

2000

On Children and Dual Nationality: Sabet and The Islamic Republic of Iran

Nancy Amoury Combs

William & Mary Law School, ncombs@wm.edu

Repository Citation

Combs, Nancy Amoury, "On Children and Dual Nationality: Sabet and The Islamic Republic of Iran" (2000). *Faculty Publications*. 1045.

<https://scholarship.law.wm.edu/facpubs/1045>

Copyright c 2000 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/facpubs>

V. IRAN-UNITED STATES CLAIMS TRIBUNAL

On Children and Dual Nationality: Sabet and The Islamic Republic of Iran

*Nancy Amoury Combs**

Keywords: dual nationality, Iran-United States Claims Tribunal, minors.

Abstract: The Iran-United States Claims Tribunal's recent decision in *Sabet and The Islamic Republic of Iran* sheds new light on difficult issues concerning the dual nationality of minors. In particular, the case was the first in which the Tribunal determined minor dual national claimants to have a dominant and effective nationality different from that of either of their parents. Further, the Tribunal broke new ground in its analysis of 'the caveat,' an equitable doctrine that can bar the claims of dual nationals. This article applauds the Tribunal's advances in its caveat jurisprudence and develops a new approach that would further those advances.

1. INTRODUCTION

Before the 1979 Islamic Revolution, the Sabet family was among the wealthiest in Iran.¹ The patriarch of the family, Habib Sabet, was born to poverty but went on to establish, either alone or with joint venture partners, numerous Iranian companies in a wide array of fields.² By the time of the Revolution, the Sabets owned, among many other things, one of Iran's largest soft-drink bottling enterprises, which held the exclusive Pepsi-Cola franchise; one of Iran's largest retail and wholesale distributors for pharmaceutical products, household appliances, and various commodities; and a real estate company that held nearly one hundred properties, including a replica of Versailles' Petit Trianon. Altogether, they had substantial interests in more than twenty companies, including Iran's Volkswagen distributorship, Iran's General Tire distributorship, and several banks. Also by the time of the Revolution, Habib's two sons, Iradj and Hormoz,

* Legal Adviser, Iran-United States Claims Tribunal, The Hague, The Netherlands. J.D., University of California at Berkeley (Boalt Hall). I am grateful for the helpful comments of Judge George H. Aldrich, Bruce Combs, Thomas Ginsburg, and Sam Hirsch. The opinions expressed and any errors are those of the author.

1. See *Aram Sabet and The Islamic Republic of Iran*, Award No. 593-815/816/817-2, 30 June 1999, at para. 7 [hereinafter *Sabet*].
2. *Habib Sabet is Dead: An Iranian Altruist and Industrialist*, 86, N.Y. Times, 24 February 1990. See also *Pepsi, TV Magnate Sabet dies in L.A.*, Iran Times, 2 March 1990.

were largely managing the Sabet empire, and each of those two sons had three children.³

In the Spring of 1979, the newly established Islamic Republic of Iran expropriated all of the Sabets' Iranian assets.⁴ Almost two years later, in January 1981, Iran and the United States adhered to the Algiers Declarations,⁵ a treaty which secured the release of the American hostages who had been held in Iran for the previous fourteen months and which created the Iran-United States Claims Tribunal to arbitrate the many claims of United States nationals against Iran.⁶ The Algiers Declarations provided no hope of recovery for most members of the Sabet family because neither Habib, nor his wife Bahereh, nor their sons, Iradj and Hormoz, nor Iradj's three children had any claim to being a United States national. However, Hormoz's three children, Reja, Aram, and Karim, were born in the United States and thus were United States nationals under United States law. Consequently, Reja, Aram, and Karim Sabet – who were fourteen, eight, and three years old, respectively, at the time of the expropriation – filed claims with the Tribunal seeking nearly \$75 million plus interest and costs for their expropriated shares in the Sabet companies.

After holding the longest hearing in the Tribunal's history, Chamber Two of the Tribunal issued its Award in *Sabet and The Islamic Republic of Iran* on 30 June 1999.⁷ The Tribunal's treatment of the Sabet children's claims sheds new light on issues concerning the dual nationality of minors and beneficial ownership, and the Tribunal broke new ground in its analysis of "the caveat," an equitable doctrine that can bar the claims of dual nationals.

To resolve the Sabet children's claims, the Tribunal had to decide four questions: (1) whether the Sabet children were "United States nationals" for purposes of the Algiers Declarations such that the Tribunal would have jurisdiction over their claims; (2) whether the children in fact owned the shares that they claimed to own; (3) whether Iran expropriated those shares; and finally (4) whether the

3. See *Sabet*, *supra* note 1, para. 7.

4. *Id.*, para. 103.

5. The term 'Algiers Declarations' refers to the Declaration of the Government of the Democratic and Popular Republic of Algeria ("General Declaration"), 19 January 1981, *reprinted in* 1 Iran-US CTR 3, and the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration" or "CSD"), 19 January 1981, *reprinted in* 1 Iran-US CTR 9.

6. The Tribunal also has jurisdiction over the claims of Iranian nationals against the United States, CSD, *supra* note 5, Art. II, para. 1, over claims of Iran and the United States "against each other arising out of contractual arrangements between them for the purchase and sale of goods and services," *Id.*, Art. II, para. 2, and over disputes concerning the interpretation of the General Declaration, *Id.*, at Art. II, para. 3, and the Claims Settlement Declaration, *id.*, Art. VI, para. 4.

7. See *Sabet* *supra* note 1; *Tribunal Says Iran Liable for Expropriation of Sabet Grandchildren's Ownership Interests in 6 Companies*, 14 No. 8 Mealey's Int'l Arb. Rep. 19 (1999).

Tribunal's caveat doctrine applied to the claims.⁸ After discussing each issue in turn, I will propose a new approach to the Tribunal's caveat analysis.

2. JURISDICTION – DOMINANT AND EFFECTIVE NATIONALITY

Although the Sabet children were unquestionably United States nationals under the United States law by virtue of their birth in the United States, they were also unquestionably Iranian nationals under Iranian law by virtue of their birth to an Iranian father.⁹ The Claims Settlement Declaration (the document establishing the Tribunal) gives the Tribunal jurisdiction, *inter alia*, over “claims of nationals of the United States against Iran,”¹⁰ but it provides no specific guidance as to whether the phrase “nationals of the United States” includes dual United States-Iranian nationals like the Sabet children – that is, persons who are United States nationals under United States law and Iranian nationals under Iranian law.¹¹

The Tribunal decided that very controversial question in 1984 when, in Case No. A18,¹² it adopted the “dominant and effective nationality” standard;¹³ the Tribunal held that it “has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 [(the date of the Algiers Declarations)] was that of the United States.”¹⁴ So, in keeping with Case No. A18, the Tribunal's first question in *Sabet* was whether the Sabet children were dominant and effective United States nationals between 11 April 1979, the date the earliest of their claims arose, and 19 January 1981.

