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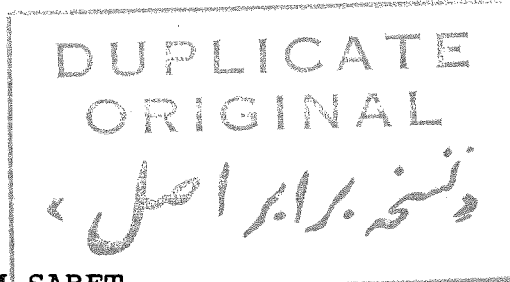
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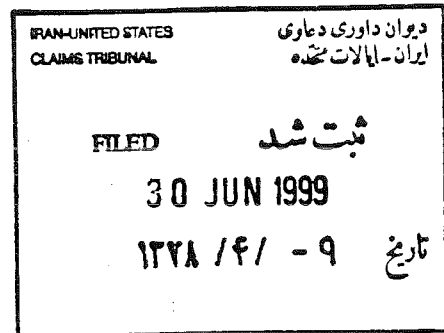


ARAM SABET,
KARIM SABET,
REJA SABET,
Claimants

and

THE ISLAMIC REPUBLIC OF IRAN,
BONYAD-E-MOSTAZAFAN,
Respondents.

CASES NOS. 815, 816, AND 817
CHAMBER TWO
AWARD NO. 593-815/816/817-2



PARTIAL AWARD

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Mr.	Karim Sabet,
	Claimants,
Mr.	Hormoz Sabet,
Mr.	Iradj Sabet,
Ms.	Valerie Sabet,
	Persons Appearing for the
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Mr.	Brian Rees,
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I. INTRODUCTION

1. The Claimants, ARAM SABET (Case No. 815), KARIM SABET (Case No. 816), and REJA SABET (Case No. 817), claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, BONYAD-E-MOSTAZAFAN, and BANK MARKAZI (collectively "the Respondents") for the alleged expropriation, in April 1979, of their ownership interests in the following Iranian companies: Firooz Corporation, General Tire and Rubber Company, Iramoz Corporation, Irangas Company, Iran Cylinder Company, Ltd., Mina Glass Company, Nownahallan Company, Radio Television Corporation of Iran, Sabet-Pasal Company, Towlid va Tasfieh Rowghan Refining Co., and the Zamzam Bottling Companies.¹ According to their final pleadings, the Claimants seek compensation in the aggregate amount of U.S.\$74,877,231.² They also seek interest and legal costs.

2. The Respondents assert that the Claimants are Iranian nationals. Even assuming that they were dual Iran-United States nationals during the relevant period, the Respondents argue that the Claimants were not dominant and effective United States nationals during that period, and consequently the Tribunal lacks jurisdiction over their claims. The Respondents argue in the alternative that, if the Tribunal were to find that the Claimants were dominant and effective United States nationals, then the caveat in Case No. A18 would bar their claims with respect to some of the companies in question. The Respondents also contend that the Claimants did not own the shares in question.

¹ Eleven separate Iranian corporations comprised the Zamzam Bottling Companies: Zamzam Bottling Company Azarbaijan (Tabriz), Zamzam Bottling Company East Tehran (Narmak), Zamzam Bottling Company Esfahan, Zamzam Bottling Company Gorgan, Zamzam Bottling Company Kerman, Zamzam Bottling Company Kermanshah, Zamzam Bottling Company Khuzestan (Abadan and Ahwaz), Zamzam Bottling Company Mashad, Zamzam Bottling Company Rasht, Zamzam Bottling Company Shiraz, and Zamzam Bottling Company Tehran.

² In their Statements of Claim, the Claimants included certain loan default claims, which they subsequently withdrew.

3. This Partial Award is made for the purpose of deciding whether the Tribunal has jurisdiction over these Cases; whether the Claimants own any or all of the property allegedly taken; whether there has been a taking of the Claimants' property by the Government of the Islamic Republic of Iran; and whether the caveat in Case No. A18 bars any of the Claimants' claims. The Tribunal shall determine in a subsequent award the value of any property that it finds was taken by the Government of the Islamic Republic of Iran and the amount of compensation to be awarded to the Claimants as a consequence.

II. PROCEDURAL HISTORY

4. In its Orders of 3 March 1989 in these Cases, the Tribunal joined all jurisdictional issues to the merits. To avoid duplication, by an Order of the same date in Case No. 385 (Gulf Associates, Inc. and Islamic Republic of Iran, et al.), the Tribunal ruled that, because Aram, Karim, and Reja Sabet claimed to have owned Gulf Associates, Inc., the claimant in Case No. 385, evidence relating to their nationality as presented in Cases Nos. 815, 816, and 817 would be applicable equally to Case No. 385.

5. To facilitate the filing of further submissions and the conduct of the Hearing, by Order of 28 October 1994, the Tribunal consolidated Cases Nos. 815, 816, and 817.

6. On 7-10, 13-16, 20-24, 27, and 28 October 1997, a joint Hearing in Cases Nos. 385, 815, 816, and 817 was held at the Peace Palace, The Hague.

III. FACTS AND CONTENTIONS³

A. BACKGROUND OF THE SABET FAMILY

7. The Claimants' grandfather, the late Habib Sabet, was the patriarch of the Sabet family. After an impoverished childhood, Habib Sabet went on to establish — either alone or with joint venture partners — numerous Iranian companies in a wide range of fields, and he became one of the wealthiest industrialists in pre-Revolutionary Iran. Habib and his wife, the late Bahereh Khamsi Sabet, had two sons, Hormoz and Iradj. In 1941 Habib, Bahereh and their two children moved from Iran to the United States, where Habib continued to engage in business activities. Habib and Bahereh returned to Iran in 1949, but they left their two sons in the United States to continue their schooling. Both Hormoz and Iradj completed their primary, secondary, and university education in the United States but returned to Iran immediately thereafter. Upon their return — Iradj in 1956 and Hormoz in 1958 — both sons became heavily involved in the Sabet family businesses. Habib and Bahereh Sabet eventually left Iran for Paris in 1975/76, and Hormoz and Iradj assumed primary responsibility for the operation of the Sabet companies.

8. The Claimants are the three sons of Hormoz Sabet. In 1963 Hormoz married Iran Khosrowshahi, an Iranian-United States dual national who was born and raised in the United States. Reja was born to Hormoz and Iran in December of 1964 in the United States, but the family lived in Iran after Reja's birth. Hormoz and Iran were divorced in 1967. Hormoz obtained custody of Reja, and father and son continued to live in Iran. In October 1971

³ The Tribunal will give more detailed consideration of certain facts, as appropriate, in connection with the merits of these claims, infra.

Hormoz married a British citizen, Valerie Springer Osborne.⁴ Aram was born in the United States to Valerie and Hormoz in August of 1972. The couple, along with Reja and Aram, lived in Iran from 1972 to 1975, while taking vacations and otherwise spending considerable time in Europe and the United States. In March of 1976 Karim was born to Hormoz and Valerie also in the United States. Hormoz acquired United States nationality in 1988 while Valerie has not become a United States citizen.

B. THE CLAIMANTS' CONTENTIONS

9. In March 1973, Hormoz and Valerie purchased their own apartment in Manhattan, New York, into which they moved in 1975, after carrying out extensive renovations. They contend that they planned to make this apartment their permanent home. In this regard, Hormoz Sabet states in his affidavit:

In the mid-1970's, I indicated to my family that I wished also to be, and currently am, engaged in other international business activities directed from New York, and to expand the operations of Gulf Associates, Inc., the New York corporation that my father founded in the 1940's. Commencing in 1975, my wife and I decided that she and the children would live in New York year-round and permanently, and that our children would be educated there. I also intended to live in Manhattan and conduct my business affairs . . . in New York City.

. . . I spent a considerable amount of time in both Tehran, primarily to attend to business matters, and New York, while my wife and children resided only in New York. I was frequently with them in New York, while my brother Iradj and his wife remained in Iran.

10. Valerie and Hormoz contend that they moved to New York because they wanted to raise their children as Americans. In addition, the Sabet family is of the Baha'i faith, and Valerie and Hormoz maintain that discrimination against Baha'is was so

⁴ This is the date of Hormoz's and Valerie's Baha'i wedding ceremony. A civil ceremony subsequently took place in New York on 7 January 1972.

severe in Iran that they feared for their children's safety when living there. According to Valerie and Hormoz, these concerns provided another reason for moving to the United States.

11. At the Hearing Mr. Victor J. Barnett, a close friend of Iradj and Hormoz from their university days in the United States, testified that he had always considered Hormoz and his children to be distinctively American rather than Iranian, and that he had understood that they planned to live permanently in the United States.

12. In support of their contention that their parents intended to raise them as Americans, rather than as Iranians, the Claimants point to the fact that even before moving to the United States in 1975, Aram and Reja attended non-Iranian schools in Iran. They contend that English was their first language and the only language spoken in their home. Aram and Reja claim that they can speak some Persian but cannot read or write it; Karim claims that he knows no Persian at all. The Claimants contend that, because Valerie had primary responsibility for raising them, their primary influence at home came from a non-Iranian parent. To this, the Respondents reply that, because Valerie was a British national, her influence was British, rather than American.

13. Moreover, in reply to the Respondents' argument that, because the Claimants were minors during the relevant period, the nationality of their father is decisive in determining their dominant and effective nationality, the Claimants assert that, although their father was born in Iran to Iranian parents, he had strong ties to the United States because of the significant time he spent there as a student and because of the social and economic ties he maintained with that country. Hormoz alleges that his primary language is English and that, while he speaks Persian, he can neither read nor write it; he therefore claims that he was obliged to use professional translators for his

business dealings in Iran. Hormoz acknowledges that he did not acquire United States nationality until 1988, however.

14. As a legal matter, the Claimants contend that, according to Tribunal precedent, it is the nationality of the minor claimant, rather than that of his or her parents, that is relevant in determining the dominant and effective nationality of the minor claimant. In support, they rely, inter alia, on Ardavan Peter Samrad, et al. and Islamic Republic of Iran, Award No. 505-461/462/463/464/465-2 (4 Feb. 1991), ("Samrad") reprinted in 26 Iran-U.S. C.T.R. 44 and Raymond Abboud, as Legal Guardian of Chrisline Arianne Abboud and Islamic Republic of Iran, Award No. 477-383-2 (16 May 1990), reprinted in 24 Iran-U.S. C.T.R. 265.

C. THE RESPONDENTS' CONTENTIONS

15. As an initial matter, the Respondents contend that the Claimants' claims arose on 31 October 1977, the date on which, according to the Respondents, the claims in Case No. 385 arose. The Respondents argue that the starting date of the relevant period in Case No. 385 applies to Cases Nos. 815-817, because, by Order of 3 March 1989 in Case No. 385, the Tribunal decided that the evidence concerning the nationality of the Claimants as submitted in Cases Nos. 815-17 was applicable to Case No. 385 (see supra, para. 4), and 31 October 1977 is the earliest date on which the claims in these Cases and Case No. 385 arose.

16. As to the Claimants' dominant and effective nationality, the Respondents dispute the Sabets' claim that they moved permanently to the United States in 1975, and they deny the Claimants' contention that religious discrimination against the Sabets was a reason for their move to the United States. Rather, the Respondents assert that the family's move to New York was intended merely to allow the children to attend school in the United States, while Hormoz, by his own admission, remained based in Iran until 1978.

