article 11 of the Administrative Justice Tribunal Act, enacted on 24 January 1982 and issued in Official Gazette No. 10790 of 9 March 1982.

Claimant by or on behalf of Iran; nor is there evidence of any agreement between the retiree and the employer which might have created independent rights for her. In addition to this, the rights which have not yet materialized, and which derive from the original legal relationship, follow the fate of the original materialized rights of the retiree. Consequently, when the statutory rights of the retiree have been terminated through the application of a special law, those rights which derive from his status also follow the fate of the original rights, and thus the Claimant's independent pension rights have not been established in this Case. The Tribunal further underlines in this context that according to the general principles of international law the creation and application of a municipal pension system belongs to the sovereign rights of the State concerned and cannot be affected by private contracts between a retiree and members of his family or by legislation in another State. Therefore, the Claimant's Claim is dismissed.

### 3. Costs

76. Both the Claimant and Iran have in their pleadings requested the Tribunal to award them the costs incurred in the proceedings in this Case.

77. In view of the circumstances of the Case, the Tribunal finds it reasonable that each Party shall bear its own costs of arbitration.

### V. AWARD

78. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Claims for the alleged expropriation of a 50 per cent share of a plot of land in Karaj, Iran, of a 10 per cent interest in Shiraz Plastic Products Corporation, and of the equity interest in a condominium in Tehran against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN are dismissed for lack of evidence.

(b) The Claim for a 50 per cent share of the terminated pension of the Claimant's husband, Hooshang Etezadi, as a retired employee of the Ministry of Foreign Affairs of Iran, against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is dismissed.

(c) Each Party shall bear its own costs of arbitration.

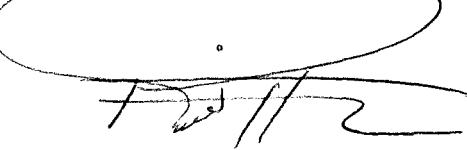
Dated, The Hague

23 March 1994

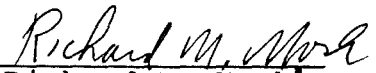


Bengt Broms  
Chairman  
Chamber One

In the Name of God



Assadollah Noori



Richard M. Mosk  
Dissenting Opinion

I concur in the present Award. However, I would like to point out that the Tribunal could and should have rejected the Claimant's claims at the earlier stages of the proceedings, for lack of jurisdiction. I am still of the opinion that the Tribunal does

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\* Designated as a Substitute Member under Article 13 of the Tribunal Rules.

not have jurisdiction over the claims of Iranians with dual United States nationality. See my note appended to Partial Award No. 497-319-1 (15 November 1990), in Hooshang and Catherine Etezadi and The Government of the Islamic Republic of Iran, reprinted in 25 Iran-U.S. C.T.R. 264.

In addition, I wish, with due respect, to express my disagreement with the Tribunal's decision on the costs of arbitration (the Award, paras. 76, 77 and 78, c). I believe that the Tribunal should have granted Iran's request for legal fees and other costs, especially given that no reason or justification for apportioning the costs of arbitration can be found in this Case. The Claimant's husband, Hooshang Etezadi, was exclusively an Iranian national during the relevant period, and yet he initiated these proceedings against Iran even though he clearly had no standing to sue. The Claimant herself, in the guise of a dual Iran-United States national, has also persisted in pursuing these claims, which would belong to her husband and not to her even if they had a basis, and thereby caused Iran to sustain considerable costs and expenses, and to devote a part of its experts' limited time and manpower, in responding to these totally baseless claims. The Tribunal should therefore have obligated the Claimant to indemnify Iran for the costs and expenses incurred by it, in view of the special circumstances of this Case, Articles 38-40 of the Tribunal Rules, the settled practice of the Tribunal, and dictates of fairness and justice.

Apart from the fact that both law and equity demand it, requiring such claimants to redress the Government of Iran for its costs of arbitration would also have the salutary effect of reminding other Iranian claimants alleging to be United States nationals and seeking to pursue their inadmissible -- and unfortunately, mostly spurious -- claims by resorting to the vehicle of the unjust Decision in Case No. A18, that they should not idly toy with the time and resources of the Iranian Government and the Tribunal, solely for the sake of their unlimited greed and avarice and their unwarranted obstinacy.