8. The Tribunal also had to determine whether the Sabet children assigned their claims to a New York-based Sabet company, which would have deprived the Tribunal of jurisdiction over the claims. See *Sabet*, *supra* note 1, para. 51 (determining that Iran did not prove an assignment of claims).

9. *Id.*, para. 32.

10. CSD, *supra* note 5, Art. II, para. 1, reprinted in 1 Iran-US CTR 9.

11. The Claims Settlement Declaration defines a “national” of [...] the United States” as, *inter alia*, “a natural person who is a citizen of [...] the United States.” *Id.*, at Art. VII, para. 1, reprinted in 1 Iran-US CTR 11, but this definition does not conclusively answer the question. See Case No. A18, Decision No. DEC 32-A18-FT, 6 April 1984, reprinted in 5 Iran-US CTR 251, 259-60.

12. Case No. A18, Decision No. DEC 32-A18-FT, 6 April 1984, reprinted in 5 Iran-US CTR 251 [hereinafter Case No. A18].

13. In doing so, the Tribunal relied heavily on the *Nottebohm* case (*Liechtenstein v. Guatemala*), 2nd Phase, Judgment of 6 April 1955, 1955 ICJ Rep. 4, and on the *Mergé* case (*US v. Italy*), 14 RIAA 235 (1955), decided by the Italian-United States Conciliation Commission.

14. Case No. A18, *supra* note 12, reprinted in 5 Iran-US CTR 265. For discussions of that decision, see P.E. Mahoney, *Comment, The Standing of Dual Nationals Before the Iran-United States Claims Tribunal*, 24 Va. J. Int'l L. 695 (1984); Note, *Claims of Dual Nationals in the Modern Era: The Iran-United States Claims Tribunal*, 83 Mich. L. Rev. 597 (1984); see also R. Khan, *The Iran-United States Claims Tribunal: Controversies, Cases and Contribution* 120-153 (1990) (discussing Case No. A18's precursor, *Nasser Esphahanian and Bank Tejarat*, Award No. 31-157-2, 29 March 1983, reprinted in 2 Iran-US CTR 157).

In determining a claimant's dominant and effective nationality, the Tribunal considers a variety of factors, including "habitual residence, center of interests, family ties, participation in public life and other evidence of attachment."¹⁵ Because the Tribunal has determined the dominant and effective nationality of dozens of dual-national claimants, it has developed a substantial body of case law which has been the subject of much commentary.¹⁶ What makes *Sabet's* application of that case law interesting is that the *Sabet* Claimants were children during the relevant period.

The Tribunal tries to consider the dominant and effective nationality of minor¹⁷ claimants separately from that of their parents,¹⁸ but in some cases this has proved a difficult task. As the Tribunal frankly acknowledged in *Sabet*, the factors that the Tribunal relies upon to determine a claimant's dominant and effective nationality are more relevant to determining an adult's nationality than that of a child.¹⁹ Although a minor claimant, no less than an adult, can have a habitual residence, a center of interests, and family ties, he is likely to have had no independent choice as to those aspects of his life and may be unable to engage in the kind of pursuits that demonstrate allegiance to a nation.²⁰

For this reason, perhaps, even though the Tribunal does consider the dominant and effective nationality of minor claimants separately from that of their parents, it has never found a minor claimant to be a dominant and effective United States national when it has determined in the same case that the minor's parent was a dominant and effective Iranian national. In *Anita Perry-Rohani and The Government of the Islamic Republic of Iran*,²¹ for instance, the Tribunal considered the claims of an American-born mother and her two small children. The family arrived in the United States in January 1979, and their claims arose seven months later, when the children were four-and-a-half years old and 22 months old.²² After finding the American-born mother to be a dominant and ef-

15. Case No. A18, *supra* note 12, reprinted in 5 Iran-US CTR 265. For a discussion of the Tribunal's consideration of 'habitual residence' rather than domicile, see D. J. Bederman, *Eligible Claimants Before the Iran-United States Claims Tribunal*, in R.B. Lillich & D.B. Magraw (Eds.), *The Iran-United States Claims Tribunal: Its Contribution to the Law of State Responsibility* 71-73 (1998).

16. See, e.g., G.H. Aldrich, *The Jurisprudence of the Iran-United States Claims Tribunal* 59-76 (1996); Bederman, *supra* note 15, at 65-81; D.J. Bederman, *Nationality of Individual Claimants Before the Iran-United States Claims Tribunal*, 42 Int'l & Comp. L.Q. 119 (1993).

17. I use "minor" to mean a person under 18 years of age.

18. See *Ardavan Peter Samrad and The Government of the Islamic Republic of Iran*, Award No. 505-461/462/463/464/465-2, 4 February 1991, para. 37, reprinted in 26 Iran-US CTR 44, 56 [hereinafter *Samrad*].

19. *Sabet*, *supra* note 1, para. 33. The Tribunal noted, for instance, that in the *Nottebohm* case, the International Court of Justice included among the relevant factors in assessing an individual's dominant and effective nationality, the "attachment shown by [the individual] for a given country and inculcated in his children." *Id.*, para. 33, n.5.

20. See *id.*, para. 33 ("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.").

21. Award No. 427-831-3 (30 Jun. 1989), reprinted in 22 Iran-US CTR 194 [hereinafter *Perry-Rohani*].

22. *Id.*, paras. 9, 18, reprinted in 22 Iran-US CTR 196, 199.

fective Iranian national, the Tribunal reached the same conclusion as to her children.²³ The Tribunal noted that at the time the 22-month-old child's claims arose, he "was still an infant, totally dependent on his mother."²⁴ As for the older child, the Tribunal stated that a seven-month period of "residence in the United States for a child [of] pre-school age is not sufficient to develop any substantial links to the American environment."²⁵ In this way, the Tribunal suggested that children, particularly young children, face considerable difficulty in distinguishing their dominant and effective nationality from that of their dual-national parent.²⁶

Indeed, the Tribunal made express this assumption in *Ardavan Peter Samrad and The Government of the Islamic Republic of Iran*,²⁷ where it also determined that the Claimant mother was a dominant and effective Iranian national.²⁸ Although the Tribunal noted that a parent's dominant and effective Iranian nationality is not dispositive of the nationality of that parent's child, it cautioned that it does "place a heavy burden upon [the child] to show that her integration in American society was more rapid and more complete than that of her mother."²⁹ The Tribunal determined that this burden was greatest for the youngest Claimant, who was less than eight years old when her claim arose.³⁰ However, none of the Samrad siblings was able to meet the burden.³¹

The prospects for both the Samrad children and other minor dual nationals have also suffered from the failure of those claimants to submit evidence adequate for the Tribunal to conclude that they are in fact dominant and effective United States nationals. In *Samrad*, the Tribunal noted that, with some small exceptions, one of the children had "provided no details of her life in the United States,"³² and it held that both children had failed to present sufficient evidence to prove that their United States nationality had become dominant by the time their claims arose.³³ Both the Samrad children and the Perry-Rohani children

23. *Id.*, paras. 17-18, reprinted in 22 Iran-US CTR 198-199.