17. The Respondents allege that the Claimants, whose family had been closely associated with the government of the Shah, remained in the United States after 1978 only to escape the Islamic Revolution, rather than because they had stronger ties to the United States. The Respondents add that any economic or social ties the Claimants might have had with the United States — such as residing and attending school there — were common to the children of many wealthy Iranians whose lives were nonetheless centered in Iran.

18. The Respondents argue, moreover, that a child's nationality should follow that of his or her parents, because it is not possible for minors to make their own decision to form close links with any state. The Respondents therefore argue that the Claimants' nationality should follow the Iranian nationality of their father. They also contend that the weakness of Hormoz's ties to the United States is shown by the fact that he returned to Iran to become involved in the family businesses immediately after graduating from university, and he did not acquire United States nationality until 1988. The Respondents further point out that Hormoz had extensive economic interests and corporate responsibilities in Iran, which far outweighed his business interests in the United States, and they note that he paid Iranian, rather than United States, taxes. The Respondents conclude that the center of Hormoz's economic life — and by extension, that of his children — was in Iran.

19. At the Hearing, counsel for the Respondents argued that the dominant and effective nationality of minor children cannot be ascertained by examining their own conduct; one must consider other factors, such as the nationality of a child's parents and grandparents and the origin of the assets at issue. Counsel concluded that, in the present Cases, these indicators point to the Iranian nationality of the Claimants.

20. The Respondents, moreover, contend that, during the relevant period, the Claimants were not integrated into United

States society, citing the following factors. First, Valerie and Hormoz were not United States citizens, and the Claimants' family ties were not centered in the United States, as evidenced by the fact that their grandparents lived in Paris, and their uncle and cousins lived in Iran or Switzerland. Second, the Claimants did not renounce their Iranian nationality, although the Respondents concede that, because the Claimants were under 25 years of age, they could not have renounced their own nationality unless their father had renounced his nationality as well pursuant to Article 988, paragraph 3, of the Iranian Civil Code. Third, an Iranian identity card was issued to Karim after 1975, and Iranian passports were issued to Aram in August 1977, Karim in April 1976, and Reja in February and July 1976.

21. Lastly, the Respondents urge the Tribunal not to consider facts that occurred after the relevant period. The Respondents point out that, in order to be considered United States nationals within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration, the Claimants must show that they were dominant and effective United States nationals from the time their claims arose until 19 January 1981.

D. SPECIFIC CONTENTIONS ABOUT EACH CLAIMANT

1. Reja Sabet

22. The Claimant in Case No. 817, Reja Sabet, was born in the United States on 16 December 1964. Reja contends that, at the time of his birth, his father's branch of the Sabet family was dividing its time between Iran, where his father had extensive economic interests and responsibilities associated with the Sabet family companies, and New York, where the Sabet family had owned an apartment since the early 1940s. He asserts that his mother, Iran Khosrowshahi, was born and raised in the United States; although she was of Iranian origin, she travelled to Iran for the first time in 1963, the year she married Hormoz Sabet.

23. Reja attended nursery and primary school in Iran: He attended kindergarten at the Hekmat School, Tehran, which employs a traditional Persian curriculum, and he claims to have attended primary school at the British School (1970-73) and the Tehran International School (1973-75), although the Respondents dispute this, contending that Reja attended the Hekmat School for seven years. Reja claims that during this period, he spent "almost half the year outside of Iran — primarily in the United States, and also in Europe." Reja submits evidence that he attended gymnastics classes in New York from 1972 to 1975 and summer school during the summers of 1974 and 1975.

24. Reja claims that after moving to the United States in late 1975, he returned to Iran only once, for a brief visit in 1976. From about 1976 until the end of the relevant period, he attended schools in New York (Choate Rosemary Hall and The Browning School), completing about three and one-half school years before the commencement of the relevant period. After graduating from high school in 1982, he attended university in the United States. Thus, before the commencement of the relevant period, he lived, in total, for about eleven years in Iran (during which period he allegedly spent much time in the United States) and for about three-and-one-half years in the United States.

25. Reja asserts that his social life was centered in the United States. He claims that the process of his integration into United States society began before the relevant period and was perfected during that period. In support of this contention, Reja has provided affidavits from several family friends and from friends of his own, attesting to his integration into American society. At the Hearing, Mr. Roger Barnett testified that, during his long friendship with Reja, he always believed that Reja considered himself to be American rather than Iranian. Reja belonged to a New York sports club from 1975 until 1979. He was attended by a New York pediatrician from 1971 and a New York dentist from 1975.

26. Finally, Reja claims that he used his Iranian passport only for travel to and from Iran, in order to comply with Iranian law.

2. Aram Sabet

27. Aram Sabet, the Claimant in Case No. 815, was born in the United States on 24 August 1972. Aram claims, as Reja does, that the family was then dividing its time between Iran and the United States. See supra, para. 22. He contends that he attended a French nursery school in Iran for a brief period and thereafter attended nursery school in New York; he commenced primary school in New York in 1978. All of his subsequent schooling took place in the United States. Aram therefore lived approximately three years in Iran and approximately three-and-one-half years in the United States before April 1979, the date at which the Claimants contend their claims arose. He contends that he has never had any cultural or social attachments to Iran and was fully integrated into American society by that date.

3. Karim Sabet

28. Karim Sabet, the Claimant in Case No. 816, was born in the United States on 10 March 1976. Karim never lived in Iran and claims that he travelled to Iran only once for 2-3 weeks soon after he was born in 1976. He attended nursery school at the French-medium Lyceum Kennedy in New York beginning in 1978; his subsequent schooling also took place in the United States. Karim claims that he never attended an Iranian school or participated in any Iranian cultural activities, and that he had no social connection to Iran. Rather, he contends that all his cultural influences were American.

IV. JURISDICTION

A. THE NATIONALITY OF THE CLAIMANTS

29. In its Decision in Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT, at 25 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265 ("Case A18"), the Full Tribunal held that the Tribunal has jurisdiction over claims brought against Iran by Iranian-United States dual nationals only when the "dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." Thus, the Tribunal must first determine whether the Claimants were nationals of both the United States and Iran during the relevant period. If the Tribunal concludes that they were, it will then have to determine whether the Claimants' United States nationality was dominant and effective during the relevant period so that the Tribunal can exercise jurisdiction over their claims.

30. As a preliminary matter, the Tribunal rejects the Respondents' contention that the relevant period in these Cases must be assumed to have commenced on 31 October 1977. There is no reason why the commencement of the relevant period in these Cases should coincide with that of the relevant period in Case No. 385, whatever that might be. The Tribunal's Order of 3 March 1989 in Case No. 385, which provided that the evidence concerning the Claimants' nationality as submitted in Cases Nos. 815-817 would be applicable to Case No. 385, was intended merely to prevent duplication of evidence in those Cases; it did not purport to influence the Tribunal's determination of the relevant periods in Cases Nos. 385 and 815-817.

31. The Claimants allege that their claims arose on 11 April 1979, when the properties that are the subject of their claims in these Cases were allegedly expropriated by the Government of the Islamic Republic of Iran. Consequently, the

Tribunal determines that the relevant period in these Cases commenced on that date.

32. The Tribunal next turns to the issue of the Claimants' dominant and effective nationality. By reason of their birth in New York City, the Claimants are all nationals of the United States. Pursuant to Article 976 of the Iranian Civil Code, they are also nationals of Iran by virtue of the Iranian nationality of their father. There is no evidence, and neither party has alleged, that the Claimants ever relinquished or otherwise lost either of these nationalities. The Claimants are consequently Iranian-United States dual nationals. The pertinent question thus becomes: Were the Claimants dominant and effective United States nationals during the relevant period such that the Tribunal has jurisdiction over their claims?

33. The criteria set forth in Case A18 to evaluate the dominant and effective nationality of an individual — habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment — are better-suited to determining an adult's nationality than that of a child.⁵ A minor does not possess the level of maturity necessary to determine where he or she wishes to live, let alone to show allegiance to a particular nation. Such decisions are taken by the parents or the guardian. For this reason, the Tribunal has considered the dominant and effective nationality of the parents or guardian factually relevant to the determination of the dominant and effective nationality of a minor claimant. See Samrad, supra, para. 38, 26 Iran-U.S. C.T.R. at 56.⁶ However,

⁵ In the Nottebohm Case (Liechtenstein v. Guatemala) I.C.J. Reports (1955) 4, 22, the International Court of Justice was clearly contemplating the dominant and effective nationality of adults when it stated that "attachment shown by [the individual] for a given country and inculcated in his children" are factors that may be considered in the assessment of that nationality.

⁶ In Samrad, the Tribunal went on to say that the fact that the claimant's father was solely Iranian and
(continued...)

the parents' or guardian's nationality is by no means dispositive in making this determination. The intentions that the parents or guardian expressed for the nationality of the minor children are also important factors.

34. Applying these principles to the facts of these Cases, the Tribunal finds that the arrangements that Hormoz and Valerie Sabet made for their children and the intentions they expressed are more relevant in determining the Claimants' dominant and effective nationality than are Hormoz's and Valerie's nationalities at the time. The evidence shows that, well before the claims in these Cases arose, Valerie and Hormoz made a permanent home in the United States for their children. The relevant facts — the Claimants' birth in the United States, the family's 1975 move to New York, the Claimants' schooling there, and the purchase of a Manhattan apartment as the permanent home for the family — reveal that Valerie and Hormoz intended to center the Claimants' lives in the United States.

35. Although they spent their earliest years living in Iran, both Reja's and Aram's native language was English. Further, they made frequent visits to the United States before they moved to New York with their family in 1975. Most importantly, Reja and Aram attended schools in the United States for about three and one-half years before their claims arose; this afforded them ample time to integrate into United States culture given their fluency in English and their previous exposure to United States influences. School records from the late 1970s

⁶(...continued)

the Tribunal's decision that her mother was not a dominant and effective United States national when her claim arose do not necessarily preclude a different decision concerning the [minor daughter]. However, that decision does place a heavy burden upon [the minor daughter] to show that her integration in American society was more rapid and more complete than that of her mother.

Samrad, supra, para. 38, 26 Iran-U.S. C.T.R. at 56.

indicate that they had no difficulty in adjusting to the United States school system and the English-medium curriculum.

36. Karim Sabet, for his part, was born in the United States on 10 March 1976 and never lived in Iran. The evidence shows that he was exposed to predominantly United States, rather than Iranian, influences from birth.

37. In the Tribunal's view, the factors cited in the foregoing paragraphs, considered together with the evident lack of contacts with Iran beginning in early 1976 at the latest, point to a finding that the Claimants, by the time their claims arose, had integrated into American society.

38. The Tribunal is, of course, mindful that it is not impossible that the Claimants ultimately might have returned to Iran after completing their schooling if the Revolution had not taken place, especially in light of the family's extensive business interests in Iran. Nevertheless, by the start of the relevant period, a number of objective factors tied them to United States society: family, home, school, language, friends, and extra-curricular activities. As the Tribunal observed in Fereydoon Ghaffari and Islamic Republic of Iran, Award No. 565-968-2, at para. 22 (7 Jul. 1995), "generally, what is important in determining the Claimant's dominant and effective nationality is what he did rather than what he said or intended to do."

39. Based on the foregoing considerations, the Tribunal determines that, at all relevant times, the Claimants were dominant and effective United States nationals. Consequently, their claims are claims of nationals of the United States in accordance with Article VII, paragraph 1, of the Claims Settlement Declaration.