24. *Id.*, para. 18, reprinted in 22 Iran-US CTR 199.

25. *Id.*

26. *But see* Dissenting Opinion of Richard C. Allison, Award No. 427-831-3, 30 June 1989, reprinted in 22 Iran-US CTR 200 (criticizing the Tribunal for holding that Mrs. Perry-Rohani was a dominant and effective Iranian national and for compounding the error "by visiting it upon her children as well").

27. *Samrad*, *supra* note 18.

28. *Id.*, para. 30, reprinted in 26 Iran-US CTR 54.

29. *Id.*, para. 38, reprinted in 26 Iran-US CTR 56.

30. *Id.*, para. 41, reprinted in 26 Iran-US CTR 57.

31. *Id.*, para. 44, reprinted in 26 Iran-US CTR 58; *see also* Arakel Khajetoorians and The Government of the Islamic Republic of Iran, Award No. 504-350-2, 25 January 1991, paras. 19, 21, reprinted in 26 Iran-US CTR 37, 42-43 (holding that a minor child and her elder brother were dominant and effective Iranian nationals after same conclusion was reached about their dual-national father).

32. *Samrad*, *supra* note 18, para. 39, reprinted in 26 Iran-US CTR 56.

33. *Id.*, paras. 40, 43, reprinted in 26 Iran-US CTR 57. The Tribunal also considered the claims of two adult Samrad siblings and found their failure to produce evidence to be even more severe. For example, the Tribunal noted that Ardavan Peter Samrad submitted only his birth certificate and a two-

were arguably disadvantaged by the relatively short time between their arrival in the United States and the date their claims arose,³⁴ but even a lengthy period of United States residence is not sufficient to satisfy the Tribunal that a claimant has acquired dominant and effective United States nationality if the claimant fails to provide corroborating evidence. For instance, the minor claimant in *Arakel Khajetoorians and The Government of the Islamic Republic of Iran*³⁵ moved to the United States with her family when she was six years old and lived there for the following eight years until her claims arose,³⁶ yet the Tribunal nonetheless found that she and her elder brother had failed to prove that they were dominant and effective United States nationals.³⁷ Pointing to “the paucity of evidence” the Claimants submitted, the Tribunal noted that their documentary evidence consisted solely of their certificates of naturalization and certain incomplete United States school records.³⁸ The minor Claimant failed to provide “any evidence of what she studied in boarding school or where she spent school vacations,” and neither she nor her elder brother provided “evidence of what language they customarily spoke with friends and family, what activities they participated in during their free time, or how much time they spent in Iran.”³⁹

In light of the inherent difficulties in determining a child’s allegiance and attachment to a particular nation as well as the failure of some claimants to submit adequate evidence, it should come as no surprise that minor dual nationals have fared considerably less well than their adult counterparts in their efforts to convince the Tribunal of their dominant and effective United States nationality. Before *Sabet*, the Tribunal determined approximately 32% of dual-national minors to be dominant and effective United States nationals, compared with approximately 65% of dual-national adults.⁴⁰ The *Sabet* children, however, appeared to have learned from their predecessors’ mistakes, and by their produc-

page affidavit, which the Tribunal termed “little more than a *curriculum vitae*.” *Id.*, para. 31, reprinted in 26 Iran-US CTR 54. *But see* Separate Opinion of George H. Aldrich, Award No. 505-461/462/463/464/465-2, reprinted in 26 Iran-US CTR 59 (dissenting with respect to Tribunal’s determination that the two elder Samrad siblings were dominant and effective Iranian nationals).

34. The Perry-Rohanis moved to the United States seven months before their claims arose. *Perry-Rohani*, *supra* note 21, para. 18, reprinted in 22 Iran-US CTR 199. The (not entirely clear) evidence suggested that the Samrad children moved to the United States approximately two years before their claims arose but that their mother probably moved to the United States only nine months before their claims arose. *Samrad*, *supra* note 18, paras. 17, 20, 29, 39, 42, reprinted in 26 Iran-US CTR 49, 50, 53, 56-57.
35. Award No. 504-350-2, 25 January 1991, reprinted in 26 Iran-US CTR 37.
36. *Id.*, para. 10, reprinted in 26 Iran-US CTR 40.
37. *Id.*, para. 21, reprinted in 26 Iran-US CTR 43.
38. *Id.*, para. 20, reprinted in 26 Iran-US CTR 42.
39. *Id.*, para. 21, reprinted in 26 Iran-US CTR 43.
40. Before *Sabet*, the Tribunal held seven out of twenty-two dual national minors to be dominant and effective United States nationals, while it held thirty-seven of fifty-seven dual national adults to be dominant and effective United States nationals. N.A. Combs, *Analysis of Dual Nationality Claims in the Iran-United States Claims Tribunal* (on file with author) (excluding two cases in which claimants filed no evidence whatsoever and in essence abandoned their claims).

tion of relevant evidence, they gave the Tribunal a solid basis for determining their dominant and effective United States nationality and ample reason to distinguish it from those of their non-American parents. Indeed, *Sabet* is the first case in which the Tribunal determined minor claimants to be dominant and effective United States nationals even though neither of the Claimants' parents were United States nationals, let alone dominant and effective United States nationals.⁴¹

The Sabet children submitted a plethora of evidence, detailing the most minute aspects of their lives,⁴² and in doing so, they were able to paint a picture of children who were well integrated into American society by the time their claims arose. The following facts emerge. Both of Habib Sabet's sons, Iradj and Hormoz, were educated in the United States and both returned to Iran immediately after graduating from university in order to become involved in the Sabet family businesses.⁴³ In 1963, Hormoz Sabet married Iran Khosrowshahi, an Iranian-United States dual national, and Reja was born to them in the United States in December 1964. The family lived in Iran after Reja's birth, and when Hormoz and his wife divorced in 1967, Reja continued to live in Iran with his father. In 1971, Hormoz married a British national, Valerie Osborne, who gave birth to Aram in the United States in August 1972. The family of four continued to live in Iran, although they vacationed and otherwise spent considerable time in Europe and the United States.⁴⁴ In 1973, Hormoz and Valerie purchased an apartment in New York City and began renovating it. The family moved into the apartment in late 1975, when Reja was eleven and Aram was three.⁴⁵ Karim was born in New York a few months later in March 1976.⁴⁶ After moving into the New York apartment, Valerie and the boys lived permanently in the United States, while Hormoz divided his time between the United States and Iran.⁴⁷ Thus, before their claims arose, Reja spent his first eleven years living in Iran and the following three-and-a-half years living in the United States;⁴⁸ Aram spent his first three years living in Iran and the following three-and-one-half

41. As I will describe below, neither Aram's nor Karim's parents were United States nationals. Reja's biological mother, who did not live with Reja after he was three years old, was a dual United States-Iranian national whose dominant and effective nationality has not been determined.

42. They submitted their medical bills from American pediatricians, their school bills, their school report cards, documentation concerning their extracurricular activities, as well as numerous affidavits from family members, friends of the family, friends of the children, and the children's teachers attesting to their integration into American society.

43. *Sabet*, *supra* note 1, para. 7.

44. *Id.*, para. 8.

45. *Id.*, para. 9.

46. *Id.*, para. 8.

47. *Id.*, para. 9.

48. *Id.*, paras. 22-24.

years living in the United States;⁴⁹ and Karim spent the entire three years after his birth living in the United States.⁵⁰

Valerie and Hormoz contended that they moved to New York because they wanted to raise their children as Americans, and because they were of the Baha'i faith and wanted to escape from the discrimination against Baha'is that they claimed was pervasive in Iran.⁵¹ Each of the children claimed to consider himself American and to be fully integrated into American society during the relevant period. English was their native language; although Reja and Aram acknowledged that they could speak some Persian, they denied being able to read or write it, and Karim claimed not to be able even to speak it.⁵² The children also claimed to have no social or cultural attachments to Iran.⁵³ Of the three children, Reja – who was the eldest and fourteen years old at the time his claim arose – was best able to prove his social and cultural attachments to the United States. He submitted affidavits from several family friends and from friends of his own attesting to his activities and his integration into American society.⁵⁴

In light of the above evidence, the Tribunal appeared to have little difficulty finding the Sabet children to be dominant and effective United States nationals despite the fact that Hormoz was an Iranian national and Valerie (Aram and Karim's biological mother and Reja's stepmother and caretaker) was a British national. Although the Tribunal acknowledged that Hormoz's and Valerie's nationalities were relevant in determining the children's dominant and effective nationality, it concluded that the arrangements that Hormoz and Valerie made for their children and the intentions they expressed were more relevant.⁵⁵ Thus, in contrast to earlier cases, in *Sabet* the Tribunal had no trouble distinguishing the children's nationality from those of their parents. According to the Tribunal, the evidence showed that, well before the children's claims arose, Hormoz and Valerie – despite their own non-American nationalities – made for their children a permanent home in the United States and manifested their intent to center their children's lives in the United States.⁵⁶ And they succeeded. The Tribunal found that the three-and-one-half years that Reja and Aram spent living in the United States and attending school before their claims arose "afforded them ample time to integrate into American culture given their fluency in English and their previous exposure to United States influences."⁵⁷ As for Karim, because he lived his

49. *Id.*, para. 27.

50. *Id.*, para. 28.

51. *Id.*, para. 10.

52. *Id.*, para. 12.

53. *Id.*, paras. 25, 27-28.

54. *Id.*, paras. 25, 35.

55. *Id.*, paras. 33-34.

56. *Id.*, para. 34.

57. *Id.*, para. 35.

entire life in the United States, the Tribunal found that he was exposed primarily to United States influences.⁵⁸

Having concluded that the Sabet children were dominant and effective United States nationals, and having satisfied itself that there were no other jurisdictional impediments,⁵⁹ the Tribunal went on to consider the merits of the claims.

3. OWNERSHIP OF SHARES IN THE SABET FAMILY COMPANIES

The Sabet children claimed to own shares in twenty-one Iranian companies,⁶⁰ six of which used registered shares, while the other fifteen used bearer shares.⁶¹ The children had no difficulty proving their ownership of the registered shares,⁶² but unfortunately for them, they owned very small percentages of the registered-share companies.⁶³ They claimed, by contrast, to have far greater holdings in the bearer-share companies. Indeed, they claimed collectively to own approximately 25% of all the Sabet family shares in the bearer-share companies. Their problem, however, was that in contemporaneous company records, the shares were listed as owned by other Sabet family members.⁶⁴ The Sabet children explained this by contending that when their grandfather Habib retired, he intended for his two sons to share one half of his bearer shares and his six grandchildren (Iradj's three children and Hormoz's three children) to share the other half.⁶⁵ So, Habib entrusted possession of the shares primarily to Iradj and Hormoz, but it was understood that they each held one half of the shares that were listed in their names for their children.⁶⁶

58. *Id.*, para. 36.

59. *See id.*, paras. 52-54.

60. Eleven of the companies were affiliated soft-drink bottling companies.

61. In Iran, shares in private joint stock companies could be in registered or unregistered form. Commercial Code of Iran, Art. 23. The holder of un-registered, or "bearer," shares was considered their owner unless the contrary was proved. *Id.*, Art. 24.

62. *Sabet*, *supra* note 1, para. 60. Indeed, Iran acknowledged that the children were the record owners of the shares but contended that their father, Hormoz, was the beneficial owner. *Id.*, para. 58. The Tribunal rejected that argument. *Id.*, para. 59.

63. The children collectively owned 1.6% of Mina Glass Company, 2.1% of Nownahallan Company, 2.9% of General Tire and Rubber Company, 2.9% of Towlid Rowghan Refining Company, 4.6% of Iran Cylinder Company, and 8.3% of Zamzam Tehran. *Id.*, para. 60.

64. *Id.*, para. 65.

65. *Id.*, paras. 62-65.

66. *Id.*, paras. 62-65. The children also claimed to own one half of the bearer shares that were listed in their grandmother Bahereh's name, while they maintained that Iradj's three children also owned one half of the shares listed in the name of Iradj's wife, Faegheh Ramsi. *Id.*, para. 65. At the Hearing, the Sabets argued in a somewhat different vein, but to the same result, that the Sabet family members treated their shareholdings as a single, undivided parcel owned in common by each of the family members, and it was understood that the children owned their proportionate share of bearer shares. *Id.*, para. 66.