B. THE CLAIMANTS' LOCUS STANDI

40. At the Hearing, the Respondents argued that the Claimants assigned all the claims that they asserted in these Cases to Gulf Associates, Inc. ("Gulf"), the Claimant in Case No. 385, before 19 January 1981. Gulf was a Sabet family company based in New York. In Case No. 385, Gulf claims that, at the time its claims arose, 100 percent of its shares were owned by Reja, Aram, and Karim Sabet. The Respondents, however, claim that during the relevant period Gulf was owned by four of the Iran-based Sabet companies and therefore was not a United States national. So, the Respondents here contend that the Claimants assigned their claims to Gulf — a non-United States national — and thereby interrupted the continuous United States ownership of the Claimants' claims, which ownership is a prerequisite to establishing the Tribunal's jurisdiction pursuant to Article VII, paragraph 2, of the Claims Settlement Declaration. The Respondents argue alternatively that even if the Claimants did own Gulf at the time of the assignment, the assignment divested them of their ownership of the claims, so they now have no standing to bring the claims before the Tribunal. Thus, the Respondents argue, all the claims in these Cases are excluded from the Tribunal's jurisdiction.

41. In support of their position, the Respondents primarily rely on two documents submitted into the record of these Cases and Case No. 385, respectively:

- Forms entitled "Census of Claims by United States Persons Against Iran," which had been filed with the U.S. Department of the Treasury in May 1980 by a law firm representing the Sabet family. These forms sought information as to claims against the Government of Iran, and one form had been completed for each of the Claimants, for Hormoz Sabet, Valerie Sabet, and for two of Iradj Sabet's children. These Census of Claims forms were produced by the Claimants in these Cases (see also infra, paras. 79-81); and

- A Complaint filed by Gulf Associates in the United States District Court for the Southern District of New York against the Islamic Republic of Iran, Bank Markazi, and the Bonyad Mostazafan on 16 January 1981 ("Complaint"). In its pleadings in Case No. 385, Gulf referred to the filing of this lawsuit in the United States District Court to provide contemporaneous evidence of the existence of one of its claims in that Case.

42. Gulf's 16 January 1981 Complaint before the District Court states in its opening paragraph that "[p]laintiff brings this action on behalf of itself and several assignors, all of whom are United States citizens and/or United States residents."⁷ The Complaint states that "the State of Iran . . . wrongfully seized, took and confiscated property belonging to and owned by plaintiff and its assignors." The Complaint goes on to describe the property allegedly taken from Gulf as well as that allegedly taken from Gulf's assignors:

10. The property wrongfully seized, taken and confiscated from Gulf Associates consists of accounts receivable and interest thereon owed to plaintiff by several confiscated Iranian corporations in the amount of \$8,101,574.

11. The property wrongfully seized, taken and confiscated from plaintiff's assignors consists of shares of stock in several Iranian corporations and dwellings, offices, warehouses, factories, real property and personal property. The total market value of this property is \$201,643,636.

The accounts receivable of U.S.\$8,101,574 allegedly owed to Gulf are the subject of Case No. 385, the case Gulf brought against Iran in this Tribunal. The Respondents contend that the shares of stock allegedly confiscated from Gulf's assignors, referred to in the following paragraph, include the stock for which the Claimants are seeking compensation in these Cases. To determine

⁷ The Complaint refers several times to "plaintiff and [or] its assignors."

the identity of the "assignors" mentioned in the Complaint, the Respondents contend, one merely has to compare the above-quoted language with the Census of Claims forms, supra, para. 41.

43. The Respondents point out that, if one adds up the individual amounts claimed in all the separate Census of Claim forms, one arrives at a total of U.S.\$201,643,636 — that is, exactly the amount sought in the Complaint in paragraph 11 for the confiscation of stock and other property, see supra, para. 42. Thus, the Respondents argue, it necessarily follows that the seven individuals listed in the Census of Claims forms, see supra, para. 41, constituted the assignors referred to in Gulf's New York complaint and that the claims of Reja, Aram, and Karim Sabet were amongst those that were assigned to Gulf prior to the date of the Algiers Declarations.

44. According to the Respondents,

to the extent that the claims of Reja, Aram and Karim Sabet that now form the basis of Cases 815, 816 and 817 were assigned to Gulf prior to the entry into effect of the [Claims Settlement Declaration], and Gulf's claims in front of the New York courts remain alive, which they do, the [Claimants] lack locus standi to bring the same claims before this tribunal.

This is because, argue the Respondents,

the claims now being presented in Cases 815, 816 and 817 by the three Sabet children cannot simultaneously be owned by two different legal entities. To the extent that these claims were assigned to Gulf Associates prior to the entry into force of the Declaration, as the New York action clearly shows, they could not also remain in the hands of the children to pursue before this tribunal. In this respect it is significant that Gulf has never abandoned its New York action. That case remains on the docket in New York, in fact at Gulf's repeated insistence. It follows that the children in assigning the claims to Gulf have divested themselves of ownership of those claims in order for Gulf to pursue the New York action. This is further confirmed in the complaint at paragraphs 17 and 21, where the defendants in the New York action are said to be liable to the plaintiff, Gulf.

45. The Claimants deny that the assignment was reduced to writing but acknowledge that prior to 19 January 1981 there was an assignment of sorts to Gulf. However, they argue that it was not an assignment of their claims in these Cases, but merely an informal assignment of the right to sue in the United States District Court for reasons of convenience. The Claimants maintain that United States law permits the assignment of a right to sue, with the assignor retaining beneficial ownership of the claim. According to the Claimants, New York law requires that the assignment of a claim be evidenced either by consideration or a written instrument. In the present instance, there was neither a writing nor consideration. The Claimants contend, moreover, that the very wording of the Complaint, with its repeated references to Gulf suing on its own behalf and on behalf of the assignors, proves the Claimants' point. If Gulf were the owner of the claims, as the Respondents argue, why would Gulf sue on behalf of others? It would simply sue on behalf of itself. Finally, the Claimants point out that there is no evidence in Gulf's books of ownership of an asset worth more than U.S.\$200 million.

46. The Claimants go on to argue that the inaccuracy of the Respondents' argument is proved by the fact that it is illogical. The Respondents contend, in Case No. 385, that during the relevant period Gulf was owned, not by the Claimants, but by four Iranian companies that had been expropriated by the Government of Iran long before the filing of the Complaint; according to the Claimants, this means that they would have assigned their claims against the Iranian government to organizations owned and controlled by Iranian government agencies. In other words, the Claimants contend that the Respondents are in effect arguing that "this claim against Iran is being assigned to Iran, which will then apparently bring its lawsuit against itself in [the] federal court." This argument, the Claimants conclude, is absurd.

47. The Respondents reply that at the time of the assignment, the Claimants were apparently under the impression that they, and not the four Iranian companies, were the owners of the Gulf shares. Based on this premise, the Respondents argue, the Claimants, who they believe were forum shopping at the time of the assignment, knowingly took the risk of a subsequent judicial determination that the actual shareholders of Gulf during the relevant period were indeed the four Iranian companies or at any rate persons other than the Claimants. Having made this choice, the Respondents continue, the Claimants must now live with it.

48. Because the Claimants acknowledge that there was an assignment to Gulf prior to 19 January 1981, the critical question for the Tribunal is whether that assignment was an assignment of the ownership of the present claims — in which case, in the absence of a timely reassignment to the Claimants or if the Tribunal were to find that Gulf was not a United States national, the Respondents would succeed in their jurisdictional defense — or merely the assignment of the right to sue in the United States District Court. As it was the Respondents who brought the assignment argument as an affirmative defense, they bear the burden of proof on the issue, in accordance with Article 24, paragraph 1, of the Tribunal Rules.

49. The documents relied on by the Respondents — the Complaint in the District Court and the Census of Claims forms — are ambiguous and as such are not conclusive proof either that the Claimants assigned to Gulf the ownership of their claims, or that they merely assigned to it a right to sue under New York law, although the references in the Complaint to Gulf's suing on behalf of the others strongly suggest that the assignment was only of the right to sue. If Gulf had become the owner of all the claims, it would presumably have brought them on its own behalf.

50. In the Tribunal's view, several additional factors confirm that suggestion. First, no assignment document has been

produced or found, and it is undisputed that under New York law, the law governing the assignment, in the absence of any consideration, written form is necessary for such an assignment to be valid. Second, from a common-sense perspective, it seems unlikely to the Tribunal that the parents and cousins of the Claimants — the persons who, together with the Claimants, filed the Census of Claims forms — would have seen fit to transfer for no consideration the ownership of almost U.S.\$200 million worth of claims to Gulf, given that neither the Claimants' parents nor their cousins were shareholders of that company at the times here relevant.⁸ In the Tribunal's view, the most likely scenario is that the Claimants, their parents, and their cousins informally assigned to Gulf the right to bring an action in the United States District Court for reasons of convenience.

51. For all the above reasons, the Tribunal holds that the Respondents have not met their burden of proof with respect to their assignment defense, which the Tribunal therefore dismisses. Consequently, the Claimants have standing to assert their claims before the Tribunal.

C. OTHER JURISDICTIONAL ISSUES

52. The claims are for the expropriation of the Claimants' alleged property interests in various Iranian companies and therefore fall within the Tribunal's subject-matter jurisdiction of claims arising "out of . . . expropriations or other measures affecting property rights." Article II, paragraph 1, of the Claims Settlement Declaration.

53. Further, the Tribunal is satisfied that these claims were owned continuously by nationals of the United States, in accordance with Article VII, paragraph 2, of the Claims Settlement Declaration and that they were outstanding on 19 January

⁸ The Tribunal must decide in Case No. 385 whether, at the relevant times, the Claimants were shareholders of Gulf.

1981, as required by Article II, paragraph 1, of the Claims Settlement Declaration.

54. For all the above reasons, the Tribunal determines that it has jurisdiction over these Cases.

V. THE MERITS

A. THE CLAIMANTS' OWNERSHIP OF THE SHARES IN THE ALLEGEDLY EXPROPRIATED COMPANIES

55. In order to succeed in their claims, the Claimants must prove, as a preliminary matter, that, during the relevant period, they owned the shares that they claim the Respondents expropriated.

1. Registered Shares

56. The Claimants contend that they owned registered shares in the following Iranian companies: a) General Tire and Rubber Company ("GTR"), which produced car tires and tubes; b) Iran Cylinder Company, Ltd. ("ICC"), a manufacturer and importer of natural gas cylinders; c) Mina Glass Company ("Mina Glass"), a manufacturer of glass bottles, containers, and cases for the soft drink industry; d) Nownahallan Company ("Nownahallan"), which provided financial services; e) Towlid va Tasfieh Rowghan Refining Co. ("TRR"), which manufactured and distributed lubricating oils; and Zamzam Bottling Company Tehran ("Zamzam Tehran"), a manufacturer, bottler, and distributor of soft drinks.

57. The Claimants allege that, during the relevant period, they held the following numbers of registered shares in the above companies:

Company	No. of Shares		
	Reja	Aram	Karim
GTR	13,436	13,436	Nil
ICC	100	100	100
Mina Glass	3,120	3,120	Nil
Nownahallan	27,946	28,076	27,946
TRR	10,509	10,509	600
Zamzam Tehran	5,000	5,000	Nil

Many of the documents that the Claimants rely on as evidence of their ownership of those registered shares have been submitted by the Respondents.

58. The Respondents concede that the Claimants at all relevant times were the record owners of all the registered shares included in their claim, but the Respondents allege that the true owner of those shares was Hormoz Sabet. It was Hormoz, the Respondents assert, who controlled the shares at all times; his children had neither the intent nor the money to purchase them.