The Tribunal noted that the children were, in essence, claiming to be the beneficial owners of the shares.⁶⁷ The Tribunal has traditionally “favored beneficial over nominal ownership of property,”⁶⁸ recognizing, in appropriate circumstances, that “beneficial ownership is both a method of exercising control over property and a compensable property interest in its own right.”⁶⁹ At the same time, the Tribunal has required a party alleging beneficial ownership “to produce strong evidence” that he, and not the nominal owner, was in reality the true owner of the property.⁷⁰ Consequently, the Tribunal has, over the years, considered several rather close claims of beneficial ownership.⁷¹

Sabet, however, did not seem to be among them. The Sabet children submitted an abundance of evidence designed to prove their beneficial ownership of the claimed bearer shares.⁷² Even a brief summary of all of the evidence and arguments would be too lengthy for present purposes; suffice it to say that the Tribunal thoroughly examined each piece of evidence but found that none of the evidence, either individually or collectively, satisfied the children’s burden of proving that they were the beneficial owners of any of the bearer shares.⁷³ Although it is by no means implausible to think that the Sabet family considered the Claimants (and the other grandchildren) as sharing in the Sabet family wealth, that very general belief cannot form the basis for a legal determination that the children owned a specific number of shares for which Iran must compensate them.

4. EXPROPRIATION

Having concluded that the Sabet children owned registered shares in six companies, the Tribunal next had to determine whether Iran expropriated those shares. However, the Tribunal’s treatment of the expropriation question justifies only a brief mention for the simple reason that the Tribunal had before it such clear, uncontroverted documentary evidence that Iran did formally expropriate all of the Sabet family assets that even Iran did not “seriously dispute that the assets of the Sabet family were confiscated.”⁷⁴ The Tribunal thus concluded that Iran was

67. *Id.*, para. 69.

68. James M. Saghi and Islamic Republic of Iran, Award No. 544-298-2, 22 January 1993, para. 18 [hereinafter *Saghi*].

69. *Id.*, para. 26.

70. Reza Nemazee and The Government of the Islamic Republic of Iran, Award No. 575-4-3, 10 December 1996, para. 54.

71. See, e.g., *id.*, paras. 54-63; *Saghi*, *supra* note 68, paras. 27-44.

72. See *Sabet*, *supra* note 1, paras. 61-92.

73. *Id.*, paras. 70, 93.

74. *Id.*, para. 103; see also *id.*, para. 101 (describing Iran as “apparently not denying that an expropriation occurred”).

liable to compensate the children for the loss of their ownership interests in the six registered-share companies.⁷⁵

5. THE CAVEAT

5.1. The Tribunal's pre-*Sabet* jurisprudence

As noted above, the Tribunal determined in Case No. A18 that it had jurisdiction over the claims of dual Iranian-United States nationals against Iran so long as the claimant's dominant and effective nationality was that of the United States.⁷⁶ In reaching that conclusion, the Tribunal at the same time recognized the risk that certain dual-national claimants might attempt "to have their cake and eat it too." That is, they might bring their claims before the Tribunal on the basis of their United States nationality while, at the same time, seeking compensation for property that they had been able to acquire only on the basis of their Iranian nationality. Consequently, in Case No. A18 and in a series of cases decided by specific Tribunal chambers, the Tribunal developed an equitable principle known as "the caveat,"⁷⁷ to prevent what the Tribunal considered to be an abuse of nationality.⁷⁸

The caveat operates at the intersection between Iranian nationality law and Iranian property law, so some background on each is necessary. Iranian law imposes Iranian nationality on a wide range of individuals, including, among many others, women of foreign nationality who marry Iranian men and persons born to Iranian fathers, no matter where they are born.⁷⁹ Once Iranian nationality is imposed, it is difficult to renounce.⁸⁰ Indeed, Iranian law does not permit certain Iranian nationals to renounce their Iranian nationality under any circumstances. For instance, children, like the *Sabet* Claimants, who are under 25 years of age and have Iranian fathers cannot renounce their Iranian nationality,⁸¹ nor, appar-

75. *Id.*, para. 106.

76. Case No. A18, *supra* note 12, reprinted in 5 Iran-US CTR 265.

77. The 'caveat' got its name from the "important caveat" that the Full Tribunal added to its decision in Case No. A18, namely: "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." *Id.*, at 265-66.

78. For a more comprehensive treatment of the caveat's development, see N.A. Combs, *Toward a New Understanding of Abuse of Nationality in Claims Before the Iran-United States Claims Tribunal*, 10 Am. Rev. Int'l Arb. 27 (1999) (forthcoming).

79. The Civil Code of Iran, Art. 976(2) and (6) (MAR Taleghany trans., 1995).

80. At a minimum, an Iranian national seeking to renounce his Iranian nationality must meet several strict requirements, including, among other things, obtaining permission from the Council of Ministers and undertaking "in advance" to transfer all his immovable property in Iran to Iranian nationals within one year from his renunciation. *Id.*, Art. 988(2) and (3).

81. *Id.*, Art. 988(1). A child under the age of 25 with an Iranian father might be able to renounce his Iranian nationality at the same time that his father renounces his own Iranian nationality, but only if the

ently, can women who are married to Iranian men.⁸² Further, Iranian law does not recognize dual nationality,⁸³ it considers a dual national's foreign nationality to be "null and void" and therefore recognizes only the dual national's Iranian nationality.⁸⁴ Thus, dual nationals, like the Sabet children, who seek to acquire property in Iran must do so in their capacity as Iranian nationals. This fact becomes relevant because Iran restricts the ownership of certain property to Iranian nationals. For example, certain kinds of real property in Iran can under no circumstances be owned by foreign nationals.⁸⁵ Further, in certain companies and enterprises, foreigners can own only a limited percentage of shares, while the remaining shares must be owned by Iranian nationals.⁸⁶ It is claims for these types of properties that have typically implicated the Tribunal's "caveat."

The Tribunal gave its first thorough examination of the caveat in *James M. Saghi and Islamic Republic of Iran*,⁸⁷ in which Chamber Two of the Tribunal established the test to determine when the caveat should apply:

The 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, [...] the equitable principle expressed by this rule can, in principle,

Council of Ministers' permission for the father's renunciation includes the child as well. *Id.*, Art. 988(3).

82. Article 986 of the Iranian Civil Code permits a "non-Iranian wife who becomes Iranian by marriage" to revert to her former nationality after the divorce or death of her husband provided that she notifies the Ministry of Foreign Affairs in writing. However, a widow who has children from her late husband cannot revert to her former nationality while the children are under eighteen years of age. *Id.*, The provision gives no hint that a woman currently married to an Iranian man can renounce her Iranian nationality under any circumstances. Further, Article 988 of the Iranian Civil Code begins by stating that "Iranian nationals may not abandon their nationality except on the following conditions." Although paragraph (3) indicates that a woman married to an Iranian man might be able to renounce her Iranian nationality at the same time that her husband renounces his, if the Council of Ministers' permission for the husband includes the wife, none of the "conditions" referred to above suggests that a woman married to an Iranian man can individually renounce her Iranian nationality.
83. See Leila Danesh Arfa Mahmoud and The Islamic Republic of Iran, Award No. 204-237-2, 27 November 1985, para. 20, reprinted in 9 Iran-US CTR 350, 354.
84. The Civil Code of Iran, *supra* note 79, Art. 989. That article provides in part: "Any Iranian national who has acquired foreign nationality after the solar year 1280 A.H. (1901-2) without observing the legal requirements, shall have his or her foreign nationality declared null and void and shall be regarded as an Iranian subject." See also Zaman Azar Nourafchan and The Islamic Republic of Iran, Award No. 550-412/415-3, 19 October 1993, para. 30. (Iran "invok[ed] provisions of the Iranian Civil Code [to prove] that it does not recognize the foreign nationality of its nationals, whether acquired by naturalization or by birth on foreign soil.").
85. See Rouhollah Karubian and The Government of the Islamic Republic of Iran, Award No. 569-419-2, 6 March 1996, paras. 157-59 [hereinafter *Karubian*]; Moussa Aryeh and The Islamic Republic of Iran, Award No. 583-266-3, 25 September 1997, para. 76 [hereinafter *Aryeh*].
86. See, e.g., Robert R. Schott and Islamic Republic of Iran, Award No. 474-268-1, 14 March 1990, para. 19, reprinted in 24 Iran-US CTR 203 ("Iranians' Bank was limited to a maximum of 35 percent foreign ownership"); Faith Lita Khosrowshahi and Islamic Republic of Iran, Award No. 558-178-2, 30 June 1994, para. 70 [hereinafter *Khosrowshahi*] (bank's shares divided into categories A and B, with B shares reserved to foreigners and restricted to no more than 25% of total stock).
87. *Saghi*, *supra* note 68.

have a broader application. Even 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.⁸⁸

With this phrasing, the Tribunal established a two-pronged test: the caveat will apply to a claim if the dual-national claimant either (1) seeks compensation for a benefit restricted by Iranian law to sole Iranian nationals, or (2) has otherwise abused his nationality in such a way as to justify barring his claim.

The second prong of the *Saghi* test – the “other abuse of nationality” prong – appears somewhat indeterminate, but in *Saghi* itself the Tribunal provided its first and, so far its last, example of its application. One of the *Saghi* Claimants, Allan Saghi, had been born with Iranian nationality but had successfully renounced it.⁸⁹ Soon after he did so, Iran enacted the Law for the Expansion of Public Ownership of Productive Units (“Law for Expansion”), which the Saghi family believed limited the percentage of shares in their company that could be held by foreigners.⁹⁰ Apparently in order to retain maximum ownership of the family's shares, Allan Saghi applied for reversion to Iranian nationality, and his application was granted. The Saghi family then executed several share transfers and submitted to the Iranian authorities shareholders' lists designating Allan Saghi as an Iranian shareholder.⁹¹

The Tribunal held that Allan Saghi had “consciously sought and obtained Iranian nationality solely for the purpose of having certain shares [...] placed in his name in order to minimize the adverse effects of the Law for Expansion,”⁹² and it consequently barred his claim for those shares pursuant to the second prong of the caveat test. The Tribunal concluded that it did not need to determine whether Allan Saghi's shares were in fact restricted by law to Iranian nationals – pursuant to the first prong of the caveat test – because “fundamental considerations of equity” required that his claim be dismissed, even if the shares he held were not restricted to Iranian nationals.⁹³ To rule otherwise, according to the Tribunal, “would be to permit an abuse of right.”⁹⁴

Judge Aldrich, Chamber Two's American arbitrator, issued a concurrence, emphasizing the “exceptional circumstances” of *Saghi*⁹⁵ and highlighting some of the factors that the Tribunal would later consider in *Sabet*. Judge Aldrich distinguished between “Allan Saghi's situation” – which he deemed to be “proba-

88. *Id.*, para. 54.

89. James M. Saghi and The Government of the Islamic Republic of Iran, Award No. ITL 66-298-2, 2 January 1987, para. 6, *reprinted in* 14 Iran-US CTR 3, 5.

90. *Saghi*, *supra* note 68, paras. 6, 55.

91. *Id.*, para. 59.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

bly unique among claims presented to the Tribunal” – and that of “most, if not all,” dual-national claimants, who instead had Iranian nationality imposed upon them either by birth to an Iranian father or by marriage to an Iranian man.⁹⁶ Judge Aldrich went on to note that, “[w]hile abandonment of Iranian nationality is not, in theory, impossible under Iranian law for persons who are more than 24 years old,” it involves numerous restrictions such that it “evidently rarely occurs in practice.”⁹⁷

The Tribunal considered the first prong of the *Saghi* test in a series of subsequent cases, the most important of which involved real property.⁹⁸ These cases make clear, as *Saghi*'s articulation of the first prong would suggest, that the caveat will apply to a claim that is for benefits reserved by law to Iranian nationals. These cases also make clear that it is the first prong of the *Saghi* test that plays the primary role in the Tribunal's caveat jurisprudence. Although Iran has pointed to a variety of behavior that it claimed constituted other abuse of nationality that would justify barring a claim, the Tribunal has not since *Saghi* found the second prong of the *Saghi* test applicable.⁹⁹

5.2. The Tribunal's application of the caveat in *Sabet*

In *Sabet*, the Tribunal had before it a relatively straightforward caveat claim, but it broke new ground by holding for the first time that a claimant's inability to renounce Iranian nationality militated against application of the caveat. I suggest below that the Tribunal extend its consideration of that factor to make it a more central feature of its caveat jurisprudence.