59. Based on the uncontested evidence presented by both parties, as well as on the Respondents' concessions, the Tribunal holds that the Claimants owned registered shares in the Sabet Group public companies in the amounts listed supra, para. 57. The Tribunal dismisses for lack of proof the Respondents' contention that Hormoz was the real owner of the registered shares. Even if the Tribunal were to assume that Hormoz had paid for the shares or had voted them as guardian and on behalf of his children, this alone would not prove that he was the true owner of those shares; it is not uncommon for parents to give stock to their children and to vote that stock until the children reach the age of majority, particularly where, as here, the company records clearly show the children to be the owners of the shares.

See Vivian Mai Tavakoli, et al. and Islamic Republic of Iran, Award No. 580-832-3, para. 68 (23 Apr. 1997) ("The Tribunal has generally demanded particularly persuasive evidence to conclude that the registered owner of shares was not their beneficial owner"). See also Kaysons International Corporation and Islamic Republic of Iran, et al., Award No. 548-367-2, para. 15 (28 Jun. 1993).

60. Accordingly, the Tribunal concludes that, during the relevant period,

- Reja Sabet, the Claimant in Case No. 817, owned 13,436 shares out of a total of 920,000 shares in GTR; 100 shares out of a total of 6,500 shares in ICC; 3,120 shares out of a total of 400,000 shares in Mina Glass; 27,946 shares out of a total of 4 million shares in Nownahallan; 10,509 shares out of a total of 750,000 shares in TRR; and 5,000 shares out of a total of 120,000 shares in Zamzam Tehran;
- Aram Sabet, the Claimant in Case No. 815, owned 13,436 shares out of a total of 920,000 shares in GTR; 100 shares out of a total of 6,500 shares in ICC; 3,120 shares out of a total of 400,000 shares in Mina Glass; 28,076 shares out of a total of 4 million shares in Nownahallan; 10,509 shares out of a total of 750,000 shares in TRR; and 5,000 shares out of a total of 120,000 shares in Zamzam Tehran;
- Karim Sabet, the Claimant in Case No. 816, owned 100 shares out of a total of 6,500 shares in ICC; 27,946 shares out of a total of 4 million shares in Nownahallan; and 600 shares out of a total of 750,000 shares in TRR.

2. Bearer Shares

61. The Sabets also had considerable shareholdings in fifteen private companies which utilized bearer shares. The Claimants assert that they owned shares in these companies as well.

62. The Claimants contend that their grandfather, the late Habib Sabet, with the aim of transferring his wealth to succeeding generations of Sabets, gifted virtually all of his interests to his wife, children, and grandchildren. According to the Claimants, this was a common practice of wealthy families in Iran. The Claimants assert that Habib intended all his grandchildren to hold approximately equal interests in all of the Sabet companies.

63. The eldest Claimant, Reja Sabet, states in his affidavit that Habib "gave to his sons and grandchildren ownership over the Sabet Group and left control to my father and uncle, until we, the grandchildren, came of age." Hormoz, the Claimants' father, explains in his affidavit:

Before my father left Iran in 1976, he entrusted me with physical custody of all bearer shares and title deeds, and certain nominative shares, to hold for my mother, for my brother, for his wife and their children, and for myself and my children, with full power of attorney. Habib Sabet . . . confidently left the major ownership of the Sabet Group companies and their shares to his lineal descendants, as his religious beliefs and specific intent called for, that is, the shares were left to me, and to my brother and the six grandchildren

64. The late Bahereh Sabet, Habib's widow, stated in a sworn declaration dated July 1991 that, prior to leaving Iran in 1976, Habib

gave everything to [Habib and Bahereh's] children and grandchildren, and made Hormoz and Iradj the custodian for their children. I think [Habib] made Hormoz the

custodian of the actual shares, to hold them for everybody. But he wanted our two sons and six grandchildren, as well as Iradj's wife [Faegheh], to own all the shares. I also owned a few shares.

She goes on to say: "I am not certain as to what shares were in which companies, as I am old and do not remember everything. I do know that half was for Iradj and half for Hormoz to hold for themselves as owners and for their children as owners."

65. The Claimants concede that they have no direct evidence of their ownership of shares in the private companies. In contemporaneous company records, the shares are listed as owned by other Sabet family members. Nonetheless, the Claimants assert in their written pleadings that their grandfather Habib gave roughly half of his shares to be divided between his two sons, Iradj and Hormoz, and the other half to be divided amongst his six grandchildren, such that the three Claimants owned roughly 8.33 percent of all the Sabet bearer shares. In particular, the Claimants contend that during the relevant period, they each owned one sixth (for a total of one half) of the bearer shares that were listed as owned by Hormoz and Bahereh. The Claimants allege that their cousins, Iradj's three children, each owned one sixth (for a total of one half) of the shares listed as owned by Iradj and his wife Faegheh Ramsi. According to the Claimants, then, each of them owned bearer shares in the following Iranian companies in the following amounts: 400 shares in Firooz Corporation ("Firooz"), a distributor of household goods; 658.33 shares in Iramoz Corporation ("Iramoz"), a real estate and investment company; 41 shares in Irangas Company ("Irangas"), a distributor of liquid propane gas; 533.33 shares in Radio Television Corporation of Iran ("RTI"), a manufacturer of television receivers; 125 shares in Sabet-Pasal Company ("Sabet-Pasal"), which imported, distributed, and serviced various vehicles and equipment; and 468 total shares in the Zamzam Bottling Companies, which manufactured, bottled, and distributed soft drinks (collectively the "private companies").

66. At the Hearing, the Claimants argued in a somewhat different vein that the Sabet family treated their shareholdings as a single, undivided parcel owned in common by each of the family members. On this theory, the Claimants contend, it was understood that they owned their proportionate share of the Sabet-held stock in the private companies. According to the Claimants, the common ownership of the bearer shares enabled share transfers among family members to take effect without compliance with formal requirements — in particular, without the need for an instrument of transfer or physical delivery. As a result, the fact that certain family members voted for certain shares at the shareholder meetings of these private companies does not necessarily mean that they owned or controlled those shares. The Claimants asserted that, as a result of this inter-family arrangement, it is difficult for them to produce direct written proof of their ownership of the bearer shares for which they claim.

67. The Respondents contend that the Claimants have failed to prove that they owned any bearer shares in the private companies at any of the times here relevant. In addition, the Respondents point to a "share verification report" that they submitted, which analyzes the private company records in detail and concludes that the Claimants owned no shares whatsoever in those companies.

68. The Respondents deny, moreover, that there existed any "common ownership of assets" among the Sabet family members. They contend that the bearer shares in question were owned individually by members of the Sabet family and that none of those shares belonged to the Claimants. The Respondents also point out that the common asset theory that the Claimants advanced at the Hearing is inconsistent with the arguments the Claimants made in their written pleadings that the Sabet family shares were owned individually by specific family members.

69. However the Claimants' arguments are articulated, they are based on the contention that the Claimants are the beneficial owners of the shares and therefore are entitled to compensation for their expropriation. In past awards, the Tribunal has "favored beneficial over nominal ownership of property," James M. Saghi, et al. and Islamic Republic of Iran, Award No. 544-298-2, para. 18 (22 Jan. 1993) ("Saghi"), and it has recognized, in appropriate circumstances, that "beneficial ownership is both a method of exercising control over property and a compensable property interest in its own right." Id. at para. 26. At the same time, the Tribunal has recognized that mere unsupported allegations are not sufficient to prove a Claimant's beneficial ownership of property. As the Tribunal stated in Reza Nemazee and Islamic Republic of Iran, Award No. 575-4-3, para. 54 (10 Dec. 1996), "[i]t is incumbent on a claimant to produce strong evidence that he or she, and not the person registered as the legal owner, was in reality the true owner of the property." The Tribunal also notes that Article 39 of the Iranian Commercial Code, as amended, states that bearer shares "shall be considered as the property of the holder unless the contrary is established." It is therefore incumbent upon the Claimants to submit evidence showing that, if they did not physically hold the shares, they were nevertheless the owners.

70. As noted above, the Claimants acknowledge that they have no direct evidence of their ownership of the shares inasmuch as the contemporaneous company records list the shares as owned by other Sabet family members. Moreover, the Claimants do not claim, nor is there any evidence, that they received any of the tangible benefits of the share ownership, such as dividends. Nevertheless, the Claimants point to other evidence which they contend supports their claim of ownership. To this evidence the Tribunal will now turn. The Tribunal will conclude, however, that none of the evidence, either individually or collectively, is sufficient to meet the Claimants' burden of proving that they were the beneficial owners of any bearer shares in the private companies.

71. The Claimants produced five summaries, dated between December 1976 and May 1978, listing Sabet family assets and shareholdings in Iran and elsewhere. Hormoz asserts that he typed these summaries himself during the period indicated. The summaries specified, inter alia, the kind of shares (bearer or registered) held in a given company, the number of shares, and their location. The Claimants also produced lists of alleged Sabet family stockholdings in the private companies. These documents listed the shares as owned by specified Sabet family members, and, according to Hormoz, were used by the Sabets "for purposes of preparing our stockholder minutes, exercising our voting representation, and more important, for internal family financial decisions."

72. Neither the Claimants' summaries of assets and shareholdings nor their lists of stockholdings in the private companies mention the Claimants as owners of any bearer shares in those companies. Thus, those documents do not constitute proof of the Claimants' ownership of those bearer shares.

73. The Claimants also submitted minutes of shareholder meetings of the private companies at which Hormoz and Iradj appeared as "representing" (in Persian "namayandeh") a certain number of bearer shares. The Claimants contend that Hormoz and Iradj are listed as "representing" those shares because they were representing them on behalf of the Claimants and Iradj's children. According to the Claimants, if Hormoz and Iradj had owned the shares, as the Respondents contend, they would have signed the minutes as owners (in Persian "darandeh"), rather than as representatives, of the shares.

74. The Tribunal has examined the numerous minutes of shareholder meetings of the private companies submitted into the record. While these minutes show that, at several of those meetings, Hormoz and Iradj were listed as "namayandeh," that is, as representatives of certain shareholdings, they do not indicate on whose behalf, if any, Hormoz and Iradj were appearing.

Moreover, Hormoz and Iradj were inconsistent in the way they signed the shareholder minutes — in any given company, they would sometimes sign as representatives and other times as holders of the same number of shares, and the other shareholders would do likewise.⁹ Finally, the Tribunal notes that in the minutes of Zamzam East Tehran, which will be discussed *infra*, paras. 85 to 88, Hormoz and Iradj were uncontestedly signing for both their own shares and for their childrens' shares; yet, rather than signing merely as "namayandeh," they signed "esalatan va velayatan," which means on his own and as guardian. Thus, the minutes to which the Claimants refer fall well short of proving that the Claimants' father participated in those meetings and voted shares on his children's behalf.

75. The Claimants next point out that Reja and Aram were listed in company records as the owners of bearer shares in Mina Glass and Zamzam Tehran when those companies were still private. Reja and Aram acquired their bearer shares in these two companies in November 1974, and the companies went public in March 1976, at which time Reja's and Aram's bearer shares were converted to registered shares. The Claimants maintain that Reja and Aram were recorded as owners of the bearer shares only in anticipation of the companies going public. They assert that, by indicating, just prior to the conversion, the stockholders whose bearer shares were to be replaced by registered shares, the companies

⁹ Often, there seemed to be no rhyme or reason to the way in which shareholders were listed in the minutes of shareholder meetings of the private companies. For example, at the 12 March 1973 meeting of the shareholders of Irangas, all six shareholders, three of whom were not Sabets, signed as "representing" their shares. At the next year's meeting, however, the same six shareholders were listed as "holders" of the same number of shares. Those six shareholders continued to be listed as "holders" at the June 1975 and February 1976 meetings, with one Mr. Storm listed as "representing Iran Cylinder Co., holder of" certain shares; yet, at the June 1976 meeting, all six were listed as "representing" their shares. Five shareholders appeared at the 18 June 1977 as "holders," but were listed as "representatives" at the 10 January 1978 meeting. At what appears to be the last meeting that the Sabets attended, held on 11 July 1978, the shareholders were again listed as "holders."

avoided complicated legal formalities that otherwise would have been required for the share conversion. According to the Claimants, there was no other reason to list them as owners of the bearer shares, and since, with the exception of Zamzam East Tehran, which will be discussed infra, paras. 85-89, the Sabets did not intend to take any of the other private companies public, the Claimants were not listed as the owners of the bearer shares in those companies.

76. The Tribunal notes, first of all, that Reja and Aram acquired their bearer shares in Mina Glass and Zamzam Tehran nearly a year and a half before the companies went public. This considerable period of time in itself undermines the Claimants' argument that they became shareholders in private companies only in anticipation of those companies going public. Moreover, evidence submitted by the Respondents indicates that the Sabets took those companies public in response to requirements imposed by the Law for the Expansion of Public Ownership of Productive Units, a law which was not passed until 24 June 1975, more than six months after Reja and Aram acquired and were listed as owners of their bearer shares. This evidence calls into question the Claimants' allegation that Reja and Aram were recorded as bearer shareholders in Zamzam Tehran and Mina Glass — in contrast to the other private companies — only in anticipation of those companies going public. In addition, the Claimants have not advanced any reason why the Sabets would wish to conceal that the Claimants were shareholders in the private companies. That is, the Claimants state that in the companies that were not going public, there was no reason to list them as owners of the bearer shares. The Claimants have not, however, advanced any reason not to list them as owners of the bearer shares. The Tribunal concludes that, far from proving the Claimants' ownership of bearer shares in other private companies, the records listing Reja and Aram as owners of bearer shares in Mina Glass and Zamzam Tehran indicate that when the Claimants owned bearer shares in private companies, they were indeed listed in company records as owning those shares.

77. In like vein, the Claimants point to their ownership of registered shares as supporting their claim to own bearer shares. The Claimants assert that it would "constitute a most unusual and highly irregular method of transferring wealth to one's children and grandchildren" if the Claimants had been given registered shares in the public companies, but no shares in the private companies. The Tribunal notes first of all that the Claimants' registered shareholdings constituted very small percentages of the Sabets' holdings in the public companies, and indeed, Karim had not been given any registered shares in three of the six public companies. Thus, even if the Tribunal were inclined to find the Claimants' registered shareholdings probative of their ownership of bearer shares, it would be unable to infer that each of the Claimants owned 8.33 percent of the Sabet holdings in each of the private companies, as the Claimants contend. The Tribunal, however, is not inclined to infer anything from the fact that the Sabets gave the Claimants some registered shares. It would not be appropriate for the Tribunal to infer comprehensive patterns of inter-generational wealth transfer from several gifts of relatively few registered shares.

78. The Claimants next point to the Respondents' share verification report on Iramoz (see supra, para. 67) as proving their ownership of Iramoz shares. The Claimants contend that the verification report states that certain debts of the Claimants¹⁰ were listed in the Partnership Accounts of Iramoz, thus proving that the Claimants were Iramoz shareholders. The Respondents deny that contention, maintaining that the share verification report states just the opposite: that the Claimants' debts were not listed in the Partners' Account. Moreover, the Respondents point out that the share verification report goes on to state that the Claimants' debts were listed under the "Debtors Account" rather than under the "Partners Debts" in Iramoz's tax declaration, thus showing that the Claimants were not partners, and they conclude that there is no evidence of the Claimants' ownership

¹⁰ The debts resulted from Iramoz's sale of some of its shares in TRR to the Claimants.

of shares in Iramoz. The Tribunal's reading of the share verification report accords with that of the Respondents. There is nothing in the report itself suggesting the Claimants' ownership of Iramoz shares, nor is there any evidence identified by the Claimants or by the report that would lead to such a conclusion.

79. The Claimants submitted copies of forms entitled "Census of Claims by United States Persons Against Iran," which had been filed with the U.S. Department of the Treasury in May 1980 by a law firm representing the Sabet family. These forms sought information as to claims against the Government of Iran, and, as noted supra, para. 41, one form had been completed for each of the Claimants, for Hormoz, Valerie, and for two of Iradj's children. On these forms, the Claimants are listed as owning shares in all the companies at issue in these Cases as well as in other Iranian companies.

80. Because these forms were lodged with the Department of the Treasury before the signing of the Algiers Declarations — thus, at a time when the Claimants could not have known of the jurisdictional limitations imposed by Article II, paragraph 1, of the Claims Settlement Declaration — they do provide some support for the Claimants' assertion of ownership of shares in the private companies; however, because the forms contain inaccurate information and information at odds with other evidence as well as with the Claimants' current theory, they cannot, without more, provide a basis for the Claimants' recovery.

81. The information on the Claimants' forms appears to have been mass produced; each of the Claimants is listed as owning shares in all of the same companies, so that Karim, for instance, is listed as owning shares in Zamzam Tehran, Mina Glass, and GTR, though he now concedes that he did not own shares in those companies. Moreover, the forms list each of the Claimants' expropriation losses as totalling between approximately U.S.\$31

million and U.S.\$33 million, whereas Hormoz's form lists his expropriation losses as totalling only U.S.\$18.3 million. That is, the forms list each of the Claimants as having owned almost twice the property that Hormoz owned. That claim is inconsistent with the allegations the Claimants make in these Cases, since here the Claimants allege that Hormoz owned 25 percent of the Sabet shareholdings while each Claimant owned only 8.33 percent; that is, they claim here that each Claimant owned one-third of the amount Hormoz owned, not twice that amount. Therefore, as a result of the inaccurate and inconsistent information found in the Census forms, the Tribunal finds itself unable to rely on them.

82. The Respondents submitted an agreement dated 12 September 1969 (the "1969 Agreement"), in which Habib, Bahereh, Iradj, and Hormoz agreed, inter alia, that Habib and Bahereh would jointly own 30 percent, Iradj 40 percent, and Hormoz 30 percent of virtually all registered and bearer shares in the Sabet companies. The Agreement provided that Hormoz and Iradj would each receive an additional 15 percent upon the deaths of both their parents. According to the Claimants, the 1969 Agreement is strong evidence that the Sabet family members considered their shareholdings as a single, undivided asset owned jointly by all family members. The Respondents, in contrast, point out that the 1969 Agreement allocates no portion of the family assets to Habib's grandchildren, although four of them had already been born. In response, the Claimants contend that, because the grandchildren were very young at the time, their exclusion from the 1969 Agreement was not of much concern to their parents and grandparents.

83. Because the 1969 Agreement does not allocate any Sabet family assets — in particular, any shares in the private companies — to the third generation of Sabets, it cannot support the Claimants' case. Habib's alleged intention to grant his grandchildren equal interests in his assets is one of the

linchpins of the Claimants' claims for bearer shares. One would expect to find some mention of this alleged intention in an important agreement on the distribution of the family assets such as the 1969 Agreement.

84. To prove that all of the Sabet family assets were owned jointly by all members of the family, the Claimants also point to a letter dated 22 December 1977 from Mina Glass¹¹ to Hormoz and Firooz, which was produced by the Respondents. The letter states:

I have the honor to inform you that on 21 November 1977, Mr. Iraj Sabet paid the amount of Rls. 1,624,000 to the added capital account on your behalf and on behalf of Messrs. Reja and Aram Sabet. Please take the matter under consideration.

According to the Claimants, the fact that Iradj paid not only for his own share of Mina Glass's capital increase but also for that of Hormoz, Reja, and Aram shows that the Sabets owned all the family assets in common. The Tribunal disagrees. For one thing, Iradj might have made that payment for any number of reasons, including, for example, to offset possible debts among Mina Glass's shareholders or personal debts between himself and Hormoz. In addition, the letter can easily, and perhaps best, be read as a request from Iradj, who managed Mina Glass, for reimbursement. The suggestion that Hormoz "take the matter under consideration" supports this interpretation. Accordingly, the 22 December 1977 letter from Mina Glass does not prove any common ownership of the Sabet family assets.

85. The Respondents produced a series of documents relating to Zamzam East Tehran. The Claimants point to these documents as proving both their ownership of bearer shares in that company and their ownership of bearer shares in all the Sabet private companies. Those documents are as follows:

¹¹ The Tribunal has found supra, at para. 60, that Reja and Aram each owned 3,120 registered shares in Mina Glass.

- a) The minutes of the meeting of the founders of Zamzam East Tehran, dated 12 October 1976, stating that Reja, Aram, and Karim Sabet each held 35 bearer shares in Zamzam East Tehran. The minutes were signed by Hormoz Sabet, who held his own 105 shares, and signed "on his own and as guardian."
- b) A "Declaration for Registration" of Zamzam East Tehran, filed with the Iranian "Bureau for Registration of Companies and Industrial Ownership" on 22 November 1976, stating that Reja, Aram, and Karim Sabet each owned 35 out of the total 500 "unregistered" (bearer) shares issued.
- c) The minutes of an extraordinary general meeting of the shareholders of Zamzam East Tehran, held on 22 December 1976, stating that Hormoz Sabet appeared "on his own and as guardian holder of 215 shares." The minutes do not mention the Claimants.
- d) The minutes of an ordinary general meeting of the shareholders of Zamzam East Tehran, held on 2 July 1977, stating that Hormoz Sabet appeared "on his own and as guardian holder of 240 shares." The minutes do not mention the Claimants.
- e) The minutes of an ordinary general meeting of the shareholders of Zamzam East Tehran, held on 12 February 1978, stating, this time, that Hormoz Sabet appeared as "holder ["darandeh"] of 240 shares." The minutes do not mention the Claimants.

86. The documents show that when Zamzam East Tehran was founded in October 1976, each Claimant received 35 bearer shares. The Tribunal is satisfied that, up to the meeting of 12 February 1978, Hormoz consistently appeared at shareholder meetings both on his own behalf and as a representative of the Claimants'

shares. At the 12 February 1978 meeting, however, Hormoz appeared solely on his own behalf and no longer as a representative of his children's shareholdings. At the Hearing, he confirmed that he did so intentionally. He said that the family had originally planned to take Zamzam East Tehran public, but by February 1978 that plan had been abandoned; therefore, it was no longer necessary to list the Claimants as holders of the shares. Hormoz stated: "The company was supposed to go public, it didn't, and the shares were reverted back." See also supra, para. 75.

87. The Claimants argue that, despite the intentional removal of any reference to them in the company records, they remained the beneficial owners of the shares. Moreover, the Claimants point to the Zamzam East Tehran records as indicative of their ownership interests in all the Sabet private companies. They note that the original allocation of shares in Zamzam East Tehran conforms exactly to the pattern that they claim exists for the other private companies. That is, the Claimants have claimed that collectively they own one half of the bearer shares listed in Hormoz's name. In Zamzam East Tehran, the Claimants did collectively receive 105 shares, while their father also held 105 shares.