Iran argued that two laws – The Law Concerning the Attraction and Protection of Foreign Investments (“LAPFI”) and the Law for Expansion – placed restrictions on the percentage of shares in the *Sabet* companies that could be owned by foreigners such that the *Sabet* children owned shares that were restricted by law to Iranian nationals.¹⁰⁰ Iran also accused the *Sabets* of abusing their nationality by failing to disclose to Iranian authorities that their shares were held by United States nationals and by failing to pay certain taxes imposed on foreigners and on Iranians residing abroad.¹⁰¹

96. Concurring Opinion of George H. Aldrich, Award No. 544-298-2, 22 January 1993, para. 2.

97. *Id.*, para. 2, n.1.

98. See, e.g., *Karubian*, *supra* note 85, paras. 146-62; *Aryeh*, *supra* note 85, paras. 51-86; Jahangir Mohtadi and The Government of the Islamic Republic of Iran, Award No. 573-271-3, 2 December 1996, paras. 34, 88-92; George E. Davidson (Homayounjah) and The Government of the Islamic Republic of Iran, Award No. 585-457-1, 5 March 1998, paras. 74-77 [hereinafter *Davidson*].

99. For instance, Iran has unsuccessfully argued that using an Iranian identity card in acquiring property and paying a more favorable tax rate as a result of owning the property as an Iranian should trigger application of the caveat. See *Ataollah Golpira and Islamic Republic of Iran*, Award No. 32-211-2, 29 March 1983, reprinted in 2 Iran-US CTR 171, 174; *Khosrowshahi*, *supra* note 86, paras. 31-33.

100. *Sabet*, *supra* note 1, para. 111.

101. *Id.*, para. 112.

Pursuant to *Saghi's* first prong, the Tribunal determined that neither LAPFI nor the Law for Expansion restricted the foreign ownership of the Sabets' shares. The Tribunal rejected Iran's contentions with respect to LAPFI, citing *Kimberly-Clark*,¹⁰² in which the Tribunal held that LAPFI granted special protection for foreign investments but that none of its provisions prevented foreign investors from owning shares outside the LAPFI regime, as the Sabets had.¹⁰³ Turning to the Law for Expansion, the Tribunal noted that the law itself made no mention of any restrictions on foreign shareholdings but that regulations promulgated subsequently provided that a Council for Expansion of Ownership of Producing Units would determine the maximum percentage of shares that could be held by foreigners for each company falling within the scope of the Law for Expansion.¹⁰⁴ The Tribunal concluded, however, that Iran had "submitted not a single piece of evidence" indicating that the Council ever got around to limiting the foreign shareholdings of the companies in which the Sabets owned shares; thus, the Tribunal concluded that Iran had not proved that the Law for Expansion restricted the ownership of shares in the companies to Iranian nationals.¹⁰⁵

Turning to the second prong of the *Saghi* test, the Tribunal determined that the equitable considerations that gave rise to the application of the caveat in *Saghi* were not present.¹⁰⁶ In particular, the Tribunal focused on the constraints imposed by Iranian nationality law and distinguished the facts of *Sabet* from those of *Saghi* by noting that unlike Allan Saghi, the Sabet children

did not actively seek Iranian nationality to minimize the adverse effects of the Law for 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. And because only their 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.¹⁰⁷

In my view, the Tribunal advanced its caveat jurisprudence considerably by recognizing, in the context of *Saghi's* second prong, the relevance of a claimant's inability to renounce Iranian nationality. However, the Tribunal should go further: It should consider this factor in the context of *Saghi's* first prong. For one thing, if the Tribunal confines consideration of a claimant's ability to renounce Iranian nationality to its analysis of *Saghi's* second prong, then it will render the

102. *Kimberly-Clark Corp. and Islamic Republic of Iran*, Award No. 46-57-2, 25 May 1983, reprinted in 2 Iran-US CTR 334, 339.

103. *Sabet*, *supra* note 1, para. 124.

104. *Id.*, para. 120.

105. *Id.*, para. 125.

106. *Id.*, para. 127.

107. *Id.*, para. 128.

factor largely irrelevant, for *Saghi's* second prong seems to be confined to the unique facts of that case. As noted above, the "exceptional circumstances" of *Saghi* are not apt to recur,¹⁰⁸ and the Tribunal has identified no other circumstances that might constitute an abuse of right under *Saghi's* second prong. Further, a claimant's inability to renounce Iranian nationality would have little relevance to a case like *Saghi*, even if it were to recur, because a claimant like Allan Saghi who purposefully acquired Iranian nationality in order to secure benefits can hardly complain that Iranian law prohibited him from subsequently renouncing that nationality. More importantly, the Tribunal should consider a claimant's inability to renounce Iranian nationality in its analysis of *Saghi's* first prong simply because it is highly relevant to that inquiry.

As noted above, neither a person under 25 years of age born to an Iranian father nor a woman married to an Iranian man can renounce Iranian nationality.¹⁰⁹ Further, because Iran refuses to recognize a dual national's foreign nationality, these two categories of persons have no choice but to be treated as Iranian nationals by Iran for all purposes, including for property ownership. Thus, when acquiring property, persons in these categories have no choice but to acquire the kind of property that can or that must be held by Iranians. At the same time, the Tribunal has held, under the first prong of the *Saghi* test, that acquiring property reserved by law to Iranian nationals and then claiming compensation for that property as a dominant and effective United States national is an abuse of right. While that conclusion may be justifiable when applied to claimants who could have renounced nationality and consequently chosen the type of property they acquired, further analysis is necessary when the claimants are among those who had no such choice.

One must note at the outset, however, that a claimant's inability to renounce Iranian nationality will not be relevant to the first prong of the *Saghi* test in every case. Rather, whether it is relevant will depend on the kind of property for which the claimant is claiming. A claimant's inability to renounce Iranian nationality would appear to have no relevance when the claim is for a type of property that could not under any circumstances have been owned by foreigners; for example, certain kinds of real property in Iran.¹¹⁰ This is because the claimant could not have owned such "wholly restricted" property even if he had been capable of renouncing his Iranian nationality; thus, his incapacity to renounce Iranian nationality would have no bearing on the Tribunal's consideration of the caveat.

108. See Concurring Opinion of George H. Aldrich, *supra* note 96, para. 2; Bederman, *supra* note 15, at 86.

109. The two groups are distinguishable, of course, because women can choose the men they marry while children cannot choose their parents. However, a woman's choice as to whom to marry is so fundamental and so unlikely to be deterred by the imposition of an unwanted nationality, that both women married to Iranian men and children born to Iranian fathers can be considered similarly situated.