88. The Tribunal, however, does not find the evidence adduced sufficient either to prove the Claimants' ownership of the Zamzam East Tehran bearer shares after 12 February 1978 or the bearer shares in the other private companies. Hormoz acknowledged that he became record holder of the shares after 12 February 1978. Thus, the Claimants have the burden of proving their beneficial ownership of shares in Zamzam East Tehran after that date. The Claimants have failed to do so because they have failed to produce strong and persuasive evidence proving their continued beneficial ownership. Given this conclusion, the Zamzam East Tehran records cannot provide the necessary support for the Claimants' alleged ownership of bearer shares in the other private companies.

89. As alternative proof of their ownership of bearer shares in Zamzam East Tehran along with the other Zamzam private companies, the Claimants point to a 16 June 1977 Loan Agreement between PepsiCo Inc. and the Zamzam companies. The Loan Agreement contains a list of all the shareholders in the Zamzam companies, and this list includes the names of all three Claimants. Reja and Aram Sabet, as the Tribunal has determined, were registered shareholders in Zamzam Tehran, so their ownership interests in that company explain their inclusion on the Loan Agreement's shareholders' list. Karim Sabet, however, did not own registered shares in Zamzam Tehran, so the Claimants contend that the inclusion of his name on this list proves that the Claimants owned bearer shares in the Zamzam companies. The Tribunal must reject this argument. As just explained, supra, at para. 86, all three Claimants owned bearer shares in Zamzam East Tehran from October 1976 until 12 February 1978, and those shareholdings would explain the inclusion of all three Claimants' names on the Loan Agreement dated 16 June 1977. Thus, the Loan Agreement does not provide the Claimants with the necessary support for their claim to own bearer shares in the Zamzam private companies.

90. Lastly, the Claimants proffered a letter in Persian dated 25 December 1977 addressed to Iradj and Hormoz, handwritten by Habib and signed by Habib and his wife, Bahereh (the "1977 disposition"). In pertinent part, the 1977 disposition reads:

December 25, 1977

. . .

Our dear Iradj and Hormoz Sabet:

It's a long time since we have left Iran and as our lives reached a retiring point and we have no intention to return to Iran, we have decided to present all of our shares in various companies in Iran amongst our six grandchildren. Considering that Iradj's three children have grown up and Hormoz's three children should continue their education for many years to come and the expenses of that are considerable, thus we have decided to divide the

aforementioned shares as they are listed below amongst our grandchildren in the following manner:

Tina Sabet, Iradj Sabet's daughter	15%
Sina Sabet, Iradj Sabet's son	15%
Taj Sabet, Iradj Sabet's son	15%
Reja Sabet, Hormoz Sabet's son	15%
Aram Sabet, Hormoz Sabet's son	20%
Karim Sabet, Hormoz Sabet's son	20%

. . .

The Claimants did not submit this letter with their filings but rather submitted it on 6 August 1997, just two months before the Hearing. The Claimants explained that they had only recently become aware of the letter's existence. The Claimants stated that, while cleaning out the family apartment in New York, in which Habib and Bahereh had also lived until Habib's death in 1990, Hormoz discovered among his father's papers numerous documents that he had never seen before, including the 1977 disposition.

91. The Claimants point to the 1977 disposition as a typical example of the inter-generational transfer of Sabet family wealth. The Respondents question the authenticity of the 1977 disposition, pointing not only to the circumstances in which it was found but also to alleged discrepancies between it and certain assertions that the Claimants have made in these proceedings. They further argue that the 1977 disposition had no legal effect, because admittedly Habib and Bahereh never delivered that document to their sons or informed them of its contents.

92. It is undisputed that Habib and Bahereh never delivered the 1977 disposition either to the Claimants or to Hormoz. It is equally undisputed that neither the Claimants nor their representatives ever accepted any gift of shares. In these circumstances, the Tribunal is not prepared to find that Habib and Bahereh ever followed through on their intention, as expressed in that 1977 document, to donate their shares to the

Claimants and, consequently, that a valid gift ever took place. Accordingly, the 1977 disposition does not prove that the Claimants owned any bearer shares in the Sabet private companies. In this connection, the Tribunal notes that no affidavit by Habib Sabet was filed in these Cases.

93. Having thoroughly examined the evidence and arguments put forth by the Claimants, the Tribunal concludes that the Claimants have not satisfied their burden of proving that they were the beneficial owners of bearer shares in Firooz, Iramoz, Irangas, RTI, Sabet Pasal, and the Zamzam Bottling Companies. Consequently, all of their claims for bearer shares are dismissed for lack of proof of ownership.

B. EXPROPRIATION

94. The Tribunal has established that the Claimants owned registered shares in GTR, ICC, Mina Glass, Nownahallan, TRR, and Zamzam Tehran. The Tribunal must now determine whether the Respondents expropriated those shares.

1. Facts and Contentions

95. On 11 April 1979, the Office of the Revolutionary Prosecutor of the Islamic Republic of Iran ("Revolutionary Prosecutor") issued to the Bonyad Mostazafan a decree stating that "[a]ll the properties of the persons and companies mentioned below are hereby confiscated by Islamic Revolutionary Court and Bonyad is informed accordingly" ("11 April 1979 Decree"). Sabet Pasal and Nownahallan were among the companies included in this decree, but neither Habib Sabet nor any other Sabet family member was mentioned.

96. On 30 April 1979, Bonyad Mostazafan sent a letter to the Revolutionary Prosecutor, requesting that he "designate[] in

detail . . . the scope of this Foundation's authority with respect to the expropriation of [Habib Sabet's] assets."¹²

97. That letter elicited two responses, dated 6 and 7 May 1979, respectively. In the 6 May response, the Revolutionary Prosecutor wrote:

You are hereby informed that the companies in which Mr. Habib Sabet holds small amounts [of ownership interest], or which are not in his name, but belong to his close relatives, are also included in the expropriated assets. Th[e] Foundation is dutybound to take action to expropriate them.^[13]

98. In the 7 May response ("7 May 1979 Proclamation"), the Revolutionary Prosecutor announced:

[I]t is hereby declared that [what is meant by] "all the assets of Mr. Habib Sabet" is all assets in any form belonging to Mr. Habib Sabet, the Sabet Group, and Mr. Sabet's first degree relatives.^[14]

99. The Claimants contend that, in accordance with the terms of the 11 April 1979 Decree, agents of the Revolutionary Guard and the Bonyad Mostazafan took full ownership and control of the properties and business establishments owned by the Sabet family and of all shares in the companies in which the Sabet family held an interest.

100. In support of this contention, the Claimants have provided copies of contemporaneous communications from Bonyad

¹² Translation from the Persian original by the Tribunal's Language Services Division.

¹³ Translation from the Persian original by the Tribunal's Language Services Division.

¹⁴ Translation from the Persian original by the Tribunal's Language Services Division.

Mostazafan, referring to the confiscation of the Sabet family assets, as well as copies of other documents, allegedly confirming that the Government of Iran expropriated all the property and assets of the Sabet family. Arranged by company, that evidence includes:

Zamzam Tehran

- a. An article that allegedly appeared on 22 April 1979 in Keyhan, an Iranian newspaper, and that, according to the Claimants, listed the Sabet family's confiscated assets, specifically mentioning, inter alia, GTR, TRR, Mina Glass, and Zamzam Co.¹⁵
- b. A letter dated 7 May 1979 from the Supervisor of the Organization for the Confiscated Properties of the Bonyad Mostazafan to the "Principal Members of Elected Council of Tehran Employees of Zamzam Company," stating:

. . . .

Since the properties of Sabet family have been confiscated in accordance with the judgments issued by the competent fora and they will be managed by this Organization,. . . .

Tehran Zamzam Company is to take action for the publishing of the notice for the confiscation of Pepsi factories and the transfer of ownership thereof to Mostazafan. . . .

- c. A letter dated 16 May 1979 from the Acting Manager for the Organization for the Confiscated Properties of the Bonyad Mostazafan, stating:

Since the properties of Sabet family have been confiscated by the competent fora and the super-

¹⁵ The list also includes "Gas Range Co.," which probably is a reference to Iran Cylinder, which manufactured gas cylinders for gas ranges, gas ovens, and hot plates.

vision thereof is with this organization . . . [3 named individuals] are hereby, temporarily, appointed for the review and study and survey of Zamzam Companies in Iran.

- d. A letter dated 11 June 1979 from the "Representative of Bonyad Mostazafan in Zamzam Group and Chairman of the Board" to the Managing Director of Zamzam East Tehran, stating: "The representatives of Bonyad Mostazafan who are the new owners as well as the operators of Zamzam Factories Group are reviewing the status of the payments to the workers and the employees. . . ."
- e. A telex dated 18 June 1979, informing PepsiCo in New York of the appointment by Bonyad Mostazafan of a manager for Zamzam and stating that "per decree of the Revolutionary Council of the Islamic Republic of Iran all the assets of Habib Sabet and family have been taken over by [Bonyad Mostazafan]."
- f. A 20 June 1979 communication to Imam Khomeini, stating:

[Y]ou are informed that the Group Factories producing Pepsi Cola, Schweppes, Bubble Up and Osso which own 12 factories in different cities were previously owned by Sabet Group. Presently the shares of stock of this Group are under the control of Bonyad Mostazaf[a]n. . . .

Nownahallan

- The 11 April 1979 Decree. See supra, para. 95.

GTR, TRR, and Mina Glass

- a. The 6 May 1979 and 7 May 1979 letters. See supra, paras. 97-98.

- b. The Keyhan newspaper article referred to supra, in subpara. a.

101. The Respondents, while apparently not denying that an expropriation occurred, contend that the question of expropriation is "beside the point" as the Claimants have not proven that they owned the shares in question. They argue that, in any event, "Iran's action in expropriating [the] Sabet Group companies was legitimate and lawful" because, even if the Claimants did own shares in the companies at issue, they did so as Iranian nationals; thus, Iran could incur no international responsibility for the taking.

2. The Tribunal's Decision

102. As noted, on 11 April 1979, the Revolutionary Prosecutor of the Islamic Republic of Iran issued a decree stating that, inter alia, the properties of Nownahallan were "hereby confiscated by Islamic Revolutionary Court." In a subsequent proclamation addressed to the Bonyad Mostazafan, dated 7 May 1979, the Revolutionary Prosecutor announced that "all the assets of Mr. Habib Sabet" as well as those of his "first degree relatives" were subject to expropriation. See supra, paras. 95 and 98. The Respondents do not dispute that the Claimants should be considered "first degree" relatives of Habib Sabet.

103. The record is replete with contemporaneous documents following up on and confirming that the assets of the Sabet family had been confiscated pursuant to the 11 April 1979 Decree and the 7 May 1979 Proclamation, see supra, para. 100. The Tribunal notes, for example, letters dated 7 and 16 May from the Organization for the Confiscated Properties of the Bonyad Mostazafan, stating that the properties of the Sabet family had been confiscated pursuant to judgments issued by the competent fora and were now managed by that Organization; and a letter dated 11 June 1979 from the Acting Manager of Firooz Corporation, "Associated with [Bonyad Mostazafan]," to Johnson & Johnson Iran,

stating that the "Sabet family wealth" had been confiscated "[i]n accordance with the decree issued by the Revolutionary Court." Moreover, the Respondents, in their pleadings, do not seriously dispute that the assets of the Sabet family were confiscated.

104. Based on the evidence presented, the Tribunal concludes that the Respondent, the Islamic Republic of Iran, acting through the Revolutionary Prosecutor of the Islamic Republic of Iran, which is a state organ, formally expropriated all of the Claimants' ownership interests in Nownahallan pursuant to the 11 April 1979 Decree and those in GTR, ICC, Mina Glass, TRR, and Zamzam Tehran pursuant to the 7 May 1979 Proclamation.¹⁶

105. The Respondents contend that, if the Tribunal concludes that the Respondents expropriated the Claimants' shares in any of those companies, the Tribunal should not, for several of those companies, use the date of the 11 April 1979 decree as the date of the expropriation; rather, where there is evidence that the actual interference with the Claimants' ownership interests occurred after the date of the decree, the Respondents propose using the date of such interference as the date of expropriation for valuation purposes.

106. While the Respondents' argument might be well taken in cases of creeping expropriation, it is beside the point in cases of de jure expropriations like those at issue here. The Claimants were formally divested of their ownership rights in Nownahallan on 11 April 1979 by virtue of the 11 April 1979 Decree and of those in GTR, ICC, Mina Glass, TRR, and Zamzam Tehran on 7 May 1979 by virtue of the 7 May 1979 Proclamation. As a result, because the Claimants were no longer shareholders in those companies as of those dates, the date of the Respondents' actual interference with the companies is of no consequence

¹⁶ With respect to Zamzam Tehran, this finding is supported by the Tribunal's finding in PepsiCo, Inc. and Islamic Republic of Iran, et al., Award No. 260-18-1, at 30 (13 Oct. 1986), reprinted in 13 Iran-U.S. C.T.R. 3, 26.

in determining the dates at which the Claimants were entitled to compensation. Under Tribunal precedent, in cases of de jure takings, ordinarily the date of the formal expropriation order is considered to be the date of taking, unless a de facto taking has occurred at an earlier date. See Moussa Aryeh and Islamic Republic of Iran, Award No. 583-266-3, paras. 23, 49 (25 Sep. 1997); Vera-Jo Miller Aryeh, et al. and Islamic Republic of Iran, Award No. 581-842/843/844-1, paras. 203-206 (22 May 1997), citing Hidetomo Shinto and 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, 328-29; Mohsen Asgari Nazari and Islamic Republic of Iran, Award No. 559-221-1, paras. 55, 120 (24 Aug. 1994); William L. Pereira Associates, Iran and Islamic Republic of Iran, Award No. 116-1-3, at 43 (19 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 198, 226-27. In light of the foregoing, the Tribunal concludes that the Respondents are liable to compensate the Claimants for the loss of their ownership interests in Nownahallan as of 11 April 1979 and for the loss of their ownership interests in GTR, ICC, Mina Glass, TRR, and Zamzam Tehran as of 7 May 1979.

C. A18 CAVEAT

1. Introduction

107. The Full Tribunal in Case A18, supra, at 26, 5 Iran-U.S. C.T.R. at 265-66, added the following important caveat to its conclusion: "In cases where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim" ("A18 caveat"). In light of this caveat, when the Tribunal joined all jurisdictional issues in these Cases to the consideration of the merits on 3 March 1989, it stated that

to reach definitive conclusions as to the dominant and effective nationality of the Claimant[s], as well as the Tribunal's jurisdiction over the Claims presented by the Claimant[s] and the relevance, if any, to the merits of the Claimant[s'] other nationality, the

Tribunal will have to examine further the nationality issue, together with other issues, such as the facts and applicable laws relating to the alleged acquisition and ownership of the property which constitutes the basis of [these Claims] as well as the actions by the Respondents allegedly affecting them.

108. In its discussion of the A18 caveat in Saghi, supra, Award No. 544-298-2, para. 54, the Tribunal concluded that

[t]he caveat is evidently intended to apply to claims by dual nationals for benefits limited by relevant and applicable Iranian law to persons who were nationals solely of Iran. However . . . [e]ven when a dual national's claim relates to benefits not limited by law to Iranian nationals, the Tribunal may still apply the caveat when the evidence compels the conclusion that the dual national has abused his dual nationality in such a way that he should not be allowed to recover on his claim.

109. Under Tribunal precedent, the mere fact that a claimant owned shares as a national of Iran in an Iranian company, without more, does not trigger the A18 caveat so as to bar recovery. See Ataollah Golpira and Islamic Republic of Iran, Award No. 32-211-2, at 6 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 171, 174; Nasser Esphahanian and Bank Tejarat, Award No. 31-157-2 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 157; Faith Lita Khosrowshahi, et al. and Islamic Republic of Iran, et al., Award No. 558-178-2 (30 Jun. 1994); Shahin Shaine Ebrahimi, et al. and Islamic Republic of Iran, Award No. 560-44/46/47-3 (12 Oct. 1994); Fereydoon Ghaffari and Islamic Republic of Iran, Award No. 565-968-2 (7 Jul. 1995); Vivian Mai Tavakoli, et al. and Islamic Republic of Iran, Award No. 580-832-3 (23 Apr. 1997); and Vera-Jo Miller Aryeh, et al. and Islamic Republic of Iran, Award No. 581-842/843/844-1 (22 May 1997).

110. In line with the foregoing principles, the Tribunal must determine whether ownership of the Claimants' shares was reserved by Iranian law for Iranian nationals, and, if not,

whether the Claimants have abused their dual nationality in such a way that they should not be allowed to recover on their claims.

2. Facts and Contentions

111. The Respondents maintain that the caveat bars the Claimants' recovery for their shares in GTR, ICC, Mina Glass, TRR, and Zamzam Tehran, because, due to restrictions imposed by Iranian law on foreign ownership of shares in these companies, ownership of the Claimants' shares therein was restricted under Iranian law to Iranian nationals alone.¹⁷ As proof for this contention, the Respondents point to the Law Concerning the Attraction and Protection of Foreign Investments in Iran ("LAPFI") and the Law for the Expansion of Public Ownership of Productive Units ("Law for Expansion"), which, they contend, restricted foreign ownership of shares.

112. In addition, the Respondents assert that the Claimants, by bringing the present claim on the basis of their United States nationality, have abused their nationality in such a way that they should not be permitted to recover. The Respondents allege, inter alia, that the Sabet family did not disclose to the Iranian authorities that the shares at issue were held by or on behalf of United States nationals and that the Claimants did not pay dividend tax on their registered shares under the Iranian Direct Taxation Act, which applied to foreigners and Iranians residing abroad; in this way, the Respondents continue, the Claimants benefitted because they were treated for tax purposes as Iranian nationals residing in Iran.

113. The Claimants deny that the benefits for which they claim were reserved under Iranian law for nationals of Iran. Furthermore, they submit that, according to Article 988 of the Iranian Civil Code, they were not permitted to renounce their Iranian nationality until they were 25 years of age. That, in

¹⁷ The Respondents do not assert that the caveat bars the claims for the Nownahallan shares.

conjunction with the fact that Iranian law does not recognize dual nationality, meant that the Claimants had to hold their shares as Iranian nationals. Therefore, the Claimants contend that they cannot be penalized for doing just that. Finally, they submit generally that the ownership of the shares at issue was not an abusive use of their nationality. The Claimants contend that they in no way misrepresented or concealed their United States nationality from anybody. In support of this contention, they refer to their Iranian identification documents, which name New York as their birthplace, and their identity cards and Iranian passports, which indicate that they were issued in New York. According to the Claimants, only the abusive conduct of a dual national will bring him within the strictures of the A18 caveat, and they maintain that neither they nor Habib or Hormoz Sabet have behaved in such a manner.

114. The Tribunal will now examine LAPFI and the Law for Expansion and their application to GTR, ICC, Mina Glass, TRR, and Zamzam Tehran to determine whether these laws restricted ownership of the Claimants' shares to Iranian nationals.

3. Law Concerning the Attraction and Protection of Foreign Investments in Iran

115. Enacted in 1955, LAPFI provided special privileges to foreign companies and individuals who imported capital pursuant to it. A foreign investor who wished to gain the benefits of LAPFI was required to submit a proposal to the Center for the Attraction and Protection of Foreign Investment (the "Center"),¹⁸ detailing various aspects of the proposed project. The Center, a division of the Ministry of Economy, would prepare a report on the application, forward the report and its approval to the Council of Ministers who would then send notice of its approval to the company along with any other conditions it wished to place on the company. Article III of LAPFI granted foreign capital the

¹⁸ This agency was subsequently replaced by the Organization for Investment and Economic and Technical Aid of Iran.

same "rights, exemptions, and facilities" as were accorded to domestic capital. In that same Article, the Iranian government guaranteed "fair compensation where the promulgation of a special legislation deprives the owner of capital from ownership." Other provisions enabled foreign investors in Iran, subject to the approval of the Center, to repatriate profits or portions of capital abroad. See Articles IV and V of LAPFI, and Article 13 of the Regulations implementing LAPFI. Article 10 of the Regulations permitted foreign investors to hold foreign currency accounts, which, according to the Respondents, was a privilege not readily granted in Iran.

116. The evidence shows that the foreign shareholders of TRR, GTR, and ICC imported their original capital investment pursuant to the provisions of LAPFI, and they applied at various times to repatriate profit and capital. There is no evidence that the Claimants made any such applications or that they were considered foreigners in those companies.

117. The Respondents contend that the Center placed maximum limits on the foreign ownership of shares based on the circumstances of each particular investment. As support, the Respondents point to a dispute between Irangas and the Iranian agencies that implemented LAPFI. When Irangas was established, 59 percent of its capital was imported by foreigners and was protected under LAPFI; yet in 1968, when Irangas wished to increase its capital, the Board for the Attraction and Protection of Foreign Investments refused to allow 59 percent of the capital increase to be comprised of foreign capital. Although the Board allowed the ownership of the initial capital to remain the same, it insisted that only 49 percent of the capital increase be comprised of foreign capital. According to the Respondents, LAPFI also restricted the foreign ownership of GTR, TRR, and ICC such that the Claimants could not have owned their shares of those companies as United States nationals. For this reason, the Respondents argue that the Claimants cannot now claim those shares on the basis of their United States nationality.

118. The Claimants' position is that there were no mandatory levels of foreign ownership set by LAPFI or its Regulations. According to the Claimants, the only consequence of investing outside the provisions of LAPFI was to forego its privileges and protections.¹⁹

4. Law for the Expansion of Public Ownership of Productive Units

119. The Tribunal in Saghi described the Law for Expansion as follows:

In 1975, the Government of Iran initiated a program to widen ownership of Iranian industry. As part of that program, on 24 June 1975 the Majlis passed the [Law for Expansion]. The law required certain industrial and mining companies to offer 49% of their shares for sale to their own employees and to the public.

Saghi, supra, Award No. 544-298-2, para. 7.

120. Thus, the Law for Expansion, as enacted, required companies to offer 49 percent of their shares, but it drew no distinction between foreign and Iranian shareholders. It should be noted in this connection that the Law for Expansion itself did not impose restrictions on foreign share ownership. However, on 6 November 1976 — almost a year and a half after the law was enacted — the Ministry of Economic Affairs and Finance promulgated Regulations which provided that a Council for Expansion of Ownership of Producing Units (the "Council") would determine the maximum percentage a foreign shareholder could own with due regard to a schedule, approved by the Council, setting forth the

¹⁹ The Respondents' expert, Mr. Mortazavi, agrees with this point. ("It is true that [LAPFI] does not envisage that every foreigner must register the capital imported by it with the Organization for Investment and Economic and Technical Aid of Iran However, under the said Acts and regulations every foreigner wishing to have his capital enjoy state protection must proceed on the basis of that Act and the necessary permits and licenses, otherwise it must not expect any state responsibility.")

maximum percentages of foreign ownership for various industries. The relevant provision in the Regulations is Article 4, which states:

Maximum number of shares belonging to foreign shareholders in each amenable unit shall be determined by the Council [for the Expansion of Ownership of Producing Units], with due consideration to the quality of technique and type of relevant industry and need of foreign investment in accordance with the schedule approved by the Council . . . and attached to this regulation.