110. See *Karubian*, *supra* note 85, paras. 157-59; *Aryeh*, *supra* note 85, para. 76.

The same cannot be said, however, for property such as that which Iran alleged to be at issue in *Sabet* – that is, shares of stock of which foreigners could own only a certain percentage, with the remainder to be held by Iranians. With respect to this “partially restricted” property, the distinction between those who could renounce their Iranian nationality and those who could not is significant. Whereas an adult male dual national could choose either to purchase the shares of the company that were reserved to Iranians or to renounce his Iranian nationality and purchase the shares of the company reserved to foreigners, a person under the age of 25 with an Iranian father or a woman married to an Iranian man had no such choice. These dual nationals were forced to remain Iranians, and, when purchasing shares of stock, they were forced to purchase those shares reserved to Iranians.

Of course, one might argue that a claimant’s inability to renounce Iranian nationality is irrelevant even with respect to partially restricted property because either the ceiling for foreign shareholders has been reached or it has not been; that is, either all of the shares reserved to foreigners have been acquired by other foreign shareholders or some are still available. If some are still available, then the caveat will not in any event bar the claim because the Tribunal will not consider the claimant to have acquired property reserved by law to Iranian nationals.¹¹¹ Conversely, if the ceiling for foreign shareholders has been reached, one could argue that the remaining shares – that is, the shares reserved to Iranians for which the claimant is claiming – are analogous to property that can under no circumstances be owned by foreigners so that the claimant’s inability to renounce Iranian nationality would be irrelevant to the Tribunal’s analysis.

However, to reason thus would be to presume an answer to a question the Tribunal has never asked: Why did the claimant acquire the benefit reserved by law to Iranian nationals in the first place? When the claimant is one who could have renounced his Iranian nationality, the Tribunal can appropriately conclude that he voluntarily chose to retain it and to acquire the benefits made available thereby. His claim as a dominant and effective United States national is likely to be considered an abuse of right. However, when the claimant is one who could not have renounced his Iranian nationality, then the fact that he acquired property reserved by law to Iranian nationals does not indicate anything about the reason that he did so. It certainly is possible that he acquired property reserved to Iranian nationals because Iranian law allowed him to obtain only that category of property; that is, that he would have renounced his Iranian nationality had he been able to and would have negotiated with the company’s existing foreign shareholders to purchase some of their shares.

111. *Khosrowshahi*, *supra* note 86, para. 73 (Claimants, who were dual national minors, acquired Category A stock reserved to Iranian nationals but caveat was held not applicable because Category B shares were still available).

The question thus becomes one of the burden of proof. Iran has the burden of proving that the caveat should apply to a claim;¹¹² consequently, Iran should be required to prove not only that the claim is for property reserved by law to Iranian nationals but, in cases in which the claimant could not renounce his Iranian nationality, that the claimant would have acquired that category of property even if he had been able to renounce his Iranian nationality and acquire property available to foreign nationals. Absent such a showing, the claim cannot be considered an abuse of right. Iran should not be permitted to benefit from requiring claimants to act in a way that it later can deem to be abusive. As the Tribunal has held: "The *caveat* is essentially an equitable instrument, intended to remedy any bad faith use of nationality [...]"¹¹³ A claimant who has no choice as to how he uses his nationality cannot be said to have used it in bad faith.

In attempting to make this showing, Iran might point to the fact that, as Judge Aldrich has noted, renunciation of Iranian nationality is apparently rare in practice because it results in a variety of restrictions, including, among other things, restrictions upon visits to Iran.¹¹⁴ That is, Iran might point to the fact that very few people have ever renounced their Iranian nationality to prove that a particular claimant would not have done so either. However, that argument might be a two-edged sword. If the restrictions that Iran imposes on those seeking to renounce Iranian nationality are so onerous that they deter virtually everyone, then one might question whether Iran has provided any of its nationals with a viable means of renouncing Iranian nationality.

To summarize, in *Sabet* the Tribunal took a step in the right direction by considering the *Sabet* children's inability to renounce Iranian nationality in the context of *Saghi*'s second prong. However, the Tribunal should take a further step and incorporate a claimant's inability to renounce Iranian nationality into its analysis of *Saghi*'s more important first prong. The inability to renounce Iranian

112. The Tribunal has never expressly placed this burden on Iran, but it has impliedly done so. See *Aryeh*, *supra* note 85, para. 75 (concluding that Iran was "unable to point to a comprehensive provision in Iranian law that contains an express prohibition on the ownership of real estate by foreign or dual nationals"); *Sabet*, *supra* note 1, para. 125 (Iran "submitted not a single piece of evidence that indicates that the Council [...] made a determination to limit the [company's] foreign shareholdings [...]"). This conclusion is further supported by Article 24, paragraph 1, of the Tribunal Rules, which provides that "[e]ach party shall have the burden of proving the facts relied on to support his claim or defence." Final Tribunal Rules of Procedure, 3 May 1983, (emphasis added) reprinted in 2 Iran-US CTR 405, 427; see also Vera-Jo Miller Aryeh and The Islamic Republic of Iran, Award No. 581-842/843/844-1, para. 157 (22 May 1997) (describing the "basic rule of burden of proof" in international tribunals as resting "upon him who asserts the affirmation of a proposition that if not substantiated will result in a decision adverse to his contention") (quoting D.V. Sandifer, Evidence Before International Tribunals 127 (1975)).

113. *Aryeh*, *supra* note 85, para. 84; see also *Davidson*, *supra* note 98, para. 76 (describing the caveat as "an instrument of equity intended to prevent abuses of right").

114. Concurring Opinion of George H. Aldrich, *supra* note 96, at para. 2, n.1. See also *Davidson*, *supra* note 98, para. 31 (finding the caveat not applicable and describing the Claimant's contention that Council of Ministers rarely consents to renunciation of Iranian nationality).

nationality will not be relevant when the claim is for wholly restricted property; because foreign nationals could not under any circumstances own that kind of property, it will be of no consequence that the claimant was prevented from renouncing Iranian nationality to become a sole foreign national. However, with respect to partially restricted property, such as that which was alleged to be at issue in *Sabet*, Iran should be required to prove not only that a claimant who could not renounce Iranian nationality acquired property restricted by Iranian law to sole Iranian nationals, but that the claimant would have acquired the same property had he been able to renounce his Iranian nationality. If Iran cannot make that showing, the caveat should not apply.

6. CONCLUSION

By becoming the first case to find minor claimants to be dominant and effective United States nationals even though neither of their parents was a United States national, *Sabet* provides new insights into the dual nationality of minors. Still, it is *Sabet's* treatment of the caveat that proves its most interesting feature. The Tribunal broke new ground by considering a claimant's inability to renounce Iranian nationality in the context of *Saghi's* second prong. The Tribunal should make that factor a more central feature of its caveat jurisprudence by considering it when analyzing *Saghi's* first prong as well.