Note 1. In case of amenable units which have been registered before the ratification of the Expansion of Ownership Act and a part of whose shares is owned by foreign shareholders, where by offering 49% of the foreign shares the total of the remaining foreign shares is above or equal to the said schedule, only the said 49% shall be offered; where it is less than the percentage mentioned in the above schedule, then based upon the request of such foreign shareholders the number of shares to be offered shall be such that the maximum percentage mentioned in the above schedule could be maintained in which case 49% of the remaining total shares shall be offered.

121. As a result of the Law for Expansion, a series of reductions was made in the shares of TRR and GTR held by foreigners. The Respondents assert that these reductions show that the Law for Expansion limited foreigners' ownership of shares in those two companies. They further assert that the quota of shares allocated to foreigners had been filled so that the Claimants owned shares which were allocated solely to Iranian nationals. The Respondents therefore conclude that the A18 caveat precludes the Claimants from recovering for shares in GTR and TRR on the basis of their United States nationality.

122. As regards Mina Glass and Zamzam Tehran, the Respondents state that the Law for Expansion was not fully applied to those companies because of their accumulated losses. In questionnaires lodged to comply with the Law for Expansion, Mina Glass stated that one hundred percent of its shareholders were

Iranian nationals, and Zamzam Tehran stated that only 50 of its 120,000 shares were owned by foreign nationals, none of whom were the Claimants. The Respondents contend that, because the Claimants owned their shares as Iranian nationals, they cannot obtain recovery for those shares as United States nationals.

123. The Claimants argue that the Law for Expansion did not prohibit or restrict their shareholdings in the subject companies. They further contend that the Regulations adopted under the Law for Expansion purporting to restrict foreign share ownership exceeded the scope of that Law. They assert that the schedule referred to in the Law for Expansion's Regulations is neither an Iranian law nor a legitimate regulation, and they submit that Article 4 of the Regulations provided that the schedule did not apply to industries and producing units established prior to the regulations.

5. The Tribunal's Decision

124. In Kimberly-Clark Corp. and Islamic Republic of Iran, et al., Award No. 46-57-2, at 11 (25 May 1983), reprinted in 2 Iran-U.S. C.T.R. 334, 339, the Tribunal noted

that the purpose of [LAPFI] is to grant special protection in favor of investments approved by Iranian Public Authorities, but none of its provisions precludes foreign investors from making investments in Iran without seeking such a privileged position. Such investments would not be unlawful, they would only not enjoy the privileges provided for in the law.

Accordingly, the Tribunal finds that, although LAPFI may have set limits on the percentage of foreign shareholdings that would be granted its protections, a foreigner was not prohibited from owning Iranian shares outside the LAPFI regime. Without approval pursuant to LAPFI, a foreigner could still own shares, but such ownership would not secure the protection afforded under LAPFI.

125. As regards the Law for Expansion and its Regulations, the Respondents have not proven that this law restricted the ownership of GTR and TRR shares exclusively to nationals of Iran. The Respondents submitted not a single piece of evidence that indicates that the Council for Expansion of Ownership of Producing Units made a determination to limit the foreign shareholdings of GTR and TRR, as required by Article 4 of the Law for Expansion's Regulations (see supra, para. 120), let alone any evidence as to what those limits might be. The Respondents did submit the alleged schedule referred to in Article 4 of the Regulations, and that schedule lists fifteen categories of industries indicating "Maximum Share of Foreign Investors" for each category. The Respondents have not identified into which categories GTR and TRR fell²⁰; this failure is in keeping with the Respondents' failure to submit any evidence to suggest that the Council ever made any determination with respect to those companies. Thus, the schedule, standing alone, does not support the Respondents' allegations.

126. Moreover, an examination of the GTR and TRR shares sold pursuant to the Law for Expansion reveals that, of the total number of shares that both companies sold pursuant to that law, both the foreign and Iranian shareholders sold just the percentage of shares proportional to their original ownership interests. That is, GTR's foreign shareholder, General Tire International, owned 32 percent of the GTR's shares before application of the Law for Expansion, and it sold exactly 32 percent of the total number of shares that GTR sold pursuant to the Law for Expansion.

²⁰ It is entirely possible that TRR fell within the petrochemical category. The schedule lists 25 percent as the maximum percentage of foreign shares under ordinary circumstances but provides that "[i]n special cases, the share of Foreign Investors can go up to a maximum of 35 per cent." The Tribunal is less confident as to which category would have been applicable to GTR, but it notes that the categories mandating 20 percent or less do not seem applicable, leaving only categories mandating 25 percent or more. Since the Claimants together owned 2.9 percent of GTR's shares, and GTR's other foreign shareholder owned 20.03 percent, GTR's total foreign shareholdings would not have exceeded any possible limit mandated by the schedule.

Likewise, the foreign shareholders of TRR owned 33.3 percent of the company before application of the Law for Expansion, and they sold 33.8 percent of the total number of shares TRR sold pursuant to the law. Thus, rather than showing that special restrictions were placed on the foreign shareholdings of GTR and TRR, the evidence shows that the Law for Expansion was applied equally to the foreign and Iranian shareholders of those companies. This conclusion is further supported by the fact that GTR's and TRR's first sales of stock pursuant to the Law for Expansion were effected²¹ before any restrictions on foreign ownership were imposed: Both companies began selling their shares many months before the November 1976 promulgation of the Law for Expansion's regulations; that is, many months before there were any restrictions on the foreign ownership of shares.²² See supra para. 120.

127. Moreover, the equitable considerations referred to in Saghi which could give rise to the application of the A18 caveat are simply not present in these Cases. In Saghi, the Tribunal noted that the facts relating to Allan Saghi's Iranian nationality were "a different and probably unique set of circumstances which distinguish[ed] his Case from the other [dual-national] Cases." Saghi, supra, Award No. 544-298-2, para. 58. The Tribunal noted that, in prior dual national cases, the claimants had acquired Iranian nationality automatically (e.g., by birth or marriage). Allan Saghi was born in Tehran to United States parents. By virtue of his parents' nationality, he obtained United States nationality, and by virtue of the country of his birth he received Iranian nationality. Upon reaching the age of 18, he asked to be relieved of his Iranian nationality, and his request was granted by the Iranian government in June 1975. In January 1977, however, he applied to revert to Iranian nationali-

²¹ Sales pursuant to the Law for Expansion were conducted in several phases. GTR sold its shares in three phases, while TRR sold its shares in two phases.

²² The evidence indicates that GTR completed its first phase of stock sales before 31 January 1976, and it indicates that TRR completed its first phase of stock sales before 6 April 1976.

ty, which was granted some time in the summer of 1977. The Tribunal found:

The picture emerging from these facts is that Allan Saghi voluntarily applied to revert to Iranian nationality in 1977, a few months before the Claimants executed several share transfers in preparation for implementation of the Law for Expansion. In August 1977, two shareholders lists were submitted to the Iranian authorities. Allan Saghi appeared on the list providing "Status of Company's shareholders, excluding shares of foreign shareholders," thereby presenting himself as an Iranian national. In the same month the Claimants transferred the nominal ownership of certain shares to nineteen N.P.I. employees [N.P.I. being the Iranian corporation which issued the shares]. In the context of the present Case, it thus seems clear that Allan consciously sought and obtained Iranian nationality solely for the purpose of having certain shares in N.P.I. placed in his name in order to minimize the adverse effects of the Law for Expansion. The Tribunal holds that in these exceptional circumstances, fundamental considerations of equity require that Allan Saghi — a dual national with dominant and effective U.S. nationality — should not be permitted to recover against Iran, even if the related benefits, i.e., the shares in N.P.I. he acquired with the use of his Iranian nationality, were not limited to Iranians by Iranian law. To rule otherwise would be to permit an abuse of right.

Id. para. 59 (emphasis in original).

128. The present facts are completely different from those of Saghi. Here, the Claimants did not actively seek Iranian nationality to minimize the adverse effects of the Law of Expansion. Quite the contrary, the Claimants' Iranian nationality was conferred on them by reason of their father's nationality, and under Article 988 of the Civil Code of Iran, under ordinary circumstances, they had no ability to renounce that nationality until they reached 25 years of age.²³ And because only their

²³ According to this provision, the oldest Claimant, Reja Sabet, acquired the capacity to renounce his Iranian nationality only in December 1989. However, his father Hormoz could have renounced his own Iranian nationality along with that of his children at an earlier date.

Iranian nationality would be recognized in Iran, the Claimants had no choice but to hold their shares as Iranians. This fact also militates against the application of the A18 caveat in the present Cases.

129. On the basis of the foregoing, the Tribunal finds that the Claimants neither obtained any benefits reserved exclusively for Iranian nationals, nor abused their Iranian nationality such that they should be barred from recovery. Nothing in their conduct justifies the refusal of an Award in their favor. Consequently, the Tribunal holds that the A18 caveat does not bar the present claims for GTR, ICC, Mina Glass, TRR, and Zamzam Tehran.

VI. AWARD

130. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- A. During the relevant period, the dominant and effective nationality of the Claimants, ARAM SABET, KARIM SABET, and REJA SABET, was that of the United States.
- B. The Respondent, THE ISLAMIC REPUBLIC OF IRAN, expropriated all of the Claimants' ownership interests in Nownahallan on 11 April 1979 and those in GTR, ICC, Mina Glass, TRR, and Zamzam Tehran on 7 May 1979. Consequently, that Respondent is liable to compensate the Claimants for the loss of their ownership interests in Nownahallan as of 11 April 1979 and for the loss of their ownership interests in GTR, ICC, Mina Glass, TRR, and Zamzam Tehran as of 7 May 1979.
- C. All of the claims for bearer shares in Firooz, Iramoz, Irangas, RTI, Sabet Pasal, and the ten private Zamzam

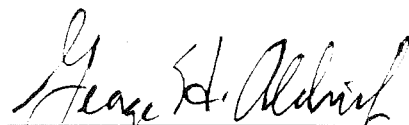
Bottling Companies are dismissed for lack of proof of ownership.

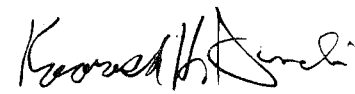
- D. The caveat in Case No. A18 does not bar the claims for registered shares in Nownahallan, GTR, ICC, Mina Glass, TRR, and Zamzam Tehran.
- E. The Tribunal shall determine in a subsequent award the value of the Claimants' ownership interests in Nownahallan as of 11 April 1979 and the value of their ownership interests in GTR, ICC, Mina Glass, TRR, and Zamzam Tehran as of 7 May 1979 and the amount of compensation to be awarded to the Claimants as a consequence.

Dated, The Hague
29 June 1999


Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God


George H. Aldrich


Koorosh H. Ameli

Concurring as to the dispositif, para. 130, except that dissenting as to its subparas. (A) and (D) (GTR, TRR and ICC). (Separate Opinion)